

summarised the adverse impacts that excessive restrictions can have on aged care facility residents.³⁹

Visitor restrictions by aged care providers can do more harm than good by cutting off older people from vitally important family and social connections. Older people who find themselves unexpectedly alone without control over their circumstances are at particular risk for a variety of severe, even life-threatening physical and mental health conditions, including cognitive decline. Such underlying health conditions are harmful enough on their own, but with a disease that is particularly dangerous for people with them, voluntary lockdowns might not be the answer.

94. Visits from family members, friends, carers, support workers, guardians or advocates not only provides an opportunity to socialise (which benefits their physical and mental health), but also provides an important oversight mechanism. This is especially important for those who are particularly vulnerable to forms of elder abuse such as those with dementia or cognitive impairments. Making reasonable adjustments to facilitate visits should be preferred over outright denial of visits. By restricting visits to aged care facility residents altogether, aged care providers are arguably imposing an unreasonable limitation on residents' human rights (their freedom of movement, freedom of association, right to family and, given the harmful effects of such policies, right to health).⁴⁰ Affected residents have limited options in seeking to address this issue. While a complaint can be made to the Aged Care Quality and Safety Commission, the Commission has no power to mandate that people be allowed to receive visitors.
95. Liberty Victoria acknowledges the Victorian Government is limited in how it can respond to potential breaches of quality and safety standards by aged care providers. However, we recommend that the Victorian Government advocate through the National Cabinet to ensure aged care providers' policies appropriately balance protecting older and at-risk residents with the residents' needs for family and connection. The Government should also advocate to ensure there is consistent and effective oversight of aged care facilities and appropriate complaint mechanisms and legal remedies in instances of breaches.

³⁹ Human Rights Watch, 'Protecting Human Rights in the COVID-19 Pandemic' (13 July 2020) <<https://www.hrw.org/news/2020/07/13/protecting-human-rights-covid-19-pandemic>> citing National Institute on Aging, 'Social isolation, loneliness in older people pose health risks' (23 April 2019) <<https://www.nia.nih.gov/news/social-isolation-loneliness-older-people-pose-health-risks>>

⁴⁰ See *International Covenant on Civil and Political Rights*, arts 6, 7, 11 and 12.

Issues affecting refugees, asylum seekers and visa-holders

96. Despite the unique and unprecedented challenges that COVID-19 presents, the Government must ensure that members of the community who are not Australian citizens are afforded the dignity and support extended to all Victorians.
97. Unfortunately, to date, many vulnerable Victorians have fallen through the gaps. People in immigration detention, those seeking asylum, temporary visa holders including bridging visa holders, people facing visa cancellation or refusal, and other vulnerable groups engaging with Australia's migration system have been excluded from the relief afforded to other Australians. These cohorts are often particularly vulnerable, facing barriers including language, health, means, and backgrounds of torture and trauma.
98. The impact on these groups has been severe, from psychological harm, financial distress including loss of livelihood and homelessness, loss of access to crucial support services, and the loss of ability to exercise legal rights (with consequences including detention and forcible removal from Australia). This is not an individual problem: it has a ripple effect on families, communities, and businesses. It is in no-one's interests to leave behind a group of people whose contribution to this State is extremely valuable, and whose suffering threatens not only their own health but the State's long-term recovery.
99. Liberty Victoria recognises that the Victorian Government's jurisdiction is limited with respect to migration. Liberty Victoria also recognises the Victorian Government's generous assistance to these groups to date. However, both in respect to its role in National Cabinet and in terms of its powers to extend State-based support to members of the Victorian community, there are further steps that can and should be taken to protect the people currently left behind. In particular, Liberty Victoria submits that the Victorian Government ought to:
 - a. Ensure financial support is available to all members of the community, regardless of visa status.
 - b. Increase funding to legal and social services providing support to asylum seekers, refugees, and people in immigration detention.
 - c. Advocate in the National Cabinet to:
 - i. Ensure transparent, appropriate and expert-led management of immigration detention, including controlled release of detainees.

- ii. Suspend adverse discretionary visa cancellation decision-making, except where it is a matter of public safety or at the request of the person affected, to ensure no loss of rights occurs due to severe access barriers.

Ensure financial support is available to all members of the community, regardless of visa status.

