



**PRESCRIPTION:**  
STAY AT HOME

DISEASE:	COVID-19
PATIENT NAME:	EVERYONE
TAKE:	DAILY

# 2020 hindsight: the first 12 months of the COVID-19 pandemic

A special report under section 31 of the *Ombudsman Act 1974*

22 March 2021

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The Hon Jonathan O'Dea MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Pursuant to section 31 of the *Ombudsman Act 1974*, I am providing you with a report titled *2020 hindsight: the first 12 months of the COVID-19 pandemic*.

I draw your attention to the provisions of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Miller".

Paul Miller

**Acting NSW Ombudsman**

22 March 2021

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# Foreword from the NSW Ombudsman

The year 2020 was unprecedented and challenging. The fact that such an observation now seems trite only underscores the extent of the upheaval.

In a year that began with the worst bushfire season in NSW history, followed shortly thereafter by extensive flooding, the onset of the COVID-19 pandemic completed a trifecta of crises that have had diverse and far-reaching impacts.

Everyone has been impacted in some way, but not everyone has been impacted in the same way or to the same extent. Some groups have been more vulnerable both to the disease itself and to government actions taken to contain it. Those living in aged care, residential disability accommodation or custodial settings, for example, may be more at risk of exposure given their close-quarters living environments; more susceptible to serious illness if they catch the disease; and more severely impacted by lock-downs and prohibitions on external visits.

It is also widely acknowledged that women have been disproportionately affected: proportionally more women were retrenched during the lockdown, female jobs have been slower to return, women assumed a disproportionate share of unpaid domestic work during lockdown (such as home-schooling), and sole parents (who are more often women) have been particularly affected.<sup>1</sup> Lower-paid workers (many of whom are, of course, also women) have also borne a different burden. They are more likely to work either in essential services where they might have contact with infected people, or in the sectors that suspended their activities, such as hotels, restaurants and tourism services.<sup>2</sup>

The different and particular experiences of groups and individuals are at the heart of this report. The Ombudsman is an office that bridges the space *between* individuals and communities, on the one hand, and the state, on the other. Our role is to make sure that the exercise of state power is not only lawful and reasonable at scale, but that it is individually just – we want to see that everyone receives the right services and that everyone is treated fairly.

In this report, we look back on the first 12 months of the pandemic and report on what we have seen, primarily through the lens of complaints we received from individuals about the actions taken by NSW Government agencies.

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1. The Grattan Institute, <https://grattan.edu.au/report/womens-work/>

2. D O'Sullivan, M Rahamathulla, M Pawar, 'The impact and implications of COVID-19: An Australian Perspective, (2020), 2(2), The International Journal of Community and Social Development Available at: <https://journals.sagepub.com/doi/full/10.1177/2516602620937922>

## Acknowledging the good work done in responding to the pandemic

It is widely recognised that, certainly by international standards, the public health response to the pandemic in NSW and Australia has been highly effective. As the NSW Ombudsman, we acknowledge the good work of those responsible for crisis response planning and implementation.

We especially recognise the dedication and effort of those public workers on the front-line, and those who support them. This includes those involved in dedicated COVID-19 response, treatment and containment roles. It also includes all those who continued to deliver ordinary and essential government services despite the challenges and changed delivery models necessitated by the pandemic.

## The problems of fragmented complaint handling

A key message of this report is the importance of effective complaint handling in improving those front-line activities, as well as the overall crisis response.

Of course, the ability to complain is also an essential right. It is, moreover, a right that can take on even greater importance during a crisis, when extraordinary government powers are enlivened, when the speed and instability of responses limit ordinary governance mechanisms (such as parliamentary oversight of executive action), and when substantive individual rights (such as the right of free movement) are being curtailed.

NSW does not have a constitutional bill of rights or a human rights act. One of the few express statutory rights that people do have is the right to complain to the NSW Ombudsman if they believe the conduct of a public authority is unlawful, unreasonable, unjust or otherwise wrong. Those held in any form of custody or detention (including quarantine) also have a specific statutory right to be assisted to make a complaint, unopened and uncensored, to the Ombudsman.

One of the lessons of the current pandemic, however, is that the current oversight and complaint handling system will not necessarily be suited to a crisis of this nature and magnitude. The response to COVID-19 involves multiple agencies across multiple layers of government (state and federal), working sometimes in close partnership, sometimes in loose alignment, and sometimes separately, and generally by way of a variety of formal and informal coordination mechanisms.

In contrast, the oversight and complaint handling system is highly fragmented:

- by jurisdiction – for example, federal agencies are overseen by the Commonwealth Ombudsman, NSW agencies by the NSW Ombudsman

- by agency – for example, the NSW Police Force is overseen by the Law Enforcement Conduct Commission (**LECC**), other NSW agencies are overseen by the Ombudsman
- by activity - breaches of privacy are overseen by the Information and Privacy Commission, health service provision by the Health Care Complaints Commission (**HCCC**), and other unlawful or wrong conduct is overseen by the Ombudsman.

These arrangements work well enough in ordinary times by providing a more-or-less comprehensive patchwork of oversight. However, in the context of a crisis like COVID-19 it can and has resulted in confusion about who has jurisdiction to do what; delays as complaints are bounced from agency to agency; and potential anomalies and gaps, for example in respect of complaints about the conduct of private contractors.

No single ombudsman or other integrity agency has oversight of the entire crisis response, or even of any single aspect of it. Hotel quarantine, for example, although apparently ‘run’ by the NSW Police Commissioner involves multiple agencies; it therefore triggers the jurisdiction of multiple oversight bodies, but with each having only limited visibility and responsibilities.

This fragmentation meant that an ad hoc special commission of inquiry needed to be established to ensure that all relevant conduct of all relevant agencies and organisations could be investigated in respect of one particular incident – the Ruby Princess outbreak.

### **Improving the oversight system during crisis**

In early 2020, shortly after the first cases of COVID-19 presented in NSW, but before any public health orders had been made, the NSW Ombudsman wrote to the NSW Government. We urged that, in any response to the unfolding crisis – and particularly if any response might involve forced quarantining or other restrictions on liberty – consideration must be given to the importance of ensuring independent oversight and clear avenues of external complaint.

We have also suggested to government (including to the Australian Government as part of its national review of hotel quarantine last year) that consideration be given to modifying oversight and complaint handling arrangements if necessary to ensure that (whether on a state-by-state or national basis) there is at least one oversight body that has full visibility of the quarantine system, and an ability to receive complaints about all aspects of it.

Failing that, we asked that relevant NSW integrity and complaint handling agencies – including our office, LECC and the HCCC – should at the very least be proactively briefed by government on the crisis response, so that we can understand who is doing what. That way,

when a complaint is made to any of us, we will be in a better position to provide accurate information to the public and to refer those complaints where necessary to the more appropriate oversight body.

Early this year, I suggested to government that a quarantine complaint handling ‘roundtable’ meeting be convened to bring together those agencies involved in delivering quarantine services with those oversight bodies that can receive complaints about those services. I am pleased to report that I received, on 19 March 2021, advice from the Department of Premier and Cabinet that the relevant agencies that deliver quarantine services agree to participate in a roundtable. I am hopeful the roundtable will identify ways to enhance the access, ease and effectiveness of complaint resolution for those affected by quarantine and related arrangements.

In the meantime, we continue to provide what information and support we can to the public and complainants, and to engage with other oversight agencies to ensure that complaints that we cannot handle are redirected as quickly and efficiently as possible to an agency that can.

### **The importance of complaints**

We understand that there may be a reticence and even a stigma associated with complaining during times of crisis, particularly when it is acknowledged that the crisis response of public officials has generally been both well-intentioned and well-executed.

However, maintaining a healthy sense of perspective and even recognising that one is in a position of relative privilege is not inconsistent with also finding oneself in a position where legitimate concerns can and should be raised about things that are not right, or not fair, and that could be improved.

In this report we highlight some of the benefits of a well-functioning complaint handling regime in the context of a crisis like this.

One of those benefits, of course, is the potential for complaints to provide on-the-ground intelligence and the early identification of risks before they escalate. In this way, far from getting in the way of public health measures, oversight and complaints offer an opportunity to reinforce and enhance them. Another benefit, of course, is that complaints give agencies the opportunity to improve the experience and wellbeing of those who, voluntarily or otherwise, become their customers.

## The impact of COVID-19 on the NSW Ombudsman's service

Like all agencies, the NSW Ombudsman's office itself has been impacted by the pandemic, and particularly in early to mid-2020 our work was seriously disrupted. Our office was grossly unprepared for a rapid wide-spread shift to home-based work, especially given a long term underinvestment in outdated legacy IT systems. Our paramount consideration throughout has been to ensure the health and safety of our staff and the community.

I am immensely proud of the commitment and agility of our staff, who responded to the many challenges the last 12 months has presented and am very pleased that we were able to maintain our front-line complaint handling capability throughout 2020. I would also like to thank all our stakeholders, including agencies, communities and the public, for their patience and support when our services were impacted.



Paul Miller  
Acting NSW Ombudsman

# 1. 2020: A year like no other





## 1.1. The trajectory of the pandemic

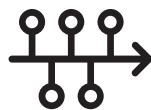
Coronavirus disease 2019 (**COVID-19**) is a contagious disease that can result in serious illness and death. It is caused by a virus: severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**). The first case of COVID-19 was identified in Wuhan, China in December 2019. Shortly after, on 25 January 2020, the first case was confirmed in Australia. By mid-February the virus had spread to many countries across the world. On 11 March 2020 the World Health Organization (**WHO**) declared a global pandemic.

In late March, the Australian Government began to impose restrictions on international travel. The Australian border was closed to all non-residents, and Australian residents returning from overseas were required to self-isolate for 14-days upon arrival.

State and territory governments also began to impose restrictions on the public at large. In NSW, large scale gatherings were forbidden, non-essential movement outside the home was prohibited and many services and workplaces not considered ‘essential’<sup>3</sup> were closed. See **Key events** and responses below, and **Annexure A** for more detail.

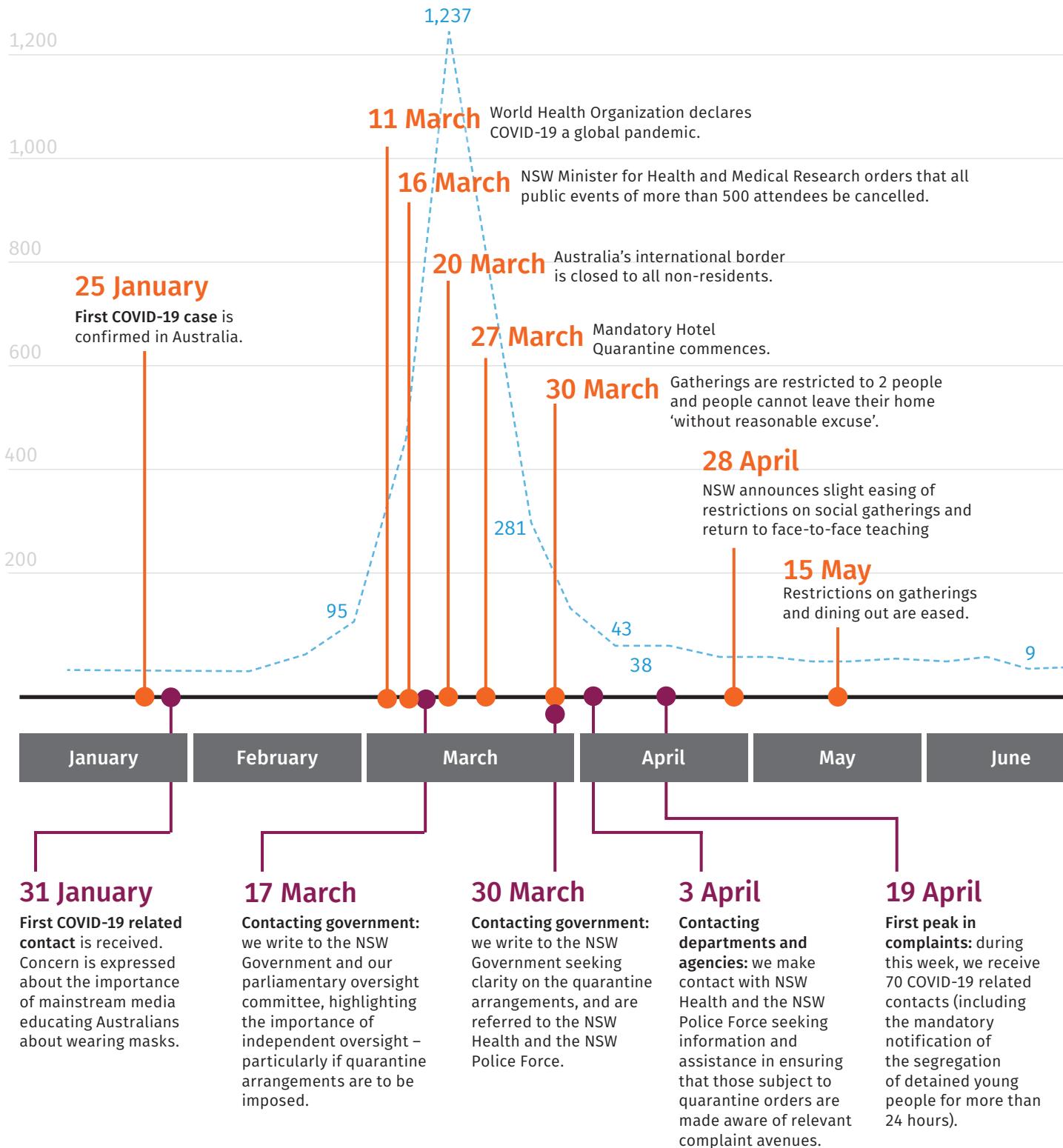


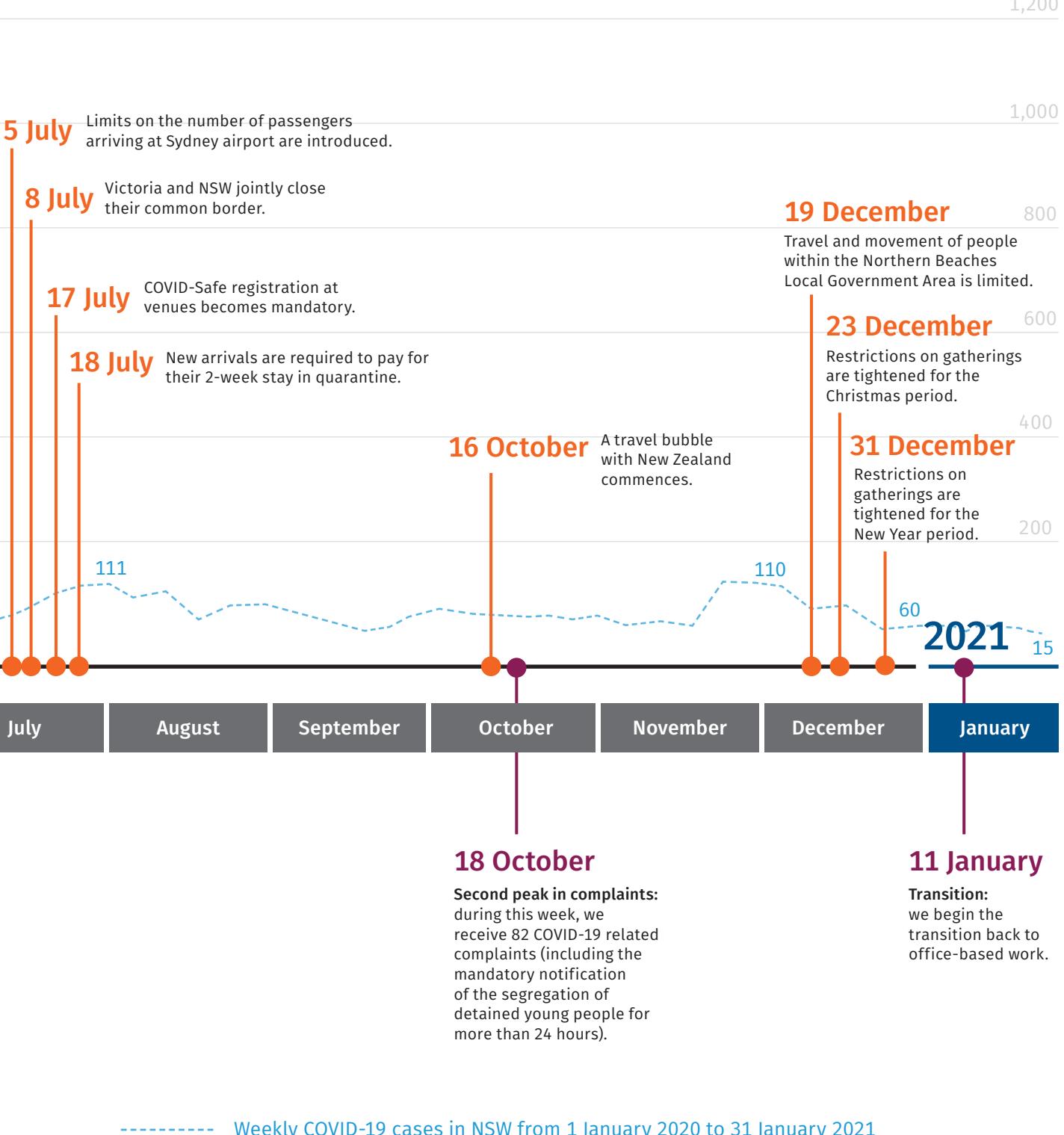
3. Initially, there was some confusion about what was and was not ‘essential’  
[www.abc.net.au/news/2020-03-31/how-australian-states-are-enforcing-coronavirus-measures/12106774](http://www.abc.net.au/news/2020-03-31/how-australian-states-are-enforcing-coronavirus-measures/12106774)



# Key events and responses in 2020

See Annexure A for more detail.





## 2. COVID-19 related complaints to the Ombudsman



Unsurprisingly, some people who contacted us in the last 12 months did so to complain or seek information about the actions being taken by the government, and various government agencies, in response to the COVID-19 pandemic.

However, as we explain in more detail in the next section, we were unable to deal with many of these complaints.

Where we could not deal with a complaint, we still sought to provide complainants with what information and support we could. In some cases, we referred them to other relevant oversight bodies who could provide more help.

## 2.1. The NSW Ombudsman's jurisdiction



The *Ombudsman Act 1974*, together with other legislation that confers functions on our office, such as the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and the *Public Interest Disclosures Act 1994*, defines what it is we can and must do. The NSW Ombudsman is independent of the government of the day, impartial, and accountable to the people of NSW through a parliamentary committee.

A core function – indeed arguably the core function – of the NSW Ombudsman is to listen and respond to complaints about NSW public authorities and certain publicly-funded community service providers.

Specifically, our purpose is to:

- protect citizens from abuse of power and unfair treatment by helping them to voice and resolve complaints, and by investigating serious maladministration
- foster enduring reforms that will prevent future failings and improve public administration and service delivery, including by:
  - helping government and service providers to learn from complaints and reviews
  - promoting public sector whistleblowing
  - providing advice, suggestions and recommendations that are evidence-based, realistic and effective
  - providing education and training to government agencies and service providers to encourage good administrative practice and build capability
- provide a trusted source of independent advice to the parliament, providing assurance of executive compliance with the rule of law and supporting the parliament's functions of scrutinising the executive and implementing legislative reform.

We generally aim to resolve complaints by facilitating communication between the person complaining and the agency in question, and by undertaking inquiries and making suggestions to resolve the complaint

and improve future practice. However, where it appears to us that there may be evidence of unlawful or otherwise wrong conduct, we can investigate a matter using our statutory powers and make formal findings and recommendations. To date, we have not commenced any formal investigation into any conduct relating directly to COVID-19.



