



MONASH
LAW

CASTAN
CENTRE FOR
HUMAN RIGHTS
LAW

Submission to the Victorian Parliament's
Public Accounts and Estimates Committee

*Inquiry into the Victorian Government's Response to
the COVID-19 Pandemic*

Prepared by

Professor the Hon Kevin H Bell AM QC, Director;
Dr Maria O'Sullivan, Member; Karin Frodé, Policy Manager;
Andrea Olivares Jones, Researcher; and Celeste Rebbechi
With assistance from Sarah Hult and Victoria Vassallo

On behalf of the Castan Centre for Human Rights Law
Faculty of Law, Monash University

7 August 2020

CONTENTS

PART I: BACKGROUND	2
1.1. Introduction	2
1.2. Summary of Submission	2
PART II: RESPECTING RIGHTS IN A PANDEMIC	3
2.1 Why Human Rights Matter in the Response to COVID-19	3
2.2 Human Rights Obligations during COVID-19	4
PART III: LIMITING HUMAN RIGHTS IN A PANDEMIC	8
3.1 Limitation of Human Rights	8
3.2 Limitation of Rights in Response to COVID-19	9
PART IV: PROTESTING IN A PANDEMIC	10
4.1 Introduction	10
4.2 Relevant International Law	10
4.3 Domestic Law	13
4.4. Case study: Refugee detention protest April 2020	15
PART V: VULNERABLE GROUPS - PUBLIC HOUSING RESIDENTS AND THE HOMELESS	18
5.1 Introduction	18
5.2 Relevant International Law	18
5.3 Domestic Law	30
5.4 Case Study: Public Housing and the COVID-19 response	32
5.5 Case Study: Homelessness and the COVID-19 response	43
PART VI: VULNERABLE GROUPS - PRISONERS AND YOUTH DETAINEES	48
6.1 Introduction	48
6.2 Relevant International Law	48
6.3 Domestic Law	55
6.4 Case study: Prisons and youth detention facilities and the COVID-19 response	57
PART VII: CONCLUSION AND KEY RECOMMENDATIONS	65
BIBLIOGRAPHY	67

PART I: BACKGROUND

I.1. Introduction

The Castan Centre for Human Rights Law (the Castan Centre) notes that the Public Accounts and Estimates Committee has agreed to review and report to the Parliament on the following terms of reference:

- a. 'the responses taken by the Victorian Government, including as part of the National Cabinet, to manage the COVID-19 pandemic; and
- b. any other matter related to the COVID-19 pandemic.'

We welcome the Committee's inquiry and are pleased to contribute to this investigation by way of this submission. The Castan Centre is a world-renowned academic centre using its human rights expertise to create a more just world where human rights are respected and protected, allowing people to pursue their lives in freedom and with dignity. The Castan Centre's mission includes the promotion and protection of human rights and it is from this perspective that we make this submission.

I.2. Summary of Submission

We begin this submission by considering why human rights matter when assessing the Victorian Government's response to COVID-19 (Part II). Our submission goes on to consider Australia's international law obligations to respect, protect and fulfil human rights, reinforced in Victoria through certain domestic legislation, notably the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the *Victorian Charter*). Next, we review the principles that govern the limitation of many human rights, even in times of a pandemic (Part III). We consider the link between these principles and good governance of the Victorian Government. In the remaining parts of the submission, we consider the Victorian Government's response to COVID-19 in the context of three topics: Protest (Part IV); Public housing and homelessness (Part V); and Prisons and youth detention (Part VI). Each part sets out the relevant human rights law framework and applies it to the specific topic examined. Based on our findings, we call on the Committee to make a number of recommendations to the Victorian Government (Part VII).

PART II: RESPECTING RIGHTS IN A PANDEMIC

2.1 Why Human Rights Matter in the Response to COVID-19

Human rights matter in the response to COVID-19 because they impose an obligation upon governments to respect, protect and fulfil the rights to life and health of every person in the community without discrimination, and to do so in a way that does not unreasonably or unjustifiably interfere with other human rights, such as the rights to freedom of movement and expression.

As in other states and territories and at the federal level, COVID-19 response measures introduced by the Victorian Government to protect the life and health of Victorians have included restrictions which significantly interfere with other international human rights (which are also domestically reinforced) such as the right to freedom of movement, to privacy, family and home, and to work. These rights are not absolute. Lawful, necessary and proportionate interference may be justified because life and health are at risk, which will be discussed in Part III of this submission.

Unlike other Australian states and territories, Victoria is experiencing a strong second wave of COVID-19, which has resulted in an unprecedented response. It included the Detention Directions to residents of nine public housing estates in July 2020 and a move to stage 4 restrictions across metropolitan Melbourne from 2 August 2020. These measures have had a significant impact upon a number of human rights for all Victorians. They have also highlighted existing inequalities in the enjoyment of rights for some of the most vulnerable groups. In Parts V and VI below, we look specifically at the impact on public housing residents, the homeless and persons in prisons and youth detention facilities.

As noted above, rights may need to be balanced against each other when in conflict, and rights may need to be balanced against other pressing concerns or matters that arise in society, such as public health emergencies. How a government responds to COVID-19 presents both types of conflicts.

What is important to keep in mind when assessing these various responses to COVID-19 by applying the principles of lawfulness, necessity and proportionality, is that individuals and groups have a strong personal stake in these rights. This is because, in various interconnected ways, they enable everyone to live a dignified life. Take, for example, the right to freedom of movement. As noted below, it is a right protected under international human rights law. It is also protected under s 12 of the *Victorian Charter* as the right ‘to move freely within Victoria and to enter or leave it and...to choose where to live’.¹

At one level, the purpose of this right is obvious – to ensure that people (and families and groups) can move freely when and where they wish. Important though this is, it is not an adequate understanding of the entire meaning and importance of the right. The purpose of the right and the values and interests protected go well beyond freedom of movement as such and encompass personal actuation and development. Individuals usually want to exercise freedom of movement

¹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 12 (‘Victorian Charter’).

for reasons that are important to them personally. Stay-at-home or do-not-travel directions interfere with these interpersonal relationships and make for a life that is smaller and less fulfilling.

This is important to recognise in and of itself. The seriousness of the context in which restrictions are imposed, such as an unprecedented global health crisis does not lessen the significantly adverse consequences for the individual/s caused by the interference. Restrictions on the right to freedom of movement usually involve much more than physical restrictions; they can involve serious social and developmental restrictions which, in turn, impact on the realisation of other rights, including the right to live a dignified life. Social media contact can go only so far as a substitute. This is the reason why the human right to freedom of movement is so important. This is why government interference with the exercise of this right can cause serious personal hardship.

When we fully appreciate the meaning and importance of these rights in and of themselves by examining their underlying purpose and the values and interests which they protect, we can better understand the true burden of the restrictions on people in human terms, which properly informs assessment of whether such restrictions are reasonable and justified.

2.2 Human Rights Obligations during COVID-19

Since the adoption of the *Universal Declaration of Human Rights* by the United Nations General Assembly in 1948², many human rights treaties and instruments have been adopted.³ Australia is a State party to seven of the core human rights treaties, including the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the UN Convention on the Rights of the Child (UNCRC).⁴ In Victoria, many of the human rights protected under international law are incorporated into domestic law, notably through the *Victorian Charter* and the *Equal Opportunity Act 2010* (Vic). As a result, the Victorian Government must develop and implement legislation and policy that is compatible with its human rights obligations under international and domestic law.

The COVID-19 pandemic has had far-reaching consequences for the economic, social and political lives of people around the world.⁵ Restricted movement, lockdowns, social distancing measures and other legislative and policy responses to COVID-19 have posed unique challenges to human rights. While

² *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948).

³ See e.g. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR'); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('ICESCR'); *UN Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('UNCRC'); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD').

⁴ Australian Law Council, 'Australia's International Human Rights Obligations', Australian Law Council (Web Page, 2020) <<https://www.lawcouncil.asn.au/policy-agenda/human-rights/australias-international-human-rights-obligations>>.

⁵ United Nations, COVID-19 and Human Rights: We are All in This Together (Report, April 2020) 2 <https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf>.

the virus itself does not discriminate, the *impacts* of the pandemic do.⁶ The challenges to rights have therefore often been exacerbated by pre-existing inequalities and access issues experienced by vulnerable groups, including women, children and youth, older persons, refugees and migrants, persons with disability, the LGBTIQ+ community and persons in detention and other closed environments.⁷

As noted above, most rights are not absolute, and human rights law does recognise that emergencies such as the COVID-19 pandemic may require some human rights to be derogated from or limited on public health grounds.⁸ While the UN has recognised that States have had to make decisions at speed to combat the spread of the virus, it has emphasised that ‘this is not a time to neglect human rights’, but rather that respect for rights is more imperative than ever before.⁹ Responses to the crisis must therefore be ‘*proportionate* to the aims of containing the virus in order to preserve the trust that needs to exist between people and their government’.¹⁰

The UN Office of the High Commissioner for Human Rights (OHCHR) has urged States to prioritise measures to guarantee basic rights in the pandemic, and to ensure that all groups are protected and included in responses.¹¹ In this regard, the OHCHR has published considerable resources to guide States in responding to the spread of COVID-19 in a way that complies with State obligations under international law. This includes guidance on issues such as emergency measures, social and economic impacts, housing, food, water, sanitation and privacy, as well as measures to ensure that vulnerable groups are considered and protected.¹²

The UN treaty bodies, which guide and monitor the implementation of the core international human rights treaties by States parties have also made statements and recommendations for responses to the COVID-19 pandemic.¹³ The treaty bodies have also developed the ‘Toolkit of Treaty Law

⁶ Ibid 10-12.

⁷ Ibid 2-3.

⁸ Ibid 3.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Michele Bachelet, United Nations High Commissioner for Human Rights, ‘COVID is “a colossal test of leadership” requiring coordinated action, High Commissioner tells Human Rights Council’, Office of the High Commissioner for Human Rights (Web Page, 9 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E>>.

¹² United Nations Office of the High Commissioner for Human Rights, ‘COVID-19 Guidance’, United Nations Office of the High Commissioner for Human Rights (Web Page, 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>> (‘UN COVID-19 Guidance’).

¹³ United Nations Office of the High Commissioner for Human Rights, Compilation of Statement by Human Rights Treaty Bodies in the Context of COVID-19 (Report, 19 June 2020) <https://www.ohchr.org/Documents/HRBodies/TB/COVID19/External_TB_statements_COVID-19_19jun20.pdf>.

Perspectives and Jurisprudence’ which contains an analytical overview of international human rights obligations and their application during the COVID-19 pandemic.¹⁴

Much of this guidance is directly relevant to this submission. The UN Human Rights Committee (UN HRC), which monitors the implementation of the ICCPR, has underlined that States parties *derogating* from human rights in response to COVID-19 must notify the UN Secretary-General without delay, and ensure the strict necessity and proportionality of any derogating measures taken, as per their obligations under article 4 of the Covenant.¹⁵ Further, States *limiting* human rights for public health reasons must ensure that these satisfy the requirements of legality, necessity, proportionality and non-discrimination, which will be explored in Part III of this submission.¹⁶ To-date, Australia has not formally derogated from its obligations under the international human rights treaties, but has instead sought to limit certain rights in response to the pandemic.¹⁷

The UN Committee on Economic, Social and Cultural Rights (CESCR) has released a statement on the impact of COVID-19 on economic, social and cultural (ESC) rights, and has made recommendations for States to ensure that they ‘take measures to prevent, or at least to mitigate’ these impacts.¹⁸ In this statement, the CESCR emphasises that emergency measures and powers ‘should not be abused, and should be lifted as soon as they are no longer necessary for protecting public health’.¹⁹ Measures should respect and protect the inherent dignity of all people, and States should devote ‘their maximum available resources to the full realisation of *all* economic, social and cultural rights, including the right to health’ (emphasis added).²⁰ Because the pandemic has a disproportionately negative impact on vulnerable groups, States must adopt ‘special targeted measures’ and ‘mobilise the necessary resources’ to protect and mitigate the impact of the pandemic on vulnerable groups.²¹

¹⁴ United Nations Human Rights Treaties Branch, Internal HRTB Toolkit of Treaty Law Perspectives and Jurisprudence in the Context of COVID-19 (Report, May 2020) <https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf> (‘HRTB COVID-19 Toolkit’).

¹⁵ United Nations Human Rights Committee, Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic, UN Doc CCPR/C/128/2 (Statement, 30 April 2020) <<https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>>.

¹⁶ United Nations Office of the High Commissioner for Human Rights, Emergency Measures and COVID-19: Guidance, (Statement, 27 April 2020) <https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf> (‘UN Guidance on Emergency Measures and COVID-19’).

¹⁷ Australian Government, Attorney-General’s Department, ‘Absolute Rights’, Attorney-General’s Department (Web Page, 2020) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/absolute-rights>>.

¹⁸ United Nations Committee on Economic, Social and Cultural Rights, Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights, UN Doc E/C.12/2020/1 (17 April 2020) [2] <<https://undocs.org/E/C.12/2020/1>> (‘CESCR Statement on COVID-19’).

¹⁹ Ibid [11].

²⁰ Ibid [12], [14].

²¹ Ibid [14]-[15].

The above clearly demonstrates that the State obligation to respect, protect and fulfil human rights has not in any way diminished during the COVID-19 pandemic. Governments around Australia, including the Victorian Government - whose population has been particularly hard hit by the virus in recent months - must therefore ensure that all emergency measures to prevent the proliferation of the virus are developed and implemented in a manner that is compliant with their obligations under international human rights law.

PART III: LIMITING HUMAN RIGHTS IN A PANDEMIC

3.1 Limitation of Human Rights

The COVID-19 pandemic has generated unprecedented government action. This has included measures which both promote and limit human rights. It is well-established that most human rights are not absolute, and good governance may suggest, or even require as the case may be, that some human rights are limited for important public purposes, generally and in the COVID-19 situation. Nonetheless, given the importance of human rights in and of themselves (as discussed in Part II above), any limitation of rights requires strict justification. Human rights limitations principles recognise, circumscribe and guide the exercise of the exceptional power of governments to limit human rights for important public purposes. Below we outline the meaning of the limitations principles and their importance for governments, including the Victorian Government, to carry out its function of good governance, both generally and in unprecedented times, such as a public health emergency.

Whether or not a limitation to a human right is justified depends upon the test applying to the particular right in the particular context. In general terms, the purpose of limitations tests is to determine whether the limit is ‘demonstrably justified in a free and democratic society based on human dignity, equality and freedom’, to use the language of s 7(2) of the *Victorian Charter*. To be justified, the limitation must satisfy certain limitations principles, as follows:²²

- Legality
- Necessity
- Legitimate purpose
- Proportionate
- Non-discrimination

The legality requirement upholds the rule of law and ensures that, in limiting rights, governments are subject to law and democratically accountable for any change to the law, for it is under law that individuals enjoy their human rights. The necessity requirement ensures that, absent this basis for limitation, individuals can enjoy fundamental rights and freedoms in their precious unlimited form. The legitimate purpose requirement ensures that the power of governance is not abused when limitations are imposed. The proportionality requirement ensures that limitations go no further than necessary, which is a guard against governance overreach: the limitation must be proportionate to the interests at stake – it must match and not exceed the protective purpose and be the least intrusive option for achieving it. The non-discrimination requirement ensures that, consistently with basic democratic principles founded upon respect for human dignity, limitations are not discriminatory. Application of the principles in the deliberative processes of good governance should lead to the result that, when limitations are necessary for legitimate purposes, they are minimally intrusive, time-bound, targeted, proportionate, certain, non-discriminatory and transparent.

²² See generally, UN Commission on Human Rights, ‘The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’ (28 September 1984) E/CN.4/1985/4 <<https://www.refworld.org/docid/4672bc122.html>>.

3.2 Limitation of Rights in Response to COVID-19

The limitations principles discussed above apply to all measures that limit human rights, or have the potential to do so, including emergency measures taken to stop the spread of COVID-19.²³

Applied to the COVID-19 situation, the OHCHR advises that:

- 'Governments have to take difficult decisions in response to COVID-19. International law allows emergency powers must only be used for legitimate public health goals, not used as a basis to quash dissent, silence the work of human rights defenders or journalists, deny other human rights or take any other steps that are not strictly necessary to address the health situation

[...]

- Governments should inform the affected population of what the emergency measures are, where they apply and for how long they are intended to remain in effect and should update this information regularly and make it widely available.
- As soon as feasible, it will be important for Governments to ensure a return to life as normal and not use emergency powers to indefinitely regulate day-to-day life, recognising that the response must match the needs of different phases of the crisis.²⁴

By applying the limitations principles to measures responding to the pandemic, governments may continue to exercise their function of good governance in the COVID-19 emergency in a way that gives maximum effect to human rights. The fact that most human rights are not absolute acknowledges that governments must sometimes take difficult decisions, yet the limitations principles ensure that they must do so through measures that are necessary for legitimate purposes, minimally intrusive, time-bound, targeted, proportionate, certain, non-discriminatory and transparent.

In the parts that follow, we examine measures taken in Victoria in response to COVID-19 that illustrate the application of these principles in the context of protest, public housing, homelessness, prisons and youth detention facilities. The seriousness in which this response is taking place must not be forgotten. However, the purpose of the subsequent parts of this submission is to illustrate the significantly adverse consequences for the individual(s) caused by the interference (as noted in Part II above), regardless of whether or not limitations are deemed necessary and proportionate.

²³ See e.g. UN COVID-19 Guidance (n 12).

²⁴ Ibid.

PART IV: PROTESTING IN A PANDEMIC

4.1 Introduction

It is well recognised that protests are one of the most important ways in which a populace can express disagreement with government action. Indeed, the ability to voice dissent is considered to be vital to maintain a functioning democracy. That has been acknowledged in Australia in the jurisprudence on the constitutional implied freedom of political communication, which has linked protest to the maintenance of representative and responsible government (see discussion below). Despite this, enforcement action has been taken against protestors under COVID-19 Directions in Victoria.

The Public Health Directions made under Victorian law do not explicitly ban protest. However, they have had that effect indirectly due to the restrictions on movement set out in the Stay at Home Directions (which only allow movement for work, exercise, shopping for essential items and caregiving) and the ban on gatherings in the Gatherings Directions.²⁵ This has important ramifications for human rights because the act of protest is an exercise of the human rights of freedom of expression, freedoms of assembly and association.

This part of the submission will examine this issue from the perspective of human rights law (international human rights and the Victorian Charter) and the Commonwealth Constitution's Implied Freedom of Political Communication. It will then go on to address the legal question of how protest applications under the Victorian Summary Offences Act should be dealt with during the COVID-19 restrictions.

4.2 Relevant International Law

Right to Peaceful Assembly

Restrictions on protest impact the right to peaceful assembly, in addition to other human rights. This section focuses on the right to assembly, but we note for completeness that other rights include freedom of expression and freedom of association.

The right to peaceful assembly is recognised by international law, to which Australia is a party. For instance, article 21 of the ICCPR states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public

²⁵ Given the rapidly changing nature of the COVID-19 situation, we examine the nature of the stay-at-home directions and gathering restrictions under Stage 2 and 3 but not under Stage 4. As noted above, there is a strong argument that under a State of Disaster and Stage 4 directions, that large physical protests can legitimately be restricted.

safety, public order ... the protection of public health or morals or the protection of the rights and freedoms of others.²⁶

As can be seen, the first limb of article 21 of the ICCPR provides that 'the right of peaceful assembly shall be recognised'.²⁷ The second limb sets out particular limitations on the right of peaceful assembly that may be exercised if lawful, necessary and proportionate.

Applying this to Victoria, it can be argued that *certain* limitations on the right to peaceful assembly can be applied if that is warranted by the particular health evidence relating to the COVID-19 situation. Indeed, the recent General Comment on Peaceful Assembly (General Comment No. 37) issued by the UN HRC in July 2020 notes that:

The protection of "public health" ground may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous.²⁸

Given that there has been some confusion and debate as to how protest should take place during COVID-19 restrictions, we bring the Committee's attention to two important points from General Comment No. 37 which set out valuable foundational principles:²⁹

1. The UN Human Rights Committee has given specific importance to peaceful assemblies with a *political message*.³⁰ The General Comment says that particular efforts must be made by States to ensure equal and effective protection of individuals who are members of groups who are (or have been) subjected to discrimination.³¹ This should be borne in mind when considering the implementation of COVID-19 restrictions against protest which involves Indigenous persons and others in Australia who have been subjected to discrimination.
2. In relation to *law enforcement*, the UN HRC has emphasised that the police should work towards dialogue with protestors, that police should de-escalate situations in case of the potential for

²⁶ We note that, under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the right to freedom of opinion and expression 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. Such measures may only be taken 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

²⁷ United Nations Human Rights Committee, General Comment No. 37 on Article 21 The right of peaceful assembly, UN Doc CCPR/C/GC/37 (27 July 2020) ('UN HRC General Comment No. 37').

²⁸ Ibid [45]

²⁹ Here we note that the Special Rapporteur on the Right to Assembly, Professor Christof Heyns, consulted widely in relation to the formulation of the General Comment. These consultations included hearings and submissions by states, national human rights institutions, civil society organizations, academics and experts. It therefore has significant influential status.

³⁰ UN HRC General Comment No. 37 [32].

³¹ Ibid [25].

violence and should avoid resorting to the use of force. We highlight here two excerpts from the General Comment:

'Relevant law enforcement agencies should as far as possible work towards establishing channels for communication and dialogue between the various parties involved in assemblies, before and during the assembly, aimed at promoting preparedness, de-escalating tensions and resolving disputes. While it is good practice for organisers and participants to engage in such contact, they cannot be required to do so'.³²

[...]