100. Temporary visa holders contribute enormous amounts to Australia in myriad ways. Our economy relies on students and skilled workers. Abandonment of these cohorts not only hurts those communities and the people directly affected, but affects Australia's international reputation as a preferred destination for education and employment. It will also affect the State's longer-term economic recovery, relying heavily as we do on tourism and hospitality workers, many of whom are non-citizens.
101. Liberty Victoria welcomes the Victorian Government's steps to address the gap left by Commonwealth funding, including the Extreme Hardship Support Program, implemented through the Red Cross, and the Victorian Government's International Student Emergency Relief Fund. However, we remain concerned that the supports do not go far enough: for example, a \$400 is unlikely to go far towards a vulnerable person's essential needs. Further, the \$1,500 hardship payment for those required to self-isolate should be available to all members of the Victorian community, regardless of visa status.
102. Liberty Victoria recommends that the Victorian Government, as part of the National Cabinet, advocate for JobSeeker and JobKeeper payments to be available to all members of the Australian community, regardless of visa status.
103. Liberty Victoria recommends that financial assistance be available to all members of the community who require it, regardless of visa status, and that any information collected in the provision of this relief be confidential so that undocumented people or people with insecure status are not prevented from access.
104. There are between 60,000 and 100,000 people without visas currently in Australia.^{41,42} Research suggests that undocumented people constitute a significant percentage of the workforce in sectors such as horticulture, cleaning and food production.⁴³ Because of their

⁴¹ Minister for Home Affairs, 'Matters Requiring Immediate Attention and Consideration,' p8
<<https://www.homeaffairs.gov.au/foi/files/2019/fa180801356-document-released.PDF>>.

⁴² Marie Segrave, 'Exploited and Illegal: Unlawful Migrant Workers in Australia', p7
<https://arts.monash.edu/_data/assets/pdf_file/0020/1532063/exploited-and-illegal_unlawful-migrant-workers-in-australia.pdf>

⁴³ Ibid.

legal status, undocumented people are often underpaid and exploited at work. Earning subsistence wages, and without access to basic forms of income and social support, undocumented people will be unable to observe social distancing, stay-at-home orders, or quarantine measures, and there may be significant barriers to receiving appropriate medical care.

105. Similarly, people facing severe financial hardship who do have visas are likely to face inordinate pressures to continue to attend work despite illness, and against government direction. They too may have insecure work or have precarious financial status. The provision of financial assistance will not only prevent harm to them, but mitigate the spread of COVID-19 by enabling compliance.
106. Premier Daniel Andrews has made clear that attending a workplace with symptoms “is the biggest driver of transmission”, noting “we have to work together to keep anyone who’s got symptoms away from work”:⁴⁴ a key part of this fight is ensuring those with insecure financial situations are protected.

Increase funding to legal and social services providing support to refugees and people seeking asylum, and people in immigration detention.

107. There is a long-standing shortage of legal and social assistance available for asylum seekers, refugees, and other non-citizens in Australia. The COVID-19 crisis has intensified the strain on service providers, with demand soaring and numerous barriers to provision of services. These essential services have also been a critical pathway for the provision of multilingual COVID-19 related information to culturally and linguistically diverse communities.
108. New research conducted by the Refugee Council of Australia investigated the social and financial costs of not extending COVID-19 lifelines to people seeking asylum and refugees. The RCOA found:
 - a. Almost 19,000 people in this cohort are estimated to lose their jobs during the present economic downturn. The unemployment rate is expected to double from 19.3 per cent to 41.8 per cent.

⁴⁴ Nicole Mills ‘Victorians must not go to work with coronavirus symptoms or lockdown ‘will not end’, Dan Andrews says’, ABC News (27 July 2020) <<https://www.abc.net.au/news/2020-07-27/coronavirus-cases-rise-again-as-victorians-go-to-work-while-sick/12495898>>

- b. Of those who remain employed, 92 per cent are expected to earn less than the minimum wage.
 - c. Thousands are expected to be pushed into poor health and homelessness. The homeless rate among refugees and asylum seekers on temporary visas is projected to rise to around 12 per cent.
 - d. The added burden on health, justice, social and other services is expected to cost hundreds of millions of dollars.⁴⁵
109. Liberty Victoria recommends that increased funding be urgently made available to ensure that vulnerable persons receive legal advice and, where necessary, representation. In particular, funding should be provided for people facing visa cancellation. This cohort are often detained and face particular barriers to understanding, responding to or engaging with the processes they are subjected to. Liberty Victoria also recommends further funding be made available to essential non-legal assistance for refugees and people seeking asylum in the community facing destitution, including housing.

Advocate in the National Cabinet to ensure transparent, appropriate and expert-led management of immigration detention, including controlled release of detainees.