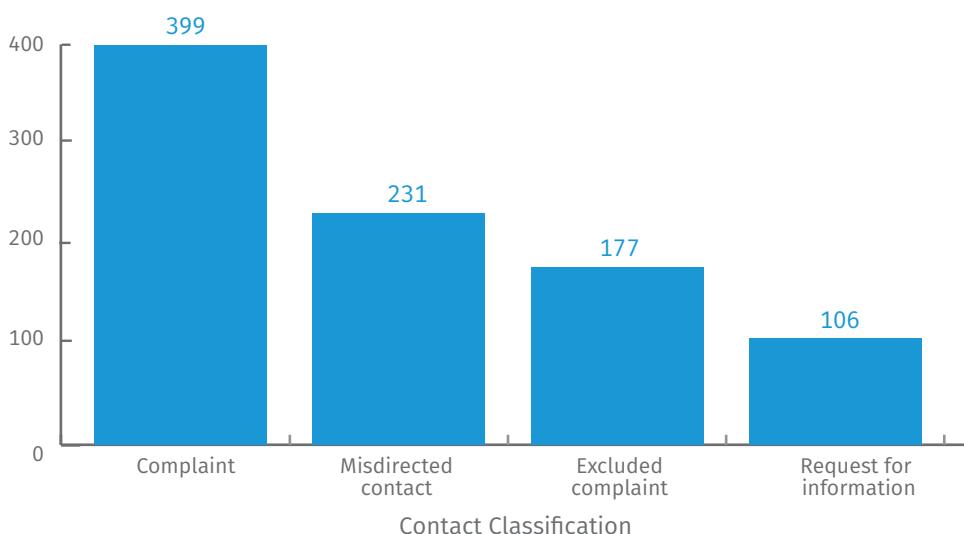
## 2.2. Complaints at a glance

We received a total of 26,146<sup>4</sup> complaints and inquiries from 1 January 2020 to 31 January 2021, of which 913 (3.5%) specifically related to the NSW Government's response to the pandemic. Of these 913 complaints and inquiries about COVID-19:

- 399 (44%) were actionable complaints, which are complaints that we have jurisdiction to receive
- 231 (25%) were misdirected contacts, which are complaints about bodies that are generally outside of our jurisdiction (such as federal government bodies or private companies)
- 177 (19%) were 'excluded complaints', which are complaints about 'excluded conduct' of NSW public authorities that our legislation prevents us from investigating (such as the conduct of the NSW Police Force)
- 106 (12%) were requests for information.

These are presented in Figure 1 below.

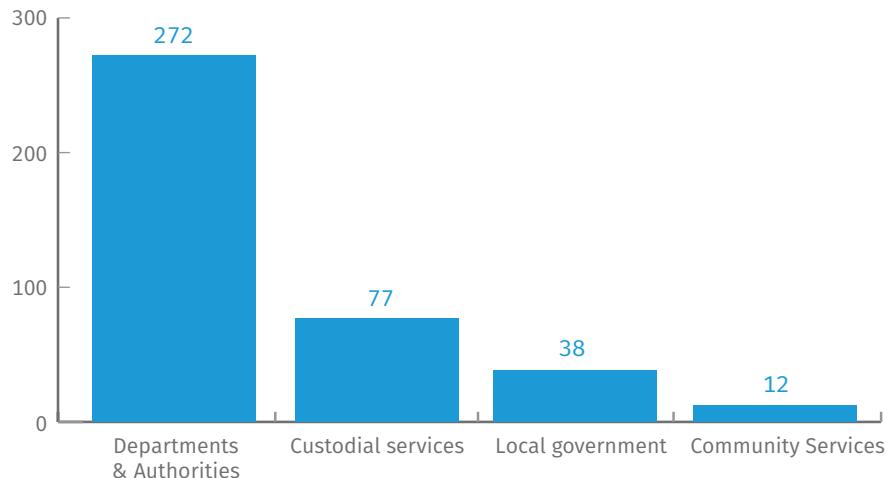
**Figure 1.** Contacts received from 1 January 2020 to 31 January 2021 by contact classifications



4. This number includes actionable complaints, excluded complaints, misdirected contacts, request for information, notifications, child and disability death registrations, feedback assist contacts and employment related child protection contacts.

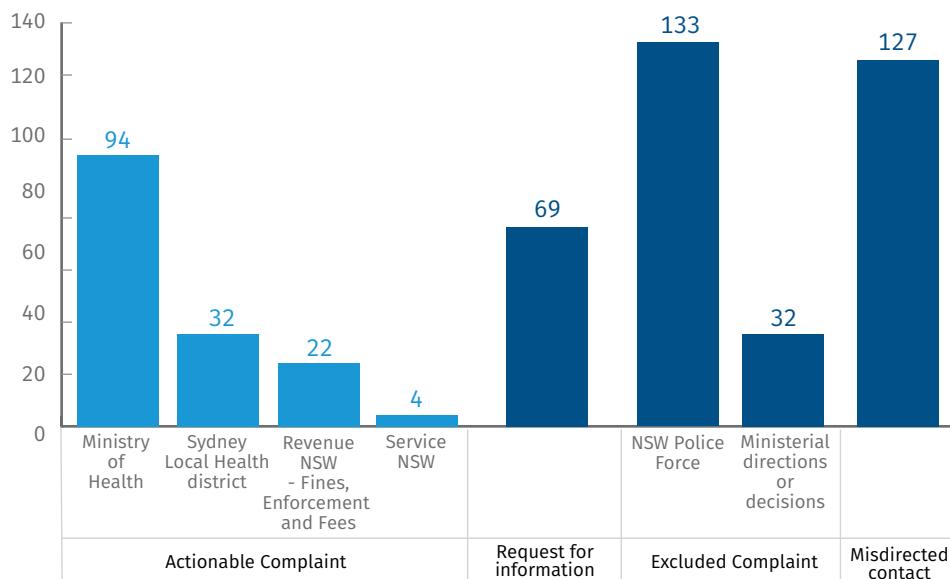
**Figure 2** shows how the 399 actionable complaints were distributed across departments, agencies and services.

**Figure 2.** Actionable complaints received from 1 January 2020 to January 2021 by case type



We received 513 contacts about hotel quarantine. 152 of these contacts were complaints that we could respond to, and 69 were requests for information. A total of 292 contacts were outside of our jurisdiction (including 165 excluded complaints and 127 misdirected complaints). **Figure 3** below sets out the contacts we received about hotel quarantine and the agencies they relate to.

**Figure 3.** Contacts about hotel quarantine by agency and jurisdiction



**Note:** Complaints about the NSW Police Force and ministerial directions or decisions are excluded from our jurisdiction.



## 2.3. Complaints about the NSW mandatory hotel quarantine system

Quarantine has been used effectively to reduce the spread of COVID-19 in the community, and the system has been refined over time. Since 29 March 2020, all travellers who arrived in Australia by air and sea have been required to quarantine at a ‘designated quarantine facility’ where they are tested twice for COVID-19.<sup>5</sup> To date, hotels that have been assessed as meeting certain criteria have been used as ‘designated quarantine facilities.’ Unless granted an exemption to isolate at home, arrivals must spend a minimum of 14 days (and up to 24 days) in this government-arranged accommodation.

In NSW, hotel quarantine is a joint operation led by the NSW Police Force and NSW Health. The terms of quarantine are governed by the *Public Health (COVID-19 Air Transportation Quarantine) Order* and the *Public Health (COVID-19 Maritime Quarantine) Order* in place at the relevant time.

Under the current orders, international travellers are required to undergo a COVID-19 symptom and temperature check upon arrival in NSW. If travellers display symptoms indicative of COVID-19, those individuals are transferred to a hotel managed by NSW Health to await their results. These hotels are known as ‘Special Health Accommodation’ (SHAs). Ordinarily, SHAs are used to accommodate people who are medically fragile or require closer supervision (regarding physical or mental health), unaccompanied minors, others who are sick (not from COVID-19) and people who have other special needs.

Travellers who do not display symptoms of COVID-19 are transferred to a NSW Police Force managed hotel or other designated quarantine facility.

The NSW Chief Health Officer (or her delegate) may release a person from quarantine after 14 full days if satisfied that, having regard to any testing, the person does not pose a risk of infecting others with COVID-19, or otherwise after 24 full days have passed if no symptoms are apparent.

Failing to follow quarantine rules is a criminal offence and attracts heavy penalties. For individuals, the maximum penalty is \$11,000, 6 months in prison, or both, with a further \$5,500 fine for each day the offence continues.<sup>6</sup>

5. [www.health.nsw.gov.au/news/Pages/20200702\\_00.aspx](http://www.health.nsw.gov.au/news/Pages/20200702_00.aspx)
6. [www.health.nsw.gov.au/Infectious/factsheets/Pages/hotel-quarantine.aspx#:~:text=Quarantine%20is%20used%20to%20reduce,transiting%20air%20or%20sea%20passengers.&text=People%20who%20refuse%20to%20be,quarantine%20for%20a%20longer%20period](http://www.health.nsw.gov.au/Infectious/factsheets/Pages/hotel-quarantine.aspx#:~:text=Quarantine%20is%20used%20to%20reduce,transiting%20air%20or%20sea%20passengers.&text=People%20who%20refuse%20to%20be,quarantine%20for%20a%20longer%20period)

Since 18 July 2020, travellers (rather than taxpayers) are charged for their mandatory stay in quarantine. As at March 2021, the following rates apply in NSW:

- \$3,000 for 1 adult
- \$1,000 for each additional adult
- \$500 for each child aged 3 and over.

Operation of the SHAs and police-managed quarantine facilities can involve multiple entities, including the NSW Police Force, NSW Health, NSW Treasury, the Department of Communities and Justice (**DCJ**), private security firms, and the hotels themselves.

The SHA facilities are managed by Sydney Local Health District (**SLHD**), which has its own contracts with accommodation and food providers. In contrast, food and services for individuals quarantined in police-managed hotels are provided by the hotels, and other providers who have contracted with the NSW Treasury.

The various entities involved have taken steps to ensure individuals are provided with certain essential items and services while in quarantine, including:

- **catering:** although if guests choose, they can order takeaway meals once a day from outside the hotel at their own expense
- **health and wellbeing services:** for example, a health care team will phone individuals in quarantine each day to check on their health and wellbeing, and a 24/7 health and wellbeing hotline has also been made available. Chaplaincy services are available by referral from the Red Cross.<sup>7</sup> Some hotels have provided additional services – for example, free access to online fitness classes.

### **2.3.1. Receiving complaints about hotel quarantine**

Many of those who complained to us from within hotel quarantine are likely to have been further frustrated by our jurisdictional constraints. In particular, we have been legally unable to deal with complaints about:

- the minister who made the public health orders that require people to be quarantined and the terms of those orders
- the NSW Commissioner of Police, or individual police officers (under whose general direction and control those in quarantine are placed).

As already noted, the conduct of both the Minister for Health and the NSW Police Force are excluded from our jurisdiction. However, we do have jurisdiction to receive complaints about other agencies that are involved in the quarantining system, including NSW Health, NSW Treasury and DCJ.

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7. Ibid.

### 2.3.2. Frequent complaints about hotel quarantine

From 30 March 2020 to 31 January 2021, we received 513 contacts about police-managed and SHA hotel quarantine. These 513 comprised a mix of complaints and inquiries about NSW agencies we have jurisdiction over, others we do not have jurisdiction over, and complaints and inquiries that were misdirected. The issues most often raised in these complaints and inquiries were:

- the condition and cleanliness of hotel facilities (254 mentions)
- inadequate food options and quality (95 mentions)
- inadequate access to support services such as mental health support or medical assistance (78 mentions)
- a lack of access to fresh air and exercise (73 mentions)
- the processing of hotel quarantine exemption requests (68 mentions)
- quarantine fees (66 mentions)
- the length of quarantine (29 mentions).

Our experience of complaints and inquiries about hotel quarantine appear to be consistent with concerns raised in other jurisdictions.<sup>8</sup>

### 2.3.3. Complaints about inadequate access to fresh air and exercise

Daily access to fresh air and 1 hour of exercise outdoors has long been seen as a minimum standard of treatment for people in facilities where liberty has been restricted.<sup>9</sup> Against the background of the COVID-19 pandemic, the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has reiterated advice on the need to respect minimum requirements for daily outdoor exercise (within the limits of necessary public health measures) in detention settings.<sup>10</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment explicitly extended this advice to ‘newly-established facilities/zones where people are placed in quarantine’.<sup>11</sup> Interim guidance from the WHO recommends that such measures be implemented in relation to quarantine ‘based on a risk assessment and consideration of local circumstances’.<sup>12</sup>

8. [www.health.gov.au/sites/default/files/documents/2020/10/national-review-of-hotel-quarantine.pdf](http://www.health.gov.au/sites/default/files/documents/2020/10/national-review-of-hotel-quarantine.pdf)

9. United Nations, *Standard Minimum Rules for the Treatment of Prisoners* (30 August 1955) r 11(a); United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), GA Res 70/175, UN Doc A/RES/70/175 (17 December 2015) rr 14(a), 23(1), 42.

10. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to States parties and national preventative mechanisms relating to the coronavirus disease (COVID-19) pandemic*, UN Doc CAT/OP/10 (7 April 2020), [9(i)].

11. Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic* CPT/Inf(2020)13 (20 March 2020).

12. World Health Organization, *International Health Regulations* (3rd ed, 2005).

In NSW, those in quarantine are not routinely given access to fresh air and outdoor exercise. This issue of lack of fresh air was mentioned 73 times in complaints and inquiries we received about hotel quarantine.



### **Case study 1.**

'I refer to the Queensland Human Rights Commission who have made the following recommendations: The Queensland Human Rights Commission has recommended all hotels used for mandatory quarantine during the pandemic should have balconies or windows that open.'

It has ruled on a complaint by a woman in self-funded hotel quarantine in August who was refused access to fresh air for two weeks. The human rights body found the state limited her right to humane treatment while depriving her liberty.

Please consider the same regulations for hotels in Sydney. It is inhumane to expect people to sit inside for 14 days without any opportunity for fresh air or opportunity to exercise. This is exacerbated by reading about people, in the same hotel, who has [sic] access to a window that can be opened, and even a balcony (while we all have to pay the same amount for this quarantine). The feeling of frustrations and the increasing difficulties in coping with limited movement and no fresh air is also exacerbated by the fact that I left Australia on compassionate grounds and I am now back after very emotional experiences in my home country with no opportunity to be with my family once back in Australia.'

### **Case study 2.**

'I have two main complaints the first is we are not allowed any outside time and are not given rooms with any way to get fresh air. Even opening the door to air the room out after exercise is not allowed. Whilst I'm happy to complete the 14 days in quarantine, as a nurse I realise that this is not healthy and even criminals are given outside time in prisons. Our health is being risked to prevent a risk to the community.'



In response to our inquiries, we were informed that when the NSW Police Force considered which hotels were suitable for use as 'designated quarantine facilities', the primary criterion was security. They determined that high-rise buildings would be easier and less resource intensive to keep secure. The drawback of high-rise buildings is that they tend not to have either balconies, or windows that can open. We understand the option to allow guests out of their rooms to

access fresh air was explored but determined to be logistically too difficult and resource-intensive to manage, and that moving people around while in quarantine represented a transmission risk.

The initial urgency of the crisis has passed, and experts have a better understanding of the impact of quarantine on individual mental and physical health, as well as the nature of the virus itself. A national review of hotel quarantine has also been completed. Now, further consideration should be given to ways of meeting the health objective of preventing the spread of the virus while also meeting the need to provide access to reasonable minimum access to fresh air and the opportunity to exercise.

### **2.3.4. Complaints about delays and decisions on applications for quarantine exemptions**

Generally, to successfully seek an exemption from hotel quarantine an applicant needs very strong medical, health or compassionate grounds, or to be transiting through NSW to an international destination. Exemption requests were mentioned 68 times in complaints and inquiries about hotel quarantine. Assessing exemption applications of any type requires decision-makers to exercise discretion. This requires properly considering the merits of the case, including weighing up different evidence and competing interests. Determining how much weight to place on the various factors that must be considered, such as public health and personal circumstance and possible risks, is not always clear-cut and can be challenging.

Decision makers must also provide the person affected by the decision with procedural fairness. This extends (but is not limited) to giving applicants general information about the factors the decision maker can take into account, the supporting information that is required and keeping relevant parties informed during the decision-making process. Clear reasons explaining why an exemption was not granted should be provided. For example, the decision maker should identify the general public health considerations they have considered, and why these have outweighed any particular considerations put forward by the individual (if this is the case). If an exemption is denied, the decision maker should outline the matters they have considered, and the reasons for the decision (for example, why public health considerations have outweighed any particular considerations put forward by the individual).

Finally, the timely provision of information and reasons is essential in a time-critical environment where deadlines are mostly determined by the applicant's flight tickets and are thus inflexible.



### **Case study 3.**

'I'm writing from hotel quarantine and I have a serious complaint about the NSW Health Exemptions Team. I applied twice for permission to self-isolate, once based on my recently adopted daughter's needs and then a review with further adoption expert documentation regarding my 6-year-old son's declining mental health. My son and his mental health concerns weren't considered in the review. His name wasn't even on the denial of our application! My family and I travelled overseas to collect our 11-month-old daughter. We returned last week on [Monday] but didn't get the denial email until we landed at Sydney airport and I had no avenue to point out that my son had been left off the decision. I've emailed the exemptions team 3 times to alert them of this error. I have not received a reply! There is no other way I can contact them. There should be a pathway to accelerate complaints and problems. People are vulnerable in quarantine...The National Review of Hotel Quarantine recommends "People in quarantine should have access to timely decision making, review processes and complaints mechanisms, including pathways for escalation." I haven't had access to any of these. Additionally, we've received our negative COVID results. We've come from a very low risk country with no local cases. To lump all overseas arrivals into the same high-risk category is a waste of quarantine spaces and resources. Both of my children are extremely vulnerable. The stress of quarantine, all its associated problems as well as my son's mental health concerns are affecting the attachment of our new daughter into our family. We are very distressed by the exemptions process. The system is under resourced and we've experienced multiple errors and delays. We urgently want our situation to be investigated as currently we face another week in hotel quarantine.'

### **Case study 4.**

'I spoke with the NSW Exemption Team regarding my application for an exemption to the 14-day quarantine in NSW and I am very disappointed in their lack of compassion. The individual whom I spoke to at length about my application admitted that I had a compassionate situation due to the fact my mother is in a critical condition. He also troubled my Father with a phone call regarding my accommodation arrangements if I were to self-isolate instead and gave him false hope that his daughter would be home at an already very stressful and worrying time for him. I then had to make the difficult call to my Father to say I am actually not coming home. I cannot understand why he was contacted if my application was not going to be approved. The QLD government have confirmed they are happy to release me from quarantine on compassionate grounds, however the NSW government have refused to share the same view. I have been provided no alternatives with precautionary

measures, testing, monitoring etc. I have been left in a room to worry, on my own, day and night. Day 4 and I am already deteriorating. I mentioned to the individual in the exemption team that my mental state will decline as a result of this decision, and as we await an update from the ICU department tomorrow by phone, I am concerned how much further I may deteriorate if the news about my Mum is not favourable.'



### 2.3.5. Complaints about difficulty in accessing health services

Quarantine can have a significant impact on an individual's physical, emotional and psychological well-being. The National Review of Hotel Quarantine stressed that:

Good practice health screening is not limited to whether a traveller is symptomatic for COVID-19 rather, it includes assessments for any mobility or cognition issues...mental health concerns, drug and/or alcohol health issues, pregnancy...or any other issue that may affect someone's capacity to undertake or manage the hotel quarantine environment.<sup>13</sup>

Health screening and triaging occurs upon arrival in the airport, and, where appropriate, individuals are sent to SHAs. Despite careful assessment and placement, we have heard from some individuals in quarantine that they can find it challenging to access health services.