'Law enforcement officials should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give a warning if it is absolutely necessary to use force, unless doing either would be manifestly ineffective. Any use of force must comply with the *fundamental principles of legality, necessity, proportionality, precaution and non-discrimination* applicable to articles 6 and 7 of the Covenant, and those using force must be accountable for each use of force (emphasis added)'.³³

The General Comment has also set out the following principles for notification of protest regimes:

- Applying for permission from authorities to peacefully assemble undermines its status as a basic right.³⁴
- Notification systems are only permissible to the extent that it assists the "smooth conduct" of the peaceful assembly.³⁵
- Notification regimes must not be utilised to stifle peaceful assemblies, with the required procedures be "transparent, not unduly bureaucratic", with demands given to the organisers of the assembly be proportionate to the impact it will have on the public.³⁶
- Failing to notify authorities of a peaceful assembly is not unlawful and cannot lead to dispersing the assembly, arresting the individuals involved and imposing undue sanctions.³⁷

³² UN HRC General Comment No. 37 [75].

³³ Ibid [78] (emphasis added).

³⁴ Ibid [70].

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid [71].

- Requirements for notifications must be provided under the domestic law of a State.³⁸ When these requirements exist, authorisation should be “granted as a matter of course”.³⁹

4.3 Domestic Law

The Victorian Charter

Section 16(1) of the *Victorian Charter* expressly provides for a right to peaceful assembly (as do the rights instruments in Queensland and the ACT).⁴⁰ This right is not absolute and can be limited. As the Federal Court of Australia said in the Melbourne Occupy case - *Muldoon v Melbourne City Council*⁴¹ - the right of freedom of assembly provided for by s 16(1) of the *Victorian Charter* is, under s 7(2), ‘subject to such reasonable limits as can be demonstrably justified in a free and democratic society’.⁴²

Against this background, we would argue that whilst some limitations to protest are required in a public health emergency (particularly during Stage 4 restrictions), some responses to protest during the COVID-19 restrictions have been unnecessary. We illustrate this by discussing below a case study involving the fining and arrest of individuals protesting immigration detention in April this year.

Implied Freedom of Political Communication

In addition to the *Charter*, Victorian legislation must be consistent with the ‘Implied Freedom of Political Communication’ protected under the *Commonwealth Constitution*. The implied freedom of political communication was first explained by the High Court in *Australian Capital Television v Commonwealth*⁴³ and *Nationwide News v Wills*.⁴⁴ In these cases, the High Court stated that a guarantee of freedom of expression in relation to public and political affairs must necessarily be implied from the provisions which the *Constitution* makes for a system of representative government, that is, s 7 and s 24 of the *Constitution*, which each guarantee that Parliament be ‘chosen by the people’. Because such a freedom is an essential element of representative government, it is necessarily implied in the prescription of that system within s 7 and s 24.

³⁸ Ibid [72].

³⁹ Ibid [73].

⁴⁰ Section 16(1) of the Victorian Charter provides that “Every Person has the right of peaceful assembly”; s 15(1) of the *Human Rights Act 2004* (ACT) provides that “Everyone has the right of peaceful assembly”. See also section 22 of the *Queensland Human Rights Act (2019)*(Qld).

⁴¹ *Muldoon v Melbourne City Council* [2013] FCA 994.

⁴² Ibid [450].

⁴³ *Australian Capital Television Pty Ltd & New South Wales v Commonwealth* [1992] HCA 45; (1992) 177 CLR 106 (30 September 1992).

⁴⁴ *Nationwide News Pty Ltd v Wills* [1992] HCA 46; (1992) 177 CLR 1 (30 September 1992).

In *Lange's* case, the Court set out a two-stage test for the validity of laws thought to interfere with the freedom:

1. The first stage is to examine whether the law burdens freedom of communication about government or political matters either in its terms, operation or effect.
2. If it does so, the second step is to whether the law is 'reasonably appropriate and adapted to serve a legitimate end in a way that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government'.⁴⁵

For a law to be inconsistent with the implied freedom of political discussion it must first be shown that it impinges upon political discussion and secondly that it does not adequately serve, or is disproportionate in its impact upon political discussion in serving, some other legitimate purpose. Proportionality analysis asks whether there is no practical/legislative alternative means of achieving the same purpose which has a less burdensome effect on the implied freedom of political communication.

We would argue that protests should be recognised under law as 'essential' activities and be permitted (if they otherwise accord with COVID-19 restrictions such as social distancing and the wearing of masks). In particular, a wholesale ban on protest would not be compliant with the implied freedom of political communication under our *Constitution*.

Although COVID-19 restrictions may serve a legitimate purpose (by ensuring the safety and wellbeing of the community), it is arguable that they are not proportionate and that there are alternative means of achieving the purpose of the COVID-19 restrictions in a manner which is less burdensome on political communication. Specifically, rather than a wholesale ban on protesting, the restrictions could be changed to allow protest as a permitted reason to leave home under the stay-at-home directives and as an explicit exception to gathering restrictions. This would be on the basis that protesters would be expected, in both cases, to observe social distancing rules. As noted by Fagan J in *Commissioner of Police v Bassi*, and by Walton J in *Commissioner of Police (NSW) v Supple*, it may be impossible for social distancing to occur in very large protests. However, we would argue that this is possible in a 'sit down' protest (as has occurred in Israel⁴⁶ and elsewhere) or in a 'drive by' protest via limiting cars to members from the same household, or to a maximum of two people in those states and territories where gatherings are severely restricted. Again we will illustrate this by discussing a case study involving the fining and arrest of individuals protesting immigration detention in April this year (see below).

Permission and Notification of Protest

A notification regime for protests exists in a number of states and territories in Australia under 'Summary Offences' legislation. This allows protestors to apply for authorisation to conduct a protest.

This is important in relation to both the Victorian Charter and the Implied Freedom of Political Communication because there has been litigation in NSW in relation to the interaction between the

⁴⁵ *Lange v Australian Broadcasting Corporation* [1997] HCA 25.

⁴⁶ Josef Federman, 'Israeli demonstrators find ways to protest in virus era', PBS News (online, 30 April 2020) <<https://www.pbs.org/newshour/world/israeli-demonstrators-find-ways-to-protest-in-virus-era>>.

Summary Offences Act (NSW), the Covid Health Directions and the implied freedom. These cases include:

- *Commissioner of Police v Bassi*, Fagan J⁴⁷;
- *Bassi v Commissioner of Police (NSW)*, Bathurst CJ, Bell P, Leeming JA⁴⁸;
- *Commissioner of Police v Gray*, Adamson J⁴⁹; and
- *Commissioner of Police (NSW) v Supple*, Walton J.⁵⁰

In this case law, there seems to be some dispute as to how the Summary Offences legislation interacts with the COVID-19 health directions and the implied freedom of political communication. Therefore, some consideration needs to be given as to how that should be settled in the Victorian context.

Summary Offences Act

The *Summary Offences Act 1966* (Vic) requires councils to consult with Victoria Police before they grant a permit for the use of council land or road closure if they believe the applicant will be facilitating a public protest.⁵¹

In considering the impact of the Summary Offences Act on protest, both the implied freedom of political communication and the Victorian Charter will be relevant.

An example of this is *Victoria Police v Anderson & Ors* (23 July 2012), where the Magistrates' Court of Victoria dismissed charges against the 16 accused for the offences of trespass and besetting premises under the *Summary Offences Act 1966* (Vic) in relation to a demonstration that occurred at Max Brenner's chocolate bar in Melbourne.⁵² Relevantly, in dismissing the charge of trespass, Magistrate Garnett took into account the protection of the rights to freedom of expression and association under sections 15 and 16 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).⁵³

4.4. Case study: Refugee detention protest April 2020

On 10 April 2020, activists took part in a car convoy protest in Melbourne to highlight the plight of refugees in detention who face a heightened risk of contracting coronavirus due to overcrowded

⁴⁷ *Commissioner of Police v Bassi* [2020] NSWSC 710 (5 June 2020).

⁴⁸ *Raul Bassi v Commissioner of Police (NSW)* [2020] NSWCA 109 (9 June 2020).

⁴⁹ *Commissioner of Police v Gray* [2020] NSWSC 867.

⁵⁰ *Commissioner of Police (NSW) v Supple* [2020] NSWSC 727 (11 June 2020).

⁵¹ *Summary Offences Act 1966* (Vic) s 6A.

⁵² *Victoria Police v Anderson and Ors (Criminal)* [2012] VMC 22 (23 July 2012).

⁵³ Magistrate Garnett found 'There was no threat to public order or breach of the peace to the extent necessary so as to justify a lawful restriction on the right of the protestors to express their political beliefs as is contemplated in S 15 (3)(b) of the Charter' [36].

conditions. Despite the fact that participants in the protests were social distancing in cars, police arrested one man⁵⁴ and fined 26 others a total of \$43,000 because they were not in public for an allowable reason (for instance, work, exercise, shopping for essentials or caregiving). At this period in time, Melbourne was under Stage 2 restrictions.

Melbourne Activist Legal Support (MALS) issued a statement after the police action, expressing concern that police response to the protest:

- Went beyond the spirit of the Deputy's Chief's Health Officer Stay at Home directions which explicitly allows travel for both work and volunteering tasks;
- Failed to recognise the accommodative and safely-organised nature of the event;
- Failed to recognise the compassionate nature of the event – which was designed to draw attention to a potential health crisis currently being ignored by public authorities; and
- Represented a disproportionate and unnecessary limitation of civil and political rights.⁵⁵

We agree with these concerns. Whilst we recognise that the COVID-19 laws requiring social distancing and the 'stay-at-home' directions have a legitimate purpose in ensuring the safety and wellbeing of the community, they are too narrowly prescribed in the context of protest. We emphasise that measures should be taken which are the *least intrusive* measures necessary to achieve permissible purposes, and are proportionate to the rights that protest seeks to protect. We therefore argue that where the health evidence allows gathering of groups and movement for certain activities (such as in a Level 2 Public Emergency situation), that COVID-19 restrictions should allow for protest which observes social distancing requirements.

When we apply the Implied Freedom principles to the refugee detention protestors fined under COVID laws (as a case study), we would submit that:

- Those refugee protestors were communicating political views.
- The laws requiring social distancing and home have a legitimate purpose in ensuring the safety and wellbeing of the community but they do not allow for protest.
- Proportionality analysis asks whether there is no practical/legislative alternative means of achieving the same purpose which has a less burdensome effect on the implied freedom of political communication.
- We would argue that there is a clear practical alternative to achieve the same purpose which has a less burdensome effect. That is, the laws can and should be calibrated to allow for

⁵⁴ Jarni Blakkarly, 'Melbourne refugee protestors fined \$43,000 for breaching coronavirus rules', SBS News (online, 11 April 2020) <<https://www.sbs.com.au/news/melbourne-refugee-protesters-fined-43-000-for-breaching-coronavirus-rules>>.

⁵⁵ See Melbourne Activist Legal Support, 'Statement of Concern: Unique protest squashed by police due to COVID restrictions', Melbourne Activist Legal Support (Web Page, 4 April 2020) <<https://melbourneactivistlegalsupport.org/2020/04/04/statement-of-concern-unique-protest-squashed-by-police-due-to-covid-restrictions/?fbclid=IwAR2HMjGNgAAGb8TY0qZ01a1vAFoDjbtYrRk2VAmATSI-f5tRwti1ySQVoKl>>.

protest as a reason to leave home if participants observe any applicable social distancing laws (e.g. they may be required to do so in a car and stand 1.5 m away from each other).

Conclusion

We recognise that there are competing public interests at play here which are of great importance. On the one hand, there are rights of free speech and public assembly and, on the other, the significant public health issues arising from the COVID-19 pandemic (including the need to enforce the public health measures that have been put in place to minimise the scope for community transmission of that virus).

We acknowledge that in some cases, the health evidence may indicate that large physical protests cannot take place (for example, where a State of Disaster has been announced and Stage 4 restrictions are in place). However, where the health evidence allows gatherings of groups (as was the case under Stage 2), we would argue that the right to protest should be considered an essential activity and a permitted gathering.

Against this background, we would question whether the appropriate balance has been struck between human rights and public health interests in some cases.

PART V: VULNERABLE GROUPS - PUBLIC HOUSING RESIDENTS AND THE HOMELESS

5.1 Introduction

This Part of the submission will consider the impacts of the Victorian Government's COVID-19 response on two vulnerable groups in the Victorian community, public housing residents and homeless persons. We acknowledge at the outset the intersectionality of vulnerabilities and unique identities of persons living in public housing and persons experiencing homelessness. A person may be particularly vulnerable to adverse impacts of responses to COVID-19 in light of their unique identity and experience. For example, heavy policing of the public housing blocks may have particularly adverse impacts on a person who has fled war or persecution and sought asylum in Australia.

We begin this part by considering the relevant human rights law framework, examining some of the rights engaged in the context of public housing and homelessness when responding to COVID-19. We then apply this framework to the July public housing lockdowns, as well as to COVID-19 measures taken by the Victorian Government that affect the rights of homeless persons.

5.2 Relevant International Law

Right to Liberty, Security of Person and Freedom from Arbitrary Detention

Under article 9 of the ICCPR, 'everyone has the right to liberty and security of a person', and includes the prohibition on arbitrary arrest or detention.⁵⁶ Under the Covenant, 'arrest' is understood to mean 'any apprehension of a person that commences a deprivation of liberty', while the term 'detention' refers to the deprivation of liberty from arrest until release.⁵⁷ Whether such deprivation of liberty is 'arbitrary' depends on a number of factors, including the lawfulness, appropriateness, predictability of deprivation and whether due process and justice have been respected.⁵⁸ For example, detention may be considered arbitrary if 'the manner in which detainees are treated does not relate to the purpose...for which they are being detained'.⁵⁹ The UN HRC has indicated that security detention (also known as administrative), which does not relate to the prosecution of a criminal charge, presents

⁵⁶ ICCPR art 9.

⁵⁷ United Nations Human Rights Committee, General Comment No. 35: Liberty and Security of a Person (Article 9 of the International Covenant on Civil and Political Rights), UN Doc CCPR/C/GC/35 (16 December 2014) [13] ('HRC General Comment No. 35').

⁵⁸ *Ibid* [12].

⁵⁹ *Ibid* [14].

‘severe risks of arbitrary deprivation of liberty’.⁶⁰ This kind of detention would be considered arbitrary if other measures are available to address the threat.⁶¹

If exceptional circumstances exist (for example a public health emergency), the burden of proof rests with the State to demonstrate that:

- a) The detained person is a present, direct and imperative threat;
- b) The threat cannot be addressed by alternative measures; and
- c) The detention is limited and does not last longer than absolutely necessary.⁶²

This burden increases the longer persons are kept in detention.⁶³ Detention must be subject to prompt and regular review by a court or other independent and impartial body, and detainees must have access to independent legal advice.⁶⁴

The UN Working Group on Arbitrary Detention has stated that the ‘imposition of mandatory quarantine, from which a person cannot leave for any reason, in the context of a public health emergency is de facto deprivation of liberty’ and has urged States to strictly observe safeguards against arbitrariness.⁶⁵ These safeguards include the right to be informed about the reasons for detention and their rights and obligations under law, the right to independent legal counsel, and the right to bring proceedings before court to challenge the lawfulness and arbitrariness of deprivation of liberty.⁶⁶

The right to be informed requires States to ensure that all persons deprived of their liberty are informed ‘through appropriate and accessible means’. This includes ‘in a language and a means, mode or format that the detainee understands’ and must include the reasons justifying the deprivation, possible avenues to challenge the arbitrariness and lawfulness of deprivation of liberty, and the right to bring proceedings before court and obtain remedies.⁶⁷

⁶⁰ Ibid [15].

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ United Nations Office of the High Commissioner for Human Rights, ‘COVID-19 not an excuse for unlawful deprivation of liberty – UN expert group on arbitrary detention’ (Media Release, 8 May 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25876&LangID=E>> (‘COVID-19 not an Excuse for Unlawful Deprivation of Liberty’).

⁶⁶ United Nations Working Group on Arbitrary Detention, ‘United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court’, UN GAOR, 30th sess, Agenda Item 3, UN Doc A/HRC/30/37 (6 July 2015) annex 1.

⁶⁷ Ibid principle 7.

The right to independent legal counsel requires States to ensure the right to legal assistance by independent counsel at any time during a person's detention.⁶⁸ Where detained persons do not have the adequate means to do so, effective legal aid must be provided.⁶⁹ Those deprived of liberty, along with their legal counsel must be allowed time, communication, privacy and confidentiality to exercise prepare their case.⁷⁰ The right to bring proceedings before court to challenge deprivation of liberty is a non-derogable right, even in emergency situations, and applies to all without discrimination.⁷¹

Right to Privacy and Respect for Family

Article 17 of the ICCPR provides that 'no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...' and that 'everyone has the right to the protection of the law against such interference or attacks'.⁷² Respect for family is further provided for under article 23 of the ICCPR, which states that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.⁷³

The UN HRC has clarified that the term 'unlawful' in this context refers to that which takes place outside of a State's law (that is to say, illegal activity).⁷⁴ Even acts which are lawful may still be arbitrary if they do not comply with the 'provisions, aims and objectives' of the ICCPR and are unreasonable in particular circumstances.⁷⁵ The UN HRC has further emphasised that States have an obligation under articles 17 and 23 to adopt 'appropriate measures to ensure the unity...of families'.⁷⁶

The rights to privacy and family are also reflected in several other human rights instruments, including the ICESCR and the UNCRC.⁷⁷ Article 10 of the ICESCR states that 'the widest possible protection and

⁶⁸ Ibid principle 9.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid principles 1-5.

⁷² ICCPR art 17.

⁷³ Ibid art 23(1).

⁷⁴ UN Human Rights Committee, General Comment No 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 33rd sess, UN Doc HRI/GEN/1/Rev.9 (8 April 1988) [3] ('HRC General Comment No 16').

⁷⁵ Ibid [3]-[4].

⁷⁶ UN Human Rights Committee, General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, 39th sess (27 July 1990) [5].

⁷⁷ UNCRC art 16; *International Convention on Protection of the Rights of All Migrant Workers and Members of their Families*, open for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) art 14; CRPD art 22.

assistance should be accorded to the family, particularly...while it is responsible for the care and education of dependent children'.⁷⁸ The UNCRC builds on this to state that the wellbeing of family members, particularly children, should be afforded protection so that the family 'can fully assume its responsibilities within the community'.⁷⁹

The UN HRC has noted that government responses to COVID-19 have raised various concerns surrounding privacy and respect for family.⁸⁰ They have emphasised that States have an obligation to protect individuals from undue interference with their family during the pandemic.

Right to Health

Article 12 of the ICESCR protects the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.⁸¹ The right is also reflected in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UNCRC and the Convention of the Rights of Persons with Disabilities (CRPD).⁸²

The right to health is of paramount importance because health is considered to be 'indispensable' to the enjoyment of other fundamental human rights, including (for example) the right to life, housing, equality and privacy.⁸³ The right is comprised of various *freedoms*, including 'sexual and reproductive freedom, and the right to be free from interference, torture, non-consensual medical treatment and experimentation'.⁸⁴ It also contains *entitlements* such as the right to equal opportunity to enjoy the highest attainable standard of health.⁸⁵

⁷⁸ ICESCR art 10(1).

⁷⁹ UNCRC preamble.

⁸⁰ HRTB COVID-19 Toolkit (n 14) 13-14.

⁸¹ ICESCR art 12.

⁸² *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) ('ICERD') art 5(3)(iv); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW') art 11(1)(f); UNCRC art 24; CRPD art 25.

⁸³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 22nd sess, UN Doc E/C.12/2000/4 (11 August 2000) [1] ('CESCR General Comment No. 14').

⁸⁴ *Ibid* [8].

⁸⁵ *Ibid*.

The CESCR has interpreted the right broadly to encompass both the right to healthcare and the right to conditions necessary for good health, including adequate food and nutrition, housing, and access to water and sanitation.⁸⁶ The essential elements of the right to health are:

- **Availability** - including adequate public health and care facilities, goods and services, in sufficient quantity, safe and adequate access to water and sanitation and medications.
- **Accessibility** - including physical and economic access to health facilities, goods and services without discrimination, with particular accessibility for the most vulnerable, marginalised and disadvantaged groups within the population, as well as accessible health information.
- **Acceptability** - including facilities, goods and services that are medically, scientifically and culturally appropriate.
- **Quality** - good quality facilities, goods and services, including safe hospital equipment, good quality medication, and safe and adequate water and sanitation.⁸⁷

The obligations of States with regard to ESC rights, including the right to health, are clarified in the *Maastricht Guidelines*.⁸⁸ States have a legal obligation to ‘respect, protect and fulfil’ the rights contained in the ICESCR.⁸⁹ The obligation to *respect* provides that States must refrain from ‘interfering with the enjoyment’ of these rights. The obligation to *protect* requires States to prevent violations of rights by third parties. Finally, the obligation to *fulfil* requires States to ‘take appropriate legislative, administrative, budgetary, judicial and other measures toward the realisation of such rights’.⁹⁰ Failure to perform any one component of these obligations is tantamount to a violation.⁹¹

As part of these obligations, States must act in a way that is ‘reasonably calculated to bring about enjoyment of a particular right’ and achieve specific targets to satisfy these targets.⁹² Economic, social and cultural rights can be ‘achieved progressively’, and States parties are accorded a ‘margin of discretion’ in determining the means by which they do so.⁹³

⁸⁶ Ibid [4].

⁸⁷ Ibid [12].

⁸⁸ International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (22 - 26 January 1997) (‘Maastricht Guidelines’).

⁸⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 6th sess, UN Doc E/1992/23 (13 December 1991) (‘CESCR General Comment No. 4’) 2.

⁹⁰ Ibid.

⁹¹ Maastricht Guidelines [6].

⁹² Ibid [7].

⁹³ Ibid [8].

