

SUBMISSION COVER SHEET



Covid-19 Royal Commission – Development of Terms of Reference

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Submitted to: COVID-19 Response Inquiry Taskforce

Terms of Reference

“That, noting that a fully empowered Royal Commission with appropriate terms of reference is necessary to learn from the unprecedented government response to COVID-19, the following matter be referred to the Legal and Constitutional Affairs References committee for inquiry and report by 31 March 2024:

The appropriate terms of reference for a COVID-19 Royal Commission that would allow all affected stakeholders to be heard.”

The Independent Education Union of Australia (IEU) welcomes the opportunity to contribute to the Legal and Constitutional Affairs References Committee’s inquiry to establish appropriate terms of reference for a COVID-19 Royal Commission. Our submission presents the main issues and solutions that the terms of reference should encompass to enable a major stakeholder, essential teachers in the non-government sector, to be heard by the Commission.

The IEU is the federally registered union representing employees in non-government education in all states and territories. We have 74,800 members, at the time of preparing this submission. We are the only union with coverage of principals, educational leaders, teachers, school support staff and early childhood professionals.

Our submission is informed by our members’ experiences as they continued in their essential worker roles during the Covid-19 pandemic.

Introductory comments

The Covid-19 pandemic imposed unprecedented challenges in all workplaces and across all industries. Our nation’s educational institutions, early childhood education centres and school systems endured some of the most widespread and severe disruptions.

The pandemic not only posed unique threats within the education system to the health and safety of students and staff, but it also brought into focus the broader implications of how school operations could impact community health and transmission of the virus. Schools constituted particularly difficult and high-risk settings - school communities involve close interactions between hundreds, and sometimes thousands, of staff and students for prolonged periods of time, and mainly indoors.

Australian governments had a critical responsibility to mitigate the domestic impacts of the international pandemic by developing and deploying a comprehensive public policy response. Unfortunately, the Commonwealth Government failed in several critical areas within the education and schools sector.

Weaknesses in the regulation of non-government schools, enforceability of safety precautions and inadequate workplace rights were exposed during the pandemic. Despite the *National Principles for School Education 2020* there were major disparities in arrangements within the non-government sector and compared to state schools. The Principles aimed “to support the ongoing delivery of high quality education for *all* students during COVID-19”.¹ The second Principle notes “..alternative flexible, remote delivery of education services may be needed.” In reality, arrangements varied greatly with some employers initially refusing remote work or insisting remote learning was delivered by school staff on-site.

Essential workers experienced some of the worst impacts of the pandemic, yet their safety was at times compromised by employer inaction. All workers need ongoing access to social protections including secure incomes, financial support and modernised leave entitlements. These protections can also then mitigate against public health risks when a pandemic occurs with sick workers being able to isolate using sick leave. Casual workers must have access to income support programs such as JobSeeker and JobKeeper.

The pandemic experience showed that Australia can afford to, and for public safety and human rights reasons needs to, make JobSeeker and JobKeeper deliver an adequate standard of living to all who need that support.

The Covid-19 pandemic exposed clear divisions in Australia’s labour market, welfare programs and health and safety systems. It disproportionately impacted the millions of workers in insecure circumstances. These included casuals such as relief teachers (many of whom were excluded from the JobKeeper program) as well as workers on minimum award wages, fixed term contracts or other forms of insecure work.

The pandemic has also highlighted the need for an income support program for sufferers of long Covid.

Further, the pandemic had disproportionately adverse and intersecting economic, social, and domestic impacts on women. Women have always dominated the school teaching profession in Australia and in 2023 formed 76% of the workforce while still averaging \$26,393 annually less than men. Women are still also more likely to be insecurely employed which, in combination with inequitable and dangerous conditions in the home, made women and their children among the groups worst impacted by the pandemic.