#### **Case study 5.**

'Being a cancer survivor, I was concerned to seek help immediately upon arrival in Australia by air. I was denied access to my own doctor by NSW Health, but assured that I would be assisted upon arrival. Instead, I was placed in a quarantine hotel and told that I would not be seen for two weeks. Since the Avalon outbreak occurred it appears, I may have to isolate again when I travel to my home in the ACT, thus delaying treatment again.'

After raising this with RPA Virtual I was told an initial blood test would be arranged immediately. It took 4 days for local staff to react and so far, I have received no treatment, even initial tests, for a potentially life-threatening condition.'



13. [www.health.gov.au/sites/default/files/documents/2020/10/national-review-of-hotel-quarantine.pdf](http://www.health.gov.au/sites/default/files/documents/2020/10/national-review-of-hotel-quarantine.pdf), p. 26.



### **Case study 6.**

'I have diabetes and a chronic kidney disease. The food that has been provided to me in hotel quarantine does not meet my medical needs. I made sure I declared my medical requirements on the Australia Health Declaration card completed on arrival in the country and I also raised my concerns with the hotel, medical staff and HCCC before coming to the Ombudsman but I haven't got any help from them.'



Pressure on people's mental health and wellbeing is a crucial consideration in the hotel quarantine system. Proactive and timely mental health screening and treatment is vital, and should be conducted no later than 24 hours into quarantine. We understand that mental health screening is conducted upon arrival and then on a daily basis, and various supports are also made available to hotel quarantine guests. Nevertheless, even those who are in good mental and physical health will find the experience taxing.<sup>14</sup>



### **Case study 7.**

'By day 5 I was not coping and had an anxiety attack, I reached out to the nurse on call who was very unhelpful and kept just saying "everyone is in this situation and even she doesn't want to be here but has to be." I hung up feeling overwhelmed and feeling like I couldn't cope, when I got a knock at the door and two police officers said they had been told my behaviour was unacceptable and would arrest me if I didn't calm down. This just made the anxiety worse and soon depression kicked in. It took almost 24 hours for a mental health professional to contact me after this. That is too late with anyone let alone a person living with mental illness.'



14. [www.health.gov.au/sites/default/files/documents/2020/10/national-review-of-hotel-quarantine.pdf](http://www.health.gov.au/sites/default/files/documents/2020/10/national-review-of-hotel-quarantine.pdf), p. 26.

**“I realise that this won’t help my situation as I am on day 10 but future arrivals should be given either a room with access to fresh air or outside time as is being done in other states.”**



### 2.3.6. The facilities provided in quarantine hotels perceived as inadequate

Complaints about hotel quarantine frequently raised concerns about hotel facilities, including the meals and drinks provided. A cross-section of these complaints is presented below. While we don’t have jurisdiction over private organisations such as hotels or caterers, we were able to make inquiries with NSW Treasury to get an understanding of the services which were included in the commercial agreement between the relevant NSW Government agencies and quarantine hotels.

With the introduction of the quarantine fee, beginning 18 July 2020, we anticipated and subsequently experienced an increase in complaints about hotel facilities. It is not surprising that individuals contributing to the cost of their stay have higher expectations about services and facilities. We raised this with NSW Treasury, as we expected they would also notice an increase in complaints.

We found individuals were keen to provide feedback about their experience in the hope that it would benefit future return travellers, rather than necessarily seeking to improve their own situation.

It is also worth noting that while we could not always act on complaints about hotel facilities or services, we were mindful to identify any complaints that involved an immediate health or safety issue so these could be referred to the State Emergency Operations Centre (SEOC) Police Liaison Office for their review, and for any appropriate action to be taken.





### **Case study 8.**

'I am currently in hotel quarantine. I have major concerns about not being able to allow fresh air into my room as my window cannot be opened. I have a thyroid issue which is aggravated by the lack of fresh air and the carpet in the room. I am generally fit and healthy but this is making me feel sick.'

[After taking this complaint, we referred the matter to the SEO and the complainant was moved to another room.]

### **Case study 9.**

'3 days into my stay I discovered bed bugs in my Room [number]. The Police and hotel staff attended and asked me to film the bed bugs as they didn't want to come into the room. I believe the initial sheets on the bed were blood stained (but laundered) due to bed bugs too. I was moved the same day into Room [number].'

### **Case study 10.**

'I have been in quarantine for 6 days now. The hotel has refused to launder personal clothes for guests citing NSW Health advice. No other laundry options were offered by the hotel.'

### **Case study 11.**

'The hotel did not provide me with adequate food/nutrition, nor did it provide me with reasonable means to attain it myself. I was assigned to a room without any means of food preparation - the room had a small fridge and an electric kettle but no microwave, stove or oven. The kitchen staff was entirely unable to meet my dietary requirements.'





## 2.4. Complaints about the effects of public health orders

Public health orders placed new restrictions on venue capacity, travel, and many day-to-day activities. Public health orders can be made by a variety of people in accordance with the minister's delegations. We are unable to handle complaints about public health orders that are made by the Minister for Health personally.

We received 33 complaints about ministerial directions or decisions, which is 4% of the total number (913) of complaints and inquiries received regarding the government's response to COVID-19. The orders have affected individuals and businesses in very particular ways. The case studies below provide examples of some of these consequences.



### **Case study 12.**

'I am...organising a corporate event for 180 people...aboard a vessel. Last [week] the vessel operators were advised by the NSW Water Police that the venue was considered to be an indoor venue and therefore COVID-19 restrictions to an indoor venue applied. This meant that the maximum capacity was reduced significantly...I am hoping that an exemption can be made in this circumstance as it affects many people's ability to work at the event.'

### **Case study 13.**

'The public health order has limited customers being able to sit in food courts and dine in restaurants in shopping centres. The COVID grant of \$3000 is being generalised by industry codes and many businesses are not being assessed under a case by case basis causing further financial stress. This is unfair and the assistance being offered is not helping those food businesses in shopping centres who are having to pay high rent and other associated costs to keep our customers COVID safe while having to deal with a decline in customer attendance because of customer seating arrangements being enforced by the government. Stop generalising by industry code and assess individually.'





## 2.5. Complaints about refunds and waivers

Many services were suspended, and tickets for travel or events have been cancelled or deferred. Agencies, service providers and event organisers have had to make difficult decisions about whether and how to proceed, and would-be attendees have been forced to consider whether they should attend events that are still going ahead. The economic consequences of these decisions for both the vendor and the consumer are obvious but have manifested in different ways.



### **Case study 14.**

'My wife was to come from [overseas]...to pursue her [university] education in March 2020 (Autumn intake). However, with the current pandemic, she was unable to come into the country as the borders closed down. Therefore, we deferred to the next spring semester (July 2020) as it was the right thing to do. Unfortunately, with this pandemic, she still cannot obtain a visa. The pandemic has impacted on our family and our finances. Therefore, we requested a refund to ease financial pressure. However, the university does not approve a refund based on the fact that the census date has passed on our first semester application.'

### **Case study 15.**

'I made a complaint to Fair Trading because our real estate agent refused to negotiate our rent when we were affected by a COVID-19 reduction in income of more than 25%. The Office of Fair Trading assessed us as meeting the criteria set by The NSW Residential Tenancies Amendment (COVID-19) Regulation 2020...They then failed to...notify us of an outcome.'

### **Case study 16.**

'[Childcare centre] is refusing to suspend our child's fees for withdrawing her from day care. Based on recommendations from the NSW Premier to keep kids home where practical, I cannot believe we are expected to pay day care costs. The centre advised to stop fees we would have to formally withdraw our child, provide 4 weeks-notice and there would be no guarantees of re-entry.'

### **Case study 17.**

'My daughter, a full-time dance student, was entered in [a major dance competition] ... Although all other competitions my daughter has been entered in for the next few months have been postponed or cancelled (and registration fee refunded) due to COVID-19 the [event organisers] decided not to cancel the competition.'

Instead they are expecting those who registered to enter via video, with very specific videos to be submitted between July 1 and July 31 but with registration for that to occur by 1 June. Obviously at present my daughter is not able to attend the studio [to train and have the videos recorded] with the restriction on not being allowed to go out for anything that is non-essential...Therefore I feel they are being unfair in continuing to keep registration fees...I'm wondering if there is anything you are aware of that would give us some grounds for pushing them further to consider refunding the registration fee.'



As noted already, decisions made by private organisations generally fall outside of our jurisdiction – so in these cases we could only refer the individual to possible alternative avenues of redress. However, in cases that involved NSW Government departments or agencies, we took steps to ensure that the merits of each case had been appropriately considered, the relevant policy had been applied in a reasonable manner, and reasons for the decision had been given.





## 2.6. Complaints about correctional centres and detention facilities

We received 77 actionable complaints from inmates and young people in youth justice centres directly relating to COVID-19. The complaints were about:

- conditions while in quarantine upon intake
- Opioid Substitute Therapy (**OST**)
- suspension of in-person visits
- the use of tablet and audio-visual links (**AVLs**) for visits
- hygiene within correctional centres and the wearing of masks by staff
- access to early release to parole
- the impact of the inability to participate in external leave programs on classification and parole consideration.

We spent substantial time reviewing and keeping abreast of changes to procedures and routines in custodial settings. We provided advice about the reasonableness and lawfulness of the changes. We also gave feedback to Corrective Services NSW (**CSNSW**) and Youth Justice NSW (**YJNSW**) about the matters being raised with us by those in custody. This communication has facilitated the refinement of procedures. It has also helped avoid unnecessary tension in the system, because our staff had the information they needed to provide clear answers to those who contacted us about the actions being taken by the correctional and youth justice systems.

In particular, we were able to provide independent assurance to those in custody that certain actions being taken by authorities were not targeted or capricious, but were being done in a way that was lawful, consistent and reasonable to protect all parties – including themselves and their families.

### 2.6.1. Quarantine upon intake was essential but hard for inmates and detainees

In early March 2020, CSNSW changed inmate intake processes to prevent COVID-19 from being introduced into the correctional system. These changes included amendments to the separation arrangements, and in some cases medical isolation. During the pandemic, inmates have been:

- separated from others for 14 days from the time of their arrival into custody
- questioned about locations visited, and activities carried out before coming into custody

- assessed for COVID-19 like symptoms
- tested for COVID-19.

Similar measures were also implemented in the youth justice system, resulting in an increase in mandatory notifications our office reporting the segregation of a young person for a period greater than 24 hours. While these segregations may be considered 'routine' in the current times, they still have a significant impact on a young person in custody and we review them with the same care and attention as those which occur during 'normal times', such as when a segregation occurs for a person's safety.

It must be acknowledged that the measures taken by CNSW and YJNSW have so far ensured that the entire custodial system in NSW has remained free of COVID-19 – except for 2 health staff testing positive (which had no flow-on to those who were detained).



### ***Case study 18.***

Susan contacted us 4 days after she came into custody and was placed in quarantine at the correctional centre. She had been unable to contact her family because she hadn't been provided the three free calls given to each inmate during 2020 due to COVID-19 restrictions. Susan also complained that she and other women in the wing had only been able to leave their cells individually to use a common room and not to access a yard in the open air.

We advised Susan that funds for the free calls were automatically allocated to every inmate's phone account each week and this process did not involve an inmate being taken to a particular phone to make these calls. We encouraged her to check that her phone account was allocated an amount equivalent to three local calls per week and that this amount would be used more quickly if she called a mobile phone.

We explained the centres needed to ensure people who were being quarantined did not interact with others outside of their 'bubble' and that everyone had some time out of their cells at a minimum, and that yard access would be optimal but not always possible depending on the number of people currently in quarantine.



## 2.6.2. Delays in accessing Opioid Substitute Therapy have been difficult for inmates

OST offers certain people who are opioid dependent an alternative, prescribed medicine. Prior to January 2020, these inmates were administered opiate replacement drugs such as methadone, buprenorphine and suboxone in the form of liquid, tablets or sublingual strips. Because COVID-19 is a highly contagious virus that can be transmitted through saliva, the Justice Health and Forensic Mental Health Network (**Justice Health**), in partnership with CSNSW, accelerated a pilot program of changes to the delivery of OST. Inmates who were receiving OST orally were transitioned to a form of OST which is instead delivered by a monthly injection.

In the prison economy, ‘bupe’ (Buprenorphine) can be worth about \$200 per strip in a maximum security centre. Unsurprisingly, demand for these prescription opioid replacements has long caused issues in prisons across the state such as assaults, misuse and diversion of the drug between inmates. Diverting these medications holds many risks, one of which is the spread of infection. The delivery of OST by injection removes the possibility of diversion of the medication and associated risks, including ‘standovers’ for the diverted medication that could involve assault or other intimidation. Using monthly injections instead of daily doses of OST also means many inmates would remain medicated if for any reason inmates were unable to access a centre.

Inmates initially viewed this change with some caution and contacted us to ask if this was ‘allowed’. Once the benefits of the new system became clear, we received more contacts from inmates who felt their access to the OST program was taking too long. In both situations, we encouraged those who contacted us to remain engaged with the medical staff at their centre about the changes and what it meant for them.



### Case study 19.

David started on the new OST program and he had his first injection 1.5 weeks before he called us and was due to get the second one a few days ago. This didn’t happen and he was worried that he would not be properly engaged on the program.

Given the rate at which the OST program was accelerated in early 2020, we contacted Justice Health to ensure that David would still be eligible to continue in the program and was scheduled to receive his next injection. We also received some general information from Justice Health about key time frames and triggers in the administration of the program.



### 2.6.3. The roll out of digital visits was generally welcomed

In March 2020 when CSNSW and YJNSW suspended all social visits for inmates in response to COVID-19, we began to receive complaints about lack of visits. As this was a policy decision based on medical advice and we had no basis for considering that decision to be unreasonable in the circumstances, our office did not act on these complaints beyond reporting back to the agencies about the concerns.

In response to the suspension of visits, both CSNSW and YJNSW accelerated the roll out of 'digital visits'. These were conducted using tablets set up in visiting areas at centres, and also using existing AVL suites when they were not in use for professional visits or court. Since then, many people in custody have told us how they enjoy the use of technology for visits with their family and friends 'in their home'. They also recognised that such visits were often more convenient to many visitors. Most detainees and inmates we have spoken to, however, would like to see a mix of 'in-person' and virtual visits so they can have in-person interaction with their significant others. This seems particularly important for those who have children.



#### Case study 20.

Leo has been in custody for 8 years and has 2 adult children who live overseas, so his contact with them has been limited to letters and an occasional phone call. When 'digital visits' were introduced, Leo was hopeful they would be able to see each other once again. People who visit inmates must have a Visitor Identification Number (**VIN**) which they get by providing formal identification that is verified by a correctional officer either at a correctional centre or community corrections office. As Leo's family did not have a VIN, he had sought advice at his centre about how they could arrange this from their home location, and had been given a phone number for them to call. The number however had rung out each time they called. We provided Leo with an email address the family could contact to get the assistance they needed. Leo later told us his family had been approved for video visits and his children were able to see him for the first time in 8 years.





## 2.7. Complaints about Community Services

In relation to non-government organisations funded to provide community services, COVID-19 related complaints generally involved limits placed on visitor and provider access to:

- assisted boarding houses
- young people in intensive therapeutic care (**ITC**)
- young people in out-of-home care (**OOHC**).

### 2.7.1. Assisted boarding houses

DCJ authorises and licenses boarding houses accommodating 2 or more people with additional needs. Additional needs are defined as disability, mental illness or age-related frailty. The Boarding Houses Regulation 2013 places obligations on assisted boarding houses as to minimum staffing levels, employment screening, complaint handling and provision of food and nutrition.

During the COVID-19 lockdown (March to May 2020), we received complaints that boarding house proprietors had restricted access to boarding houses to protect residents from contracting COVID-19. The concern raised with us was that if the boarding houses were closed, residents would miss out on essential services that are delivered directly to residents at the boarding houses. We made inquiries with DCJ's boarding house team to ensure that residents were not missing out on essential services, including access to psychological supports, general practitioner (**GP**) visits and case work support.



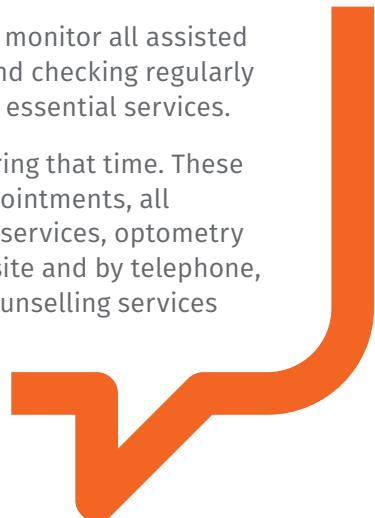
#### **Case study 21.**

We received a complaint about a boarding house's decision to cancel 'all community access, visitors and providers' noting that there seemed to be no distinction between essential and non-essential contacts and no evidence of any consultation with key stakeholders to ensure that the health, wellbeing and safety of residents would not be compromised during COVID-19 measures.

We made inquiries with DCJ's Boarding House Team and were informed that:

- On 16 March 2020 the licensee, following consultation with service providers and families, took the decision to restrict non-essential service providers and visitors.
- The licensee consulted with relevant stakeholders about this decision.
- The restrictions were in line with the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020*.

- The DCJ boarding house team continued to monitor all assisted boarding houses, including on-site visits and checking regularly with residents to ensure they are receiving essential services.
- Essential services continued as normal during that time. These services included personal care, all GP appointments, all specialist medical appointments, podiatry services, optometry services, mental health services, both on-site and by telephone, a health care nurse and psychology and counselling services (provided via Skype).



### 2.7.2. Intensive therapeutic care

ITC is for children and young people aged over 12 years with complex needs, who are either unable to be supported in foster care or require specialised and intensive supports to maintain stability in their care arrangements. This support is most commonly delivered in a residential setting, with support workers assisting up to 4 young people in 1 residence.

We received several complaints from young people in ITC at the beginning of the lockdown. The young people were concerned about continuing access to their caseworkers, education and family members. We made inquiries with ITC services and were advised that face-to-face contact with caseworkers would continue during the pandemic, and that young people in ITC (as with other young people across NSW) would continue to access their education online. In some cases, family visits were also held online, but only for a limited period during April and May.

### 2.7.3. Out-of-home care

OOHC is alternative accommodation for children and young people who are unable to live with their parents. The most common alternative accommodation options are kinship care (when a child resides with extended family) and foster care.

As with ITC, the lockdown affected family contact for all children in OOHC. OOHC agencies responded by ensuring that children had access to their families via telephone and online. OOHC agencies worked closely with kin and foster carers to ensure that family contact continued during the lockdown.



### **Case study 22.**

A complainant contacted our office to raise concern about in-person contact visits with his daughter. In response to the COVID-19 pandemic the complainant's visits with his daughter were changed from face to face to Zoom. The complainant was concerned that the in-person visits had not resumed, though restrictions had been lifted. In response to the complaint, we wrote to the agency about the concerns raised by the complainant. The agency advised visits would resume fortnightly from the beginning of July 2020. The complainant confirmed that his complaint was resolved, as face to face visits resumed and he was also continuing to have video calls with his daughter.



## **2.8. Complaints about applying existing policies in a pandemic environment**

COVID-19 has impacted institutional frameworks and people's personal circumstances in varied ways. Complaints to our office have highlighted that existing policies may not adequately account for the new scenarios that have begun to emerge. There is a clear need for agencies and organisations to be flexible in applying their old policies in extraordinary circumstances.



### **Case study 23.**

'I am studying at university. Due to the coronavirus outbreak the university has decided that they will do everything online, even the assessment and exams. I appreciate their efforts. I am an old school student, and I cannot type more than 10 words/minute that also contains a lot of error.'

I discussed with this first my unit coordinator and she informed me that I need to ask disability service for further help. However, as I am not a person with disability I am not eligible for assistance.'

### **Case study 24.**

'I am a van owner at the local Council owned Caravan Park. We were advised of the forced closure of all parks on 26th March 2020. We were also advised that Council will continue to charge full fees as per our agreement. Van owners believe it is unfair and unethical to charge fees for services not rendered as we will be paying for a van that we are not able to access.'