However, as a State party, Australia must still take steps ‘to the maximum of its available resources’ in order to progressively realise economic, social and cultural rights, including the right to health.⁹⁴ This means taking ‘*concrete, targeted, expeditious and effective* steps’ to achieve this right.⁹⁵ This may be by way of ‘legislative measures, administrative, judicial, economic, social and educational’ steps.⁹⁶ States must also ‘give *due priority* to those social groups living in unfavourable conditions by giving them particular consideration’ (emphasis added).⁹⁷ Comparatively, in a country such as Australia, the ability to do so is ‘not impeded by lack of resources’.⁹⁸

Violations of human rights under ICESCR occur where states fail to satisfy the ‘minimum core obligations’ (minimum essential levels) of each right.⁹⁹ Violations can occur through both acts and omissions.¹⁰⁰

With specific reference to the right to health, the CESCR has called on states to adopt a rights-based national health strategy, with indicators to monitor the implementation of the strategy and realisation of the right to health in the country.¹⁰¹

In the context of a global health pandemic, the UN’s Guidance on emergency measures and COVID-19 notes that States have an obligation to provide ‘timely and effective measures to support the enjoyment of core economic and social rights of people affected by emergency restrictions’, including support with health.¹⁰²

⁹⁴ ICESCR art 2(1).

⁹⁵ Ibid; UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant, 5th sess, UN Doc E/1991/23 (14 December 1990) 1; UN Office of the High Commissioner for Human Rights, Fact Sheet No. 21: The Human Right to Adequate Housing (November 2009) (‘UN Fact Sheet No. 21’); Australian Human Rights Commission, ‘Homelessness is a Human Rights Issue (2008), Australian Human Rights Commission (Web Page, 2008) <<https://humanrights.gov.au/our-work/homelessness-human-rights-issue-2008#fnB29>>.

⁹⁶ UN Fact Sheet No. 21 (n 95).

⁹⁷ CESCR General Comment No. 4 2.

⁹⁸ The Hon. Kevin Bell, ‘Protecting public housing tenants in Australia from forced eviction: the fundamental importance of the human right to adequate housing and home’ (Speech, Monash University Costello Lecture, 18 September 2012) 9.

⁹⁹ Maastricht Guidelines [9].

¹⁰⁰ Ibid [14] - [15].

¹⁰¹ Office of the High Commissioner for Health and the World Health Organisation, Fact Sheet No. 31: The Right to Health (June 2008) 24 <<https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>>.

¹⁰² UN Guidance on Emergency Measures and COVID-19 (n 16).

Right to Adequate Standard of Living

Article 11(1) of the ICESCR enshrines the ‘right of everyone to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions...’.¹⁰³ It applies to all persons without discrimination, and extends to ‘all parts of federal states without limitations or exceptions’.¹⁰⁴

As evident from the definition of the right to an adequate standard of living, several rights form an integral part of this right, including the right to adequate housing and the right to food. Other rights recognised as falling within the right to an adequate standard of living include the right to water and sanitation.¹⁰⁵

As noted above in respect of the right to health, the UN’s Guidance on emergency measures and COVID-19 notes that States have an obligation to provide ‘timely and effective measures to support the enjoyment of core economic and social rights of people affected by emergency restrictions’, including support with housing and food.¹⁰⁶

Further, the UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha, has urged States to take measures to protect in particular those experiencing homelessness, living in informal settlements, and living in emergency shelters during the pandemic, for their safety, and for that of the general public.¹⁰⁷

Right to Adequate Housing

In respect of the right to adequate housing, the CESCR has maintained that this right should be interpreted broadly.¹⁰⁸ To this point, the treaty body has elaborated that the right to ‘adequate housing’ refers to more than just shelter, or ‘the right to four walls and a roof’.¹⁰⁹ Instead it ‘should be

¹⁰³ ICESCR art 11(1).

¹⁰⁴ Ibid arts 2(2) and 28.

¹⁰⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15 The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 29th sess, UN Doc E/C.12/2002/11 (20 January 2003) (‘CESCR General Comment No. 15’) [3].

¹⁰⁶ UN Guidance on Emergency Measures and COVID-19 (n 16).

¹⁰⁷ Leilani Farha, Special Rapporteur, “‘Housing, the Frontline Defence Against the COVID-19 Outbreak’” says UN Expert’, United Nations Office of the High Commissioner for Human Rights (Web page, 18 March 2020) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>>.

¹⁰⁸ CESCR General Comment No. 4 2.

¹⁰⁹ Ibid.

seen as the right to live somewhere in security, peace and dignity'.¹¹⁰ It therefore overlaps with other fundamental rights, such as the rights to life, liberty, security, health, privacy and non-discrimination.

The protections afforded by this right turn on the meaning of '*adequate*'. The CESCR has acknowledged that adequacy is 'determined in part by social, economic, cultural, climatic, ecological and other factors', but has nevertheless emphasised that adequate housing requires the following *at a minimum*:

- **Security of tenure:** must guarantee legal protection against forced evictions, harassment and other threats.
- **Availability of services, materials, facilities, infrastructure:** must provide safe drinking water, adequate sanitation, energy, heating, lighting, food storage and waste disposal.
- **Affordability:** cost must not compromise tenant's enjoyment of other human rights. States must take steps to ensure that housing-related costs are commensurate with income levels.¹¹¹
- **Habitability:** must guarantee physical safety, adequate space and protection from the elements.
- **Accessibility:** must account for the specific needs of marginalised groups.
- **Location:** must not be cut-off from employment opportunities, healthcare services, schools, childcare centres, social facilities etc.
- **Cultural adequacy:** must account for the expression of cultural identity.¹¹²

State obligations with regard to economic, social and cultural rights were discussed in detail under the right to health above. As noted there, States must take steps to the maximum of available resources to progressively realise economic, social and cultural rights. While the right to adequate housing is not absolute, limitations on this right must be determined by law, and be 'compatible with the nature of these rights and solely for the purpose of promoting general welfare in a democratic society'.¹¹³ The 'minimum core' of economic, social and cultural rights must still be fulfilled.

With specific reference to the right to adequate housing, the CESCR has called on states to adopt a national housing strategy and coordinate national and local authorities to reconcile policies in order to ensure adherence to its obligations under ICESCR.¹¹⁴

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ ICESCR art 4.

¹¹⁴ UN Fact Sheet No. 21 (n 95).

In the context of COVID-19, the CESCR has emphasised that adequate housing must be ensured, particularly in cases where stay-at-home orders are in place. Examples of steps include moratorium on evictions, as well as ‘tak[ing] urgent measures to provide homeless people with adequate shelter, which is the minimum core content of the right to adequate housing.’¹¹⁵ These minimum requirements apply during quarantine. The CESCR has underlined that homeless persons should not be penalised for breaking rules demanding stay-at-home.¹¹⁶ States parties must also ensure that overcrowded housing does not result in ‘greater contagion risk’ by taking effective preventive steps to groups living in such accommodation.¹¹⁷

Right to Adequate Food

Right to adequate food is another right within the broader right to an adequate standard of living under article 11(1) of the ICESCR.¹¹⁸ Under article 11(2), the ICESCR also recognises the ‘fundamental right to be free from hunger’.¹¹⁹ The ICESCR and the ICCPR state under common article 1(2) that ‘[i]n no case may a people be deprived of its own means of subsistence’.¹²⁰ The right is also found under other international instruments, including the UNCRC and the CRPD.¹²¹

The CESCR has confirmed that the right to food is ‘indivisibly linked to the inherent dignity of the human person and is indispensable for the enjoyment of other human rights...’¹²², for example the rights to life and health. In its General Comment No. 36, the UN HRC elaborated upon the positive obligations under the right to life in the ICCPR.¹²³ This includes a duty on part of States parties to take steps to address ‘general conditions’ that may amount to ‘direct threats to life’ or which prevent individuals to enjoy a life with dignity. Such measures include, according to the HRC, ‘measures

¹¹⁵ HRTB COVID-19 Toolkit (n 14) [12].

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ ICESCR art 11(1).

¹¹⁹ Ibid art 11(2).

¹²⁰ Ibid art 1(2); ICCPR art 1(2).

¹²¹ See e.g. UNCRC arts 24(2)(c), 27(3); CRPD art 28(1).

¹²² UN Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food (art. 11), 20th sess, UN Doc E/C.12/1999/5 (12 May 1999) (‘CESCR General Comment No. 12’) [4].

¹²³ UN Human Rights Committee, General comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 36th sess, UN Doc CCPR/C/GC/36 (30 October 2018) [26] (‘HRC General Comment No 36’).

designed to ensure access without delay by individuals to essential goods and services such as food...'.¹²⁴

The right to adequate food extends beyond mere 'minimum package' but should include 'physical and economic access *at all times* to adequate food or means for its procurement' (emphasis added).¹²⁵

Similar to the right to adequate housing, the protections afforded by this right turn on the meaning of 'adequate'. The CESCR has acknowledged that adequacy is 'determined in part by social, economic, cultural, climatic, ecological and other factors', but has nevertheless outlined the following core minimum of the right to adequate food:

- a) **Available:** Availability includes both quantitative and qualitative availability to an extent that is enough to meet 'dietary needs' of an individual, without 'adverse substances'. It must be available either directly or through distribution.
- b) **Acceptable:** The food that is available must also be 'acceptable within a given culture'. This requires consideration of 'non-nutrient-based values' that persons may attach to food.
- c) **Accessible:** Food must be accessible in a sustainable manner and without violating other human rights. It must be both economically and physically accessible for everyone, and particular consideration may need to be paid to vulnerable groups.¹²⁶

As noted in respect of the right to health above, States must take steps to progressively achieve economic and social rights. However, minimum essential levels must be fulfilled immediately. In respect of the right to food, this includes 'minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger'.¹²⁷ The right to food must also be realised without discrimination on one or more of the prohibited grounds under ICESCR.¹²⁸ This is an immediate obligation.

Australia has obligations to respect, protect and fulfil economic and social rights. The CESCR has confirmed that in instances where 'an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by means at their disposal', States are obligated to provide the right to these individuals or groups.¹²⁹

¹²⁴ Ibid.

¹²⁵ CESCR General Comment No. 12 [6].

¹²⁶ Ibid [8]-[13].

¹²⁷ Ibid [14].

¹²⁸ Ibid [18]; ICESCR art 2(2).

¹²⁹ Ibid [15].

In the context of COVID-19, the CESCR has noted that it is a duty for States parties to guarantee that food is still available and meet people's 'dietary and other needs', despite the challenges imposed by the pandemic.¹³⁰ Specific challenges for vulnerable groups, such as older persons, in accessing food should be accounted for and steps must be taken to ensure that food remains affordable.¹³¹

Right to Water and Sanitation

The CESCR has confirmed that the list of rights central to the right to an adequate standard of living is non-exhaustive and includes the right to water.¹³² The Committee has also found that the right to water is 'inextricably' related to the right to health discussed above, as well as to adequate sanitation which in turn is crucial for human dignity.¹³³ In line with these other rights, as well as human dignity, water must also be 'adequate'.¹³⁴

To be 'adequate', the CESCR has confirmed the following must apply 'in all circumstances':¹³⁵

- a) **Available:** To be available water must be 'sufficient and continuous', for uses such as drinking, sanitation, laundry, cooking, as well as personal and home hygiene. Quantities per person to correspond with guidelines by the WHO.
- b) **Quality:** Water must be safe for personal or domestic use and free from things such as chemical substances that constitute health threats, as well as of acceptable colour, taste and smell.
- c) **Accessible:** Water must be physically and economically accessible to everyone without discrimination, including those most vulnerable and marginalised. Information must also be available about issues relating to water.

States must *respect, protect and fulfil* the right to water. This requires States themselves to refrain from interfering with the enjoyment of the right, prevent others from interfering with the right, and finally 'provide, facilitate and promote the right'.¹³⁶

¹³⁰ HRTB COVID-19 Toolkit (n 14) 10 [13].

¹³¹ Ibid.

¹³² CESCR General Comment No. 15 [3].

¹³³ Ibid 1, 10 [3], [29].

¹³⁴ Ibid 4 [11].

¹³⁵ Ibid 4-6 [11]-[12].

¹³⁶ Ibid 8-10[21]-[28]

As noted above, economic and social rights are to be realised progressively, yet also contain essential minimum levels that must be realised immediately. This includes, for example, ensuring access to water without discrimination, as well as an immediate obligation to take steps towards full realisation of the right through ‘deliberate, concrete and targeted’ steps.¹³⁷

Given the importance of hand hygiene to protect against COVID-19, the CESCR has called on States parties to ensure that water and hygiene essentials are provided to communities who may not have access to such.¹³⁸

Rights to Equality and Non-Discrimination

Under international law, the rights to equality and non-discrimination require States to ensure that all persons can enjoy human rights and fundamental freedoms, including the rights discussed in this framework, on an equal basis with others.¹³⁹ No distinctions must be made in the enjoyment of rights, or otherwise, on grounds of ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.¹⁴⁰

The inclusion of ‘other status’ indicates that the list of grounds upon which it is prohibited to discriminate is non-exhaustive. For example, in its General Comment No. 20 on the right to non-discrimination, the CESCR has clarified that ‘other status’ includes disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, as well as economic and social situation.¹⁴¹ A person’s economic and/or social situation may be further exacerbated, or linked to, other grounds, such as a person’s gender or social origin.

International human rights law protects against discrimination on one or more grounds, known as multiple discrimination.¹⁴² Multiple discrimination can be:

- *cumulative* - a person experiences discrimination on one ground and subsequently, on a different ground; and
- *intersectional* - a person experiences discrimination on one ground in combination with one or more other grounds, the combination of which is what results in the discrimination.

¹³⁷ Ibid 7-8 [17].

¹³⁸ HRTB COVID-19 Toolkit (n 14) 10.

¹³⁹ ICCPR arts 2(1), 26; ICESCR art 2(2); See also *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) (‘ICERD’) art 1(1); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, UNTS 1249 (entered into force 3 September 1981) (‘CEDAW’) arts 1-2.

¹⁴⁰ ICCPR arts 2(1), 26; ICESCR art 2(2).

¹⁴¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) UN Doc E/C12/GC/20 (2 July 2009) (‘CESCR General Comment No. 20’) [27]-[35].

¹⁴² Ibid [17], [27].

Discrimination, whether on one or more grounds, may be *direct* or *indirect*. International law defines direct discrimination as less favourable treatment than a person in a similar situation on the basis of one or more of the prohibited grounds noted above, or ‘detrimental acts or omissions’ on the basis of one or more of the prohibited grounds, regardless of the existence of a comparator.¹⁴³ Indirect discrimination, on the other hand, is defined as ‘laws, policies or practices’ that seem neutral but has a ‘disproportionate impact’ on a person on the basis of one or more prohibited grounds.¹⁴⁴

Discrimination also includes *harassment* and *failure to provide reasonable accommodation*.¹⁴⁵ Harassment means ‘unwanted conduct’ on the basis of one or more of the prohibited grounds which has the ‘purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment’.¹⁴⁶ This may include both words and acts, such as different forms of violence. Failure to provide reasonable accommodation occurs when a person is denied ‘necessary and appropriate modifications and adjustments’ to ensure that they can enjoy rights and freedoms on an equal basis as others.¹⁴⁷

The UN HRC has expressed fears that the COVID-19 crisis ‘is disproportionately impacting people depending on factors such as...socio-economic status’ and has emphasised that the ICCPR provides for protection from discrimination *of any kind*.¹⁴⁸ They have also urged political leaders and others to refrain from ‘inflaming discriminatory attitudes’.¹⁴⁹

5.3 Domestic Law

Public Health Act

The spread of COVID-19 saw the declaration of a State of Emergency in Victoria under the *Public Health and Wellbeing Act 2008* (PHWA).¹⁵⁰ During a State of Emergency, the Act gives broad powers to the Chief Health Officer of Victoria to authorise public officers to ‘exercise public health risk powers and emergency powers’ in response to the risk.¹⁵¹ This includes the power to:

¹⁴³ Ibid [10(a)].

¹⁴⁴ Ibid [10(b)].

¹⁴⁵ Ibid [7], [28]; UN Committee on the Rights of Persons with Disabilities, General Comment No. 6 on Equality and Non-discrimination, UN Doc CRPD/C/GC/6 (26 April 2018) (‘CRPD Committee General Comment No. 6’)[18c]-[18d].

¹⁴⁶ CRPD Committee General Comment No. 6 [18d].

¹⁴⁷ Ibid [18c].

¹⁴⁸ HRTB COVID-19 Toolkit (n 14) 12.

¹⁴⁹ Ibid.

¹⁵⁰ *Public Health and Wellbeing Act 2008* (Vic) Div 3 (‘PHWA’).

¹⁵¹ PHWA ss 198-199.

- a) **Detain** any persons/ groups for a period reasonably necessary to eliminate or reduce a serious risk to public health;
- b) **Restrict** the movement of any persons/ groups within an emergency area;
- c) **Prevent** persons/groups from entering the emergency area; or
- d) **Give** 'any other direction' that the public officer considers to reasonably necessary to protect the public health.¹⁵²

Importantly, authorised officer *must* explain the reason for detention and why it is necessary, unless it is 'not practicable' to briefly do so.¹⁵³ Persons subject to detention should be warned that failure to comply is an offence under the Act, punishable 120 penalty units (\$1652) for individuals and 600 penalty units (\$9931) for businesses.¹⁵⁴ Other obligations for authorised officers include duties to facilitate reasonable requests for communication by detained persons, review the need to detain once every 24 hours and notify the Chief Health Officer of the decision to detain or continue detention.¹⁵⁵

The objectives of the PHWA are to protect public health and prevent disease, illness, injury, disability or premature death, promote conditions for health, and reduce inequalities in health and wellbeing.¹⁵⁶ The powers under the Act must be exercised in accordance with various guiding principles also contained therein, including the primacy of prevention, and the need for evidence-based decision making, accountability and proportionality.¹⁵⁷ These require acts authorised by the legislation to prioritise the prevention of disease over remedial measures, be based on relevant and reliable evidence, and ensure decisions are transparent, systematic and appropriate, as well as proportionate to aims sought (namely to prevent, minimise or control a public health risk).¹⁵⁸ Decisions must further not be made or taken in an arbitrary manner.¹⁵⁹

¹⁵² Ibid s 200(1).

¹⁵³ Ibid s 200(2)-(3).

¹⁵⁴ Ibid s 200(4), 203(1).

¹⁵⁵ Ibid s 200(6)-(9).

¹⁵⁶ Ibid s 4(2).

¹⁵⁷ Ibid ss 5, 7, 8, 9.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid s 9(b).

Victorian Charter

Victoria is one of three Australian states and territories with a specific human rights act. It is important to note that the Victorian Charter applies during a state of emergency, and as the Victorian Equal Opportunities and Human Rights Commission has observed, 'it's more vital than at any other time'.¹⁶⁰

The Charter contains some of the rights discussed in the international framework above. This includes, for example the right not to have one's privacy or family life unlawfully or arbitrarily interfered with and the right to enjoy one's human rights without discrimination.¹⁶¹

Unlike the human rights acts in the ACT and Queensland, it does not protect economic and social rights, such as the right to education¹⁶² and the right to health services.¹⁶³ These rights are, however, protected under the international instruments discussed above, and are inextricably linked with other rights protected under the Charter, such as the right to life and the right to be treated with humanity and with respect to human dignity.

Under the Charter, the Victorian Government has an obligation to act in a manner which is compatible with the rights under the Charter.¹⁶⁴ This means it must, in making a decision, give proper consideration to the relevant human rights impacted, unless it 'could not reasonably have acted differently or made a different decision'.¹⁶⁵

5.4 Case Study: Public Housing and the COVID-19 response

On 4 July 2020, the Premier announced a 'hard lockdown' of nine public housing estates located in Melbourne's north.¹⁶⁶ The lockdown, authorised by Detention Directions issued by the Victorian Deputy Chief Health Officer, applied to nine estates, and required the towers be 'closed and contained

¹⁶⁰ Victorian Equal Opportunity and Human Rights Commission, 'Embedding Human Rights During COVID-19', Victorian Equal Opportunity and Human Rights Commission (Web Page, 2020) <<https://www.humanrights.vic.gov.au/legal-and-policy/covid-19-and-human-rights/embedding-human-rights-during-covid-19/>>.

¹⁶¹ *Ibid* s 13(a).

¹⁶² *Human Rights Act 2019* (Qld) s 36; *Human Rights Act 2004* (ACT) s 27A.

¹⁶³ *Human Rights Act 2019* (Qld) s 37.

¹⁶⁴ *Victorian Charter* s 38(1).

¹⁶⁵ *Ibid* s 38(1)-(2).

¹⁶⁶ Daniel Andrews, Premier, 'Statement From The Premier' (Media Release, 4 July 2020) <<https://www.premier.vic.gov.au/statement-from-the-premier-48/>>.

immediately' pursuant to the emergency powers under section 200(1)(a), (b) and (d) of the PHWA discussed above.¹⁶⁷

The Directions alerted residents to their immediate detention period of 14 days at their premises, with the potential for an additional 10 days for those who refused to test for COVID-19. The reason provided for the detention was the 'serious risk to public health' resulting from a number of residents being diagnosed with COVID-19.¹⁶⁸ Residents were not permitted to leave their homes for any reason without express permission, and even then only in limited circumstances (i.e. medical care, necessary for physical and mental health, or for compassionate reasons).¹⁶⁹ Residents were also not permitted to allow any non-authorised persons into their residences.¹⁷⁰ Communication by phone and electronic means was permitted, and the detention was subject to review every 24 hours.¹⁷¹

We acknowledge that the Victorian Government's decision to impose a hard lockdown was in response to a legitimate public health risk posed by the spread of COVID-19. We also recognise that the Government sought to impose these measures in accordance with the requirements of the PHWA. As such, it is our understanding that the hard lockdown was imposed on the relevant and reliable advice of medical professionals and contact tracers who initially found 23 cases of COVID-19 in 12 households within the towers in question.¹⁷² Further, we note that measures were intended to be preventative, aiming to contain the spread of the coronavirus across Melbourne and minimise the subsequent threat to public health.¹⁷³ The Government appears to have made some effort to ensure transparency, with both a public announcement made by the Premier and written notices given to the residents of the towers.¹⁷⁴ Finally, the Government has also maintained that the measures were proportionate to the stated aim of protecting public health.¹⁷⁵

¹⁶⁷ Ibid; Victorian Deputy Chief Health Officer, Detention Directions (130 Racecourse Road, Flemington), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (9 Pampas Street, North Melbourne), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (159 Melrose Street, North Melbourne), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (76 Canning Street, North Melbourne), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (126 Racecourse Road, Flemington), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (120 Racecourse Road, Flemington), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (33 Alfred Street, North Melbourne), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (12 Sutton Street, North Melbourne), (4 July 2020); Victorian Deputy Chief Health Officer, Detention Directions (12 Holland Court, Flemington), (4 July 2020).