Terms of Reference: Issues and Solutions

The Covid-19 Royal Commission’s terms of reference should encompass the following matters to enable teachers and support staff in schools to be heard. Some of the issues registered will have application to the wider community, such as women and insecure workers. The learnings from these experiences can inform safer and fairer government responses to future pandemics and public health crises.

¹<https://www.education.gov.au/covid-19-national-principles>. Our italics.

1. Education workers, along with other essential workers, should be provided with priority access to vaccination programs during health emergencies.

Education employees were regarded as essential workers, and yet access to Covid vaccinations was limited and extremely difficult to access throughout a majority of the pandemic. Priority access to vaccinations should have been confirmed for education workers at the earliest possible stage. Additionally, schools should be considered for use as central vaccination hubs for staff and students during health emergencies.

2. The Federal Government must assume responsibility for the provision of TGA approved personal protective equipment and personal testing equipment to education workers during health emergencies.

Despite the high risk of Covid transmission in schools - a setting characterised by extensive personal contact between students, staff and parents - the supply of personal protective equipment (PPE) was manifestly inadequate. Realistic supplies of TGA approved PN95 masks must be freely available in all schools to protect public safety in schools and the communities that students and education workers live in.

Similarly to the failure to protect front-line education workers with basic PPE, the Government was unable to source Rapid Antigen Tests (RATs) for use in non-government schools or provide priority access for school staff during large periods of the pandemic. This failure contributed to delays in schools resuming normal operations and placed the onus on schools and individual staff members and students to source their own testing equipment at a time when tests were almost impossible to locate.

Health and safety challenges in schools and early childhood services were complex; however, an earlier and more decisive intervention by the Federal Government would have mitigated risks and safety hazards in the early months of the pandemic.

3. Paid pandemic leave be included as a stand-alone National Employment Standards (NES) entitlement for employees (including casuals) during health emergencies.

The Federal Government's pandemic leave income support measures applied to very few IEU members given eligibility requirements. Instead, school and ECEC staff were required to use their limited personal leave in cases where they contracted Covid, where they were required to quarantine or where they needed to care for a family member. In many jurisdictions, our union was able to negotiate additional paid pandemic leave with individual employers; however, the vast majority of such leave has since been discontinued by employers.

For IEU members in workplaces without pandemic leave, or where employees exhausted all of their other accrued leave, the pressure to return to work in order to continue to be paid became an understandable dilemma. The situation also had the potential to undermine public health directives around home isolation and 'close contact' requirements designed to limit the spread of the virus. The pandemic highlighted the need for consistent and enforceable minimum standards and a modernised safety net of paid leave for all employees.

The limitations of modest personal leave entitlements were obvious. The current quantum of NES personal leave was not developed within the context of an international pandemic that was requiring employees to be absent from work for extended periods. The NES should be updated to include access to paid pandemic leave (in addition to personal leave) for all workers including casuals.

4. The Federal Government be afforded greater authority and enforcement capacity to oversee health and safety and school operational arrangements during a public health emergency in order to ensure compliance with health protocols.

A wide variety of employer responses were evident during the pandemic. While some employers worked constructively with staff and our union to develop safety plans and operational procedures, others failed to adhere to established health protocols. Employers were often slow to amend school practices to minimise risks. Several employers failed to confirm necessary changes until forced by union action or formal industrial dispute.

Non-government education providers should be required to follow clear medical guidance designed to limit the spread of disease. This could include prohibitions on large staff/student gatherings, mandated remote work and teaching, modified school activities, compulsory risk assessment procedures and the installation of clean air equipment. The Federal Government funds the non-government school sector to the value of \$16.7 billion dollars per year. It's reasonable for the Federal Government to be afforded greater oversight and compliance powers within the sector.

5. The Commonwealth Government's *National Principles for School Education* should be revised to ensure they support public health safety during pandemics.

The Commonwealth's *National Principles for School Education* should be revised, at the level of policy and implementation, to ensure work health and safety conditions for non-government education staff are on par with those in the government education sector during pandemics, including in relation to remote work options, PPE access, and other safety precautions.