### **Case study 25.**

'My query/complaint refers to the following situation. We are renting a residential premises for which we have had to reduce the rent as a result of COVID-19 considerations. It's now time to renew the lease for the same tenant that has been leasing up to this point. The new regulations states that the landlord must ensure that all taps in the premises have a flow rate of 9 L per minute or less. According to my agent, this means that I have to employ a licensed plumber to measure the flow rate of each tap and have them replaced if they don't comply with the flow rate of 9 L per minute.'

### **Case study 26.**

'I rang Fair Trading to inquire as to why, during these difficult times of COVID-19 pandemic, when the rents are going down or are non-existent as a result of hardship caused by the pandemic to the tenants (which I agree is fair), why would the landlord be required to comply with this regulation which has no impact on the safety, health and well-being of the tenant? In other words, while the landlord's income is rapidly decreasing, this regulation insists that the landlord's expenses be increased. In what way is this fair?'





## 2.9. Complaints about guardianship decisions

The Public Guardian is responsible for the health and welfare of people under guardianship orders, and is expected to be aware of and oversight the individual circumstances of its wards. Under normal circumstances, the Public Guardian can be granted various authorities over a ward, including the ability to restrain or restrict an individual physically. Guardianship orders are subject to a number of oversight mechanisms and appeal rights to tribunals and courts. In these two case studies, the restrictive powers were granted 'as a COVID-19 response' in a very compressed timeframe.

### **Case study 27.**

Richard, a 76-year-old Aboriginal<sup>15</sup> man, who lives with his wife in regional NSW, is subject to a guardianship order. The Public Guardian sought to vary the terms of the guardianship order to ensure they could protect Richard's health in the context of the pandemic. The Public Guardian was granted the authority to:

[c]onsent to restrictive practices, specifically the authority to consent to environmental restraint. This request was to enable the Public Guardian to decide whether to restrict Richard's access to his electric wheelchair, which has the effect of preventing him from leaving his home.<sup>16</sup>

The NSW Civil and Administrative Tribunal (**NCAT**) varied the existing guardianship order by adding a so called 'COVID-19 function' which gave the Public Guardian extended powers, so they had the ability to:

make decisions as to Richards's accommodation, freedom of movement, and access to the community to protect and promote Richard's health, welfare and interests specifically as a result of the COVID-19 pandemic...<sup>17</sup>

### **Case study 28.**

Mary, a 69-year-old Aboriginal woman, lives in Housing NSW accommodation in regional NSW. A variation of her guardianship order was sought to:

add an additional authority so that Mary may be placed in emergency respite accommodation, and kept there, during the COVID-19 pandemic. This additional authority would, if granted,

15. In this document Aboriginal refers to the First Nations peoples of the land and waters now called Australia, and includes Aboriginal and Torres Strait Islander peoples.

16. NSW Civil and Administrative Tribunal: [www.caselaw.nsw.gov.au/decision/5ea112d3e4b0d927f74af263](http://www.caselaw.nsw.gov.au/decision/5ea112d3e4b0d927f74af263) para 37.

17. NSW Civil and Administrative Tribunal: [www.caselaw.nsw.gov.au/decision/5ea112d3e4b0d927f74af263](http://www.caselaw.nsw.gov.au/decision/5ea112d3e4b0d927f74af263) para 3.

# With the decrease of oversight comes an increase in the risk of violence, abuse, neglect and exploitation.

-Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2020) Statement of Concern: The Response to the Covid-19 Pandemic for People with Disability.  
<https://disability.royalcommission.gov.au/publications/statement-concern-response-covid-19-pandemic-people-disability>

give the Public Guardian the authority to authorise others including members of NSW Police and the Ambulance Service of NSW to:

- take Mary to a place approved by the Guardian
- keep her at that place
- return her to that place should she leave it.<sup>18</sup>

This request was granted.



We acknowledge that at the time the orders were made a general stay at home order was in effect, which required all people to remain at home unless there was a reasonable excuse to leave.<sup>19</sup> In Richard's case, the extended powers were also expressly limited to the period in which the public health order required people to stay at home. However, the exceptions to the general stay at home order, including to go grocery shopping and visit family on 'compassionate' grounds, would not have been available to Richard under the authority granted to the Public Guardian.

The extreme nature of these circumstances may mean that there is a risk other checks and balances in place to monitor the exercise of these powers – such as care plans and visits – might not occur, could be stretched, or may even be inappropriate. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability highlighted that the already limited visibility of this vulnerable population can be further obscured by disruptions to formal and informal oversight mechanisms (such as visits from family and friends).

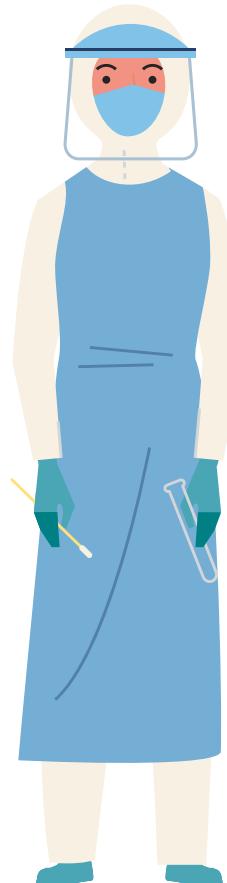
18. NSW Civil and Administrative Tribunal: [www.caselaw.nsw.gov.au/decision/5e827fd2e4b096e236c21bf6](http://www.caselaw.nsw.gov.au/decision/5e827fd2e4b096e236c21bf6) para 6.

19. *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 (NSW)* as at 23 April 2020.

# 3. The value of complaints in a crisis



If encouraged, listened to and acted upon, complaints allow risks to be identified and controlled before they escalate into major issues.



People may be reluctant to complain, particularly during times of crisis, and they may be criticised if they do so. Inevitably, whatever complaint one might have, there is likely to be someone in a worse situation. Looking around the world, this seems particularly true of COVID-19.

It is generally accepted that the NSW response – and indeed, the national response – to COVID-19 has been highly effective. Indeed, many who did complain to us during the last 12 months were at pains to point out that they were not objecting generally to the government's response. However, complaining about unfair or unreasonable treatment with respect to a particular aspect or experience of the government's COVID-19 response does not necessarily imply a criticism of the system as a whole.

I would firstly like to say that I believe totally with what the government has put into place to protect the Australian people against COVID-19. I am not against the idea of the quarantine however I believe that everyone in quarantine should get the same treatment be across the board. We should be able to access to fresh air once a day if we do not have a window that can open or a balcony.

Most complainants we spoke to accepted that there was a necessary trade-off to be made between what was necessary to protect the community, and their general rights as individuals.

However, accepting that public health should be the first priority does not mean that other considerations should not also be given full and proper consideration. It is possible to care about and deliver good public health outcomes (in terms of COVID-19 containment) alongside other important public health objectives such as mental health support, respect for individual rights, administrative fairness, non-discrimination and gender equity concerns, and even optimal 'customer experience'. Indeed, confidence that those other priorities are also being respected is likely to enhance broader trust and confidence in the government's public health response, and therefore its effectiveness.



### 3.1. Why effective complaint management matters

#### 3.1.1. The value of complaints as intelligence

Listening to and acting on the concerns of citizens lays the foundation for a system that can achieve the best outcomes for individuals and the community – including the best public health outcomes.

Complaints are particularly important in helping identify essential system improvements in circumstances where those systems have been implemented rapidly and at scale, but without any prior experience, detailed planning, widespread consultation or clear precedents.

If encouraged, listened to and acted upon, complaints allow risks to be identified and controlled before they escalate into major issues. Corrective action can be taken to address issues while they are relatively minor, helping avoid major incidents. It has been reported, for example, that a recent decision by the NSW Police Force to discontinue the use of a particular hotel for quarantine purposes arose in part from concerns identified as a result of an unusually large number of complaints about that hotel.<sup>20</sup>

External complaint avenues also provide opportunities to identify issues and risks that may not have surfaced or otherwise been considered during initial planning and operationalisation, including the need for other supports or services beyond public health and security services.

### **3.1.2. Improving customer satisfaction through internal complaint handling mechanisms**

Improving satisfaction with services has been one of the NSW Premier's priorities for several years, and this focus has spurred a range of enhancements to service delivery across the state. This priority should remain central to government agencies' responses to COVID-19, and good complaint handling must form part of that response.

The Complaint Handling Improvement Program (**CHIP**), developed by our office and the Department of Customer Service in 2015, has been adopted by the Secretaries Board for application by all NSW departments and agencies.

In the context of a public health emergency where people have lost elements of their substantive rights (such as freedom of movement) these commitments and principles are more important than ever.

Clear information about complaint processes is essential to greater customer satisfaction and reducing future complaints, and should be made easily accessible. That information should include: what can be complained about, how to make a complaint, who to complain to, and what the possible outcomes of the complaint might be.

20. [www.abc.net.au/news/2020-08-26/sydney-travelodge-hotel-barred-from-coronavirus-quarantine/12596188](http://www.abc.net.au/news/2020-08-26/sydney-travelodge-hotel-barred-from-coronavirus-quarantine/12596188)

## **The 6 commitments to good complaint handling are:**

- 1. Respectful treatment**
- 2. Information & accessibility**
- 3. Good communication**
- 4. Taking ownership**
- 5. Timeliness**
- 6. Transparency**



It is well recognised that, when something goes wrong, the way the problem is dealt with is often more important to people than the initial service failure. Successive NSW Government customer satisfaction management surveys have shown that people whose complaint was handled well had a significantly higher overall rate of satisfaction than people who did not have a complaint to begin with.

### **3.1.3. Access to an independent, external complaint handling mechanism**

Government services can be difficult to navigate at the best of times. During the pandemic, the complexities arising from the necessary interaction among various levels of government and the private sector in responding to COVID-19 have made the system even more complex. In addition to internal complaint handling mechanisms, easy access to an independent and external complaint mechanism is crucial. This supports:

- **Greater public confidence in government agencies and the crisis response:** this may be even more important in circumstances where Executive action is so urgent that it must take place in the absence of (or at least in advance of) the usual avenues of democratic accountability, such as parliamentary or public debate.
  - **Greater transparency in the crisis response:** an external complaint handler like the NSW Ombudsman can provide complainants with unbiased information and advice. This includes, where appropriate, an assurance that the actions of agencies are in fact consistent and reasonable in the circumstances. This can be particularly important in environments of detention where there may otherwise be distrust of those who are enforcing detention and where tensions can escalate quickly.
- The function of monitoring or ‘keeping under scrutiny’ the internal complaint handling systems of an agency or regime provides assurance that those systems are robust and functioning effectively.
- **A more effective crisis response:** external sources of feedback enable quick and effective adjustments to service delivery. Oversight bodies can gain insight into potential systemic issues in real time.

# 4. The challenges of oversight during COVID-19



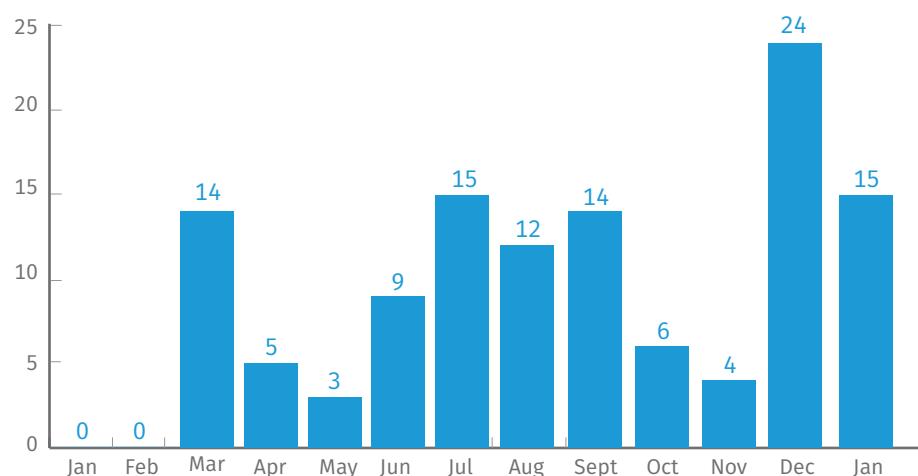


## 4.1. The ‘side-lining’ of parliament

### 4.1.1. Limitations on parliament’s ability to oversight during a crisis

In the case of COVID-19, the primary tool used by government to ‘legislate’ its pandemic response were public health orders. From January 2020 to 31 January 2021, the Minister for Health made 121 principal and amending public health orders under the *Public Health Act 2020* (**Public Health Act**) (see **section 6.2** for a full chronology of orders and legislative amendments).

**Figure 4.** NSW Public Health orders



The COVID-19 public health orders have authorised an extraordinary level of government intrusion into the lives of citizens, including restricting freedom of movement and the right to gather.

Public health orders are a form of delegated (or ‘subordinate’) legislation and have the force of law. Delegated legislation is made by authority of an act of parliament. The delegation of legislative powers has, on occasion, raised concerns about the prospect of executive overreach, among other things.<sup>21</sup> However, such delegation may be a useful component of the legislative framework during crises, as they allow for the executive to respond rapidly and flexibly to meet unforeseen and evolving circumstances.

Section 7 of the Public Health Act delegates broad powers to the Minister for Health to respond to public health risks, including the power to declare parts of NSW as ‘a public health risk area’ and make directions to reduce public health risks and ‘segregate or isolate inhabitants of the area’. Unlike in other jurisdictions such as Victoria,<sup>22</sup> this provision can be triggered in NSW without the declaration of a state of emergency, and orders made under it are not subject to review by NCAT.

21. [www.parliament.nsw.gov.au/lc/proceduralpublications/DBAssets/wppbook/15%20NSW%20LC%20Prac%20Ch14%20\(press\).pdf](http://www.parliament.nsw.gov.au/lc/proceduralpublications/DBAssets/wppbook/15%20NSW%20LC%20Prac%20Ch14%20(press).pdf)

22. [www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13962-emergency-powers-public-health-and-COVID-19](http://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13962-emergency-powers-public-health-and-COVID-19)

There is a separate statutory power under the Public Health Act to make directions where a state of emergency has been declared, including an express power to require people to submit to medical testing.<sup>23</sup> Other specific provisions of the Public Health Act also provide for orders to be made to require particular people who are considered a public health risk to submit for testing and to be detained in quarantine (as per division 4 of the Public Health Act). Orders under that provision are subject to review by NCAT.

However, to date, all COVID-19 related directions under the Public Health Act have been issued under the most general provision of the act: section 7. Those orders were often drafted – necessarily given the circumstances – in broad terms that were open to different interpretations (exemptions from lockdown for ‘essential’ work and for ‘compassionate reasons’, for example); they also conferred broad discretions on public officials (the requirement that those in quarantine comply with any “conditions determined, or directions given” by the NSW Police Commissioner, for example).

The orders are not subject to disallowance by parliament, which is usually the case for legislative rules made by the government.<sup>24</sup> Given the ultimate source of authority for delegated legislation is the parliament itself, the disallowance process permits either house of parliament to disallow any legislative rule made by the government. However, public health orders are not disallowable.<sup>25</sup>

#### **4.1.2. Special purpose COVID-19 related legislation**

Not all of the government’s response to the pandemic could be dealt with by order, however. In March 2020 the government introduced special-purpose COVID-19 legislation,<sup>26</sup> the passage of which was expedited through the NSW Parliament.

The legislation widened the government’s authority to respond to possible unfolding events without needing further parliamentary approval. For example, it:

- gave (but did not require) the Corrective Services Commissioner the power to release inmates early to minimise the risk of an outbreak of COVID-19 in the prison system (so far, the commissioner has not exercised this new power)
- permitted (but did not require) pre-recorded evidence in certain criminal trials in the District and Supreme Courts for specified classes

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23. Section 8, Public Health Act 2020.

24. Section 41, *Interpretation Act 1987* (NSW).

25. This is because the COVID-19 related public health orders are not statutory rules within the meaning of s 21 of the *Interpretation Act 1987*. As such, the orders are not required to be tabled nor subject to the disallowance process under s 40 and s 41 of that Act. The orders are not listed in Parliament’s Indexes of Statutory Rules. Regulations made in support of orders are tabled and disallowable e.g., regulations prescribing quarantine services for the purpose of charging fees, as well as prescribing penalties for breaches of the orders. Orders may also take effect when made (Public Health Act s 7(2), (4)), unlike statutory rules which do not commence until published: *Interpretation Act 1987*: s 39(1)(b)).

26. For details on the full extent of legislative amendments, see: [www.legislation.nsw.gov.au/information/Covid19-legislation](http://www.legislation.nsw.gov.au/information/Covid19-legislation).

of witnesses (complainants in prescribed sexual offence proceedings and domestic violence offences, violent serious indictable offences, or witnesses or complainants at significantly greater risk of COVID-19 due to age and health)

- allowed (but did not require) certain functions of NCAT to be performed by 2 tribunal members instead of 3 – for example, guardianship and public health functions
- amended the *Environmental Planning and Assessment Act 1979* to allow the minister to authorise development by order and without need for approval under that act or consent from any person
- authorised the government to extend or postpone timeframes imposed by existing laws (e.g., by allowing the Minister to postpone local government elections if reasonable in the circumstances because of the COVID-19 pandemic).

The bill to make these legislative amendments was introduced into parliament on 24 March 2020 and was passed by both houses within 12 hours.

#### **4.1.3. The Public Accountability Committee Inquiry**

On 27 March 2020, the Legislative Council's Public Accountability Committee<sup>27</sup> established an inquiry into the NSW Government's management of the COVID-19 pandemic. The terms of reference for the inquiry include 'any matter relating to the NSW Government's management of the COVID-19 pandemic' and the committee is due to report by 30 June 2021.<sup>28</sup> The terms of reference are broad, and the committee has heard from a wide range of stakeholders including:

- government departments and agencies like NSW Health and the Department of Education
- non-government organisations such as Mission Australia and the Salvation Army
- members of the community.

The committee is an important mechanism that was established to oversight the government's performance and exercise of powers during this extraordinary time. However, the current terms of reference of the committee provide that its primary focus is on fiscal and regulatory efficiencies and accountabilities. The human and social impacts of government activities are only considered as they arise in connection to these focus areas. Furthermore, the committee is not a complaint handling body, and is limited in its ability to consider matters as they happen in 'real time'.

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27. The Public Accountability Committee was established by the Legislative Council in 2018, 'to inquire into and examine the public accountability, financial management, regulatory impact and service delivery of NSW government departments, statutory bodies or corporations.'

28. [www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593#tab-termsofreference](http://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593#tab-termsofreference)



## 4.2. The fragmentation of oversight bodies

### 4.2.1. Fragmented jurisdictions

The NSW Ombudsman is the ‘general’ parliamentary state ombudsman with respect to NSW public authorities, as well as some government-funded community service providers.

However, while our jurisdiction to take complaints about the NSW public and community sector is exceptionally broad, it has limits.

There are numerous other specialist bodies that have jurisdiction over certain bodies, and certain conduct, which complements and, in some cases, overlaps with our jurisdiction.

The table at **section 6.3** sets out some of these other bodies, whose functions are particularly relevant in the context of COVID-19.

The limited jurisdiction of each separate and independent oversight body – in contrast to the necessarily multi-agency nature of the government’s COVID-19 response itself – means that no one oversight body is likely to have had full visibility of that response.

It has, at times, been challenging for oversight bodies to gain visibility even over those parts of the response for which they do have jurisdiction – or sometimes even to determine what those parts are.

Two case studies highlight the impact of this complexity and potential confusion in relation to oversight of COVID-19 related decision making by public authorities.

### 4.2.2. Mandatory hotel quarantine in NSW

On 28 March 2020, 2 public health orders were introduced that required people arriving from overseas to be quarantined at facilities designated by (and in accordance with directions of) the Commissioner of the NSW Police Force.