¹⁶⁸ Ibid (see pt 2, s 4 (1)-(3) of each Direction).

¹⁶⁹ Ibid (see pt 2 s 5(2)).

¹⁷⁰ Ibid (see pt 2 s 5(3)).

¹⁷¹ Ibid (see pt 2 s 5(5)-(6)).

¹⁷² Daniel Andrews, Premier, 'Statement From The Premier' (Media Release, 4 July 2020) <<https://www.premier.vic.gov.au/statement-from-the-premier-48/>>.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Richard Wynne, Minister for Housing, 'Statement From The Minister For Housing' (Media Release, 4 July 2020) <<https://www.premier.vic.gov.au/statement-from-the-minister-for-housing/>>.

Notwithstanding the above however, there were significant issues with the execution of the measures which in turn had a severe impact on the human rights of residents, many of whom were vulnerable (i.e. women, children, persons with disability and mental illness, recent migrants). This submission examines some of the most salient issues, including lack of adequate and appropriate notice and information, intimidating and inappropriate enforcement, lack of access to basic services, risks to the health and wellbeing of residents, as well as discrimination.

Inadequate Notice and Information

The first major problem encountered in the execution of the hard lockdown was the lack of *adequate and appropriate* notice. The hard lockdown commenced at 3:30pm on Saturday 4 July 2020. Public notice was given by Premier Daniel Andrews at 4pm that same day - half an hour after commencement. This left residents *no time at all* to prepare for extended periods confined to their apartments.¹⁷⁶

In addition, reports indicate that the notice provided by the Victorian Government was provided only in English, despite the fact that residents of the towers come from culturally and linguistically diverse backgrounds.¹⁷⁷ Indeed, some residents reported discovering the lockdown only due to the heavy and extensive police presence outside the towers.¹⁷⁸ Information about the resident's rights was not provided until Tuesday 7 July 2020, and even then only after the considerable efforts of the Victorian Equal Opportunity and Human Rights Commission.

The above was compounded by a failure to provide adequate and appropriate information after the commencement of the lockdowns. Reports emerged that some residents were still unaware of the reasons, the nature, and even the length of the hard lockdown as long as 18 hours after it began, with police officers not able to provide clear information.¹⁷⁹ During the lockdown, some announcements regarding coordination for testing were made over public announcements systems, again only in English, leaving residents confused and distressed. Communication was also inadequate for several residents with complex communication needs, deafness, intellectual disabilities and speech

¹⁷⁶ 'Victoria coronavirus cases rise by 108 as Daniel Andrews strengthens lockdown at nine public housing estates', ABC News (online, 4 July 2020) <<https://www.abc.net.au/news/2020-07-04/victoria-coronavirus-cases-rise-by-108-lockdown-new-postcodes/12422456>>.

¹⁷⁷ Yara Murray-Atfield, 'Melbourne public housing tower resident says community is being 'treated like criminals' amid coronavirus lockdown', ABC News (online, 5 July 2020) <<https://www.abc.net.au/news/2020-07-05/coronavirus-lockdown-melbourne-public-housing-residents-speak/12423170>> ('Melbourne Public Housing Residents and the Coronavirus Lockdown').

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

impairment.¹⁸⁰In addition, there were significant delays getting medical professionals, interpreters and social workers on the scene to advise, assist and support residents.¹⁸¹

Inadequate notice and information impacted upon residents rights to liberty, security and freedom from arbitrary deprivation of liberty. As touched upon in Part 4.2, the UN Working Group on Arbitrary Detention has released safeguards to assist States in preventing deprivation of liberty that is 'arbitrary'. One such safeguard is the right to information, which requires that information on the reasons justifying deprivation of liberty, and the legal rights of detained persons (including access to legal assistance and the right to challenge the deprivation) be made both *available* and *accessible* to those persons. The Victorian Government's response during the public housing lockdown saw long delays to providing this information, thereby limiting the *availability*, as well as the failure to provide notice in a language that detained persons could understand, thereby restricting the *accessibility* of information.

We recognise that the reason for the lack of notice may have been due to time constraints, and to minimise the risk of residents leaving and inadvertently spreading the virus. However, we note that this appears to be the only instance where so little notice in advance has been granted to persons and communities affected by restrictions in Victoria. For example, earlier this year, the imposition of restrictions across Melbourne on the 1 July gave over 24 hours' notice.¹⁸² Similarly, the imposition of Stage 3 restrictions in 'hotspot' suburbs in Melbourne North *on the same day* as the public housing lockdown (4 July) gave residents 7.5 hours' notice before commencement.¹⁸³ Even the most recent announcement of Level 4 restrictions across metropolitan Melbourne gave residents 3 hours' notice prior to commencement.¹⁸⁴ It should be noted that these three examples saw restrictions that were considerably less onerous than those imposed on the public housing towers. Residents of those towers were not however afforded the same information in advance.

In addition, notice was provided only in English, despite the fact that many residents within the towers come from culturally and linguistically diverse backgrounds.¹⁸⁵ Some reported discovering the lockdown only due to the heavy and extensive police presence outside the towers.¹⁸⁶ We recognise

¹⁸⁰ Nadine Silva, 'First Nations families with disabilities stuck in Melbourne's public housing towers with little to no help', SBS News (online, 10 July 2020) <<https://www.sbs.com.au/nitv/article/2020/07/10/first-nations-families-disabilities-stuck-melbournes-public-housing-towers-little>>.

¹⁸¹ Yara Murray-Atfield, Melbourne Public Housing Residents and the Coronavirus Lockdown (n 177).

¹⁸² Ibid.

¹⁸³ Victorian State Government, 'Coronavirus (COVID-19) restrictions Victoria', Victorian State Government (Web Page, 2020) <<https://www.vic.gov.au/coronavirus-covid-19-restrictions-victoria>>.

¹⁸⁴ Ibid.

¹⁸⁵ Yara Murray-Atfield, Melbourne Public Housing Residents and the Coronavirus Lockdown (n 177).

¹⁸⁶ Ibid.

that the circumstances were unprecedented, and that coordinating the logistics of diverse translation services in a short time frame can be challenging.

Nevertheless, we emphasise the responsibility of the Victorian Government to *appropriately balance* the interests of the broader public with the unique needs of some of the most vulnerable in Victoria. As examined above in Part III, the limitation of rights must be lawful, necessary, for a legitimate purpose, proportionate and non-discriminatory. While the hard lockdown may indeed have been lawful under the PHWA, necessary to prevent further spread of the coronavirus, and for the legitimate aim of protecting public health, the proportionality principle requires that limitations go no further than absolutely necessary. Measures should be the least intrusive option for achieving a purpose. The lack of adequate and appropriate information made measures which were already challenging and intrusive even more so. The harms to residents could therefore have been minimised by taking more time and care to ensure *effective* notice and information throughout the restrictions. The principle of non-discrimination also requires that limitations have regard to inherent human dignity and do not discriminate. The notice and care afforded to other communities across Victoria as restrictions were imposed should therefore also have extended equally to residents subjected to public housing lockdown.

Intimidating and Inappropriate enforcement

A further issue raised by the Victorian Government response to COVID-19 during the public housing lockdown was the use of intimidating and inappropriate enforcement methods. The hard lockdown was reportedly carried out by 500 officers of Victoria Police *per shift* across the towers.¹⁸⁷ Without forewarning, police guarded entrances of the towers, and were stationed on every floor of the to ensure residents did not leave their premises.¹⁸⁸ Again at the time, there were no interpreters, social workers or health workers to assist and support residents.¹⁸⁹

The methods of enforcing the Victorian Government's hard lockdown impacted on residents' right to non-discrimination and equality.

The harsh enforcement had a disproportionate and discriminatory impact on residents within these towers, many of whom are considered vulnerable persons. This includes the elderly, persons with disability, those with pre-existing mental and physical health concerns, migrants, refugees and

¹⁸⁷ Calla Wahlquist and Margaret Simons, 'Melbourne's 'hard lockdown' orders residents of nine public housing towers to stay home as coronavirus cases surge', The Guardian (online, 4 July 2020) <<https://www.theguardian.com/world/2020/jul/04/melbournes-hard-lockdown-orders-residents-of-nine-public-housing-towers-to-stay-home-as-coronavirus-cases-surge>>.

¹⁸⁸ 'Victoria coronavirus cases rise by 108 as Daniel Andrews strengthens lockdown at nine public housing estates', ABC News (online, 4 July 2020) <<https://www.abc.net.au/news/2020-07-04/victoria-coronavirus-cases-rise-by-108-lockdown-new-postcodes/12422456>>; 'Ham-fisted' lockdown of nine Melbourne public housing towers, some without confirmed COVID-19 cases, criticised', SBS News (online, 6 July 2020) <<https://www.sbs.com.au/news/ham-fisted-lockdown-of-nine-melbourne-public-housing-towers-some-without-confirmed-covid-19-cases-criticised>>.

¹⁸⁹ Margaret Simons, 'Melbourne towers' sudden hard lockdown caught police, health workers and residents off-guard', The Guardian (online, 5 July 2020) <<https://www.theguardian.com/australia-news/2020/jul/05/melbourne-towers-sudden-hard-lockdown-caught-police-health-workers-and-residents-off-guard>>.

Aboriginal and Torres Strait Islander peoples. Community organisations and advocacy groups have rightly emphasised that many of these groups have in the past been subject to over-policing.¹⁹⁰ Instead of receiving care and support from qualified professionals such as healthcare staff and social workers in response to the public health issue, residents faced armed police in considerable force. The response by police has been criticised as ‘heavy-handed’ and ‘information-light’.¹⁹¹

The heavy police presence also had a significant impact on the mental health and wellbeing of residents within the locked down towers. Residents reported feeling intimidated, confused and distressed at the lack of information and sudden and heavy police presence.¹⁹² Further, some residents have experienced considerable trauma which led to the exacerbation of depression, anxiety and other mental health issues under hard lockdown.¹⁹³ For example, a medical expert from Monash Alfred Psychiatry Research Centre has indicated that the experience could worsen acute Post Traumatic Stress Disorder for residents that are or have been refugees, asylum seekers or previously detained.¹⁹⁴

Access to Basic Necessities

The hard lockdown also raised significant human rights concerns. Public housing in Victoria is densely populated and overcrowded, with as many as 9 persons living in one 2-3 bedroom apartment in some instances.¹⁹⁵ This is due in large part to a shortage of public housing. Victoria has the lowest proportion of public housing across all Australian states, and public housing in the State was found to be in decline

¹⁹⁰ Human Rights Law Centre, ‘Victorian Government must provide public health response to pandemic, end discriminatory measures and withdraw hundreds of police from public housing’, Human Rights Law Centre (Web Page, 8 July 2020) <<https://www.hrlc.org.au/news/2020/7/8/victorian-government-must-provide-public-health-response-to-pandemic-end-discriminatory-measures-and-withdraw-hundreds-of-police-from-public-housing>>.

¹⁹¹ Anthony Zwi, ‘COVID-19 in Melbourne’s high-rise towers: Rights at stake?’, University of NSW Andrew and Renata Kaldor Centre for International Refugee Law (Article, 13 July 2020) <<https://www.kaldorcentre.unsw.edu.au/publication/covid-19-melbourne%E2%80%99s-high-rise-towers-rights-stake>>.

¹⁹² Rachel Clayton, ‘Melbourne residents in coronavirus hard lockdown fear for health impacts in public housing towers’, ABC News (online, 7 July 2020) <<https://www.abc.net.au/news/2020-07-07/health-concerns-rise-in-coronavirus-melbourne-tower-lockdown/12427940>> (‘Melbourne Residents in Coronavirus Hard Lockdown Fear for Health Impacts’); Evan Young and Ahmed Yussuf, ‘Melbourne public housing residents demand eased restrictions, removal of police amid lockdown confusion’, SBS News (online, 7 July 2020) <<https://www.sbs.com.au/news/melbourne-public-housing-residents-demand-eased-restrictions-removal-of-police-amid-lockdown-confusion>> (‘Melbourne Public Housing Residents Demand Eased Restrictions’).

¹⁹³ Ahmed Yussuf, ‘The Aftermath of Melbourne’s Public Housing Lockdown: I Don’t Know if I’ll Ever be the Same Again’, SBS (The Feed) (online, 15 July 2020) <<https://www.sbs.com.au/news/the-feed/the-aftermath-of-melbourne-s-housing-tower-lockdown-i-don-t-know-if-i-m-ever-going-to-be-the-same-again>>.

¹⁹⁴ Ibid.

¹⁹⁵ Sandra Carrasco, Majdi Faleh, Neeraj Dangol, ‘Our lives matter – Melbourne public housing residents talk about why COVID-19 hits them hard’, The Conversation (online, 14 July 2020) <<https://theconversation.com/our-lives-matter-melbourne-public-housing-residents-talk-about-why-covid-19-hits-them-hard-142901>> (‘Our Lives Matter’); Biwa Kwan, Camille Bianchi and Rachel Cary, ‘It’s horrific’: Residents of Melbourne’s locked-down towers are struggling to receive essential supplies’, SBS News (online, 6 July 2020) <<https://www.sbs.com.au/news/its-horrific-residents-of-melbourne-s-locked-down-towers-are-struggling-to-receive-essential-supplies>> (‘Residents Struggling to Receive Essential Supplies’); Jewel Topsfield, ‘Tower outbreak fears spark call to tackle public housing overcrowding’, The Age (online, 8 July 2020) <<https://www.theage.com.au/national/victoria/tower-outbreak-fears-spark-call-to-tackle-public-housing-overcrowding-20200708-p55a4i.html>>.

between 2009 -2019.¹⁹⁶ Such overcrowding makes it difficult to practice social distancing and self-isolate.¹⁹⁷ The hard lockdown therefore saw large families and groups, some of whom had young children, contained to a confined space for an extended period. Several community organisations have raised concerns that these measures heightened the risk of domestic violence within the towers.¹⁹⁸

The conditions within the towers have been identified as problematic, with issues such as poor ventilation, limited access points (i.e. 1 shared lift per 160 apartments), limited access to sanitation facilities (i.e. 2 washing machines per 8 households) and no balconies or access to outdoor spaces.¹⁹⁹ These issues worsened throughout the lockdown, with communal laundry facilities closed to minimise potential spread of the virus (although laundry services were ultimately provided as substitute), insufficient hand sanitiser, gloves and masks provided, and no ability to leave the towers for exercise, as was possible in other areas of Melbourne and regional Victoria.²⁰⁰

In addition, the rushed nature of the measures left residents underprepared for the restrictions, with insufficient food and basic necessities to sustain themselves and their families through the detention period.²⁰¹ While public authorities sought to organise food for the residents, they failed to appropriately communicate with residents to determine their needs, or explain how food would be delivered. Residents faced extended delays for food (up to 8 hours), and when it did arrive it was missing staple items (such as bread and milk), often not culturally appropriate (i.e. not Halaal), was placed on the floor outside residences without notice, and some was even reportedly expired.²⁰² Some residents also reported that requests for basic necessities such as baby formula, medication and

¹⁹⁶ David Kelly, Kate Shaw and Libby Porter, 'Melbourne tower lockdowns unfairly target already vulnerable public housing residents', The Conversation (online, 6 July 2020) <<https://theconversation.com/melbourne-tower-lockdowns-unfairly-target-already-vulnerable-public-housing-residents-142041>>.

¹⁹⁷ Rebecca Bentley and Erika Martino, 'Overcrowding and affordability stress: Melbourne's COVID-19 hotspots are also housing crisis hotspot', The Conversation (online, 29 June 2020) <<https://theconversation.com/overcrowding-and-affordability-stress-melbournes-covid-19-hotspots-are-also-housing-crisis-hotspots-141381>>.

¹⁹⁸ Sandra Carrasco, Majdi Faleh, Neeraj Dangol, Our Lives Matter (n 195).

¹⁹⁹ Mani Truu and Ahmed Yussuf, 'Melbourne tower lockdowns expose what it's like to live inside high-density public housing', SBS News (online, 8 July 2020) <<https://www.sbs.com.au/news/melbourne-tower-lockdowns-expose-what-it-s-like-to-live-inside-high-density-public-housing>>.

²⁰⁰ Victorian Public Tenants Association, 'Public Housing Lockdowns', Victorian Public Tenants Association (Web Page, 2020) <<https://vpta.org.au/public-housing-lockdowns/>>; Evan Young and Ahmed Yussuf, Melbourne Public Housing Residents Demand Eased Restrictions (n 192).

²⁰¹ Jason Fang, Tahlea Aualitita, Erwin Renaldi and Bang Xiao, 'Melbourne public housing residents welcome coronavirus lockdown, but voice concerns', ABC News (online, 6 July 2020) <<https://www.abc.net.au/news/2020-07-06/communities-react-to-being-locked-down-melbourne-towers/12425968>>.

²⁰² Ibid; Matilda Bosley, 'Residents in Melbourne Covid-19 tower lockdown say food supplies have been inadequate', The Guardian (online, 6 July 2020) <<https://www.theguardian.com/world/2020/jul/06/residents-melbourne-covid-19-tower-lockdown-food-supplies-inadequate>>; Sandra Carrasco, Majdi Faleh, Neeraj Dangol, Our Lives Matter (n 195).

nappies were delayed for extended periods, and often these were provided by family, friends and community organisations - not by public authorities.²⁰³

In addition, reports emerged of families being separated by the sudden hard lockdown. Some families were separated for extended periods, with distressing impacts on parents and children alike.²⁰⁴ This included a mother who was separated from her newborn child, who had been born prematurely and was in intensive care.²⁰⁵

The Victorian Government's imposition of a hard lockdown for the 9 public housing towers in response to COVID-19 impacted on residents' rights to an adequate standard of living, food, sanitation, privacy and respect for family.

Firstly, the hard lockdown showcases a need for urgent action to ensure the right to adequate standard of living for residents of the public housing towers during COVID-19. As examined above, this right encompasses the right to adequate housing and food and applies to all without discrimination.²⁰⁶

Adequate housing requires at a minimum (among other things) the *availability* of services and facilities including adequate sanitation, and the guarantee of *habitability*, including physical safety and adequate space. Reports from the affected public housing towers, particularly those which indicate lack of ventilation, overcrowding, and lack of outdoor spaces however illustrate that these elements were not present in the residences even prior to COVID-19, and worsened during tough restrictions as large families and groups were confined to small spaces.

Adequate food requires at a minimum the *availability* of food that meets the dietary needs of the individual, either directly or distribution, the *acceptability* of food within a given culture, and the *accessibility* of food, both physically and economically, with particular consideration given to vulnerable groups. These requirements were not met during the hard lockdown. Reports indicate that much of the food provided by public authorities did not meet the dietary or cultural needs of residents under lockdown (i.e. food was expired and not Halaal). Furthermore, residents faced barriers to physically accessing food as they were denied permission to leave the towers to obtain basic necessities, and faced long delays accessing food provided by both public authorities and friends and family.

²⁰³ Ibid; Biwa Kwan, Camille Bianchi and Rachel Cary, Residents Struggling to Receive Essential Supplies (n 195); Maggie Cogan, 'Community sector rallies around residents in hard lock down', Probono Australia (online, 6 July 2020) <<https://probonoaustralia.com.au/news/2020/07/community-sector-rallies-around-residents-in-hard-lock-down/>> ('Community Sector Rallies Around Residents in Hard Lockdown').

²⁰⁴ Ahmed Yussuf, 'Meet the Separated Families of the Melbourne Public Housing Towers', SBS (The Feed) (online, 9 July 2020) <<https://www.sbs.com.au/news/the-feed/meet-the-separated-families-of-the-melbourne-public-housing-towers>>.

²⁰⁵ Margaret Paul, 'Parents caught in Melbourne public housing coronavirus lockdown stopped from visiting baby', ABC News (online, 9 July 2020) <<https://www.abc.net.au/news/2020-07-09/coronavirus-public-housing-lockdown-stops-parents-visit-baby/12439778>>.

²⁰⁶ ICESCR arts 2(2), 11(1), 28.

The right to privacy and respect for family further requires that no one be subjected to arbitrary or unlawful interference with privacy, family home and correspondence.²⁰⁷ The importance of family unity is strongly iterated in both the ICCPR and the CRC.²⁰⁸ The UN has also specifically emphasised the need for States to take steps to prevent as far as possible interference with family during the pandemic.²⁰⁹ The hard lockdown of the public housing towers in Melbourne however saw the sudden separation of families without notice. This separation caused significant distress for parents and children alike.

Risks to Health and Wellbeing

While the hard lockdown was designed to protect health by responding to cases of COVID-19 in some of the towers, it also created risks to the health of the residents subjected to the hard lockdowns. As noted above, the public housing towers are densely populated and overcrowded.²¹⁰ They also contain communal areas, including laundromats and lifts.²¹¹ As noted above, there were reports of a lack of hand sanitisers, gloves and masks in such communal areas.²¹² The lack of such supplies inevitably will have increased the risk of spread within the buildings themselves, posing health risks to residents who had to leave their flats to obtain tests, collect food or seek information from neighbours (due to the lack of information discussed above).

In addition to the health risks inside the towers, the Detention Directions did not enable residents to leave the towers for medical reasons (unless they obtained express permission from authorities) and prevented non-residents from entering the towers. This resulted in reports of disruption of the care of residents with existing care arrangements, such as persons with disabilities, as external care personnel and organisations were restricted from entering the towers.²¹³ In another instance, a mother was reportedly unable to leave the tower to visit her prematurely born baby in hospital to

²⁰⁷ ICCPR art 17.