6. Flexible work arrangements should be available under the *Fair Work Act* for medically vulnerable employees working at the time of a public health emergency.

One of the most common industrial disputes in schools during the pandemic related to the inability of employers to provide a safe workplace for medically vulnerable employees. Reasonable requests for remote work or flexible work arrangements designed to limit exposure for medically vulnerable staff were routinely dismissed by employers. We propose that the right to access flexible work arrangements under the *Fair Work Act* explicitly include medically vulnerable employees working at the time of a pandemic.

7. A tougher threshold test should also be required of employers prior to the imposition of any unpaid standdown on their workforce.

The significant workplace challenges caused by the pandemic reinforced the need for genuine consultation. Open communication with staff and their union leads to better decisions, greater transparency and a shared commitment to outcomes. While the pandemic imposed unforeseen difficulties on many occupations, employers who engaged in genuine consultative

processes with employees were best placed to meet these challenges, while at the same time minimising adverse impacts on the working rights and conditions of employees.

Consultation requirements should be expanded in the *Fair Work Act* to specifically apply where employers seek to impose unpaid stand downs of employees. Tougher threshold tests should also apply in such circumstances to ensure all alternative options are exhausted and demonstrated to the satisfaction of employees and their union. Penalties should apply to employers who fail to comply with such requirements.

8. Consultation requirements should be strengthened to ensure genuine prior discussions with employees and their union in relation to compliance with government health directives.

Clearer interaction between government health directives, such as vaccination requirements or mask wearing, and the industrial obligation of employers should be confirmed in workplace consultation requirements. There should be an unequivocal and explicit requirement for employers to consult with employees and their union around how such government directives are managed and implemented at the workplace level.

9. Greater federal co-ordination of funding and implementation of special education supports designed to reduce negative learning impacts.

Negative impacts on student learning during the pandemic were exacerbated by the existing economic and social disadvantage of many students. Schooling connections were often disrupted for students in regional or remote areas, or who had limited access to home technology or digital support.

Of equal importance in mitigating the effects of disrupted education were measures implemented following a return to classrooms. Small-group tuition programs were established by New South Wales, South Australia and Victoria from 2020, but were not implemented equitably across the nation. Federal co-ordination of the funding and implementation of these supports may reduce negative impacts and improve learning outcomes during a future health emergency. Programs such as the Commonwealth's School Student Broadband Initiative should continue and be considered for expansion.

10. Review the Federal Government's pandemic decision to restrict access to JobKeeper.

The IEU welcomed the provision of a wage subsidy for Australians during the pandemic. However, the decision to restrict the eligibility for JobKeeper excluded approximately 1 million casuals from the program (including 67,000 casuals in the Education and Training sector). The eligibility restrictions on JobKeeper and ending the program too early caused financial stress to many workers.

During the pandemic the majority of our casual relief teachers were denied paid work due to staffing changes. The JobKeeper model then left them with either insufficient or no income. JobKeeper also failed to offer protection for all school staff, particularly support staff, in schools unable to demonstrate an immediate decrease in revenue, yet proceeded to stand down employees without pay.

There is a responsibility for employers to maintain staff during a public health crisis, including schools and systems in receipt of high levels of government funding. However, there is also a need for consideration of the wide diversity of schools and their communities to establish appropriate variation mechanisms to ensure workers in all schools can be retained and supported.

Retaining and supporting teachers and support staff in all schools and workers in other sectors should be an objective included in a much-needed review of the JobKeeper model. Design and implementation problems with JobKeeper did allow some schools to absorb JobKeeper payments as an income stream, while our members who were casually employed were stood down and left with no income.

Insecure employment remains an ongoing source of financial insecurity for millions of Australian. ABS figures show that in 2022-23 there were, Australia wide across sectors, 2.7 million casual employees, up from 2.4 million in August 2021. 21% of those employees did not have minimum guaranteed hours. 1.1 million were independent contractors, and 3.4% of employees were employed on fixed-term contracts.