Earlier, on 17 March 2020, we had written to the NSW Government and our parliamentary oversight committee highlighting the importance of continued independent oversight in the event public agencies may be called on to exercise extraordinary powers. We received no response, and no notice that the public health orders were to be made. In a letter dated 22 May 2020, the Premier acknowledged additional correspondence we had sent on 16 April 2020.

In an attempt to coordinate oversight, we contacted LECC and the Commonwealth Ombudsman, both of whom were in a similar situation to us. None of us had any information about key details, including:

- the legal framework governing the detention of individuals for the purpose of quarantine

- the process for designating quarantine facilities, or the list of facilities that had been designated
- the demarcation of roles of NSW agencies and federal government personnel involved in the administration of the system
- any internal complaints avenues put in place specifically for those held in quarantine
- the proposed oversight arrangements in place to ensure appropriate transparency and accountability.

Our initial discussions with the Commonwealth Ombudsman centred around whether it may be possible for one or other of our offices to delegate powers to the other, to enable a single point of contact and complaint for those in quarantine – irrespective of whether the complaint concerned the conduct of state or federal agencies.

We subsequently made contact with senior officials in the NSW Police Force and NSW Health, who helped us to understand the basic structure of the quarantine system. As the system matured, the allocation of responsibilities has been further refined and clarified.

The NSW Police Force is responsible for the administration of the majority of quarantine facilities; NSW Health<sup>29</sup> has been charged with testing arrivals for COVID-19 and attending to the various medical needs of those in Special Health Accommodation (**SHA**) quarantine; the Australian Defence Force has facilitated the transportation of arrivals from ports of entry to quarantine facilities; and NSW Treasury has funded elements of the quarantine regime.

Nevertheless, even now some aspects of the quarantine system remain unclear. As already noted, the NSW Ombudsman has jurisdiction over decisions and conduct of some agencies and officials involved in hotel quarantine (such as NSW Health and NSW Treasury and their staff) but not others (most importantly, NSW Police Force and its officers). Given these agencies and staff appear to be working closely on the ground, but that arrangements are somewhat informal, we need a particularly high level of detail in order to understand our jurisdiction in any particular case. For example, simply being told that ‘police run the quarantine hotels’ is not helpful if, in practice, staff of other agencies are engaged in making decisions and performing activities on the ground in those hotels.

By way of illustration: if a person complains to us that they are not receiving meals that meet their medical and dietary needs, it is not enough for us to know that the person is in a police-run hotel. What matters, in determining whether the complaint is in our jurisdiction, is **who** is actually making that particular decision, and who is responsible for the particular conduct that is being complained about.

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29. We note that the South Eastern Sydney Local Health District triage arrivals at the airport for COVID-19 symptoms and the Sydney Local Health District manage the SHAs.

A complaint like this could potentially concern the conduct of multiple agencies – a complaint about police who generally run the facility (outside of our jurisdiction), a complaint about private sector catering staff who prepare the meals (also outside of our jurisdiction), a complaint about NSW Treasury in regards to its contract arrangements with the private sector catering staff (within our jurisdiction), or a complaint about NSW Health in regards to its advice directions and services (within our jurisdiction).

The issue of oversight of the conduct of hotel staff and other contracted personnel, including security staff and caterers, is particularly opaque. While the NSW Ombudsman does not generally have direct jurisdiction to receive complaints about the conduct of private sector staff,<sup>30</sup> we may do so if the complaint is (in effect or in addition) a complaint about the conduct of a relevant public agency. For example, we could handle a complaint if it concerned the government agency's decisions or conduct in procuring or managing a contract with a private sector provider, or if it concerned the way the agency itself had handled complaints about that provider.

#### **4.2.3. The Ruby Princess cruise ship**

In March 2020, when the first wave of the pandemic was beginning, the Ruby Princess cruise ship arrived back in Sydney Harbour after an 11-day cruise from Sydney to New Zealand. All 2,700 passengers onboard were allowed to disembark in Sydney without sufficient screening.<sup>31</sup> More than 100 felt unwell, at least 900 later tested positive to COVID-19, and 28 people died.

The various processes that ultimately culminated in the decision to allow the passengers to disembark involved the ship's crew and its operator, Carnival Corporation & plc (**Carnival**) as well as various government departments at state and federal level. These included the Australian Border Force; the Federal Department of Agriculture, Water and the Environment; NSW Health; the NSW Police Force; NSW Ambulance; and the Port Authority of NSW.

The complexity of interactions among various state and federal government agencies, and the lack of coordination of oversight meant that, despite numerous standing oversight bodies at state and federal level with royal commission-like powers (including ourselves, the Commonwealth Ombudsman, LECC, and the Australian Commission for Law Enforcement Integrity) there was no existing

30. In some cases, the NSW Ombudsman has been given statutory functions to oversight and receive complaints about private sector bodies and their staff, including privately managed correctional facilities and community service providers that are funded by the Department of Communities and Justice.

31. [www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf](http://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf)

oversight body with the appropriate jurisdiction to investigate the matter. This necessitated the establishment of an ad hoc special commission of inquiry to examine the decision.

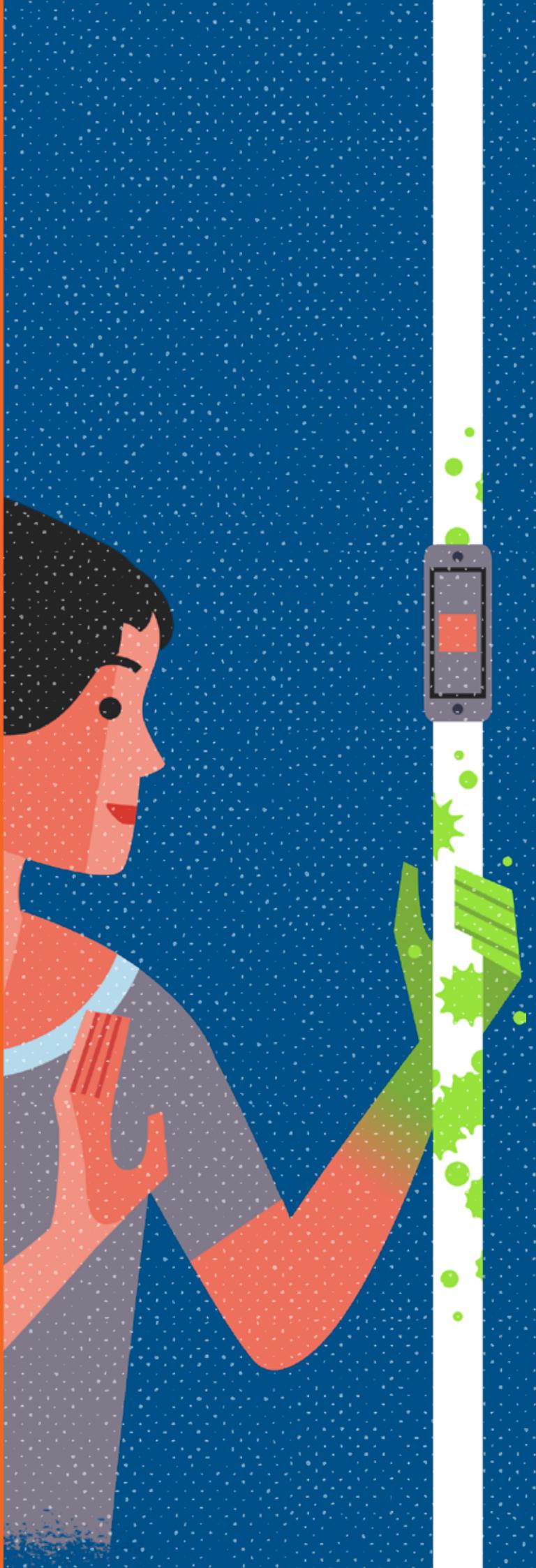
The Special Commission of Inquiry into the Ruby Princess was established on 15 April 2020. It found the decision by an expert panel of NSW Health to classify the Ruby Princess as ‘low risk’ was as ‘inexplicable as it is unjustified.’ Carnival should have ensured relevant staff ‘were made aware of the change’ to the Communicable Disease Network of Australia guidelines and that passengers and crew aboard the ship ‘were informed that there were suspected cases of COVID-19 on board’.<sup>32</sup>



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32. [www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf](http://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf) p.32.

# 5. Suggestions for the future



Our focus in this report has primarily been to look back at what we have experienced over the last 12 months. In this section we shift our focus to the future and consider the broader lessons we can learn about oversight and complaint handling, both during this ongoing crisis as well as for future crises.

We make a number of suggestions to improve oversight and complaint handling by better integrating it into crisis response planning.

We also consider the potential impact of the Optional Protocol on the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment (**OPCAT**), which Australia has ratified but not yet fully operationalised.



## 5.1. A key lesson for oversight and complaint handling in a crisis

A key lesson that can be drawn from the 12 months of the COVID-19 pandemic is that it is critical that oversight and complaint handling be consciously considered, and considered and if necessary, designed at the outset and alongside other crisis response planning activities.

Why? First, because the circumstances of a crisis, and the way in which government responds to that crisis are likely to make oversight and complaint handling, even more important than during ordinary times. Some of the reasons for this have already been highlighted in this report:

- **Parliament may be ‘sidelined’:** the extraordinary powers called upon by government to deal rapidly and flexibly with the crisis typically mean that the ordinary function of parliament in holding government to account may be omitted, delayed or otherwise not fully realised.
- **There may be significant incursions on individual rights:** the restrictions and controls being exercised by government public officials under those extraordinary, powers were themselves extraordinary and involved significant intrusions into personal freedoms.
- **While individual rights may need to make way when reasonably necessary for a greater public good, those whose rights are being sacrificed are entitled to the assurance of independent oversight and clear avenues of complaint – internal and external.**
- **There may be a reduction in informal oversight mechanisms:** during a crisis, there may be a greater need to bolster institutionalised oversight and external complaint avenues – because the crisis may otherwise reduce transparency and modes of informal oversight.

This is obviously true of people being held in forms of detention, such as correctional and youth justice facilities and hotel quarantine. It is also potentially true for aged care and residential facilities for people with disability, as well as in respect of out of home and other child protection services. The absence or reduction of ‘eyes on the ground’, whether that be official community visitors, external service providers, or families and friends, means that greater consideration may need to be given to the adequacy of other safeguards to protect against potential abuse or neglect.

- **More people may find themselves in positions of vulnerability:** a crisis, whether bushfire, flood, contagion or even economic collapse, places people in a position of inherent vulnerability. They may lose their homes or their livelihoods; they may find themselves in physical danger or mental distress. The consequence is that people may need additional assistance to navigate services and systems and understand the review mechanisms and complaint processes available to them.
- **Actions being taken are likely to involve an element of novelty:** While crisis scenario planning is important, inevitably the response to a crisis, when it arrives, will involve an element of ‘making it up as you go along’. This means implementing novel measures, or at least implementing measures in novel ways or under novel circumstances. Typically, in a crisis, this happens with little or no time for comprehensive consultation or a full consideration of all the options, risks and contingencies.

In circumstances where community consultation and detailed planning and analysis is not possible, effective oversight and complaint handling mechanisms are an especially important tool. It supports information gathering, input from those affected by the measures, and the ability to make early and rapid corrections and improvements. As discussed in **section 3.1**, complaints provide an essential source of real-time, on-the-ground intelligence and enhance the potential to identify and manage risks early – and thereby to adapt responses quickly to avoid unintended consequences and unforeseen calamity.

The second reason why oversight and complaint handling systems require special focus when planning a crisis response is that, just as those systems are (for the reasons discussed above) becoming more important, the crisis and its response may render them less effective than usual. Again, this report has already illustrated how this has been so in the context of the COVID-19 pandemic:

- **A fragmented oversight system may result in multi-agency responses that are misaligned:** the best response to a crisis, and particularly a massive and widespread crisis, may be (and often will be) to establish and co-ordinate multi-agency responses. However, the existing oversight system is not designed to align with such a response. As discussed elsewhere in this report, oversight bodies are typically limited in their jurisdiction, typically by agency, by conduct, or by both.

- **Oversight and complaint handling bodies enter the crisis with an information deficit:** over time, bodies that oversight a sector will develop a deep expertise of that sector, which will assist them to undertake their oversight role more effectively. The Ombudsman and the Inspector of Custodial Services, for example, have expert staff who understand the corrective services system. In the case of the Ombudsman, this enables us to respond rapidly and effectively to any complaints from those being held in the system.

The same is not true when wholly new systems are implemented to respond to a crisis, such as the hotel quarantine system. In that case, we began to receive complaints from those in quarantine before we had any meaningful information (beyond what was publicly available in the public health orders themselves) about how they worked.

Unless briefed early and comprehensively, oversight and complaint handling bodies will be slower and less effective in a crisis.

- **Oversight bodies may themselves be impacted by the crisis:** particularly in a widespread crisis like COVID-19, the bodies that comprise the oversight and complaint handling system are themselves likely to be impacted by that crisis. The impact of the pandemic on the Ombudsman's office, for example, is outlined in the Annexure to this report.



## 5.2. Approaches for this, and future crises

The particular approach needed to optimise the oversight system for a crisis will depend upon the particular crisis – its nature, impact, extent, and duration – and the response it triggers.

The following approaches (listed in escalating order) may need to be considered:

1. **Keeping oversight bodies informed:** identify all existing oversight and complaint handling bodies whose jurisdiction may be enlivened by the crisis response activities. Brief all of them early and often to ensure they understand what is happening, can ascertain their jurisdictional responsibilities, have clear points of contact with the relevant agencies, and can respond rapidly and effectively when they are approached with a complaint or query.

At the same time, ensure the public who may be impacted by the crisis response are informed of the different oversight bodies, their responsibilities and their contact points.

This, we suggest, is the minimum approach that should be taken in any significant crisis.

2. **Informal designation of 'lead' oversight body for queries and triaging of complaints:** in addition to keeping oversight bodies informed, identify and designate one oversight body as the 'lead' for the particular crisis or for a particular part of the crisis response.

This need not necessarily involve any formal change to jurisdiction. It could simply involve informal recognition of the following:

- o The designated body is to be kept continuously informed (by government and relevant agencies) of the crisis response activities, perhaps by daily or weekly briefings depending on what is appropriate for the particular crisis.
- o Any queries from the public can be directed to that body, including queries about the crisis response itself and about how to make a complaint.
- o Any complaints can also be directed through that designated body. Complaints not within the jurisdiction of the designated oversight body may be referred to the more appropriate oversight body using existing powers of referral. In this way, the designated body would offer a single ‘front door’ or complaint concierge service (a precedent for this approach already exists in the nsw.gov.au website, which contains a complaint portal that allows the public to complain about any and all government agencies. The NSW Ombudsman’s office receives and triages those complaints, referring them to relevant agencies and oversight bodies as necessary).<sup>33</sup>
- o The designated body will inform other oversight bodies of developments in the crisis response that are relevant to them.

This approach would support improved customer service, as the public (or ‘guests’ as they are termed in the context of hotel quarantine) would benefit from a single point of contact for complaints, and a central and independent source of up to date and accurate information.

3. **Formal designation of a ‘lead’ oversight body for handling complaints:** similar to point 2, but here the jurisdiction and functions of the designated oversight body may be adjusted (including, if necessary, by legislative amendment) to empower it to receive, handle and seek to resolve all relevant complaints.

One opportunity to consider and enact such amendments to jurisdiction or functions would be when parliament is considering the passage of special crisis specific legislation, such as the COVID-19 legislation discussed in **section 4.1** above.

This approach could have been (and may still be) appropriate for hotel quarantine. The NSW Ombudsman (or perhaps even the Commonwealth Ombudsman, if a single national approach is preferred) could be authorised to handle all hotel quarantine complaints in the first instance, irrespective of which agency or agencies they concern. However, where the complaint raises

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<sup>33</sup>. See s 35E, *Ombudsman Act 1974* (NSW).

allegations of a serious nature or that otherwise might warrant investigation by a specialist body those would still be referred on. Complaints suggesting ‘serious misconduct’ by a NSW police officer, for example, would be referred by the designated body to LECC; complaints suggesting professional misconduct by a health services provider referred to the HCCC.

That is, the designation of a general complaint handling body for all complaints arising in relation to hotel quarantine (or perhaps even in relation to any actions taken under the COVID-19 related public health orders) would not derogate from the specialised oversight of particular expert bodies. Rather it would complement them, by providing a single point of access, a rapid and effective mechanism to respond to requests for information, queries about less-serious issues and complaints, and an efficient system for triaging and referring serious allegations to those specialist bodies when investigation may be necessary.

This approach may be particularly useful in circumstances where the crisis response is such that the conduct of the various agencies being oversighted cannot be easily distinguished, for example, where the different functions of agencies are unclear, converge or overlap.

4. **Conferral of a ‘keep under scrutiny’ or monitoring function:** if a body is formally designated as the front-line external complaint handler for a particular crisis response measure (such as hotel quarantine), consideration could also be given to conferring on that body a clear power to monitor (or ‘keep under scrutiny’) the associated internal complaint handling systems of relevant agencies.

Generally, if complaints can be addressed at the front line agency level, before being escalated to an external body, they should be. If the relevant external body has a function of monitoring the internal complaint handling system then they are better placed to work with agencies to ensure that this happens, wherever possible.

It will also be important to consider the resourcing needs of oversight bodies. A designated oversight body, in particular, will need to be adequately resourced to maintain a call centre (on-line or telephone) or a presence in the facilities to ensure accessibility to those affected.



## 5.3. OPCAT and National Preventative Mechanisms in NSW

### 5.3.1. The delay in nominating a National Preventive Mechanism (NPM)

The Optional Protocol to the Convention Against Torture and Cruel, Inhuman and Degrading Treatment (**OPCAT**) is an international treaty designed to strengthen protections for people who are held in any form of detention. The Australian Government ratified OPCAT in December 2017.

Article 4 of OPCAT requires states to allow visits to ‘any place under [their] jurisdiction and control where persons are or may be deprived of their liberty’, with deprivation of liberty being defined as ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority’.<sup>34</sup>

A key obligation that arises from ratifying OPCAT is the establishment of a system of regular preventive visits by independent bodies, known as National Preventative Mechanisms (**NPMs**).<sup>35</sup> The Australian Government opted to postpone its (and states’ and territories) obligations to implement NPMs for 3 years.

So far, only the federal government and Western Australia have nominated NPMs for places of detention operating in those jurisdictions. NSW has until January 2022 to operationalise its NPM arrangements. To date, the NSW Government has made no announcement as to which body or bodies are to be conferred NPM functions in respect of the various places of detention in NSW.

The experience of countries around the world that have well-established NPMs, including the UK and New Zealand, show that they have had an important role to play in enhancing proactive oversight during a crisis like COVID-19. This has occurred, for example, by bringing diverse bodies together to discuss and identify issues of common concern: the 20 bodies that compose the UK NPM regularly highlight issues such as isolation and solitary confinement; and the Scottish members have established joint working relations.<sup>36</sup> Formalised channels of communication between oversight bodies are beneficial in the event of state or national emergencies, as institutional frameworks for inter-agency cooperation (and jurisdictional boundaries and remit) are already in place, and do not have to be developed in haste.

34. [www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx)

35. [www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx](http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx)

36. Monitoring places of detention, Sixth Annual Report of the United Kingdom’s National Preventive Mechanism, 1 April 2014 – 31 March 2015. Available at [www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf](http://www.nationalpreventivemechanism.org.uk/wp-content/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf), pp.21-51.

### 5.3.2. The relevance of OPCAT to the COVID-19 pandemic

If one or more NPMs had been operating in NSW in accordance with OPCAT during the COVID-19 pandemic, this would likely have had significant implications for oversight – given the particular impacts of the pandemic on people in places of detention as well as the establishment of new places of detention.