²⁰⁸ UNCRC preamble, art 16; ICCPR art 23(1); UN HRC, General comment No. 19: [5].

²⁰⁹ HRTB COVID-19 Toolkit (n 14) 13-14.

²¹⁰ Sandra Carrasco, Majdi Faleh, Neeraj Dangol, Our Lives Matter (n 195); Biwa Kwan, Camille Bianchi and Rachel Cary, Residents Struggling to Receive Essential Supplies (n 195).

²¹¹ 'Victoria records 74 new coronavirus cases, public housing lockdown tenants have rent waived', ABC News (online, 5 July 2020) <<https://www.abc.net.au/news/2020-07-05/coronavirus-victoria-new-cases-public-housing-melbourne-lockdown/12423700>>.

²¹² Laura Murphy-Oates, 'Inside the Covid-19 hard lockdown of Melbourne's public housing towers', The Guardian (online, 7 July 2020) <<https://www.theguardian.com/australia-news/audio/2020/jul/07/inside-hard-lockdown-of-melbourne-public-housing-towers>>; Yara Murray-Atfield, Melbourne Public Housing Residents and the Coronavirus Lockdown (n 177).

²¹³ Anthony Piovesan, 'Coronavirus: Locked-down Flemington tower resident says conditions 'worse than prison'', The Australian (online, 8 July 2020) <<https://www.theaustralian.com.au/breaking-news/coronavirus-locked-down-flemington-tower-resident-says-conditions-worse-than-prison/news-story/4e001b5bf5c0be39511093c245694714>>.

provide milk.²¹⁴ Further, as noted above in relation to the access to basic necessities, residents reported delays in receiving medication and medical supplies.²¹⁵ The reported inadequacy of food deliveries also posed risks to the health and wellbeing of the residents during the time of the lockdown.²¹⁶

The lack of communication surrounding the hard lockdown and heavy police presence as discussed above have also resulted in reports on impacts on the mental health of residents by compounding trauma of persons with a negative perceptible and/or experience of public authorities. For example, it is reported that some residents have fled war and family violence and have already difficult mental health complications.²¹⁷ Many also come from linguistically and culturally diverse backgrounds.²¹⁸ The lack of information about the lockdowns, as well as the heavy police presence outside the buildings have resulted in reports of fear and apprehension as a result of prior trauma.²¹⁹ Further, the arrangement of fencing of outdoor areas to allow for exercise also reportedly had an adverse impact on some residents who have experienced past detention.²²⁰

The risks to health and wellbeing noted above engage a number of human rights, including the rights to health, an adequate standard of living and non-discrimination. The lockdown exposed residents to the risks of contracting COVID-19 without apparent accommodation for those with underlying health conditions. The failure to provide access to medication for those in need, for example, or delay in alternative care arrangements, conflict with the core minimum obligations of the right to health, which requires both availability and accessibility of healthcare and services. It also requires such access and

²¹⁴ See e.g. Noel Towell, Rachel Eddie, Chloe Booker, David Estcourt, 'Hundreds of housing tenants to remain in hard lockdown', The Age (online, 9 July 2020) <<https://www.theage.com.au/national/victoria/hundreds-of-housing-tenants-to-remain-in-hard-lockdown-20200709-p55akp.html>> ('Hundreds of Housing Tenants to Remain in hard Lockdown').

²¹⁵ Biwa Kwan, Camille Bianchi and Rachel Cary, Residents Struggling to Receive Essential Supplies (n 195); Maggie Cogan, Community sector rallies around residents in hard lock down (n 203); Noel Towell, Rachel Eddie, Chloe Booker, David Estcourt, Hundreds of housing tenants to remain in hard lockdown (n 214).

²¹⁶ See e.g. Rachel Eddie, Bianca Hall, Clay Lucas, Nicole Prezel, "You couldn't eat it: Food for tower residents left in corridors as deliveries delayed", The Age (online 6 July 2020) <<https://www.theage.com.au/national/victoria/you-couldn-t-eat-it-food-for-tower-residents-left-in-corridors-as-deliveries-delayed-20200706-p559h6.html>>; Lucy Mae Beers, 'Victoria coronavirus public housing lockdown causes food delivery anger', 7 News (online, 6 July 2020) <<https://7news.com.au/lifestyle/health-wellbeing/victoria-coronavirus-public-housing-lockdown-causes-food-delivery-anger-c-1146592>>.

²¹⁷ 'Coronavirus forces lockdown of Melbourne public housing towers in 3051 and 3031 postcodes. This is what that means for the residents', ABC News (online, 4 July 2020) <<https://www.abc.net.au/news/2020-07-04/coronavirus-victoria-melbourne-public-housing-estates-lockdown/12423042>>; Sandra Carrasco, Majdi Faleh, Neeraj Dangol, Our Lives Matter (n 195).

²¹⁸ Yara Murray-Atfield, Melbourne Public Housing Residents and the Coronavirus Lockdown (n 177).

²¹⁹ Rachel Clayton, Melbourne Residents in Coronavirus Hard Lockdown Fear for Health Impacts (n 192); Evan Young and Ahmed Yussuf, Melbourne Public Housing Residents Demand Eased Restrictions (n 192).

²²⁰ Rachael Dexter, Melissa Cunningham, "We are prisoners': Fenced exercise yards at lockdown tower slammed", The Age (online, 12 July 2020) <<https://www.theage.com.au/national/victoria/we-are-prisoners-fenced-exercise-yards-at-lockdown-tower-slammed-20200712-p55bbb.html>>.

availability without discrimination. For example, the hard lockdown arrangements appear to have disproportionately affected specific groups, such as persons with disabilities, in terms of the adverse impact of not being able to access external support.

The response also appears to have exposed residents to risks by failing to provide adequate and culturally-appropriate food, a right which forms part of the right to an adequate standard of living, as well as being a prerequisite to the right to health. The failure to immediately accommodate the unique needs of residents within the towers suggest a failure to provide reasonable accommodation, a form of discrimination, which in the enjoyment of rights is a core minimum obligation. While the accommodation of each and every individual need may go beyond what is 'reasonable', items connected to protected characteristics, such as Halal food, must be accommodated to ensure equal access to food and health, regardless of religion.

Conclusion

We recognise that the hard lockdown was a response by the Victorian Government to a serious emerging public health risk. Importantly however, the nature and degree of the response to COVID-19 in the public housing estates in question has not taken into account the unique vulnerabilities of the persons impacted by the hard lockdown. It resulted in considerable confusion, distress, and anxiety. Further, the fact that such a response had not been imposed elsewhere in Victoria, before or even since, signalled a discrepancy between approaches to managing the COVID-19 response for different groups, and resulted in a breakdown of trust in government by the individuals and communities that were impacted. As reported by community legal centres, the hard lockdowns have also been accompanied by racism and stigma against public housing residents, who already comprise of some of the most vulnerable groups in society as a result of systematic and structural discrimination and inequality.²²¹

Whether or not specific incidents raise to the level of human rights violations is a matter for careful limitation analysis and investigation, for example through the current investigation by the Victorian Ombudsman's office. Nevertheless, it is important to recognise the adverse impacts of the hard lockdown on the rights of individuals and groups in the towers. As we underline in Part 2.1 of this submission, this is why human rights matter in the pandemic.

The above concerns could have been mitigated by adopting a rights-based approach to the COVID-19 response. This would have seen an acknowledgement of residents' fundamental rights, accommodation of unique and intersecting vulnerabilities, consultation with local community members and groups²²² to ascertain unique needs, the involvement of professionals that can provide support and care in public health emergencies and the development and timely and continuous

²²¹ Anthony Kelly, 'The Hard Lockdown of the Public Housing Hi-Rise: Our Statement', Flemington & Kensington Community Legal Centre (online, 4 July 2020) <<https://flemkenlegal.org/latest-news/2020/7/4/our-statement-on-the-hard-lockdown-of-the-public-housing-hi-rise>>.

²²² David Kelly, Kate Shaw and Libby Porter, 'Melbourne tower lockdowns unfairly target already vulnerable public housing residents', The Conversation (online, 6 July 2020) <<https://theconversation.com/melbourne-tower-lockdowns-unfairly-target-already-vulnerable-public-housing-residents-142041>>.

delivery of information that was both adequate, and appropriate given the diversity of languages within the towers. By adopting such an approach in future, the Victorian Government can ensure that it effectively balances the rights of the broader public with the rights of individuals and builds trust between marginalised groups in Victoria, the wider public and public authorities.

5.5 Case Study: Homelessness and the COVID-19 response

Homelessness has been defined by the UN as one of the crudest manifestations of poverty, inequality and housing affordability challenges'.²²³ It refers to 'a condition where a person or household lacks habitable space with security of tenure, rights, and ability to enjoy social relations, including safety'.²²⁴ Homelessness encompasses diverse forms of housing insecurity, from 'sleeping rough' on the street, to living in public spaces or precarious and unstable housing conditions (i.e. shelters, boarding houses, couch surfing), to living in inadequate housing that is overcrowded or lacks basic amenities.²²⁵ Homelessness is experienced by people of all ages, genders and backgrounds, but disproportionately impacts upon various vulnerable groups, including low-income individuals and families, women, children and young people, Indigenous persons, refugees and asylum seekers, those with mental illness and disability, as well as persons released from detention .²²⁶

The Victorian Government has recognised that homelessness is both a significant and growing issue, with an estimated 25,000 people sleeping rough or living in insecure housing in 2020, with young, older and Indigenous persons particularly vulnerable to homelessness.²²⁷ The COVID-19 pandemic has been an important catalyst for the Victorian Government to directly address the issue of homelessness, and we commend the Government for their initiatives to support frontline community

²²³ United Nations Economic and Social Council, Commission for Social Development, Affordable Housing and Social Protection Systems for all to Address Homelessness: Report of the Secretary-General, UN ESCOR, 58th sess, Agenda Item 3(a) of the provisional agenda, UN Doc E/CN.5/2020/3 (10-19 February 2020) 3 ('UN Economic and Social Council, Commission for Social Development, Affordable Housing and Social Protection Systems for all to Address Homelessness').

²²⁴ Ibid 2.

²²⁵ United Nations Economic and Social Council, Commission for Social Development, Homelessness: A Prominent Sign of Social Inequalities, 58th sess (10-19 February 2020) 1; Kristy Muir et al, Amplify Insights: Housing Affordability & Homelessness. Centre for Social Impact (2018) 12.

²²⁶ UN Economic and Social Council, Commission for Social Development, Affordable Housing and Social Protection Systems for all to Address Homelessness (n 223) 3, 13-14, 26, 30-31.

²²⁷ Victorian Department of Health and Human Services, Victorian Homelessness 2020 Strategy (2010) 1-2; Victorian Department of Health and Human Services, 'Housing and Homelessness', Victorian State Government (Web page, 2020) <<https://www.dhhs.vic.gov.au/housing-and-homelessness>>.

organisations and workers, to temporarily house rough sleepers in hotels and other accommodation, to provide financial assistance and rent support, and to impose temporary bans on rental evictions.²²⁸

We maintain however that that the Victorian Government response to homelessness during COVID-19 contains critical deficiencies that pose threats to the fundamental rights of homeless persons - in particular to the right to an adequate standard of living (including access to housing, food and water), the right to health, and the rights to equality and non-discrimination. We emphasise that more remains to be done to ensure the fundamental rights of homeless persons are respected, protected and fulfilled.

Contributing to Homelessness

The COVID-19 pandemic and the restrictions imposed to counter it have been identified as factors that can in fact *contribute* to homelessness. The pandemic has had a severe impact on employment, resulting in reduced hours, changes in conditions of employment, and in many cases loss of jobs as businesses adapt and in some cases close down.²²⁹ A lack of income has for many resulted in housing insecurity and thereby increased the risk of homelessness, especially for those already under financial strain.²³⁰ In addition, lockdown restrictions that confine people to their homes have resulted in a rise in family and intimate partner violence, which in some cases has driven vulnerable persons from their homes.²³¹ Meanwhile, community organisations and homelessness support groups are grappling with physical distancing requirements within shelters, reducing their capacity for intake, and adopting measures to protect their volunteers from infection and ensure that they are complying with new rules and curfews.²³²

²²⁸ Victorian Department of Health and Human Services, 'Housing and Homelessness: COVID-19', Victorian State Government (Web Page, 2020) <<https://www.dhhs.vic.gov.au/housing-and-homelessness-coronavirus-covid-19>>; Richard Wynne, Minister for Housing, 'More Homelessness And Public Housing Support In COVID-19 Fight' (Media Release, 18 March 2020) <<https://www.premier.vic.gov.au/more-homelessness-and-public-housing-support-in-covid-19-fight/>>; Richard Wynne, Minister for Housing, 'Safe Places For The Homeless To Recover And Isolate' (Media Release, 10 April 2020) <<https://www.premier.vic.gov.au/safe-places-for-the-homeless-to-recover-and-isolate/>>; Housing Victoria, 'Coronavirus (COVID-19) rent relief grant', Victorian State Government (Web Page, 15 July 2020) <<https://www.housing.vic.gov.au/help-renting/rentrelief/>>; Daniel Andrews, Premier, 'Supporting Tenants And Landlords Through Coronavirus' (Media Release, 15 April 2020) <<https://www.premier.vic.gov.au/supporting-tenants-and-landlords-through-coronavirus/>>; Jewel Topsfield, 'How the shock of COVID-19 could end street homelessness in Victoria', The Age (online, 13 June 2020) <<https://www.theage.com.au/national/victoria/how-the-shock-of-covid-19-could-end-street-homelessness-in-victoria-20200612-p551vk.html>> ('COVID-19 and Ending Homelessness in Victoria').

²²⁹ Michaela Janda, 'Victorian jobs hit from renewed coronavirus lockdown highlights second wave economic risks', ABC News (online, 28 July 2020) <<https://www.abc.net.au/news/2020-07-28/victoria-highlights-jobs-hit-from-second-lockdown/12499044>>.

²³⁰ Nasseem Khadem, 'Coronavirus recession puts thousands of refugees and asylum seekers at risk of job loss, homelessness', ABC News (online 30 July 2020) <<https://www.abc.net.au/news/2020-07-30/coronavirus-recession-refugees-asylum-seekers-at-risk-homeless/12503874>>.

²³¹ Kate Fitz-Gibbon and Silke Meyer, 'The COVID-19 pandemic opens the door to solving the homelessness problem', Monash Lens (Blog, 18 March 2020) <<https://lens.monash.edu/2020/08/05/1381002/covid-19-pandemic-opens-the-door-to-solving-homelessness-problem>>.

²³² Catalina Flores, 'Concerns for Australia's homeless community as coronavirus continues to spread', SBS News (online, 21 March 2020) <<https://www.sbs.com.au/news/concerns-for-australia-s-homeless-community-as-coronavirus-continues-to-spread>>.

Access Barriers and Health Risks

Homelessness, particularly in the time of COVID-19, creates barriers to access that impact upon the rights to food, water and sanitation, and health.²³³ Hoarding of food in supermarkets, which has occurred on multiple occasions in Victoria, especially when coupled with the reduced capacity of homelessness support organisations, can make accessing adequate food for homeless persons.²³⁴ Persons experiencing homelessness also face reduced access to, and ability to safely store, food and medication. Those sleeping rough may also lack access to clean water, sanitation, and masks which can inhibit their ability to practice good hygiene to protect themselves from coronavirus. In addition, persons staying in temporary shelters and sleeping in public spaces may find it difficult to practise social distancing.²³⁵ These vulnerabilities are further compounded by pre-existing health conditions which are prevalent among the homeless communities, and result in a higher risk of serious and life-threatening illness for those infected with COVID-19.²³⁶

Temporary Hotel Accommodation

In addition, the Victorian Government's initiative to house homeless persons in temporary hotel accommodation during the pandemic has raised concerns regarding the rights to an housing and food, right to health and rights to equality and non-discrimination. We commend the government for temporarily housing an estimated 4500 homeless persons, and extending efforts to support the homeless until April 2021.²³⁷ We have however recognised significant concerns with the management of this initiative that have been raised by community organisations and persons experiencing homelessness themselves.

This includes the requirement for formerly homeless and low-income individuals to contribute 'co-payments' for their stay in hotel accommodation. These payments can take up a significant proportion of individuals' income and have implications for the rights to housing and food.

²³³ Ibid; 'United Nations Economic and Social Council, Commission for Social Development, Affordable Housing and Social Protection Systems for all to Address Homelessness (n 223) 3.

²³⁴ Leilani Farha, Special Rapporteur, 'COVID Guidance Note: Protecting Those Living in Homelessness', Office of the High Commissioner for Human Rights (Document, 28 April 2020) <https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf>.

²³⁵ Andrew Davies and Lisa J Wood, 'Homeless Healthcare' (2018) 209 (5) Medical Journal of Australia 230; Lisa Wood, Andrew Davies and Zana Khan, 'COVID-19 precautions – easier said than done when patients are homeless' (2020) 212 (8) Medical Journal of Australia 384, 384.

²³⁶ Australian Government, Advice for homeless shelters and people working with homelessness in COVID-19 pandemic (Report, June 2020) <<https://www.health.gov.au/sites/default/files/documents/2020/06/advice-for-homeless-shelters-and-people-working-with-homelessness-in-covid-19-pandemic.pdf>>.

²³⁷ Jewel Topsfield, COVID-19 and Ending Homelessness in Victoria (n 228); Ben Knight, 'Coronavirus Hotel Housing for Victoria's Homeless Gets Extension Amid Calls to Make it Permanent', ABC News (online, 28 July 2020) <<https://www.abc.net.au/news/2020-07-28/coronavirus-hotel-plan-for-homeless-to-be-extended-in-victoria/12498750>>.

Co-payments reportedly amount to around 25% of individuals' total income, sometimes more, with contributions said to be several hundred dollars per week, taken directly from welfare benefits.²³⁸ Some have reported that the amount of contribution varies from week to week, with little information provided on how these amounts are calculated. While government spokespersons have indicated that co-payments are voluntary, reports appear to indicate that the lack of information in the community has given rise to a perception that co-payments are mandatory.²³⁹ Lack of adequate information around the co-payments has also given rise to confusion regarding the actual amount to be contributed, which has been exacerbated by inconsistency between co-payment amounts from week to week.²⁴⁰ Community organisations have also highlighted that rooms do not necessarily come with food, cooking or laundry facilities, leaving individuals to pay for prepared food and basic services at additional cost, or heavily depend on community organisations.²⁴¹

Requiring co-payments, in addition to the associated costs relating to hotel accommodation for the temporarily housed homeless has the potential to place considerable strain on individuals already under financial stress. For this reason, such management of the initiative is not in line with the minimum *affordability* requirements under the right to housing, which state that the cost of housing 'must not compromise the tenant's enjoyment of other rights', such as food and sanitation.²⁴² Further, such measures endanger the right to food by limiting the availability of adequate food, and creating barriers to physical and economic access to adequate food or means for its procurement.²⁴³

Finally, co-payments also raise important concerns around discrimination. Homeless support organisations have questioned why co-payments are being required of persons already under considerable financial strain, whilst the same is not required of incoming travellers.²⁴⁴ To apply distinct approaches between homeless persons and travellers without valid reason may amount to discrimination on the basis of 'other status' such as socio-economic status.²⁴⁵

²³⁸ Matilda Bosley and Luke Henriques-Gomes, 'It sucks': Homeless Victorians Asked to Help Pay for Lockdown Hotels', The Guardian (online, 28 May 2020) <<https://www.theguardian.com/australia-news/2020/may/28/it-sucks-homeless-victorians-asked-to-help-pay-for-lockdown-hotels>>.

²³⁹ Ibid; Mary Gearin, 'Uncertainty looms for homeless Victorians in hotel accommodation during coronavirus crisis', ABC News (online, 17 July 2020) <<https://www.abc.net.au/news/2020-07-17/coronavirus-uncertainty-for-homeless-victorians-put-up-in-hotels/12464818>>.

²⁴⁰ Ibid.

²⁴¹ Jewel Topsfield, COVID-19 and Ending Homelessness in Victoria (n 228).

²⁴² Ibid.

²⁴³ CESCR General Comment No. 12 (n 122) [8]-[13].

²⁴⁴ Ibid; Daniel Andrews, Premier, 'Enforced Quarantine for Returned Travellers to Combat Coronavirus' (Media Release, 27 March 2020) <<https://www.premier.vic.gov.au/enforced-quarantine-for-returned-travellers-to-combat-coronavirus/>>; Tamara Thiessen, 'Australia Hotel Quarantine: You will Pay \$3000-\$5000 Returning Home, Here are State Details', Forbes (online, 13 July 2020) <<https://www.forbes.com/sites/tamarathiessen/2020/07/13/australia-nsw-hotel-quarantine-travelers-pay-3000/#42dda45f4283>>.

²⁴⁵ ICCPR arts 2(1), 26; ICESCR art 2(2).

Conclusion

We recognise that the Victorian Government has sought to prevent homelessness by providing financial support and rent relief for persons facing homelessness, as well as resources to assist community organisations, family violence support and avenues to access temporary hotel accommodation during COVID-19. However, the current management of initiatives has not taken into account the unique circumstances and vulnerabilities that homeless persons face. This is particularly the case with the requirement of co-payments from individuals already under considerable financial stress. These costs can have flow on effects for such vulnerable persons, including limiting their access to adequate food and specialist care. Further the discrepancy in approaches to homeless persons and returned travellers raises concerns around discrimination that should immediately be addressed.

The above concerns could have been mitigated by adopting a human-rights centric approach to responding to COVID-19. This would have seen acknowledgement of the unique vulnerabilities and fundamental rights of persons experiencing homelessness, and continued consultation with, as well as support and funding for, community and specialist organisations, as well as those experiencing homelessness and housing insecurity themselves.