The decision to restrict JobKeeper was taken despite the fact that the debt incurred to fund both JobKeeper and JobSeeker still left Australia with low debt by international and G8 countries' standards, at 26% of GDP.² The restrictions caused a major threat to public health by forcing insecure workers to choose, on the one hand, between keeping a roof over their heads and food and medications for their families, and on the other hand a Covid-19 test for inconclusive early symptoms that might result in a positive result. Nearly half of Australia survives from pay cheque to pay cheque and cannot afford any gaps in income including, if a Covid-19 test is positive, a 2-week isolation period without income support options.

We ask the Royal Commission to consider recommending to a Federal Government committed to a health and wellbeing budget:

1. a review of the JobKeeper model including appropriate variation mechanisms to ensure workers in all schools can be retained and supported; *and*
2. due to the termination of the Covid-19 Disaster Payment and the Pandemic Leave Disaster Payment, establish a new an ongoing income support program for long-Covid sufferers.

11. Consider special measures to better support women, particularly those on low incomes and in insecure work, in the event of a future pandemic.

The legislative, industrial and operational changes needed to keep our members and their students and families safe during a future pandemic intersect with the needs of a wider stakeholder group - Australian women.

In 2023, women comprised 76% of the teaching workforce. Australian women were disproportionately impacted by the pandemic in mutually compounding domestic and economic ways. A 2017 study found that Australian women performed 76% of childcare, 67% of domestic work, and 69% of care for adults.³ During the pandemic these gender-based inequities worsened. Women including teachers carried an even more disproportionate

² Dawson, E. & Lloyd-Cape, M., Some Facts about Debt: A Per Capita Discussion Paper.

³ Price Waterhouse Cooper, Understanding the unpaid economy, 2017.

amount of domestic work during the shutdowns and also carried most of the home-schooling responsibilities for their children.

Domestic violence against women and their children also increased shamefully during the Covid-19 pandemic and shutdowns, again exposing and exacerbating the need for the 2022 expansion of paid family and domestic violence leave under the *Fair Work Act*.

The economic impacts of the pandemic also disproportionately affected insecure workers. Women are more likely to be in insecure work such as casual or part-time. Women are also more likely to be receiving lower award rates of minimum pay with lower leave entitlements.

Women continue to earn less even when in full-time permanent work.

Prior to the Covid pandemic, women comprised 56.9% of all casuals, 58.9% of the underemployed, and 61% of all award workers. During 2020, women tended to lose their jobs more often and have bigger reductions in working hours than men. Before the pandemic the Women's Gender Equality Agency estimated it would take 50 years to close the gender pay gap.⁴ In 2023 the gender pay gap had not lessened for women outside the managerial and upper pay rungs. Intersectionally, in our female-dominated membership, for those who are casual or fixed term contract workers, the pandemic exacerbated existing financial insecurities, as it did the millions of insecure workers across the nation.

12. Recommend a future Royal Commission into what lessons the COVID-19 crisis can provide as to how governments can invest in the Australian economy including the education workforces to build secure and well-paid jobs as the norm to mitigate risks in the event of pandemic.

Before and after the pandemic there are millions of insecure Australian workers including 67,000 in the education and training sector. Future public health emergencies present another imperative for governments to continue developing health and wellbeing budgets and investing in secure, well-paid employment for all Australians across the national workforce and for our members in the non-government education sector.

The Royal Commission's terms of reference should investigate what lessons the Covid-19 pandemic can provide as to how governments and employers can invest in the Australian economy to build job security and prosperity for all Australian workers, in order to better mitigate against the impact of future pandemics.

⁴ WGEA 2018-2019 Scorecard: <https://www.wgea.gov.au/sites/default/files/documents/2018-19-Gender-Equality-Scorecard.pdf>.