NPMs are not complaint handlers as such. Rather, they are tasked with proactively initiating inspections of places of detention. This function complements the existing oversight framework, which is typically more reliant on individuals coming forward to complain about their management and treatment while in detention.<sup>37</sup>

The experience of countries around the world that have well-established NPMs, including the UK and New Zealand, show that NPMs have had an important role to play in enhancing pro-active oversight during a crisis like COVID-19.

Obviously prisons, youth detention centres, and police stations are a focal point within OPCAT's remit. However, the concept of 'detention' is significantly broader. For example, as part of its oversight of the pandemic response, the New Zealand Ombudsman conducted inspections of secure wings in specialist treatment facilities, forensic hospitals and acute mental health facilities.<sup>38</sup>

### 5.3.3. NPM's and mandatory hotel quarantine

The NSW Ombudsman considers that people in mandatory hotel quarantine are in a form of 'detention' as a result of the 2020 *Public Health (COVID-19 Maritime) Order* and the *(COVID-19 Air-Transportation) Order*.<sup>39</sup> This is because quarantined people are subject to an administrative order that requires them to accede to the control of those officers supervising the quarantine, and prevents them from leaving their place of quarantine for the period prescribed by the order. Further, those people are compelled to comply with directions while in quarantine, and to accept whatever practical limitations are imposed in the facility where they are placed.

37. In NSW, there is an Inspector of Custodial Services who has responsibility for inspecting (some) places of detention: [www.inspectorcustodial.nsw.gov.au/](http://www.inspectorcustodial.nsw.gov.au/)

38. OPCAT COVID-19 report: Report on inspections of mental health facilities under the *Crimes of Torture Act 1989*. Available at: [www.ombudsman.parliament.nz/resources/opcat-COVID-19-report-report-inspections-mental-health-facilities-under-crimes-torture](http://www.ombudsman.parliament.nz/resources/opcat-COVID-19-report-report-inspections-mental-health-facilities-under-crimes-torture)

39. This is consistent with the view of Dr Elina Steinerte, Vice-Chair of the United Nations Working Group on Arbitrary Detention who is of the view that in the majority of cases, mandatory hotel quarantine would fall within the definition of 'place of deprivation of liberty' in Article 4 of OPCAT. Victorian Aboriginal Legal Service, OPCAT: An opportunity to prevent the ill-treatment, torture and death of Aboriginal and Torres Strait Islander people in custody, 3 March 2021, [Unlocking Victorian Justice: OPCAT - YouTube. So, for example, the NZ Ombudsman has been inspecting hotel quarantine facilities in New Zealand pursuant to its role as NPM: https://www.ombudsman.parliament.nz/news/chief-ombudsman-begin-inspections-COVID-19-isolation-facilities.](https://unlockingvictorianjustice.org/opcat-youtube-so-for-example-the-nz-ombudsman-has-been-inspecting-hotel-quarantine-facilities-in-new-zealand-pursuant-to-its-role-as-npm/)

Had an NPM been in place in NSW during 2020, it would have meant that there would have been at least one agency with clear responsibility for inspecting all such facilities throughout the crisis.



## 5.4. Suggestions

As highlighted throughout this report, key insights we have drawn from our experience of the COVID-19 pandemic include the need to:

- include, as an integrated part of crisis planning and response, comprehensive consideration of oversight and complaint handling mechanisms
- consider whether existing systems might need to be adjusted to ensure that they are comprehensive, effective and efficient in the context of the particular crisis
- ensure that relevant agencies' internal complaint mechanisms are functioning well
- provide clear information to the public about how to access information, or complain, about their treatment or related issues.

Based on these insights, we make several suggestions to the NSW Government:

- 1. Recommit all NSW agencies to the NSW Government's Complaint Handling Improvement Principles, including by affirming that those principles should be included as an element of any major crisis response plan.**
- 2. Ensure that external oversight and complaint handling are integrated into crisis response planning, including by:**
  - a. identifying and briefing the relevant independent oversight bodies before the introduction of any new measure if possible (and otherwise as soon as practicable after), and keeping them informed of developments**
  - b. where appropriate, designating a single oversight body as the 'front door' for any external queries or complaints relating to a crisis response measure**
  - c. where appropriate, conferring on the designated oversight body a function of also monitoring or 'keeping under scrutiny' the internal complaint handling mechanisms of relevant agencies involved in delivering crisis response measures.**
- 3. Move expeditiously to nominate, fund and operationalise National Preventative Mechanisms in accordance with Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

# 6. Supporting information





## 6.1. Chronology of key events

Date	Details
<b>2020</b>	
<b>25 January</b>	The first case of novel coronavirus is detected in Australia. A man in Victoria, who arrived by plane from Wuhan, China on 19 January 2020, is diagnosed with COVID-19. <sup>40</sup>  On the same day, 3 cases are diagnosed in NSW. The 3 men had arrived by plane from China on 6 January, 18 January and 20 January respectively. <sup>41</sup>
<b>27 February</b>	Prime Minister Scott Morrison activates the Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) to guide the health sector response. <sup>42</sup>
<b>1 March</b>	Australia reports the first death from COVID-19: a 78-year-old man from Perth, who was one of the passengers on the Diamond Princess cruise ship. <sup>43</sup>
<b>11 March</b>	WHO declares a global pandemic. <sup>44</sup>
<b>19 March</b>	2,700 passengers are permitted to disembark from the Ruby Princess in Sydney. 712 passengers later test positive for coronavirus. <sup>45</sup>
<b>20 March</b>	Australian borders are closed to all non-residents. <sup>46</sup>
<b>21 March</b>	NSW introduces public health restrictions limiting mass gatherings of people. Gatherings that are permitted to proceed must be on premises that allows at least 4 square metres per person. <sup>47</sup>
<b>23 March</b>	NSW imposes public health restrictions that require some businesses and other publicly accessible premises to close to the public altogether, or open only under significant restrictions. <sup>48</sup>
<b>24 March</b>	NSW introduces public health measures to restrict access to residential aged care facilities.
<b>25 March</b>	The Prime Minister establishes the National COVID-19 Coordination Commission as a strategic advisory body for the national response to the pandemic. The commission's purpose is to provide timely and direct advice from a business perspective to support the government's management of COVID-19, and its plans for economic recovery. <sup>49</sup>

40. The Hon. Greg Hunt MP, Cth Minister for Health, Media Release 'First confirmed case of novel coronavirus in Australia' 25 January 2020, available at [www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/first-confirmed-case-of-novel-coronavirus-in-australia](http://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/first-confirmed-case-of-novel-coronavirus-in-australia)

41. NSW Health, Media Release 'Coronavirus cases confirmed in NSW' 25 January 2020, available at [www.health.nsw.gov.au/news/Pages/20200125\\_03.aspx](http://www.health.nsw.gov.au/news/Pages/20200125_03.aspx)

42. Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) [www.health.gov.au/sites/default/files/documents/2020/02/australian-health-sector-emergency-response-plan-for-novel-coronavirus-COVID-19\\_2.pdf](http://www.health.gov.au/sites/default/files/documents/2020/02/australian-health-sector-emergency-response-plan-for-novel-coronavirus-COVID-19_2.pdf)

43. [www.abc.net.au/news/2020-03-01/australia-records-first-coronavirus-death-perth-man-cruise-ship/12014742](http://www.abc.net.au/news/2020-03-01/australia-records-first-coronavirus-death-perth-man-cruise-ship/12014742)

44. [www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19---11-march-2020](http://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19---11-march-2020)

45. Report of the Special Commission of inquiry into the Ruby Princess, available at [www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf](http://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf) p. 48

46. [www.pmc.gov.au/media/border-restrictions#:~:text=Australia%20is%20closing%20its%20borders,spouses%2C%20legal%20guardians%20and%20dependants.](http://www.pmc.gov.au/media/border-restrictions#:~:text=Australia%20is%20closing%20its%20borders,spouses%2C%20legal%20guardians%20and%20dependants.)

47. *Public Health (COVID-19 Gatherings) Order 2020 (NSW)*, 20 March 2020.

48. *Public Health (COVID-19 Places of Social Gathering) Order 2020 (NSW)*

49. National COVID-19 Commission Advisory Board: <https://pmc.gov.au/ncc>

Date	Details
<b>27 March</b>	The National Cabinet agrees that mandatory hotel quarantine should be introduced no later than 28 March 2020. <sup>50</sup> NSW Parliament establishes a committee to consider NSW Government's management of the COVID-19 pandemic. <sup>51</sup>
<b>28 and 29 March</b>	NSW imposes requirements for people arriving by sea and air to enter mandatory quarantine for 14 days, at facilities arranged by the government. <sup>52</sup>
<b>30 March</b>	The Australian Government announces its largest economic support package in response to the crisis – the \$130 billion 'JobKeeper' wage subsidy program. <sup>53</sup>
<b>31 March</b>	NSW introduces public health restrictions significantly limiting public movement. Most people are required to stay at home and not leave without a reasonable excuse. Public gatherings are limited to 2 people. Most businesses, and other publicly accessible premises are now subject to restrictions on opening to the public. <sup>54</sup>
<b>5 April</b>	The NSW Police Force launches a criminal investigation into whether Carnival Australia, the operator of the Ruby Princess, contravened the Biosecurity Act 2015 (Cth) and NSW state laws by deliberately concealing COVID-19 cases. <sup>55</sup>
<b>11 April</b>	An outbreak is identified at Anglicare's Newmarch House, an aged care nursing home in NSW. By 19 May 2020, 69 COVID-19 cases had been linked to the facility. <sup>56</sup>
<b>15 April</b>	A Western Australian man becomes the first person in Australia to be jailed for breaking a self-isolation directive. <sup>57</sup>
<b>15 May</b>	In NSW, public health restrictions requiring people to stay at home are lifted, but employers are required to permit staff to work from home if reasonably practicable. Restrictions on public gatherings and public access to businesses and other premises are eased. <sup>58</sup> Restrictions continue to be eased over the next 2 months, and new requirements are introduced requiring COVID-19 safety plans and the recording of personal information for contact tracing purposes.
<b>25 May</b>	A night duty manager at one of Melbourne's quarantine hotels reports a fever and tests positive to COVID-19 the following day. Five security guards on contract from United Security also test positive. <sup>59</sup>

50. [www.pm.gov.au/media/update-coronavirus-measures-270320](http://www.pm.gov.au/media/update-coronavirus-measures-270320)

51. [www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593](http://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2593)

52. *Public Health (COVID-19 Maritime Quarantine) Order 2020 (NSW), Public Health (COVID-19 Air Transportation Quarantine) Order 2020 (NSW)*

53. [www.pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job](http://www.pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job)

54. *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 (NSW)*

55. [www.abc.net.au/news/2020-04-05/ruby-princess-cruise-coronavirus-deaths-investigated-nsw-police/12123212](http://www.abc.net.au/news/2020-04-05/ruby-princess-cruise-coronavirus-deaths-investigated-nsw-police/12123212)

56. Newmarch House COVID-19 Outbreak Independent Review Final report, available at [www.health.gov.au/sites/default/files/documents/2020/08/coronavirus-COVID-19-newmarch-house-COVID-19-outbreak-independent-review-newmarch-house-COVID-19-outbreak-independent-review-final-report.pdf](http://www.health.gov.au/sites/default/files/documents/2020/08/coronavirus-COVID-19-newmarch-house-COVID-19-outbreak-independent-review-newmarch-house-COVID-19-outbreak-independent-review-final-report.pdf)

57. [www.abc.net.au/news/2020-04-15/man-jailed-for-breaching-coronavirus-quarantine-by-leaving-hotel/12149908](http://www.abc.net.au/news/2020-04-15/man-jailed-for-breaching-coronavirus-quarantine-by-leaving-hotel/12149908)

58. *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020 (NSW)*

59. [www.abc.net.au/news/2020-08-18/victoria-Covid-crisis-traced-back-to-seven-travellers-inquiry/12568408](http://www.abc.net.au/news/2020-08-18/victoria-Covid-crisis-traced-back-to-seven-travellers-inquiry/12568408)

Date	Details
<b>30 June</b>	The Victorian Government reintroduces lockdown measures across 10 postcodes in Melbourne. Residents cannot leave their residence except to go shopping for essential items, for medical or compassionate needs, to exercise, or to go to work or school. <sup>60</sup>
<b>2 July</b>	The Victorian Premier, Daniel Andrews, announces the Judicial Inquiry into Hotel Quarantine Program. <sup>61</sup>
<b>2 July</b>	NSW prohibits non-residents entering NSW from Victoria if they have been in a COVID-19 hotspot in the previous 14 days. NSW residents are permitted to return but must self-isolate for 14 days. <sup>62</sup> From 8 July 2020, a permit system is introduced to allow specified classes of people to enter NSW, and border regions are established which allow less restricted movement within these regions. <sup>63</sup> These border controls remain in place until 23 November 2020.
<b>4 July</b>	The Victorian Government adds 2 postcodes to the lockdown zone. Nine public housing towers housing 3000 residents are also placed in lockdown, with the additional condition that residents cannot leave the tower under any circumstances for 5 days, with the possibility of this extending to 14 days. <sup>64</sup>
<b>5 July</b>	At the request of the NSW Government, the Australian Government introduces restrictions on the number of passengers permitted to land at Sydney Airport: a maximum of 50 passengers per flight, and 450 international arrivals per day. <sup>65</sup>
<b>10 July</b>	The Prime Minister, Scott Morrison, announces National Cabinet has agreed to a national review of hotel quarantine. <sup>66</sup>
<b>12 July</b>	NSW announces that compulsory hotel quarantine, previously free to international arrivals, would cost travellers \$3000. Those already in quarantine would not be charged, nor those who had purchased flights before 11.59 pm on 12 July 2020. <sup>67</sup>
<b>18 July</b>	The sitting of federal parliament scheduled for the first 2 weeks of August is cancelled. Medical advice notes a 'significant risk' if members were to return to Canberra from all over Australia. <sup>68</sup>
<b>2 August</b>	A state of disaster is declared in Victoria. Metropolitan Melbourne moves to stage 4 restrictions, and regional Victoria to stage 3 restrictions. The increased restrictions include a curfew across Melbourne from 8 pm to 5 am. <sup>69</sup>

60. [www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2021/Chronologies/COVID-19StateTerritoryGovernmentAnnouncements#\\_Toc52275800](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Chronologies/COVID-19StateTerritoryGovernmentAnnouncements#_Toc52275800)

61. [www.premier.vic.gov.au/sites/default/files/2020-07/200702-Judicial-Inquiry-Into-Hotel-Quarantine-Program.pdf](http://www.premier.vic.gov.au/sites/default/files/2020-07/200702-Judicial-Inquiry-Into-Hotel-Quarantine-Program.pdf)

62. *Public Health (COVID-19 Interstate Hotspots) Order 2020 (NSW)*

63. *Public Health (COVID-19 Border Control) Order 2020*

64. [www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-detention-and-treatment-of-public-housing-residents-arising-from-a-COVID-19-hard-lockdown-in-july-2020/](http://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-detention-and-treatment-of-public-housing-residents-arising-from-a-COVID-19-hard-lockdown-in-july-2020/)

65. [www.nsw.gov.au/media-releases/nsw-sets-new-airport-arrival-limits](http://www.nsw.gov.au/media-releases/nsw-sets-new-airport-arrival-limits)

66. [www.pm.gov.au/media/national-cabinet](http://www.pm.gov.au/media/national-cabinet)

67. [www.nsw.gov.au/media-releases/nsw-to-charge-returned-international-travellers-for-hotel-quarantine](http://www.nsw.gov.au/media-releases/nsw-to-charge-returned-international-travellers-for-hotel-quarantine)

68. [www.pm.gov.au/media/sitting-parliament](http://www.pm.gov.au/media/sitting-parliament)

69. [www.premier.vic.gov.au/statement-changes-melbournes-restrictions](http://www.premier.vic.gov.au/statement-changes-melbournes-restrictions)

Date	Details
<b>14 August</b>	The Special Commission of Inquiry into the Ruby Princess publishes their final report. <sup>70</sup>
<b>6 September</b>	The Victorian Government releases their 5-step roadmap to reopening, which detailed the conditions to be met to facilitate the gradual easing of restrictions. <sup>71</sup>
<b>16 October</b>	A trans-Tasman travel bubble comes into effect – travellers from New Zealand can travel to NSW, ACT, and NT without having to undergo 14 days of quarantine upon arrival. Australians travelling to New Zealand must still undergo quarantine. <sup>72</sup>
<b>23 October</b>	The National Review of Hotel Quarantine Final Report is released. <sup>73</sup>
<b>26 October</b>	Victoria records no new cases or deaths state-wide for the first time since 9 June 2020. <sup>74</sup>
<b>1 November</b>	Australia records no cases of community transmission nation wide for the first time since 9 June 2020. <sup>75</sup>
<b>16 November</b>	South Australia reintroduces restrictions after an outbreak of COVID-19 in the northern suburbs of Adelaide. <sup>76</sup>
<b>19 November</b>	NSW prohibits non-residents entering NSW from South Australia if they have been in a COVID-19 hotspot in the previous 14 days. NSW residents are permitted to return but must self-isolate for 14 days. 77 people who have not been in a hotspot must complete a declaration with their personal details and movements in the previous 14 days. This remains in place until 13 December 2020.
<b>21 November</b>	The South Australian Government ends their state lockdown after discovering a patient had given false information to health officials and had not come into contact with as many people as initially thought. <sup>78</sup>
<b>17 December</b>	The Victorian Ombudsman releases their report ‘Investigation into the detention and treatment of public housing residents arising from a COVID-19 ‘hard lockdown’ in July 2020’. <sup>79</sup>

70. [www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf](http://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Special-Commission-of-Inquiry-into-the-Ruby-Princess-Listing-1628/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf)
71. [www.premier.vic.gov.au/statement-from-premier](http://www.premier.vic.gov.au/statement-from-premier)
72. [https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/7590201/upload\\_binary/7590201.pdf?type=application%2Fpdf#search=%22media/pressrel/7590201%22](https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/7590201/upload_binary/7590201.pdf?type=application%2Fpdf#search=%22media/pressrel/7590201%22)
73. [www.health.gov.au/resources/publications/national-review-of-hotel-quarantine](http://www.health.gov.au/resources/publications/national-review-of-hotel-quarantine)
74. [www.dhhs.vic.gov.au/coronavirus-update-victoria-26-october-2020](http://www.dhhs.vic.gov.au/coronavirus-update-victoria-26-october-2020)
75. [www.abc.net.au/news/2020-11-01/coronavirus-australia-live-updates-Covid19-latest-mental-health/12836336](http://www.abc.net.au/news/2020-11-01/coronavirus-australia-live-updates-Covid19-latest-mental-health/12836336)
76. [www.abc.net.au/news/2020-11-16/sa-reintroduces-coronavirus-restrictions-amid-outbreak/12887770](http://www.abc.net.au/news/2020-11-16/sa-reintroduces-coronavirus-restrictions-amid-outbreak/12887770)
77. *Public Health (COVID-19 Border Control—South Australia) Order 2020 (NSW)*
78. [www.COVID-19.sa.gov.au/documents/emergency-directions-COVID-19/revoke/stay-at-home/Emergency-Management-Stay-at-Home-No-3-COVID-19-Revocation.pdf](http://www.COVID-19.sa.gov.au/documents/emergency-directions-COVID-19/revoke/stay-at-home/Emergency-Management-Stay-at-Home-No-3-COVID-19-Revocation.pdf)
79. [www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-detention-and-treatment-of-public-housing-residents-arising-from-a-COVID-19-hard-lockdown-in-july-2020/](http://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-detention-and-treatment-of-public-housing-residents-arising-from-a-COVID-19-hard-lockdown-in-july-2020/)

Date	Details
<b>18 December</b>	Sydney's Northern Beaches is declared a national COVID-19 hotspot, following an outbreak that was linked to 28 cases. Chief Medical Officer Paul Kelly designates the region a hotspot in line with the National Cabinet's guidelines. The guidelines designate a metropolitan area a potential hotspot if it registers 30 or more community transmissions within 3 days. In response, states reintroduce border restrictions on travellers from NSW <sup>80</sup> On 19 December, NSW imposes restrictions on movement into and out of the Northern Beaches local government area, requiring residents in the area to stay at home and not leave without a reasonable excuse. <sup>81</sup>
<b>21 December</b>	NSW increases public health restrictions in the Greater Sydney area, including halving the number of people allowed on publicly accessible premises generally, and significantly limiting visitors to a place of residence (including over the Christmas and New Year holiday period). <sup>82</sup> Special restrictions were also imposed to limit public access to key central areas during New Year's Eve celebration. <sup>83</sup> NSW also revokes a long-standing public health order exemption that unaccompanied minors be released to a parent or guardian to self-isolate rather than enter mandatory hotel quarantine. From 21 December 2020, the preference is for unaccompanied minors to complete quarantine in SHA. The Victorian COVID-19 Hotel Inquiry release their final report. <sup>84</sup>
<b>2021</b>	
<b>3 January</b>	NSW introduces a requirement to wear masks in many public settings in Greater Sydney. <sup>85</sup> Over the following weeks, the settings where masks are required are reduced.
<b>8 January</b>	NSW imposes health restrictions requiring people who had been in certain COVID-19 hotspots in Queensland to self-isolate after entering NSW, and to complete a declaration with their personal details and movements in the previous 14 days. These restrictions are lifted on 11 January 2021.
<b>10 January</b>	Restrictions on travel to and movement of people within the Northern Beaches LGA are repealed.
<b>1 February</b>	NSW imposes health restrictions requiring people who had been in certain COVID-19 hotspots in Western Australia to self-isolate after entering NSW and wear a facemask when leaving their home. They are also required to complete a declaration with their personal details and movements in the previous 14 days. These restrictions are lifted on 5 February 2021.