We recognise that the Victorian Government has taken positive steps towards such an approach. For example, we acknowledge that the Government has rightly not applied stay-at-home directives to homeless persons, who are unable to do so and would be disproportionately impacted by the considerable fines for non-compliance.²⁴⁶ We also commend the Government's decision to extend homelessness support programs until April 2021, including plans to lease 1100 properties on the private rental market.²⁴⁷

We emphasise, however, that these measures must be continued throughout, and indeed beyond COVID-19. Programs and initiatives to prevent homelessness must be continuously funded if the Government is to adhere to its obligations under international law - particularly with regard to the rights an adequate standard of living, health and respect for privacy and family. As Castan Centre Director Kevin Bell has recently stated, homelessness itself is a human rights breach 'for which our governments are responsible' and which they 'can resolve, and must resolve'.²⁴⁸

²⁴⁶ The Hon. Kevin Bell and Steven Roberts, 'The COVID-19 pandemic opens the door to solving the homelessness problem', Monash Lens (Blog, 05 August 2020) < <https://lens.monash.edu/2020/08/05/1381002/covid-19-pandemic-opens-the-door-to-solving-homelessness-problem> > ('The COVID-19 Pandemic and Homelessness').

²⁴⁷ Ben Knight, 'Coronavirus hotel housing for Victoria's homeless gets extension amid calls to make it permanent', ABC News (online, 28 July 2020) < <https://www.abc.net.au/news/2020-07-28/coronavirus-hotel-plan-for-homeless-to-be-extended-in-victoria/12498750> >.

²⁴⁸ Kevin Bell and Steven Roberts, The COVID-19 Pandemic and Homelessness (n 246).

PART VI: VULNERABLE GROUPS - PRISONERS AND YOUTH DETAINEES

6.1 Introduction

This Part of the submission will consider the impacts of the Government's COVID-19 response on two other vulnerable groups in the Victorian community, prisoners and children in youth detention. As noted in respect of public housing residents and homeless persons, the prison and youth detention populations comprise individuals with unique needs and characteristics. For example, it is well-established that Indigenous people are overrepresented in the criminal justice system due to systemic and structural discrimination and inequality.

We begin this Part by considering the relevant human rights law framework, including some of the rights engaged in the context of prisons and youth detention facilities in the COVID-19 response. We then apply this framework to the Victorian Government's response to COVID-19 in relation to youth detainees and prisoners.

6.2 Relevant International Law

The ICCPR makes clear under article 10(1) that prisoners enjoy all the rights contained within the covenant, stating that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'.²⁴⁹ The UN HRC has also recognised that respect for dignity is a fundamental and universally applicable rule which must be applied without distinction of any kind.²⁵⁰ They have however qualified that enjoyment rights may be subject to restrictions that 'are unavoidable in a closed environment'.²⁵¹

The rights of prisoners are further safeguarded by the *United Nations Basic Principles for the Treatment of Prisoners* (Basic Principles), the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (Mandela Rules) and the *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (Body of Principles).²⁵² These instruments are considered binding on States to the extent that they develop upon the norms of the rights contained in human rights treaties such as the ICCPR and ICESCR.

²⁴⁹ ICCPR art 10.

²⁵⁰ United Nations Human Rights Committee, General Comment No. 21: Human Treatment of Persons Deprived of Their Liberty (Article 10 of the International Covenant on Civil and Political Rights), 44th sess (10 April 1992) [4] ('CCPR General Comment No. 21').

²⁵¹ CCPR General Comment No. 21 [3].

²⁵² United Nations General Assembly, Basic Principles for the Treatment of Prisoners, UN GAOR, 45th sess, 67th plen mtg, UN Doc A/RES/45/111 (28 March 1991) ('Basic Principles'); United Nations General Assembly, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN GAOR, 70th sess, Agenda Item 3, UN Doc A/RES/70/175 (8 January 2016) ('Mandela Rules'); United Nations General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN GAOR, 43rd sess, UN Doc A/RES/43/173 (9 December 1988).

Rights to Liberty, Security and Freedom from Arbitrary Detention

As examined above in Part V, the rights to liberty, security and freedom from arbitrary detention have been impacted by the Victorian Government's response to the COVID-19 pandemic.

These rights are protected under article 9 of the ICCPR which states that 'everyone has the right to liberty and security of a person', and includes the prohibition on arbitrary arrest or detention.²⁵³ Prisons and closed environments are examples of places wherein persons are deprived of their liberty. Again, whether such deprivation of liberty is 'arbitrary' requires consideration of the lawfulness, appropriateness, and predictability of deprivation, and whether due process and justice have been respected.²⁵⁴

The UN Working Group on Arbitrary Detention has emphasised that States should act in accordance with their obligations under international law, even in a state of emergency.²⁵⁵ The COVID-19 pandemic has however raised significant human rights concerns for those deprived of their liberty. Overcrowding, poor hygiene and the vulnerability of certain prisoners due to pre-existing illness have been identified as key factors that exacerbate risks to the security and health of detained persons.²⁵⁶ The Working Group has therefore advised States to 'urgently review the existing cases of deprivation of liberty across all detention settings to determine whether detention is still justified as necessary and proportionate in the prevailing context of the COVID-19 pandemic'.²⁵⁷ In particular they have urged States to refrain from holding older persons, pregnant and breastfeeding women, those with disabilities and those with chronic health conditions to limit the risk to their 'physical and mental integrity and life'.²⁵⁸

The Working Group has instead pushed for non-custodial measures to be preferred during the public health emergency.²⁵⁹ They have further commented that States should seek to reduce existing prison populations by 'implementing schemes of early, provisional or temporary release' for detainees if safe to do so.²⁶⁰ The implementation of such schemes can be guided by the existing *Tokyo*

²⁵³ ICCPR art 9.

²⁵⁴ UN HRC General Comment No. 35 [12].

²⁵⁵ United Nations Working Group on Arbitrary Detention, Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies (8 May 2020) ('WGAD Deliberation No. 11').

²⁵⁶ *Ibid* [12]-[17].

²⁵⁷ United Nations Office of the High Commissioner for Human Rights, COVID-19 not an Excuse for Unlawful Deprivation of Liberty (n 65).

²⁵⁸ *Ibid*.

²⁵⁹ *Ibid*.

²⁶⁰ WGAD Deliberation No. 11 [17].

Rules and *Bangkok Rules* which provide standard minimum safeguards for persons subject to alternatives to imprisonment.²⁶¹

Right to Health

The meaning and content of the right to health were discussed in Part V above. Article 12 of the ICESCR protects the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.²⁶² Prisoners and other persons deprived of liberty are no exception. The right to health is a fundamental right in and of itself, but also to the enjoyment of other fundamental human rights, including the right to life, housing, equality, and privacy, among others.²⁶³

The Mandela Rules contain many specific rules on access and provision of health care and related necessities, such as food, to prisoners.²⁶⁴ In the context of COVID-19, the UN’s Guidance on emergency measures notes that States have an obligation to provide ‘timely and effective measures to support the enjoyment of core economic and social rights of people affected by emergency restrictions’, including support with health.²⁶⁵

COVID-19 measures affecting persons deprived of liberty must not violate human rights, including the right to health. For example, restrictions on contact with family members while aiming to contain the spread of COVID-19 may have a negative impact on the mental health of a person deprived of liberty and alternative arrangements may be necessary. Similarly, prisoners’ presence in custody must not amount to ‘direct threats to life’ and States must take steps to ensure that general conditions do not amount to such risks to life due to COVID-19. In its COVID-19 Guidance, the UN has called on States to ‘urgently explore options for release and alternatives to detention to mitigate the risk of harm within places of detention’ for people in certain circumstances, including for example prisoners imprisoned for ‘minor, petty and non-violent offences’ and those with underlying health conditions.²⁶⁶

Right to Life

As noted above, the right to health is fundamental to the enjoyment of other human rights, including the right to life. The right to life is protected under various human rights instruments, including for

²⁶¹ See United Nations General Assembly, Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), UN GAOR, 44th sess, UN Doc A/RES/45/110 (14 December 1990); United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), UN GAOR, 3rd Comm, 65th sess, Agenda Item 105, UN Doc A/C.3/65/L.5 (6 October 2010).

²⁶² ICESCR art 12. See also ICERD art 5(3)(iv); CEDAW’ art 11(1)(f); UNCRC art 24; CRPD art 25.

²⁶³ CESCR General Comment No. 14 (n 83) [1].

²⁶⁴ Mandela Rules, rr 24-35.

²⁶⁵ UN Guidance on Emergency Measures and COVID-19’ (n 16).

²⁶⁶ UN COVID-19 Guidance (n 12).

example article 6 of the ICCPR. Under article 2(1) the ICCPR imposes an obligation on States parties to both respect and *ensure* the rights under the Covenant.

As the UN HRC has clarified, the need to ensure Covenant rights means that the right to life imposes not only negative obligations on States to respect life, but also involve positive obligations to ensure the right to life.²⁶⁷ In elaborating upon these positive obligations, the UN HRC has noted that it involves a duty on part of States parties to take steps to address ‘general conditions’ that may amount to ‘direct threats to life’ or which prevent individuals to enjoy a life with dignity.²⁶⁸ COVID-19 being a notable example of such threats.

The UN HRC has also noted that States have heightened obligations to protect the right to life of individuals deprived of their liberty by the State because by arresting, detaining and imprisoning individuals States assume responsibility to care for their life and bodily integrity.²⁶⁹ The Committee has emphasised that States may not rely on ‘lack of financial resources or other logistical problems to reduce this responsibility’.²⁷⁰

As regards infectious diseases generally, UN HRC jurisprudence also indicates that the ‘failure to separate detainees with communicable diseases from other detainees could raise issues primarily under articles 6, paragraph 1’.²⁷¹ Further, in respect of COVID-19 specifically, as noted above in relation to the right to health, the UN has called on States to ‘urgently explore options for release and alternatives to detention to mitigate the risk of harm within places of detention’ for some prisoners, including those with underlying health conditions.²⁷² This is a risk to harm to both health and life and as the UN has also recognised, persons in detention are at a heightened risk of infection.²⁷³

Right to Privacy and Respect for Family

As discussed in Part V above, the ICCPR provides that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...’ and that ‘everyone has the

²⁶⁷ UN Human Rights Committee, General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 36th sess, UN Doc CCPR/C/GC/36 (30 October 2018) [21] (‘HRC General Comment No 36’).

²⁶⁸ *Ibid* [26].

²⁶⁹ UN HRC General Comment No. 36 [25]; Similarly in Victoria, s 9 of the Charter imposes a positive duty on the Victorian Government to protect the right to life of persons in their care, (i.e. prisons). See Victorian Government Solicitors’ Office, ‘Charter Guide’, Victorian Government Solicitors’ Office (Web Page, 2020) <<https://humanrights.vgso.vic.gov.au/charter-guide/charter-rights-by-section/section-9-right-life>>.

²⁷⁰ UN HRC General Comment No. 36 [25].

²⁷¹ Lynn-Sophie Temp, ‘Coronavirus and the Right to Health of Prisoners’, Oxford Human Rights Hub (Blog, 16 March 2020) <<https://ohrh.law.ox.ac.uk/coronavirus-and-the-right-to-health-of-prisoners/>> (‘Coronavirus and the Right to Health of Prisoners’).

²⁷² UN COVID-19 Guidance (n 12).

²⁷³ *Ibid*.

right to the protection of the law against such interference or attacks'.²⁷⁴ The ICCPR emphasises that family is a 'natural and fundamental group unit of society' and as such is entitled to protection by States.²⁷⁵ The obligation to respect family is also incorporated into the ICESCR and the CRC.²⁷⁶

The Mandela rules affirm the importance of respect for family. Rule 43, provides that under 'no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment', and goes on to expressly disallow the prohibition of family contact as a form of disciplinary sanction or restrictive measure'.²⁷⁷ Where contact with family is restricted, it may only be for a limited period and only as 'strictly required for the maintenance of security and order'.²⁷⁸ Further, Rule 58 states that prisoners must be allowed to communicate with their family at regular intervals, using where available writing, telecommunication, electronic, digital and other means, *and* by receiving visits.²⁷⁹ Rule 106 goes on to emphasise that special attention be paid to the maintenance and improvement of family relations as far as this is in the 'best interests of both'.²⁸⁰

In addition, the Body of Principles state in Principle 15 that 'communication of the detained or imprisoned person with the outside world, and in particular his family... shall not be denied for more than a matter of days'.²⁸¹ Principle 19 further provides that imprisoned persons have the 'right to be visited by and to correspond with the outside world, subject to reasonable conditions...'.²⁸²

The UN HRC have further recently released a statement urging States to protect privacy and family from undue interference during the COVID-19 pandemic.²⁸³ Further, the United Nations Office of the Prevention of Drugs and Crime (UNODC), in its position paper on 'COVID-19 preparedness and responses in prisons', has emphasised that respecting the fundamental safeguards in the Mandela

²⁷⁴ ICCPR art 17.

²⁷⁵ ICCPR art 23.

²⁷⁶ UNCRC art 16; International Convention on Protection of the Rights of All Migrant Workers and Members of their Families, open for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) art 14; CRPD art 22.

²⁷⁷ Mandela Rules r 43.

²⁷⁸ Ibid.

²⁷⁹ Ibid r 58.

²⁸⁰ Ibid r 106.

²⁸¹ Body of Principles principle 15.

²⁸² Ibid principle 19.

²⁸³ HRTB COVID-19 Toolkit (n 14) 13-14.

Rules remains critical, calling on prisons to abstain from suspending family contacts altogether during the pandemic.²⁸⁴

Children's Rights and Deprivation of Liberty

International human rights law, notably the UNCRC, recognises that children are physically and psychologically vulnerable in different ways than adults, due to their vastly different stages of development.²⁸⁵ As the Committee on the Rights of the Child emphasises in General Comment 24, youth justice facilities must therefore be tailored to the needs of children, in order to prevent long-term harm and reoffending.²⁸⁶

Minimum requirements

In addition to human rights applicable to children and adults alike, and the rights in the UNCRC which apply to all children without discrimination, specific protections exist to safeguard the rights of children deprived of liberty. An important instrument in this regard is the 1990 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules).²⁸⁷

As the Havana Rules underline, all children deprived of liberty have the right to:²⁸⁸

- a) **Education:** 'education suited to his or her needs and abilities' and 'integrated with the education system of the country'.
- b) **Vocational training:** 'in occupations likely to prepare him or her for future employment'.
- c) **Exercise:** 'a suitable amount of time of daily free exercise, in open air whenever weather permits'.
- d) **Medical care:** 'adequate medical care, both preventive and remedial', including mental health care.
- e) **Religion:** allowing children to 'satisfy the needs of his or her religious and spiritual life', including attending services or meetings.
- f) **Communication:** 'communicat[ion] with their families, friends and other persons or

²⁸⁴ United Nations Office of Drugs and Crime, Position Paper: COVID-19 preparedness and responses in prisons (Position Paper, 31 March 2020) 3.

²⁸⁵ UNCRC, Preamble. See also UN Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019) [2] ('UNCRC General Comment No. 24').

²⁸⁶ UNCRC General Comment No. 24 [2]-[3].

²⁸⁷ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA Res. 45/I/13 (14 December 1990) ('Havana Rules').

²⁸⁸ Ibid [38]-[55].

representatives', including through regular visits, written communication or telephone.

Prohibition on solitary confinement

Importantly, the Committee on the Rights of the Child has stressed in General Comment 24 that a child must never be placed in *solitary confinement*.²⁸⁹ Rule 44 of the Mandela Rules defines solitary confinement as 'the confinement of prisoners for 22 hours or more a day without meaningful human contact'.²⁹⁰ 'Meaningful human contact' is not defined in the Mandela Rules. An expert group deliberating on the meaning of the Mandela Rules observed that it has been used to describe 'the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being'.²⁹¹ In order to be meaningful an interaction must involve direct human contact with no physical barriers and be 'more than fleeting or incidental' to enable 'empathetic interpersonal communication'.²⁹² It also must go beyond contact that is 'determined by prison routines, the course of (criminal) investigations or medical necessity'.²⁹³

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has confirmed that solitary confinement of children constitutes cruel, inhuman or degrading treatment or punishment.²⁹⁴

Safeguards

The Committee on the Rights of the Child has confirmed that separation (other than solitary confinement) is permissible but only for as little time as necessary and only as a last resort to the purpose of protecting the child or other persons.²⁹⁵ In such circumstances, separation must be closely supervised by staff and a record of the separation must be kept.²⁹⁶

²⁸⁹ UNCRC General Comment No. 24 [95h].

²⁹⁰ Mandela Rules r 44.

²⁹¹ Penal Reform International and Essex Human Rights Centre, 'Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules' (April 2016) 88 <<https://cdn.penalreform.org/wp-content/uploads/2016/10/Essex-3-paper.pdf>>.

²⁹² Ibid 88-89.

²⁹³ Ibid 89.

²⁹⁴ Juan E. Mendez, Special Rapporteur, Torture and other cruel, inhuman or degrading treatment or punishment, UN GAOR, 66th sess, Agenda Item 69(b) of the provisional agenda, UN Doc A/66/268 (5 August 2011) [77] <<http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>>.

²⁹⁵ UNCRC General Comment No. 24 [95h].

²⁹⁶ Ibid.

COVID-19

In a technical note on COVID-19 and children deprived of liberty, UNICEF and the Alliance for Child Protection in Humanitarian Action observe that the right to health of these children is at risk both from their heightened risk of contracting the virus in the closed environment, as well as from measures taken to prevent the spread of COVID-19, for example by limiting contact with families²⁹⁷. The technical note calls for States to prioritise alternative measures to deprivation of liberty and urgently release children '[w]here it is safe to do so and in consideration of the best interests of the child'.²⁹⁸ In instances where alternative measures are not available, it calls on States to ensure that minimum international standards for deprivation of liberty are respected, and provide access to basic necessities on an equal basis with children in the community.²⁹⁹

According to the technical note, children may only be isolated on the basis of 'medical necessity' based on a clinical decision.³⁰⁰ Solitary confinement may never be used on a child as noted above, not even for health reasons.³⁰¹ To protect the health of the child or other persons, isolation should be based at home or in a health facility.³⁰²

6.3 Domestic Law

COVID-19 Omnibus (Emergency Measures) Act 2020

On 23 April 2020, the Premier introduced the COVID-19 Omnibus (Emergency Measures) Bill to introduce temporary amendments to existing acts and allow for regulations that modify the operation of Victorian laws for the purpose of responding to the pandemic.³⁰³ The Omnibus Act came into effect on 24 April and has resulted in a number of changes to the Victorian legal framework.³⁰⁴ Among the changes introduced were amendments that affect prisoners and children in youth justice facilities.

²⁹⁷ UNICEF and Alliance for Child Protection in Humanitarian Action, 'Technical Note: COVID-19 and Children Deprived of their Liberty', 2-3 <https://alliancecpa.org/en/system/tdf/library/attachments/covid-19_and_children_deprived_of_their_liberty_v1_lowres_0.pdf?file=1&type=node&id=37576>.

²⁹⁸ Ibid 6.

²⁹⁹ Ibid 5.

³⁰⁰ Ibid 8.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Victorian Parliament, Statement of Compatibility, COVID-19 Omnibus (Emergency Measures) Bill 2020, 2 <https://www.parliament.vic.gov.au/images/COVID-19_Omnibus_Emergency_Measures_Bill_2020-stat_com-2nd_read.pdf> ('Omnibus Statement of Compatibility').

³⁰⁴ *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic) ('Omnibus Act').

Children, Youth and Families Act 2005

Notably, the Omnibus Act inserted new provisions into the *Children, Youth and Families Act 2005* (Vic) (CYF Act) regarding the isolation of children in youth justice facilities.³⁰⁵ Section 600M permits isolation of children in youth justice facilities for up to 14 consecutive days for the purpose of stopping the spread of COVID-19. The specific period of isolation is to be determined by the Secretary of the Department of Health and Human Services (DHHS), and these provisions permit isolation of a person even where they are not suspected of having COVID-19.³⁰⁶

The amendments add to existing isolation provisions in the CYF Act under s 488. However, this section only authorises isolation where the child is an ‘immediate’ threat to themselves, others, property or in the ‘interests of the security of the centre’.³⁰⁷ It must also be a measure of last resort.³⁰⁸ Section 600M does not limit the use of isolation to instances where there is an immediate threat and where it is a last resort.

Basic entitlements for children in isolation pursuant to s 600M include rights to daily outdoor exercise, receive visitors, have reasonable efforts made to accommodate their medical, religious and cultural needs, to receive information on the rules of the centre and on their rights, to make a complaint to the Secretary or Ombudsman and to be advised of these entitlements.³⁰⁹ However, the Secretary can choose to deny any of these entitlements, if the Secretary does not believe it is reasonably safe or reasonably possible to give effect to them, having regard to (broadly) the current COVID-19 advice, or the security interests of the youth justice facility. Children may therefore be at risk of losing fundamental rights, such as the right to daily outdoor recreational activities.

Corrections Act 1986

Amendments by the *Omnibus Act* to the *Corrections Act 1986* place restrictions on prison visits ‘for the safety, security and good order of a prison, or for the health and safety of any person’.³¹⁰

The amendments also allow the issuing of mandatory quarantine directions in corrections and youth justice custodial facilities to enable the testing, treatment, care and quarantine of prisoners and youth detainees.³¹¹ Mandatory quarantine of prisoners that enter the system is allowed for a period up to

³⁰⁵ *Children, Youth and Families Act 2005* (Vic) (‘CYF Act’).

³⁰⁶ *Ibid* s 600M.

³⁰⁷ *Ibid* s 488(7).

³⁰⁸ *Ibid* s 488(2).

³⁰⁹ *Ibid* s 600N.

³¹⁰ *Corrections Act 1986* (Vic) s 112G.

³¹¹ Omnibus Statement of Compatibility (n 304).