110. The Federal Government has acknowledged that those most at risk of serious infection include people in detention facilities.⁴⁶ Victoria is home to the Melbourne Immigration Transit Accommodation in Broadmeadows, as well as Alternative Places of Detention. Many people previously living freely in Victorian communities, and members of Victoria families, are detained in these places.
111. People in detention have very little agency or control over their circumstances or proximity to others.
112. Those in detention face insurmountable difficulties in attempting to self-isolate or comply with those Government-issued guidelines. Many have underlying health conditions that put that at a higher risk of serious illness or death should they contract the virus. People most

⁴⁵ Refugee Council of Australia, 'COVID-19 and humanitarian migrants on temporary visas: assessing the public costs' (Research Briefing Note 2, July 2020) <<https://www.refugeecouncil.org.au/wp-content/uploads/2020/07/COVID-19-van-Kooy-.pdf>>

⁴⁶ Department of Health, Australian Government, 'What you need to know about coronavirus (COVID-19)' (24 March 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/what-you-need-to-know-about-coronavirus-covid-19>>

vulnerable in detention include elderly people, people with ongoing health conditions including psychological conditions, minors and Aboriginal and Torres Strait Islander people.

113. Detainees are also facing immense psychological pressure: they are understandably terrified.
114. At declaring the biosecurity emergency, the Commonwealth Government should have had a clear and implementable plan for controlled release to community detention of low risk, highly vulnerable immigration detainees due to the increased risk of transmission and mortality in places of detention.⁴⁷
115. Liberty Victoria condemns the reported use of solitary confinement practices for quarantine.
116. Liberty Victoria recommends that the Victorian Government advocate for a systematic review of numbers in immigration detention and consideration of alternative placement options, including controlled release. Appropriate oversight from bodies including the Commonwealth Ombudsman should also be ensured.

Advocate in the National Cabinet to suspend adverse discretionary visa cancellation decision-making.

117. People facing visa cancellation are very often particularly vulnerable, as are their families in the community. They usually have some history of criminal offending, and may have trauma or refugee backgrounds.
118. The law is complex and the timeframes labyrinthine and strict.
119. The consequences of cancellation are severe, and include prolonged detention, forcible removal from Australia, and permanent separation of families. Many of those affected are held in correctional facilities under COVID-19 lockdown and cannot access appropriate assistance to ensure a fair hearing of their case.

⁴⁷ World Health Organisation, 'Preparedness, prevention and control of coronavirus disease (COVID-19) for COVID-19 in prisons and other places of detention' (15 March 2020) <https://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf>. See also Prof Richard Coker, 'Report on Coronavirus and Immigration Detention', p15 (<[https://www.publicdefenders.nsw.gov.au/Pages/covid19/Report%20on%20Detention%20and%20COVID%20\(Final\).pdf](https://www.publicdefenders.nsw.gov.au/Pages/covid19/Report%20on%20Detention%20and%20COVID%20(Final).pdf)>); Diane Taylor, 'Home Office releases 300 from detention centres amid Covid-19 pandemic' *The Guardian* (22 March 2020) <<https://www.theguardian.com/uk-news/2020/mar/21/home-office-releases-300-from-detention-centres-amid-covid-19-pandemic>>.

120. Liberty Victoria understands that many people are unable to understand correspondence they receive regarding visa cancellation, or are without the means to sufficiently respond, and consequently, do not take action and miss strict immovable deadlines to access review. This means that they are denied the opportunity for a considered and appropriate review of their circumstances, with a decision made on the basis of the facts.
121. Given travel restrictions, they may be detained for prolonged periods, where their communication may be further restricted, and in circumstances of great hardship. No visits are presently permitted.
122. As a result of COVID-19, obtaining advice is more difficult. Many law and support services are more difficult to contact due to closures and demand. Interpreting services are overburdened and often impractical to use. People in detention may be quarantined or even in hospital. Services that used to monitor detention in person are no longer able to carry out that role.
123. Providing a full and meaningful response to in a visa cancellation process requires an affected person to gather a large volume of supporting documents, including letters or statements from family, employers and friends; medical records and letters health providers; documents from previous legal representatives, and documents that can only be obtained through freedom of information. COVID-19 has severely restricted people's ability to obtain such documents in a timely manner.
124. The Administrative Appeals Tribunal has issued new Practice Directions in the Migration and Refugee and General Divisions indicating hearings will be held by telephone, on the papers, or by video, rather than in person, representing a significant disadvantage to review applicants who *do* manage to lodge review applications.
125. This is all occurring in the context of significantly increased stress and lack of support. It will impact the integrity of decision-making and lead to disproportionate outcomes.
126. As visas are cancelled and detention becomes mandatory, the health risk in detention increases. Each new detainee is a significant risk to others.

127. There is no justification for proceeding with negative visa cancellation decisions during a pandemic, unless they are patently necessary in the public interest (for example on national security grounds), or at the request of the relevant person (for example, because they wish to be removed from Australia).

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