80. [www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/doorstop-interview-on-18-december-2020](http://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/doorstop-interview-on-18-december-2020)

81. *Public Health (COVID-19 Northern Beaches) Order 2020 (NSW)*

82. *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 7) Amendment Order (No 2) 2020 (NSW); Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 7) Amendment Order (No 3) 2020 (NSW).*

83. *Public Health (COVID-19 Sydney New Year's Eve Arrangements) Order 2020*

84. [www.quarantineinquiry.vic.gov.au/reports](http://www.quarantineinquiry.vic.gov.au/reports)

85. *Public Health (COVID-19 Mandatory Face Coverings) Order 2021 (NSW)*



## 6.2. Chronology of COVID-19 related legislative amendments and public health orders

The information in the table below is largely drawn from ‘NSW public health restrictions to deal with the COVID-19 pandemic: A chronology’,<sup>86</sup> a background paper published in partnership between the NSW Parliamentary Research Service and the NSW Ombudsman’s office. The public health orders, their full names and exact wording can be accessed here: [www.legislation.nsw.gov.au/information/Covid19-legislation](http://www.legislation.nsw.gov.au/information/Covid19-legislation)

Date	Details
<b>2020</b>	
<b>16 March</b>	A 500-person limit is imposed on public events.
<b>17 March</b>	A requirement to self-isolate is imposed for people who have been in another country in the previous 14 days.
<b>18 March</b>	Public gatherings are restricted to 500 people outdoors, and 100 people indoors – unless they are considered an essential or exempted gathering.
<b>21 March</b>	A social distancing requirement is introduced for public gatherings.
<b>22 March</b>	Access to Lord Howe Island is restricted.
<b>23 March</b>	Significant classes of public premises and businesses are closed or restricted to the public. Food and drink premises are restricted to operating on a takeaway basis only.
<b>24 March</b>	Access to residential aged care facilities is restricted. Visitors are allowed for care and support (1 visit per day limited to 2 hours), and end of life support only. Young people under 16 years are not allowed to visit.
<b>26 March</b>	<ul style="list-style-type: none"> <li>• More non-essential public venues and businesses are closed to the public.</li> <li>• Restrictions are placed on weddings and funerals, community sporting activities and other activities.</li> <li>• Social distancing requirements are imposed more broadly.</li> <li>• Government agencies are authorised to collect and disclose personal and health information if necessary for health and welfare purposes during the pandemic.</li> </ul>
<b>26 March</b>	People diagnosed with COVID-19 are required to self-isolate or go to hospital.
<b>28 March</b>	<ul style="list-style-type: none"> <li>• Mandatory hotel quarantine commences for people arriving from outside of NSW by sea.</li> <li>• Unaccompanied children are permitted to be released from airport to parents or guardians for 14 days isolation.</li> </ul>

86. [www.parliament.nsw.gov.au/researchpapers/Documents/NSW%20public%20health%20restrictions%20to%20deal%20with%20the%20COVID-19%20pandemic.pdf](http://www.parliament.nsw.gov.au/researchpapers/Documents/NSW%20public%20health%20restrictions%20to%20deal%20with%20the%20COVID-19%20pandemic.pdf)

Date	Details
<b>29 March</b>	<ul style="list-style-type: none"> <li>Mandatory hotel quarantine commences for people arriving from outside NSW by air.</li> <li>The NSW Government clarifies that people already in self-isolation because they had been in another country in the previous 14 days are to complete their self-isolation, but are not required to enter mandatory hotel quarantine.</li> </ul>
<b>31 March</b>	<ul style="list-style-type: none"> <li>A general public lockdown is imposed, requiring people without a 'reasonable excuse' to stay at home.</li> <li>Public gatherings are limited to 2 people.</li> <li>Places of public worship are closed to the public, except for weddings (5-person limit) and funeral services (10-person limit).</li> </ul>
<b>3 April</b>	The NSW Government clarifies how to calculate the length of the mandatory quarantine period.
<b>4 April</b>	<p>Closure restrictions for premises are amended to permit the streaming and recording of religious services.</p> <p>A food and drink exception is introduced for truck stops and drivers.</p>
<b>8 April</b>	The crew of all vessels are allowed to disembark to undertake essential vessel work, and other public officials (including union officials) are allowed to board.
<b>9 April</b>	Intentionally spitting or coughing at public officials to cause fear of COVID-19 infection is prohibited.
<b>20 April</b>	The prohibition on intentionally spitting or coughing is extended to protect all workers.
<b>1 May</b>	<ul style="list-style-type: none"> <li>NSW allows certain businesses (spas, nail, beauty, waxing and tanning salons) to reopen to sell goods but not services.</li> <li>The list of reasonable excuses to leave your residence is expanded to include visits to provide care and support of another. There is a limit of 2 visitors at a time.</li> </ul>
<b>9 May</b>	The list of reasonable excuses to leave residences is expanded to include real estate purposes related to sale or lease of a property.
<b>15 May</b>	<ul style="list-style-type: none"> <li>The general public lockdown is lifted.</li> <li>The public gatherings limit is increased to 10 people.</li> <li>The number of people allowed on premises is limited to 500 outdoors and 100 indoors, or less if required to maintain social distance requirements.</li> <li>Some businesses remain closed to the public – restriction on dining-in is lifted, but the number of patrons permitted on premises at any time is limited to 10.</li> <li>Certain public recreational facilities reopen on a restricted basis.</li> <li>A limit of 5 visitors to a residence is introduced.</li> <li>Prohibition of holidays in regional areas is continued.</li> <li>Employers are required to allow working at home where reasonably practicable.</li> <li>The limit on attendees at weddings and funerals are increased to 10 and 20 (or 30 if outdoors) respectively. In-person religious services recommence, with a limit of 10.</li> <li>Requirements to provide contact information are introduced.</li> </ul>

Date	Details
<b>19 May</b>	Physical spacing requirements provided for recreational vessels.
<b>1 June</b>	<ul style="list-style-type: none"> <li>Public health restrictions are eased further – businesses can open, with conditions including having a COVID-19 safety plan. Individual group limits of 10 are imposed for certain premises, in addition to a cap on total numbers on premises.</li> <li>The limit on the number of people permitted to attend weddings, funerals and religious services is increased to 20, 50 and 50 respectively.</li> <li>Requirements to provide contact information are continued.</li> <li>Limit on visitors to place of residence are continued.</li> </ul>
<b>13 June</b>	<ul style="list-style-type: none"> <li>The size of individual customer groups for business is increased to 20.</li> <li>The number of visitors permitted to residences is increased to 20.</li> </ul>
<b>18 June</b>	Restrictions on access to Lord Howe Island are continued.
<b>22 June</b>	An exemption from the 500-person outdoor cap is introduced for ski resort premises (subject to conditions).
<b>23 June</b>	<ul style="list-style-type: none"> <li>The requirement for those diagnosed with COVID-19 to self-isolate is continued.</li> <li>Restrictions on length and number of care and support visits to aged care facilities are eased, and young people are permitted to visit.</li> </ul>
<b>25 June</b>	Requirements for mandatory hotel quarantine of people arriving by air and sea are continued.
<b>29 June</b>	The mandatory quarantine period for arrivals by air and sea is amended to at least 14 full days. The person may be required to quarantine for up to 24 full days if the Chief Health Officer is not able to be satisfied after 14 days that the person is not a COVID-19 infection risk.
<b>1 July</b>	<ul style="list-style-type: none"> <li>The limit on public health gatherings is increased to 20 people.</li> <li>Business restrictions are eased further, with conditions requiring a COVID-19 safety plan in most cases.</li> <li>Individual group limits are lifted. Larger recreational premises and businesses are permitted to reopen.</li> <li>Restrictions on community sporting activities are eased.</li> </ul>
<b>2 July</b>	People who have been in a COVID-19 hotspot in Victoria recently are barred from entering NSW – except NSW residents who must self-isolate upon return.
<b>4 July</b>	Areas are added to the interstate hotspots order.
<b>7 July</b>	<ul style="list-style-type: none"> <li>More areas are added to the interstate hotspots order.</li> <li>The order prohibiting intentionally spitting or coughing on workers to cause fear of COVID-19 infection are continued.</li> </ul>
<b>8 July</b>	<ul style="list-style-type: none"> <li>Border restrictions are extended to bar people who have been anywhere in Victoria recently from entering NSW, except in certain cases.</li> <li>A permit system is introduced, requiring most people seeking entry from Victoria to apply for a permit to enter – including border community residents.</li> <li>Health enforcement officers are empowered to require information to determine if a person may enter.</li> </ul>

Date	Details
<b>9 July</b>	An exemption is introduced allowing NSW residents to return from Victoria in limited circumstances.
<b>14 July</b>	Gatherings of more than 500 people for netball associations are permitted, subject to specified distancing requirements.
<b>17 July</b>	Pubs are restricted to 300 people on premises, with an individual group limit of 10. All people on premises must provide their individual contact details.
<b>22 July</b>	<ul style="list-style-type: none"> <li>Travel within border community areas ('border zones') is limited to certain permitted purposes.</li> <li>Permits to enter NSW for education are extended to day school students.</li> <li>Significant changes are introduced to existing permit classes and conditions – all existing permits of people outside NSW are effectively cancelled, and people are required to apply for new permits.</li> </ul>
<b>23 July</b>	The requirement to self-isolate is extended to people who have had contact with confirmed COVID-19 case and are identified as at risk of developing COVID-19.
<b>24 July</b>	<ul style="list-style-type: none"> <li>Limits on the number of people permitted on pub premises are increased. Venues must have safety marshals and ensure patrons remain seated (as far as practicable).</li> <li>Permit are introduced allowing care for vulnerable people in border zones.</li> </ul>
<b>25 July</b>	Travel from NSW to Victoria for medical or hospital services is limited to services necessary to treat or maintain health. Permitted border travel is extended to essential care services.
<b>1 August</b>	Electronic registration of contact details is introduced.
<b>3 August</b>	Restrictions on access to Lord Howe Island are continued.
<b>6 August</b>	<ul style="list-style-type: none"> <li>Gyms are required to register COVID-19 safety plans and have safety marshals.</li> <li>Sea crew are permitted to disembark for essential tasks.</li> </ul>
<b>7 and 10 August</b>	Certain border entry permits now require people travelling from Victoria to NSW by air to undergo mandatory hotel quarantine.
<b>13 August</b>	<ul style="list-style-type: none"> <li>An exemption is introduced allowing people living in or near remote communities to cross the border for essential goods and services.</li> <li>A temporary exemption is introduced allowing residents of the ACT in Victoria to transit through NSW on their way home.</li> </ul>
<b>18 August</b>	A new permit class is introduced to allow entry into NSW for critical service (agricultural) workers.
<b>20 August</b>	An exemption is introduced for Year 11 and 12 students and their teachers to cross the border (subject to conditions).
<b>26 August</b>	A loophole for 'party buses' is removed.
<b>27 August</b>	An exemption is introduced allowing weddings to have up to 150 attendees if in places of worship. Places of worship are also now permitted to host up to 100 people per building (subject to conditions).

Date	Details
<b>31 August</b>	Restrictions on access to Lord Howe Island are continued – with exceptions now being made for access by transiting vessels.
<b>4 September</b>	<ul style="list-style-type: none"> <li>A single border region introduced to replace multiple border zones outlined in previous orders. Region extends 50 km each side of the border</li> <li>People holding critical service permits are exempted from self-isolation, (subject to conditions).</li> </ul>
<b>11 September</b>	Students and teachers are exempted from mandatory quarantine (subject to conditions).
<b>12 September</b>	Critical service agriculture permits are made available for work in Victoria.
<b>14 September</b>	Auctions and open houses are required to have a COVID-19 safety plan.
<b>17 September</b>	The border region movement condition of 'permitted purpose' is removed.
<b>18 September</b>	Access restrictions are continued, with no significant changes.
<b>21 September</b>	Mandatory quarantine of arrivals by air and sea is continued.
<b>24 September</b>	Updates are required to COVID-19 safety plans for certain premises.
<b>25 September</b>	<p>The order prohibiting intentionally spitting and coughing on a worker is remade.</p> <p>Entry for agriculture related services is expanded to non-critical services (including seasonal workers).</p> <p>People from interstate may self-isolate in their home state, if determined suitable.</p>
<b>28 September</b>	An exception is made allowing for vessels travelling along the Murray River.
<b>2 October</b>	<ul style="list-style-type: none"> <li>The Lord Howe Island order is repealed – access is now permitted (subject to conditions).</li> <li>The prior border control order is remade with no substantial changes.</li> </ul>
<b>8 October</b>	An exemption from general indoor gatherings limits is introduced to allow up to 50 people to attend funeral and memorial services, provided certain conditions are met (such as attendees maintaining a minimum distance from each other if not part of same household).
<b>12 October</b>	An exemption is introduced allowing public gatherings for musical rehearsals or performances of up to 500 people if certain conditions are met.
<b>16 October</b>	<ul style="list-style-type: none"> <li>People are permitted to transit through NSW and through Victoria.</li> <li>The New Zealand travel bubble commences. People entering from New Zealand are not required to enter mandatory hotel quarantine.</li> <li>Social distancing requirements eased for outdoor areas in hospitality venues with an electronic entry recording system.</li> </ul>
<b>20 October</b>	The self-isolation order is remade with the power to direct people diagnosed with COVID-19 to provide information about contacts over the past 28 days.
<b>23 October</b>	Restrictions on public gatherings are further eased.

Date	Details
<b>19 November</b>	Restrictions are imposed on people entering NSW from South Australia if they have been in an COVID-19 hotspot in the previous 14 days. People allowed to enter must self-isolate and complete a declaration.
<b>23 November</b>	Mandatory quarantine of arrivals by air and sea is continued.
<b>7 December</b>	<ul style="list-style-type: none"> <li>• Special arrangements are made to restrict and control access to certain areas of the Sydney CBD and harbour foreshore during New Year's Eve celebrations. Travel to these zones is restricted to residents or event ticket holders.</li> <li>• Restrictions on gatherings are continued.</li> </ul>
<b>13 December</b>	An order closing the border with South Australia is repealed.
<b>14 December</b>	Mandatory quarantine of arrivals by air and sea is continued.
<b>15 December</b>	Restrictions on entering aged care facilities are continued.
<b>17 December</b>	<ul style="list-style-type: none"> <li>• An order prohibiting intentionally spitting and coughing on a worker is remade.</li> <li>• Restrictions on gatherings are amended to deal with seating of spectators at outdoor rehearsals and performances.</li> </ul>
<b>19 December</b>	An order limiting travel to, and movement of, people within the Northern beaches Local Government Area (LGA) is introduced, and residents are required to remain at home and not leave without a reasonable excuse.
<b>20 December</b>	<ul style="list-style-type: none"> <li>• An order limiting travel to, and movement of, people within the Northern beaches LGA is remade.</li> <li>• The self-isolation order is remade. Unaccompanied minors are now to quarantine in SHA.</li> </ul>
<b>21 December</b>	<ul style="list-style-type: none"> <li>• Restrictions on gatherings in Greater Sydney are increased.</li> </ul>
<b>23 December</b>	<ul style="list-style-type: none"> <li>• The order limiting travel to and movement of people within the Northern beaches LGA is extended.</li> <li>• Restrictions on gatherings are tightened for the Christmas period. Only 10 people permitted to visit a place of residence on any day during Christmas period.</li> </ul>
<b>29 December</b>	<ul style="list-style-type: none"> <li>• The order relating to the Northern beaches LGA is amended to ensure residents do not leave the area for food, goods and services unless not reasonably available locally, and to incorporate exemptions relating to some recreational activities and gatherings.</li> <li>• Restrictions on gatherings are returned to pre-Christmas period arrangements – including that no visitors are permitted.</li> </ul>
<b>30 December</b>	The order relating to the Northern beaches LGA is amended to further restrict people entering the LGA, and to restrict the areas residents may leave to obtain food, goods, services or for exercise or recreation.

Date	Details
<b>31 December</b>	<ul style="list-style-type: none"> <li>A temporary exception is made to the order limiting travel to and movement of people within the Northern beaches LGA. During the New Year period, residents within the northern and southern areas of LGA are permitted to visit others within their particular area.</li> <li>Restrictions on gatherings are tightened for the New Year period. In greater Sydney, only 5 people are permitted to visit a place of residence on any day during that period. Outside greater Sydney, 50 visitors are permitted.</li> </ul>
<b>2021</b>	
<b>3 January</b>	<ul style="list-style-type: none"> <li>Restrictions on travel to and movement of people within the Northern beaches LGA are amended to apply only to the Northern part of the LGA.</li> <li>The self-isolation order is remade.</li> <li>Fitted face coverings become mandatory in designated indoor areas and public transport across greater Sydney.</li> <li>Greater Sydney restrictions are amended to confirm that the number of people allowed on premises is generally limited to what is necessary to allow 4 square metres per person in indoor areas and 2 square meters per person in outdoors areas, and to remove the exemption allowing a minimum number of people regardless of the size of the premises.</li> </ul>
<b>8 January</b>	Restrictions are placed on attendance at the New Year's Cricket Test. Any person who visited an affected area on or after 24 December 2020 may not enter the Sydney Cricket Ground (SCG). Attendees must wear a fitted face covering.
<b>10 January</b>	Restrictions on travel to, and movement of, people within the Northern beaches LGA are repealed.





### 6.3. Key complaint handling and oversight bodies relevant to COVID-19 in NSW

The following table outlines the key complaint handling bodies in NSW involved in the oversight of systems and processes related to the pandemic response in NSW. The table does not include Commonwealth bodies, such as the Commonwealth Ombudsman, which may have complaint handling responsibilities in relation to Commonwealth agencies that operate within NSW.