14 days in either a 'protective quarantine unit' or a separate cell.³¹² The amendments to the Act also gives power to the Secretary or Governor of a prison to order isolation, separation or quarantine for the purpose 'preventing, detecting or mitigating the risk of COVID-19' for as long as this is deemed necessary.³¹³

Before isolation, separation or quarantine is ordered in a prison, the Secretary or Governor must consider 'if reasonably practicable' any vulnerability of the person to be subjected to the order.³¹⁴ The Statement of Compatibility that accompanied the amendments in the *Omnibus Act* notes the need for consideration of disabilities, cultural background and medical or psychiatric conditions.³¹⁵

Victorian Charter

In the Statement of Compatibility that accompanied the Omnibus Bill, the Premier confirmed that he is satisfied that the Bill is compatible with the provisions in the Victorian Charter.³¹⁶

As noted in Part V above, the Charter incorporates a number of the rights protected under international law discussed above. This includes, for example, the right to health through the right to life under section 9 of the Charter. As the Premier underlines in the Statement of Compatibility, the Government's obligation to protect health and life extends to 'all persons in Victoria, including those in closed environments such as prisons...'.³¹⁷

6.4 Case study: Prisons and youth detention facilities and the COVID-19 response

Persons in closed environments are highly vulnerable in the COVID-19 pandemic. Indeed, the Australian government has identified prisoners and persons in youth detention facilities as among the highest risk groups for contracting the virus.³¹⁸ Contributory factors include lack of adequate sanitation and insufficient space to allow prisoners to physically distance from one another.³¹⁹ In addition, those

³¹² *Corrections Act 1986* (Vic) ss 112J-112K, 112M.

³¹³ *Ibid* s 112O.

³¹⁴ *Ibid* s 112K(4).

³¹⁵ Omnibus Statement of Compatibility 6 (n 304).

³¹⁶ *Ibid* 2.

³¹⁷ *Ibid*.

³¹⁸ Australian Government Department of Health, 'What you need to know about coronavirus (COVID-19)', Australian Government (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/what-you-need-to-know-about-coronavirus-covid-19#who-is-most-at-risk>>.

³¹⁹ United Nations, COVID-19 and Human Rights We are all in this together (April 2020) 12; Human Rights Law Centre, 'Explainer: Prisons and COVID-19' (Media Release, 2020) <<https://www.hrlc.org.au/prisons-and-covid19>>.

in prisons and juvenile detention often have pre-existing health concerns which can exacerbate the seriousness of illness if the novel coronavirus is contracted.³²⁰ Infection has the potential to spread widely and rapidly, with catastrophic and devastating impacts.³²¹ For these reasons, prisons and juvenile justice centres have been identified as tinderboxes for the virus.³²²

Correctional facilities in Victoria have responded to the threat of coronavirus by suspending visitation rights, isolating new inmates for 14 days, temperature checking staff, professional visitors and contractors.³²³ Corrections Victoria has also reported imposing physical distancing measures, mandating the use of personal protective equipment and improving sanitation in facilities. They have also imposed lockdowns of prisons where staff or inmate cases of COVID-19 are detected. The Victorian Government however has not arranged for the temporary or early release of inmates in response to COVID-19. Following the 'second wave' of coronavirus cases, and notwithstanding the above measures, there have been numerous reports of both inmates and prison staff testing positive to COVID-19 in Victorian prisons.³²⁴

Failure to release prisoners

The failure of the Victorian Government to facilitate the early or temporary release of vulnerable prisoners and juveniles in detention centres raises significant human rights concerns. The Victorian prison population is considerable, with an estimated 10,679 inmates across prisons and juvenile detention centres as at June 2020.³²⁵ Of these persons, 1,846 are aged under 25, while approximately 800 are Aboriginal and Torres Strait Islanders.³²⁶

As briefly discussed above, prisons have been identified as particularly vulnerable during the COVID-19 pandemic. This is firstly because there is a high risk of *infection*. Prisoners come and go into the

³²⁰ Luke Michael, 'Prison is the 'perfect breeding ground' for COVID-19, human rights groups warn', Probono Australia (Web Page, 3 April 2020) <<https://probonoaustralia.com.au/news/2020/04/prison-is-the-perfect-breeding-ground-for-covid-19-human-rights-groups-arn/#:~:text=%E2%80%9CThe%20very%20nature%20of%20prisons,wildfire%20throughout%20the%20prison%20system.%E2%80%9D>>.

³²¹ United Nations, 'UN rights chief urges quick action by governments to prevent devastating impact of COVID-19 in places of detention', United Nations (Web Page, 25 March 2020) <<https://news.un.org/en/story/2020/03/1060252>>.

³²² Kriti Sharma, 'Coronavirus is a Ticking Time Bomb for Australia's Prisons', Human Rights Watch (Web Page, 16 April 2020) <<https://www.hrw.org/news/2020/04/16/coronavirus-ticking-time-bomb-australias-prisons>>.

³²³ Victorian Department of Corrections, Prisons and Parole, 'Our response to coronavirus (COVID-19)', Victorian State Government (Web page, 2 August 2020) <<https://www.corrections.vic.gov.au/covid19#update10>> ('COVID-19 Response').

³²⁴ Ibid.

³²⁵ Victorian Department of Corrections, Prisons and Parole, 'Monthly prisoner and offender statistics 2019-20', Victorian State Government (Web Page, 2020) <<https://www.corrections.vic.gov.au/monthly-prisoner-and-offender-statistics-2019-20>>.

³²⁶ Ibid.

community, where as we have seen during the second wave of COVID-19, hundreds of new cases are being identified each day.³²⁷ Further, there is a likelihood that if cases do emerge within prisons, they will *spread quickly and rapidly*. Overcrowding makes it difficult for prisoners to physically distance themselves from one another, and isolate themselves where necessary.³²⁸ It should be noted that while prisons are making efforts to isolate prisoners with symptoms, this process is complicated by the fact that individuals can be asymptomatic, even when they do have the virus.³²⁹ In addition, prisoners typically have pre-existing vulnerabilities and health concerns that can both increase their risk of contracting the virus, as well as *exacerbate the seriousness of the illness* thereafter.³³⁰ Particularly vulnerable groups within prisons include Aboriginal and Torres Strait Islanders, the elderly, and those with disability and chronic illness.³³¹

For the above reasons, the UN, along with various other advocacy groups and community organisations have called for the release of vulnerable prisoners to minimise the risks to their health and wellbeing.³³² The UN has specifically pushed for States to seek non-custodial alternatives, arrange the early or temporary release of vulnerable inmates, including minors and juveniles, pregnant women, inmates with disabilities and chronic illness, and prisoners who are low-risk or nearing the end of their sentence.³³³ The United Nations International Children’s Fund (UNICEF) has also called for

³²⁷ Lesley Russell, ‘Why prisons in Victoria are locked up and locked down’, *The Conversation* (online, 23 July 2020) <<https://theconversation.com/why-prisons-in-victoria-are-locked-up-and-locked-down-143178>>.

³²⁸ Ibid; Christopher Knaus, ‘Security at risk as number of prisoners jumps by 40%, leaving cells overcrowded’, *The Guardian* (online, 24 May 2019) <<https://www.theguardian.com/australia-news/2019/may/24/security-at-risk-as-number-of-prisoners-jumps-by-40-leaving-cells-overcrowded>>.

³²⁹ Victorian Department of Corrections, Prisons and Parole, COVID-19 Response (n323); Australian Government Department of Health, Novel coronavirus (2019-nCoV) (Factsheet, 2020) <<https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>>.

³³⁰ Australian Institute of Health and Welfare, *The health of Australia’s prisoners* (Report, 2018) <<https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>>.

³³¹ Victorian Department of Health and Human Services, ‘Coronavirus (COVID-19) information for Aboriginal and Torres Strait Islander communities’, Victorian State Government (Web Page, 2020) <<https://www.dhhs.vic.gov.au/coronavirus-information-aboriginal-and-torres-strait-islander-communities>>; Australian Government Department of Health, ‘Coronavirus (COVID-19) advice for older people’, Australian Department of Health (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19/coronavirus-covid-19-advice-for-older-people>>; Australian Government Department of Health ‘Coronavirus (COVID-19) advice for people with disability’, Australian Government (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19/coronavirus-covid-19-advice-for-people-with-disability>>; Australian Government Department of Health, ‘Coronavirus (COVID-19) advice for people with chronic health conditions’, Australian Government (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/nov-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19/coronavirus-covid-19-advice-for-people-with-chronic-health-conditions>>.

³³² Human Rights Law Centre, *Explainer: COVID-19 and Prisons* (n 319).

³³³ Ibid.

governments to release all children ‘who can safely return to their families or an appropriate alternative’ from detention during the COVID-19 pandemic.³³⁴

Notwithstanding the heightened risk to persons within prisons and juvenile justice centres, the Premier has stated that he does not consider that alternatives, such as release from youth justice facilities, are ‘reasonably available’, opting instead for measures which minimise prisoner contact with the community and extended isolation for new inmates.³³⁵ Despite these efforts however, 11 prisoners within 6 different prisons in the state have tested positive for COVID-19 according to the latest reports.³³⁶ This has prompted prisons to institute harsh and prolonged lockdowns, which see prisoners in their cells for up to 24 hours per day.³³⁷

This inaction has serious implications for the rights to life and health. As noted above, the right to life is protected under article 6 of the ICCPR, and it is also protected in Victoria under section 9 of the *Victorian Charter*. The need for States not only to refrain from unlawfully taking life but to take positive steps to protect life as discussed above is of particular relevance with regard to infectious diseases. Given the clear risks that COVID-19 poses to the lives of vulnerable prisoners in State care, the failure to release vulnerable prisoners (where possible and appropriate) is at odds with the positive obligations under the right to life.

In addition, as examined above, the right to health under article 12 of the ICESCR protects the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.³³⁸ This right extends to those deprived of their liberty.³³⁹ The UN has recognised that the right to health is closely linked with the right to life.³⁴⁰ The UN HRC has expressly stated that ‘[d]anger to the health and lives of detainees as a result of the spread of contagious diseases . . . amounts to a violation of article 10 of the Covenant [on rights of those deprived of their liberty] and may also include a violation of articles 9 and 6’ (rights to health and life).³⁴¹ While the right to health is not included in the Victorian

³³⁴ Henrietta Fore, ‘Children in detention are at heightened risk of contracting COVID-19 and should be released’, United Nations International Children’s Fund (Web Page, 13 April 2020) <<https://www.unicef.org/press-releases/children-detention-are-heightened-risk-contracting-covid-19-and-should-be-released>>.

³³⁵ Omnibus Statement of Compatibility 13 (n 304).

³³⁶ Jessica Longbottom, ‘Pressure mounts for release of low-risk inmates due to coronavirus in Victorian prisons’, ABC News (online, 24 July 2020) <<https://www.abc.net.au/news/2020-07-24/coronavirus-push-to-release-low-risk-victorian-prisoners/12489722>> (‘Pressure mounts for prisoner release’); Elias Visontay, ‘Six Victorian prisons in Covid-19 lockdown as lawyers call for low-risk inmates to be released’, The Guardian (online, 21 July 2020) <<https://www.theguardian.com/australia-news/2020/jul/21/six-victorian-prisons-in-covid-19-lockdown-as-lawyers-call-for-low-risk-inmates-to-be-released>>.

³³⁷ Ibid.

³³⁸ ICESCR art 12.

³³⁹ CESCR General Comment No. 14 (n 83) [1].

³⁴⁰ Ibid.

³⁴¹ Lynn-Sophie Temp, Coronavirus and the Right to Health of Prisoners (n 271).

Charter, the right to health is inextricably linked to the right to life, and so too obtains protection through section 9 of the Charter. As noted by the Premier in the Statement of Compatibility that accompanied the Omnibus Bill, the Government is therefore obliged to ‘use all means necessary to protect the health and life of all persons in Victoria, including those in closed environments such as prisons’.³⁴² Again, due to the serious risk that COVID-19 presents to the health and wellbeing of vulnerable prisoners, a failure to take appropriate steps to release, where possible and appropriate, vulnerable persons within Victorian prisons presents serious human rights concerns.

As regards the early release of juvenile offenders, the Statement of Compatibility that accompanied the Omnibus Bill did not appropriately address the above concerns, only stating that ‘reducing the number of persons in youth justice facilities’ did not seem ‘reasonably available or sufficient to effectively respond to a potential COVID-19 outbreak in a facility or to reduce any resultant transmission from a facility to the Victorian community’.³⁴³

We recognise that the reluctance on part of the Victorian government to release children from youth justice facilities may be linked to an inability of the State to guarantee adequate care arrangements for these children upon release.³⁴⁴ We emphasise, however, that this is not sufficient reason to justify inaction given the clear threat to the life and health of juveniles in detention centres. Instead, we emphasise the need for the Victorian Government to engage with child protection services, communities and child rights organisations to develop adequate care arrangements for children released (be it early or on a temporary basis) due to the threat of COVID-19.

Isolation provisions

Isolation of prisoners and children in youth detention facilities under new or existing legislative provisions raise a number of issues relating to the rights discussed above. For example, it raises concerns around the right to privacy and family life through limited contact with family, as well as issues relating to the right to physical and mental health as a result of isolation away from other persons. With the exception of solitary confinement (which is prohibited against children under international law), to comply with international law, minimum standards and safeguards must be in place in respect of all instances of deprivation of liberty, including isolation. For example, isolation must be a measure of last resort.

Even prior to the new COVID-19 provisions on the isolation of children under the *CYF Act*, reports from investigations into the use of isolation in Victorian youth justice facilities found that minimum entitlements and safeguards under s 488 of the *CYF Act* are not always complied with by staff at youth

³⁴² Omnibus Statement of Compatibility 2 (n 304).

³⁴³ Ibid 13.

³⁴⁴ Ibid.

justice facilities.³⁴⁵ For example, the Victorian Commission on Children and Young People found that isolation was excessively relied upon in youth justice facilities as a behavioural management tool, rather than an option of last resort.³⁴⁶ The Commission stated that staff were not clear on the dangers of isolation, the circumstances in which it should, and indeed *should not* be used, as well as when a child should be removed from isolation. The report also identified instances where children were kept in isolation for over 24 hours without proper authorisation.³⁴⁷ In addition, where isolation measures were utilised in youth justice facilities, the Commission found that Indigenous children were more frequently isolated than non-Indigenous children.³⁴⁸

While the Department of Justice and Community Safety (DJCS) and the DHHS sought to improve training for youth justice facilities officers on isolation and its serious potential harms, the Victorian Ombudsman concluded in its 2019 report that in spite of the initiatives taken, many of the same concerns remained.³⁴⁹ The lack of progress in remedying their observations give rise to concerns that the new COVID-19 isolation provisions under the *CYF Act* will similarly not be used in line with international standards and safeguards, and may run the risk of amounting to solitary confinement contrary to international law.

The Statement of Compatibility accompanying the *Omnibus Act* (inserting the new isolation provisions in the *CYF Act*) concluded that isolation under the new COVID-19 provisions did not constitute cruel, inhuman or degrading treatment or punishment under the Victorian Charter as they did not amount to ‘deliberate mistreatment’ and their purpose was ‘protective rather than punitive’.³⁵⁰ However, as the Government notes in its ‘Charter Guidelines’, it is not relevant for any cruel, inhuman or degrading treatment to have been *intentionally* inflicted.³⁵¹ Further, both ‘treatment’ and ‘punishment’ are prohibited, not solely treatment that is punitive.³⁵² This aligns with the prohibition on cruel, inhuman and degrading treatment or punishment under international human rights law.

³⁴⁵ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017) <<https://ccyp.vic.gov.au/assets/Publications-inquiries/The-Same-Four-Walls1.pdf>>.

³⁴⁶ *Ibid* 48.

³⁴⁷ *Ibid* 52.

³⁴⁸ *Ibid* 56.

³⁴⁹ Victorian Ombudsman, *OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people* (September 2019) <<https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/OPCAT-in-Victoria-A-thematic-investigation-of-practices-related-to-solitary--September-2019.pdf?mtime=20191216123911>>.

³⁵⁰ *Omnibus Statement of Compatibility 12* (n 202).

³⁵¹ Victorian Department of Justice, *Charter of Human Rights and Responsibilities: Guidelines for Legislation and Policy Officers in Victoria* (2008) 67 <https://www.justice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2020/06/14/e4712838a/CharterActGuidelinesPart1.pdf>.

³⁵² *Ibid*.

Restricting visits / Interference with family

As noted above, the COVID-19 pandemic has seen the Victorian Government suspend visitation rights for prisoners. Corrections Victoria emphasised that the decision was made to ensure the health, safety and security of prison communities around the State.³⁵³ While Correctional facilities have sought to increase phone access, encourage letter writing and utilise technology to facilitate communication with family and friends, the imposition of this measure still raises issues important human rights concerns.³⁵⁴

The Statement of Compatibility that accompanied the Omnibus Bill does acknowledge that changes to contact allowed with prisons have the potential to interfere with the rights to privacy and family as restricting or prohibiting visitors will limit the ability of a prisoner to interact with their family and children.³⁵⁵ The Government has stated that this is ‘mitigated to some extent’ by the provision of other non-physical forms of communication, and is therefore justified and proportionate as no less restrictive means are available.³⁵⁶

We recognise that the right to privacy and family may be limited in a public health emergency, and that as such physical contact must be minimised temporarily. Importantly however, alternative methods of communication do not necessarily equate to sufficient or indeed *meaningful* contact with family. For example, reports have emerged of calls to family being infrequent, even for juvenile detainees, particularly in the prisons that have imposed a ‘lockdown’ in response to positive COVID-19 cases.³⁵⁷ The Government must therefore go further to ensure that alternative communication is *properly managed*, especially where prisons are locked down for extended periods, in order to adhere to the requirements of the Mandela Rules and Body of Principles, as well as the UN’s COVID-19-specific guidance on limiting interference with family in the pandemic.

Conclusion

We recognise that the Victorian Government has sought to respond to COVID-19 by imposing a number of restrictions *within* correctional facilities. These include limiting contact between correctional facilities and the broader community. We commend the efforts of Corrections Victoria to provide alternative avenues for communication to prisoners isolated from their families through increased access to telephone and digital alternatives. We also note that, as in the outside community, where persons are infected with coronavirus, isolation may be necessary for some individuals.

³⁵³ Victorian Department of Corrections, Prisons and Parole, COVID-19 Response (n 323).

³⁵⁴ Ibid.

³⁵⁵ Omnibus Statement of Compatibility (n 202).

³⁵⁶ Ibid.

³⁵⁷ Jessica Longbottom, Pressure mounts for prisoner release (n 336).

Nonetheless, we underline that the interests of the broader public must be *appropriately balanced* with those of persons within correctional facilities, and must comply with limitations principles under human rights law. We emphasise that the deprivation of liberty necessarily requires a heightened duty of care from the Government to persons directly under their care. We also emphasise the need for the Government to provide special protection to vulnerable persons during COVID-19. Therefore, the unique vulnerabilities of prisoners, particularly those who are juveniles, Indigenous, older persons, persons with disabilities and those with chronic pre-existing illness, must be acknowledged and addressed in the Government's response to the pandemic.

We therefore emphasise that in order to respect the rights to liberty and security, life, health, privacy and respect for family, as well as the rights of children, the approach to, and management of COVID-19 initiatives in closed environments requires improvement. This means, where possible and practicable, arrangements must be made for the temporary or early release of vulnerable prisoners, including juveniles. Further, it requires strictly regulated use of isolation, particularly where children are involved. In addition, the alternatives to visitation must be appropriately managed to ensure *meaningful* contact with family.

PART VII: CONCLUSION AND KEY RECOMMENDATIONS

We began our submission by setting out why human rights matter in the context of COVID-19. On the one hand, human rights impose obligations upon governments to respect, protect and fulfil the rights to life and health of every person in the community without discrimination. On the other hand, meeting these obligations must not unreasonably or unjustifiably limit other human rights, such as the rights to privacy and peaceful assembly. This equation is one which international human rights law allows for given that most human rights are not absolute.

Further, good governance may suggest, or even require, that some human rights are limited for important public purposes, generally and in the COVID-19 situation. However, any limitations must be strictly justified, subject to the limitations principles we discussed in Part III: legality, necessity, legitimate purpose, proportionality and non-discrimination. As our case studies in Parts IV-VI demonstrate, regardless of whether or not a measure is necessary and proportionate, Victorians from some of the most marginalised groups in our community have experienced significant adverse impact on human rights, which must be at the centre of the examination of COVID-19 responses *ex post facto*, and importantly, prior to any further restrictions in response to COVID-19.

Key recommendations

The Castan Centre calls on the Public Accounts and Estimates Committee to recommend that the Victorian Government **ensure a human rights-based approach in responses to COVID-19**.

More specifically and as illustrated in our submission, this requires that the Victorian Government:

- 1. *Leave no one behind:*** All individuals and groups in Victoria must be included in COVID-19 response measures, vulnerable groups must not be left behind or experience particular disadvantage due to underlying and systemic inequalities compounded by COVID-19.
- 2. *Include focus on social policy and action:*** Social policy and action must accompany economic recovery measures in order to recognise the impact that COVID-19 has on people, particularly vulnerable groups.
- 3. *Ensure community participation:*** Measures taken to respond to COVID-19 must include mechanisms that ensure and enable community participation in policy development and implementation.
- 4. *Strengthen human rights scrutiny and parliamentary oversight:*** Human rights scrutiny and parliamentary oversight mechanisms must be strengthened, in Victoria as well as at the federal and other state and territory levels, particularly in respect of delegated legislation, such as the directions and orders made in response to COVID-19.
- 5. *Allow for protest that complies with social distancing:*** Where the health evidence allows gatherings of groups, laws can and should be calibrated to allow for protest as a reason to leave home if participants observe any applicable social distancing laws.

- 6. *Ensure ongoing support and housing for the homeless:*** Homelessness does not cease to matter at the end of the pandemic. The Government must therefore develop appropriate, comprehensive and sustainable strategies to permanently house and support the homeless in the long-term.

- 7. *Protect the rights of those deprived of their liberty:*** Persons do not relinquish their human rights upon incarceration and deserve continued protection from the Victorian Government. COVID-19 measures, including restricted visitation, and the use of isolation must be strictly regulated and carefully monitored to ensure compliance with international law.

- 8. *Facilitate early or temporary release for vulnerable and at-risk prisoners:*** Vulnerable and at-risk groups include, for example, minors, the elderly, Aboriginal and Torres Strait Islanders, persons with disability and pre-existing and chronic health conditions.