**Table 1. Oversight bodies**

Oversight body	Functions (most relevant to COVID-19)
<b>The NSW Ombudsman</b>	<p>The NSW Ombudsman's primary function with relevance to COVID-19 is to handle and investigate complaints about maladministration by NSW government agencies and community service providers funded by NSW Government departments.</p> <p>Although our jurisdiction covers most NSW Government departments, local councils and state-run universities, we cannot handle complaints about the NSW Police Force, the conduct of members of parliament, ministers, and courts, among others.</p>
<b>Health Care Complaints Commission (HCCC)</b>	<p>The HCCC's primary function is to act to protect public health and safety by resolving, investigating and prosecuting complaints about health care. The HCCC deals with complaints about all health services and providers in NSW including hospitals, registered health practitioners, and unregistered health practitioners.</p> <p>In addition to its complaint handling function, the HCCC has overseen the implementation of COVID-19 testing and treatment across NSW.</p>
<b>Law Enforcement Conduct Commission (LECC)</b>	<p>The LECC's primary functions are to detect, oversight, investigate and expose misconduct and maladministration within the NSW Police Force and the NSW Crime Commission.</p> <p>With reference to COVID-19, the LECC is responsible for monitoring and dealing with complaints about the enforcement of public health orders by the NSW Police Force.</p>
<b>Inspector of Custodial Services (ICS)</b>	<p>The ICS's primary function is to review the conditions, treatment and outcomes for adults and young people in custody, including 24-hour court complexes, inmate/detainee transport and transitional centres. The ICS is also responsible for administering the Official Community Visitor program for those held in custody. During the pandemic, the ICS has been monitoring the planning and responses to COVID-19 by the agencies that deliver custodial services.</p> <p>The ICS does not investigate individual complaints made by inmates, young people in custody or their families. Any such complaints are handled by the NSW Ombudsman.</p>

Oversight body	Functions (most relevant to COVID-19)
<b>Independent Commission Against Corruption (ICAC)</b>	<p>The ICAC's primary functions are to investigate and expose corrupt conduct in the NSW public sector, to actively prevent corruption through advice and assistance, and to educate the community and public sector about corruption and its effects.</p> <p>ICAC's jurisdiction extends to most NSW public sector agencies, including local councils, and their employees and contractors; members of parliament and ministers; the judiciary, and the governor. The ICAC's jurisdiction does not extend to officers of the NSW Police Force or the NSW Crime Commission.</p>
<b>Information and Privacy Commission</b>	<p>The IPC's primary functions are to undertake external reviews of decisions made by government agencies on applications for the release of information made under the <i>Government Information (Public Access) Act 2009</i>, provide advice and assistance, and deal with complaints about access to information and privacy. During the pandemic the IPC encouraged agencies to take proactive steps to put arrangements in place with applicants about how their applications will be dealt with, including whether a request for an extension of time will be necessary.</p>
<b>Other complaint handlers in NSW</b>	<p>The Energy and Water Ombudsman NSW provides a dispute resolution service for electricity and gas and some water customers in NSW.</p>



# Annexure A: Impact of the pandemic on the operations of the NSW Ombudsman's office



# Like all organisations, COVID-19 impacted not only the work we were doing but also the way we did it.



In this report, we have primarily reported on changes relating to the content of our work: the new and changed government activities and services we have been overseeing, and especially the new and different kinds of complaints we have been receiving.

In this annexure, we shift the focus internally – outlining the ways our own organisation has had to respond and adapt to the changing environment caused by the COVID-19 pandemic.

Looking back, it can be difficult to appreciate the speed with which events were moving in the early days of the pandemic, and the uncertainty about what might happen next.

In mid-March we had to close our physical office both to staff and the public, after being alerted to a confirmed instance of COVID-19 in our building. Initially, we planned for this closure to be in place for 14 days – the idea being that, by keeping all staff at home for the ‘incubation period’, this would prevent any further spread within our office in the event that any of our staff had contracted the disease from the infectious person (fortunately none of our staff did).

However, before that 14-day period expired the government issued public health orders making it mandatory for all employers in NSW to allow staff to work from home where practicable.

As a consequence, our staff continued to work from home for almost the entire 12 months, with limited ability to return to the office under new COVID-safe plans.

The events of March 2020 meant that, with little notice, we transitioned from an almost entirely office-based work environment to a fully remote working environment. We quickly put in place operational and technological solutions to ensure continued and safe delivery of our services to NSW public. However, legacy IT issues, including on-site (non-cloud based) technology platforms and strict network bandwidth limits meant that only a small proportion of staff were able to access our secure network at any one time.

Throughout, a core objective has been to maintain the availability and accessibility of our complaint services. Here, we outline some of the measures we put in place to ensure that the people of NSW could always continue to access our services, while at the same time protecting the health and wellbeing of our staff and contributing to the broader public health measures.

### 6.3.1. Using technology to remain accessible

Most of the contacts we have with the public occur over the phone or online, so we were able to maintain this form of accessibility with most complainants.

However, our limited capacity to access our case management and document record systems remotely and the inefficiency of our dated IT systems inevitably affected our work. We fast-tracked upgrades to our IT systems, and are continuing to build our expertise with these new technology tools so we are better positioned to face future crises.

### 6.3.2. Maintaining complaint lines and accessibility

While we were able to continue to fulfil our statutory obligations, we were initially hampered by limited system access and an inability to answer calls directly from the public.

We prioritised systems workarounds and upgrades for our Assessments Unit to ensure the public had continued access to our services. Specifically, we:

- immediately secured direct ongoing telephone contact for adult inmates and youth detainees – this has meant that, with the exception of a few hours on the first day of our office being shut down, there has been no break in access to our office for individuals in custody
- initiated a telephone call back system for all other members of the community
- prioritised email, online and call-back complaints from the most vulnerable members of the community, and those that raised more serious or urgent issues.

By April and May 2020, more staff gained remote system access. By 23 June 2020 we had launched a cloud-based telephony system to answer calls directly from the public.

In July 2020 we reinstated a reduced program of visits to correctional and youth justice centres to ensure we remained visible to inmates, detainees and centre staff, and to observe conditions in these centres during the pandemic. By January 2021 we have returned to a regular and comprehensive program of visits.

### 6.3.3. A fall in overall complaints

Our office was not inundated with complaints during the first 12 months of COVID-19. There has been a significant fall in actionable complaints to our office since the emergence of COVID. The number of actionable complaints received in 2020 (11,726) is 31% lower than the average number of actionable complaints received over the prior 3 years (17,082).

Reasons for the decline in overall complaint numbers are likely to include:

- (a) The disruption of normal routines of government at all levels and its agencies – many of the ordinary services that people receive (and therefore may have cause to complain about) were temporarily suspended.
- (b) Many people, especially in the early months of the pandemic, were focused on grappling with the new realities created by the pandemic, and not much else.
- (c) Large components of the government's COVID-19 response are performed by officials whose conduct is excluded from our jurisdiction (such as ministers and police). Thus, we are less likely to have received contact about these issues.
- (d) The COVID-19 response included, particularly at the federal level, a significant package of financial supports (for example JobKeeper and JobSeeker). These may have lessened some of the impact on people and their livelihood. Complaints about these federal government supports are also outside of our jurisdiction.
- (e) In some cases, people may not have been aware of their complaint rights and avenues.
- (f) Our office itself was impacted, and so we may not have been as accessible (particularly in the early days of the pandemic) to members of the public. We suspended in-person visits to prisons and communities. Initially, we were only able to offer a telephone call back service to complainants, other than those in custody who could call us directly. But we are now back to normal, and from this month we will be reopening our physical office to 'walk in' complaints.

In recent months, our complaint numbers have been rising, and we expect them to return to their long-term average levels in the current financial year.

### **6.3.4. Continuing preliminary inquiries and investigations**

We were acutely aware that many public authorities and community service providers were facing their own additional pressures as they responded to COVID-19. While carrying out our work and making inquiries to departments and agencies, we sought to make accommodations where possible. This was to ensure that our involvement would not result in an unnecessary diversion of resources, or any other disruption to the authority's primary functions and their response to the pandemic.

We made several adjustments to the way we interact with agencies to protect the health and safety of all involved. Specifically, we:

- increased communication with the agencies and extended the flexibility of deadlines
- improved our ability to receive information from agencies in stages and electronically
- moved to a model of virtual meetings, interviews and hearings (that would ordinarily be conducted in person)

- permitted some witnesses to give statements or provide answers to questions in writing, rather than through face-to-face interviews.

### 6.3.5. Engaging with Aboriginal communities

One of the NSW Ombudsman's functions is to monitor and assess prescribed Aboriginal programs – the first of which is the government's OCHRE plan for Aboriginal affairs.

Due to COVID-19 restrictions, we curtailed face-to-face community engagement activities, replacing them with a blended model of engagement that allows for both face-to-face and online engagement.

This new mode of communication has enhanced our connectivity and collaboration with community groups. From March to December 2020, we held 57 quarterly liaison meetings and 31 community engagement meetings via this new mode.

In June 2020 we held the twice-yearly Aboriginal Procurement Advisory Committee meeting online and were able to link a larger than normal group of participants together across a range of locations in NSW. The response from communities and stakeholders has been positive, and we will look at maximising the benefits of technology moving forward.

### 6.3.6. Training and education

As a result of the closure of our office, and in accordance with health restrictions and government guidelines, we cancelled all in-person training workshops from 18 March 2020.

To adapt to this new demand for remote learning we fast-tracked our training modernisation project, which will allow us to further improve the delivery of our sector-leading training programs. The project includes:

- engaging a vendor through an open tender process to deliver a learning management system and instructional design services
- adapting our complaint handling workshops for remote and blended learning delivery, beginning with Managing Unreasonable Complainant Conduct, our most popular training program
- procuring other remote learning tools such as video conferencing tools
- developing a go-to-market strategy.

We were able to deliver a limited number of workshops online from 25 August 2020. Several courses required major work to adapt them to the new online or blended learning delivery. Trainers have had to upskill and adapt to the requirements of remote training delivery, including developing new ways to encourage learner engagement. However, feedback from participant evaluations has been overwhelmingly positive – both in terms of the content and delivery.

Our new blended learning training business is on track to be relaunched in March 2021. These new learning opportunities will complement our existing face-to-face workshops, enabling us to engage more learners around NSW and the world, including remote communities.

### **6.3.7. Continuing to monitor community services**

We promote and protect the rights and best interests of people using community services in NSW by handling and resolving complaints about these services, and by monitoring and reviewing how these services are delivered. In line with these responsibilities, we have been undertaking various COVID-19 related activities. We have:

- liaised with the Department of Communities and Justice about its planned responses to the pandemic
- reviewed and monitored COVID-19 related information and plans published on the websites of relevant peak associations and key providers of community services
- monitored COVID-19 related complaints received by our office
- requested and received information from DCJ and Specialist Homelessness Services about access to refuge and temporary accommodation for homeless people during the pandemic
- reviewed information provided by DCJ and peak homelessness associations about homeless people's access to venues and general services during the pandemic.

### **6.3.8. Reviewing the deaths of children**

Another of our functions is to convene the Child Death Review Team, which (among other things):

- maintains a register of all child deaths in NSW
- analyses data to identify trends and patterns in those deaths
- undertakes research to help prevent or reduce the likelihood of child deaths
- makes recommendations as to legislation, policies, practices and services to prevent or reduce the likelihood of child deaths
- reports biennially to parliament on its analysis and research.

Meetings of the NSW Child Death Review Team moved from quarterly face-to-face discussions to online meetings across various platforms. The move to virtual meetings proved successful, although it did limit informal networking amongst members.

We also chair a national child death review forum – the Australia and New Zealand Child Death Review and Prevention Group. We had to cancel the 2020 2-day annual meeting and conference which had been arranged for March-April 2020.

For 2021, we have made significant changes to the format to allow for online sessions, which will go ahead in May 2021 as a series of virtual presentations and discussion forums.

### 6.3.9. Continuing oversight of the Public Interest Disclosure scheme

We are also responsible for promoting public awareness of the *Public Interest Disclosures Act 1994 (PID Act)* and monitoring and reporting to parliament on compliance by agencies with the PID Act.

We were able to continue our monitoring function, however audits of agency compliance with the requirements of the PID Act were suspended. Meetings of the PID Steering Committee, which provides advice on the operation of the PID Act and recommendations for reform were moved online.

### 6.3.10. Protecting the health and wellbeing of our staff

The health and safety of our staff and the community has been a paramount consideration in all our decisions related to the closure of our physical offices and subsequent crisis management activities. We implemented a wide range of workplace health and safety measures to ensure we adhered to this guiding principle. Notable measures include:

- **Providing for an ergonomically safe work environment:** in supporting staff to work from home, we hired equipment for staff who could not provide an ergonomically safe working-from-home environment given the short notice provided due to COVID-19.
- **Extra promotion of our Employee Assistance Program:** we made sure staff were aware of the external supports available, and we made extra 1-on-1 counselling sessions available.
- **Increased flexibility of work arrangements:** to assist staff balance their work and personal commitments (such as home-schooling children or caring for vulnerable members of their household) we extended the bandwidth of hours within which staff could complete their duties.
- **Additional peer-to-peer supports:** to mitigate the isolating effects of social distancing and working from home, we established a buddy system to maintain connections between staff and to monitor health and wellbeing. Additional supports were put in place for frontline staff including the establishment of a system that facilitated easy and immediate channels of communication to the team support group.<sup>87</sup>

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87. A group composed of supervisors and senior managers.

- **Guidelines for front-line staff.** The content of some of our work can be challenging and at times distressing (for example reviewing materials relating to child deaths). Although our staff receive careful induction, ongoing training and counselling to support their wellbeing, we were acutely aware that working from home would pose a very different dynamic, and certain stressors may be more difficult to manage. So we developed guidelines to support staff well-being while handling complaints from home. The guidelines included escalation matrices and built-in 1-on-1 check-ins between staff and supervisors.

In June 2020 we undertook a ‘pulse survey’ of staff to get feedback on our crisis management. The response was positive, indicating that our staff had exhibited significant resilience in the face of the crisis and had felt supported throughout the crisis. The survey also showed that many staff enjoyed many benefits from flexible working. The pulse survey was conducted in part because the sector-wide People Matters Employment Survey (**PMES**) was delayed. In late 2020 also completed the PMES, the results of which reinforce what staff had told us in the pulse survey.

### 6.3.11. Dealing with the unreasonable conduct of some complainants

At times, speaking with people in a complaint environment involves difficult conversations, which may be due to someone’s vulnerability, demeanour or behaviour. We anticipated that the pandemic might increase distress and vulnerability in the community, and this in turn may have an impact on the way individuals interacted with our office and staff.

While our staff are carefully inducted and receive training in how to sensitively deal with people in distress and in managing unreasonable conduct of complainants, we worked hard to adapt existing practices to the remote working environment. Key aspects of this process included:

- **Behaviours:** we refreshed our staff on the key principles of dealing with difficult or unreasonable conduct by a complainant and highlighted a lower threshold for the kinds of behaviour they should manage before urgent escalation. We highlighted the new channels that should be used to escalate such matters.
- **Referrals:** we made sure the referral information we provide included the additional services callers may need to assist with the financial and social hardships caused by the pandemic.
- **Emergency protocols:** we adapted the protocols triggered when a caller refers to self-harm or harming others to make sure staff were both equipped and supported to deal with these situations remotely. We established an ‘on-call’ roster to ensure that at any given time during business hours, senior members of staff with the appropriate delegations were available to front-line

staff to help with contacts that require additional action. Once the upgrades to our IT system had been completed, additional platforms for support became available.

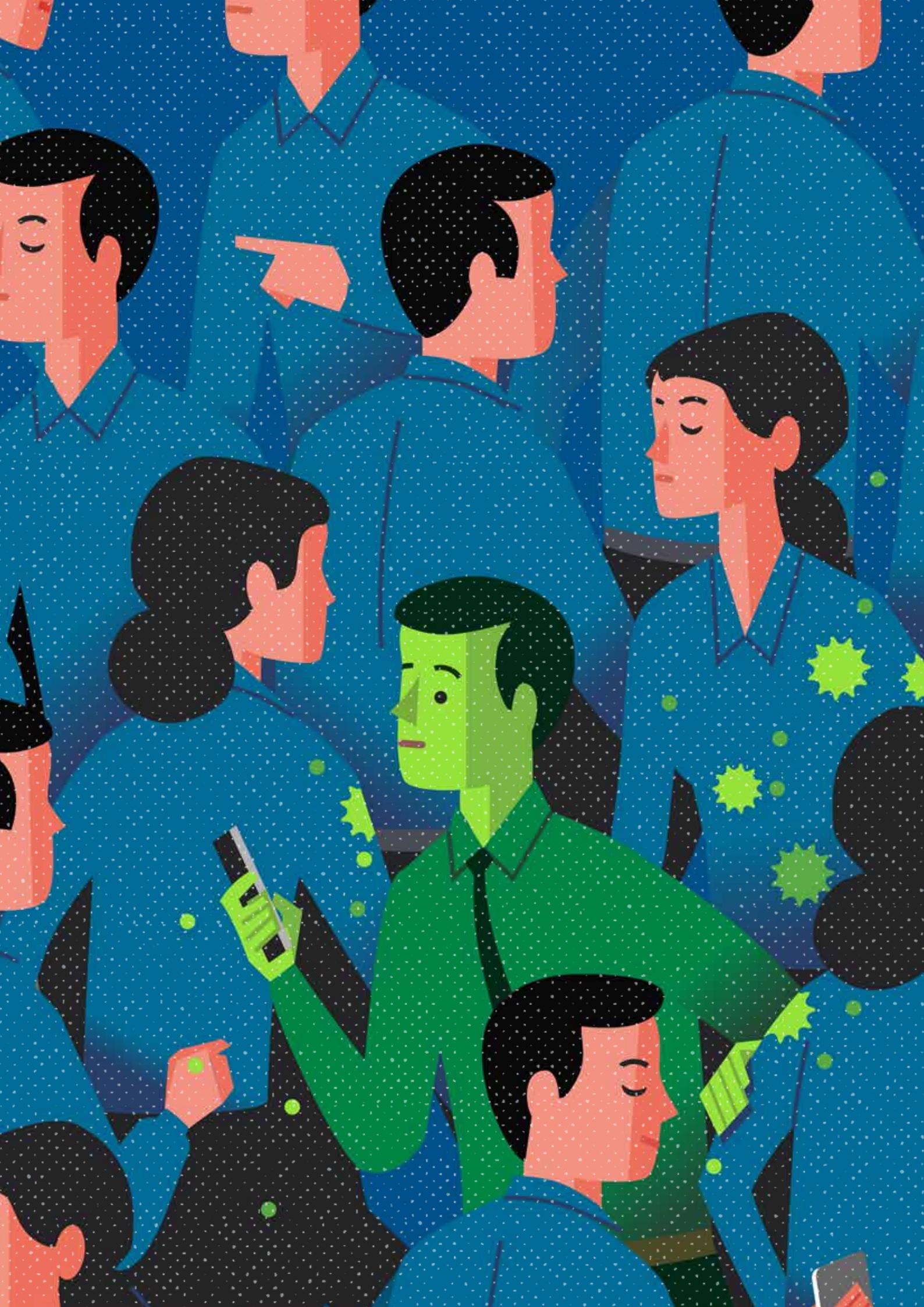
- **Remote debriefs:** debriefs with a supervisor are part of our ordinary emergency escalation protocols. While working in the office, colleagues seated close to each other invariably liaise and support one another. This support through immediate, close-proximity human interaction is not available when working from home, so we took care to build a system of remote debriefs into our practice.

Anecdotally, staff reported that the level of unreasonable conduct by complainants did not increase materially in the early months of the pandemic.

Indeed, most people who contacted our office communicated reasonably, often taking the time to acknowledge that many people had been impacted by the pandemic in one way or another and recognising that the general response to the pandemic, although disruptive and challenging, was evidently motivated by a proper purpose and necessary for the good of the community as a whole.

As mentioned in **section 2.3** above, our experience is that many complaints are motivated by community-minded concerns, rather than self interest. Many complainants raise issues with us because they wish to contribute to improving the health response or other government service provision, or to ensure that, if they experienced poor service or were mistreated, that others who might in future be in similar circumstances have a better experience than they did.





**PREScription:**  
**STAY AT HOME**

DISEASE:	COVID-19
PATIENT NAME:	EVERYONE
TAKE:	DAILY