BIBLIOGRAPHY

A Articles/Books/Reports

Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017) <<https://ccyp.vic.gov.au/assets/Publications-inquiries/The-Same-Four-Walls1.pdf>>

Davies, Andrew and Lisa J Wood, 'Homeless Healthcare' (2018) 209 (5) *Medical Journal of Australia* 230

Victorian Department of Justice, *Charter of Human Rights and Responsibilities: Guidelines for Legislation and Policy Officers in Victoria* (2008) 67
<https://www.justice.vic.gov.au/sites/default/files/embriidge_cache/emshare/original/public/2020/06/14/e4712838a/CharterActGuidelinesPart1.pdf>

Farha, Leilani Special Rapporteur, 'COVID Guidance Note: Protecting Those Living in Homelessness', Office of the High Commissioner for Human Rights (Document, 28 April 2020) <https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID19_guidance_homeless.pdf>

Muir, Kristy et al, *Amplify Insights: Housing Affordability & Homelessness*. Centre for Social Impact (2018)

Penal Reform International and Essex Human Rights Centre, 'Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules' (April 2016) 88
<<https://cdn.penalreform.org/wp-content/uploads/2016/10/Essex-3-paper.pdf>>

UNICEF and Alliance for Child Protection in Humanitarian Action, 'Technical Note: COVID-19 and Children Deprived of their Liberty', 2-3 <https://alliancecpha.org/en/system/tdf/library/attachments/covid-19_and_children_deprived_of_their_liberty_v1_lowres_0.pdf?file=1&type=node&id=37576>

United Nations, COVID-19 and Human Rights: We are All in This Together (Report, April 2020)
<https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf>

United Nations Economic and Social Council, Commission for Social Development, *Affordable Housing and Social Protection Systems for all to Address Homelessness: Report of the Secretary-General*, UN ESCOR, 58th sess, Agenda Item 3(a) of the provisional agenda, UN Doc E/CN.5/2020/3 (10-19 February 2020)

United Nations Economic and Social Council, Commission for Social Development, *Homelessness: A Prominent Sign of Social Inequalities*, 58th sess (10-19 February 2020)

United Nations Human Rights Treaties Branch, Internal HRTB Toolkit of Treaty Law Perspectives and Jurisprudence in the Context of COVID-19 (Report, May 2020) <https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf>

United Nations Office of Drugs and Crime, Position Paper: COVID-19 preparedness and responses in prisons (Position Paper, 31 March 2020)

United Nations Office of the High Commissioner for Human Rights, Compilation of Statement by Human Rights Treaty Bodies in the Context of COVID-19 (Report, 19 June 2020) <https://www.ohchr.org/Documents/HRBodies/TB/COVID19/External_TB_statements_COVID-19_19jun20.pdf>

Victorian Department of Health and Human Services, Victorian Homelessness 2020 Strategy (2010)

Victorian Ombudsman, OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people (September 2019) <<https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/OPCAT-in-Victoria-A-thematic-investigation-of-practices-related-to-solitary--September-2019.pdf?mtime=20191216123911>>

Wood, Lisa, Andrew Davies and Zana Khan, 'COVID-19 precautions – easier said than done when patients are homeless' (2020) 212 (8) *Medical Journal of Australia* 384

B Cases

Australian Capital Television Pty Ltd & New South Wales v Commonwealth [1992] HCA 45

Commissioner of Police v Bassi [2020] NSWSC 710

Commissioner of Police v Gray [2020] NSWSC 867

Commissioner of Police (NSW) v Supple [2020] NSWSC 727

Lange v Australian Broadcasting Corporation [1997] HCA 25

Muldoon v Melbourne City Council [2013] FCA 994

Nationwide News Pty Ltd v Wills [1992] HCA 46

Raul Bassi v Commissioner of Police (NSW) [2020] NSWCA 109

Victoria Police v Anderson and Ors (Criminal) [2012] VMC 22

C Legislation

Commonwealth Constitution

Charter of Human Rights and Responsibilities Act 2006 (Vic)

Children, Youth and Families Act 2005 (Vic)

Corrections Act 1986 (Vic)

COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic)

Equal Opportunity Act 2010 (Vic)

Human Rights Act 2004 (ACT)

Human Rights Act 2019 (Qld)

Public Health and Wellbeing Act 2008 (Vic)

Summary Offences Act 1966 (Vic)

Victorian Deputy Chief Health Officer, *Detention Directions (130 Racecourse Road, Flemington)* (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (9 Pampas Street, North Melbourne)*, (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (159 Melrose Street, North Melbourne)*, (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (76 Canning Street, North Melbourne)*, (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (126 Racecourse Road, Flemington)*, (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (120 Racecourse Road, Flemington)*, (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (33 Alfred Street, North Melbourne)*, (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (12 Sutton Street, North Melbourne)*, (4 July 2020)

Victorian Deputy Chief Health Officer, *Detention Directions (12 Holland Court, Flemington)*, (4 July 2020)

D Treaties

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008)

International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)

International Convention on Protection of the Rights of All Migrant Workers and Members of their Families, open for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

United Nations Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

E Other

Andrews, Daniel, Premier, 'Enforced Quarantine for Returned Travellers to Combat Coronavirus' (Media Release, 27 March 2020) <<https://www.premier.vic.gov.au/enforced-quarantine-for-returned-travellers-to-combat-coronavirus/>>

Andrews, Daniel, Premier, 'Statement From The Premier' (Media Release, 4 July 2020) <<https://www.premier.vic.gov.au/statement-from-the-premier-48/>>

Andrews, Daniel, Premier, 'Supporting Tenants And Landlords Through Coronavirus' (Media Release, 15 April 2020) <<https://www.premier.vic.gov.au/supporting-tenants-and-landlords-through-coronavirus/>>

Australian Government Department of Health, 'Coronavirus (COVID-19) advice for people with chronic health conditions', *Australian Government* (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/nov-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19/coronavirus-covid-19-advice-for-people-with-chronic-health-conditions>>

Australian Government Department of Health 'Coronavirus (COVID-19) advice for people with disability', *Australian Government* (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19/coronavirus-covid-19-advice-for-people-with-disability>>

Australian Government Department of Health, 'Coronavirus (COVID-19) advice for older people', *Australian Department of Health* (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/advice-for-people-at-risk-of-coronavirus-covid-19/coronavirus-covid-19-advice-for-older-people>>

Australian Government Department of Health, *Novel coronavirus (2019-nCoV)* (Factsheet, 2020) <<https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>>

Australian Government Department of Health, 'What you need to know about coronavirus (COVID-19)', *Australian Government* (Web Page, 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/what-you-need-to-know-about-coronavirus-covid-19#who-is-most-at-risk>>

Australian Government, Attorney-General's Department, 'Absolute Rights', *Attorney-General's Department* (Web Page, 2020) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/absolute-rights>>

Australian Human Rights Commission, 'Homelessness is a Human Rights Issue (2008)', *Australian Human Rights Commission* (Web Page, 2008) <<https://humanrights.gov.au/our-work/homelessness-human-rights-issue-2008#fnB29>>

Australian Institute of Health and Welfare, *The health of Australia's prisoners* (Report, 2018) <<https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>>

Australian Law Council, 'Australia's International Human Rights Obligations', *Australian Law Council* (Web Page, 2020) <<https://www.lawcouncil.asn.au/policy-agenda/human-rights/australias-international-human-rights-obligations>>

Bachelet, Michele, United Nations High Commissioner for Human Rights, 'COVID is "a colossal test of leadership" requiring coordinated action, High Commissioner tells Human Rights Council', *Office of the High Commissioner for Human Rights* (Web Page, 9 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E>>

Beers, Lucy Mae, 'Victoria coronavirus public housing lockdown causes food delivery anger', *7 News* (online, 6 July 2020) <<https://7news.com.au/lifestyle/health-wellbeing/victoria-coronavirus-public-housing-lockdown-causes-food-delivery-anger-c-1146592>>

Bell, The Hon Kevin 'Protecting public housing tenants in Australia from forced eviction: the fundamental importance of the human right to adequate housing and home' (Speech, Monash University Costello Lecture, 18 September 2012) <<http://www.nwhn.net.au/admin/file/content2/c7/Justice%20Kevin%20Bell%20-%20Costello%20Lecture%20-%20September%202012.pdf>>

Bell, The Hon Kevin and Steven Roberts, 'The COVID-19 pandemic opens the door to solving the homelessness problem', *Monash Lens* (Blog, 05 August 2020) <<https://lens.monash.edu/2020/08/05/1381002/covid-19-pandemic-opens-the-door-to-solving-homelessness-problem>>

Bentley, Rebecca and Erika Martino, 'Overcrowding and affordability stress: Melbourne's COVID-19 hotspots are also housing crisis hotspot', *The Conversation* (online, 29 June 2020) <<https://theconversation.com/overcrowding-and-affordability-stress-melbournes-covid-19-hotspots-are-also-housing-crisis-hotspots-141381>>

Blakkarly, Jarni 'Melbourne refugee protesters fined \$43,000 for breaching coronavirus rules', *SBS News* (online, 11 April 2020) <<https://www.sbs.com.au/news/melbourne-refugee-protesters-fined-43-000-for-breaching-coronavirus-rules>>

Bosley, Matilda, 'Residents in Melbourne Covid-19 tower lockdown say food supplies have been inadequate', *The Guardian* (online, 6 July 2020) <<https://www.theguardian.com/world/2020/jul/06/residents-melbourne-covid-19-tower-lockdown-food-supplies-inadequate>>

Bosley, Matilda and Luke Henriques-Gomes, 'It sucks': Homeless Victorians Asked to Help Pay for Lockdown Hotels', *The Guardian* (online, 28 May 2020) <<https://www.theguardian.com/australia-news/2020/may/28/it-sucks-homeless-victorians-asked-to-help-pay-for-lockdown-hotels>>

Carrasco, Sandra, Majdi Faleh and Neeraj Dangol, 'Our lives matter – Melbourne public housing residents talk about why COVID-19 hits them hard', *The Conversation* (online, 14 July 2020) <<https://theconversation.com/our-lives-matter-melbourne-public-housing-residents-talk-about-why-covid-19-hits-them-hard-142901>>

Clayton, Rachel 'Melbourne residents in coronavirus hard lockdown fear for health impacts in public housing towers', *ABC News* (online, 7 July 2020) <<https://www.abc.net.au/news/2020-07-07/health-concerns-rise-in-coronavirus-melbourne-tower-lockdown/12427940>>

Cogan, Maggie, 'Community sector rallies around residents in hard lock down', *Probono Australia* (online, 6 July 2020) <<https://probonoaustralia.com.au/news/2020/07/community-sector-rallies-around-residents-in-hard-lock-down/>>

'Coronavirus forces lockdown of Melbourne public housing towers in 3051 and 3031 postcodes. This is what that means for the residents', *ABC News* (online, 4 July 2020) <<https://www.abc.net.au/news/2020-07-04/coronavirus-victoria-melbourne-public-housing-estates-lockdown/12423042>>

Dexter, Rachael and Melissa Cunningham, 'We are prisoners': Fenced exercise yards at lockdown tower slammed', *The Age* (online, 12 July 2020) <<https://www.theage.com.au/national/victoria/we-are-prisoners-fenced-exercise-yards-at-lockdown-tower-slammed-20200712-p55bbb.html>>

Eddie, Rachel, Bianca Hall, Clay Lucas, Nicole Precel, 'You couldn't eat it': Food for tower residents left in corridors as deliveries delayed', *The Age* (online 6 July 2020) <<https://www.theage.com.au/national/victoria/you-couldn-t-eat-it-food-for-tower-residents-left-in-corridors-as-deliveries-delayed-20200706-p559h6.html>>

Farha, Leilani, Special Rapporteur, "'Housing, the Frontline Defence Against the COVID-19 Outbreak" says UN Expert', *United Nations Office of the High Commissioner for Human Rights* (Web page, 18 March 2020) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>>

Fang, Jason, Tahlea Aualiitia, Erwin Renaldi and Bang Xiao, 'Melbourne public housing residents welcome coronavirus lockdown, but voice concerns', *ABC News* (online, 6 July 2020) <<https://www.abc.net.au/news/2020-07-06/communities-react-to-being-locked-down-melbourne-towers/12425968>>

Federman, Josef 'Israeli demonstrators find ways to protest in virus era', *PBS News* (online, 30 April 2020) <<https://www.pbs.org/newshour/world/israeli-demonstrators-find-ways-to-protest-in-virus-era>>

Fitz-Gibbon, Kate and Silke Meyer, 'The COVID-19 pandemic opens the door to solving the homelessness problem', *Monash Lens* (Blog, 18 March 2020) <<https://lens.monash.edu/2020/08/05/1381002/covid-19-pandemic-opens-the-door-to-solving-homelessness-problem>>

Flores, Catalina, 'Concerns for Australia's homeless community as coronavirus continues to spread', *SBS News* (online, 21 March 2020) <<https://www.sbs.com.au/news/concerns-for-australia-s-homeless-community-as-coronavirus-continues-to-spread>>

Fore, Henrietta, 'Children in detention are at heightened risk of contracting COVID-19 and should be released', *United Nations International Children's Fund* (Web Page, 13 April 2020) <<https://www.unicef.org/press-releases/children-detention-are-heightened-risk-contracting-covid-19-and-should-be-released>>

Gearin, Mary, 'Uncertainty looms for homeless Victorians in hotel accommodation during coronavirus crisis', *ABC News* (online, 17 July 2020) <<https://www.abc.net.au/news/2020-07-17/coronavirus-uncertainty-for-homeless-victorians-put-up-in-hotels/12464818>>

'Ham-fisted' lockdown of nine Melbourne public housing towers, some without confirmed COVID-19 cases, criticised', *SBS News* (online, 6 July 2020) <<https://www.sbs.com.au/news/ham-fisted-lockdown-of-nine-melbourne-public-housing-towers-some-without-confirmed-covid-19-cases-criticised>>

Housing Victoria, 'Coronavirus (COVID-19) rent relief grant', *Victorian State Government* (Web Page, 15 July 2020) <<https://www.housing.vic.gov.au/help-renting/rentrelief>>

Human Rights Law Centre, 'Explainer: Prisons and COVID-19' *Human Rights Law Centre* (Media Release, 2020) <<https://www.hrlc.org.au/prisons-and-covid19>>

Human Rights Law Centre, 'Victorian Government must provide public health response to pandemic, end discriminatory measures and withdraw hundreds of police from public housing', *Human Rights Law Centre* (Web Page, 8 July 2020) <<https://www.hrlc.org.au/news/2020/7/8/victorian-government-must-provide-public-health-response-to-pandemic-end-discriminatory-measures-and-withdraw-hundreds-of-police-from-public-housing>>

International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (22 - 26 January 1997)

Janda, Michaela, 'Victorian jobs hit from renewed coronavirus lockdown highlights second wave economic risks', *ABC News* (online, 28 July 2020) <<https://www.abc.net.au/news/2020-07-28/victoria-highlights-jobs-hit-from-second-lockdown/12499044>>

Kelly, Anthony, 'The Hard Lockdown of the Public Housing Hi-Rise: Our Statement', *Flemington & Kensington Community Legal Centre* (online, 4 July 2020) <<https://flemkenlegal.org/latest-news/2020/7/4/our-statement-on-the-hard-lockdown-of-the-public-housing-hi-rise>>

Kelly, David, Kate Shaw and Libby Porter, 'Melbourne tower lockdowns unfairly target already vulnerable public housing residents', *The Conversation* (online, 6 July 2020) <<https://theconversation.com/melbourne-tower-lockdowns-unfairly-target-already-vulnerable-public-housing-residents-142041>>

Khadem, Nasseem, 'Coronavirus recession puts thousands of refugees and asylum seekers at risk of job loss, homelessness', *ABC News* (online 30 July 2020) <<https://www.abc.net.au/news/2020-07-30/coronavirus-recession-refugees-asylum-seekers-at-risk-homeless/12503874>>.

Knaus, Christopher 'Security at risk as number of prisoners jumps by 40%, leaving cells overcrowded', *The Guardian* (online, 24 May 2019) <<https://www.theguardian.com/australia-news/2019/may/24/security-at-risk-as-number-of-prisoners-jumps-by-40-leaving-cells-overcrowded>>\

Knight, Ben, 'Coronavirus Hotel Housing for Victoria's Homeless Gets Extension Amid Calls to Make it Permanent', *ABC News* (online, 28 July 2020) <<https://www.abc.net.au/news/2020-07-28/coronavirus-hotel-plan-for-homeless-to-be-extended-in-victoria/12498750>>

Kwan, Biwa, Camille Bianchi and Rachel Cary, 'It's horrific': Residents of Melbourne's locked-down towers are struggling to receive essential supplies', *SBS News* (online, 6 July 2020) <<https://www.sbs.com.au/news/it-s-horrific-residents-of-melbourne-s-locked-down-towers-are-struggling-to-receive-essential-supplies>>

Longbottom, Jessica, 'Pressure mounts for release of low-risk inmates due to coronavirus in Victorian prisons', *ABC News* (online, 24 July 2020) <<https://www.abc.net.au/news/2020-07-24/coronavirus-push-to-release-low-risk-victorian-prisoners/12489722>>

Melbourne Activist Legal Support, 'Statement of Concern: Unique protest squashed by police due to COVID restrictions', Melbourne Activist Legal Support (Web page, 4 April 2020) <<https://melbactivistlegal.org.au/2020/04/04/statement-of-concern-unique-protest-squashed-by-police-due-to-covid-restrictions/?fbclid=IwAR2HMjGNgAAGb8TY0qZ01a1vAFoDJbtYrRk2VAmATSI-f5tRwti1ySQVoKI>>

Murphy-Oates, Laura, 'Inside the Covid-19 hard lockdown of Melbourne's public housing towers', *The Guardian* (online, 7 July 2020) <<https://www.theguardian.com/australianews/audio/2020/jul/07/inside-hard-lockdown-of-melbourne-public-housing-towers>>

Murray-Atfield, Yara, 'Melbourne public housing tower resident says community is being 'treated like criminals' amid coronavirus lockdown', *ABC News* (online, 5 July 2020) <<https://www.abc.net.au/news/2020-07-05/coronavirus-lockdown-melbourne-public-housing-residents-speak/12423170>>

Michael, Luke, 'Prison is the 'perfect breeding ground' for COVID-19, human rights groups warn', *Probono Australia* (Web Page, 3 April 2020) <<https://probonoaustralia.com.au/news/2020/04/prison-is-the-perfect-breeding-ground-for-covid-19-human-rights-groups-warn/#:~:text>>

[=E2%80%9CThe%20very%20nature%20of%20prisons,wildfire%20throughout%20the%20prison%20system.%E2%80%9D>](#)

Paul, Margaret, 'Parents caught in Melbourne public housing coronavirus lockdown stopped from visiting baby', *ABC News* (online, 9 July 2020) <<https://www.abc.net.au/news/2020-07-09/coronavirus-public-housing-lockdown-stops-parents-visit-baby/12439778>>

Piovesan, Anthony, 'Coronavirus: Locked-down Flemington tower resident says conditions 'worse than prison'', *The Australian* (online, 8 July 2020) <<https://www.theaustralian.com.au/breaking-news/coronavirus-lockeddown-flemington-tower-resident-says-conditions-worse-than-prison/news-story/4e001b5bf5c0be39511093c245694714>>

Russell, Lesley, 'Why prisons in Victoria are locked up and locked down', *The Conversation* (online, 23 July 2020) <<https://theconversation.com/why-prisons-in-victoria-are-locked-up-and-locked-down-143178>>

Sharma, Kriti, 'Coronavirus is a Ticking Time Bomb for Australia's Prisons', *Human Rights Watch* (Web Page, 16 April 2020) <<https://www.hrw.org/news/2020/04/16/coronavirus-ticking-time-bomb-australias-prisons>>

Silva, Nadine, 'First Nations families with disabilities stuck in Melbourne's public housing towers with little to no help', *SBS News* (online, 10 July 2020) <<https://www.sbs.com.au/nitv/article/2020/07/10/first-nations-families-disabilities-stuck-melbournes-public-housing-towers-little>>

Simons, Margaret, 'Melbourne towers' sudden hard lockdown caught police, health workers and residents off-guard', *The Guardian* (online, 5 July 2020) <<https://www.theguardian.com/australia-news/2020/jul/05/melbourne-towers-sudden-hard-lockdown-caught-police-health-workers-and-residents-off-guard>>

Temp, Lynn-Sophie, 'Coronavirus and the Right to Health of Prisoners', *Oxford Human Rights Hub* (Blog, 16 March 2020) <<https://ohrh.law.ox.ac.uk/coronavirus-and-the-right-to-health-of-prisoners/>>

Thiessen, Tamara, 'Australia Hotel Quarantine: You will Pay \$3000-\$5000 Returning Home, Here are State Details', *Forbes* (online, 13 July 2020) <<https://www.forbes.com/sites/tamarathiessen/2020/07/13/australia-nsw-hotel-quarantine-travelers-pay-3000/#42dda45f4283>>

Topsfield, Jewel, 'How the shock of COVID-19 could end street homelessness in Victoria', *The Age* (online, 13 June 2020) <<https://www.theage.com.au/national/victoria/how-the-shock-of-covid-19-could-end-street-homelessness-in-victoria-20200612-p551vk.html>>

Topsfield, Jewel, 'Tower outbreak fears spark call to tackle public housing overcrowding', *The Age* (online, 8 July 2020) <<https://www.theage.com.au/national/victoria/tower-outbreak-fears-spark-call-to-tackle-public-housing-overcrowding-20200708-p55a4i.html>>

Towell, Noel, Rachel Eddie, Chloe Booker, David Estcourt, 'Hundreds of housing tenants to remain in hard lockdown', *The Age* (online, 9 July 2020) <<https://www.theage.com.au/national/victoria/hundreds-of-housing-tenants-to-remain-in-hard-lockdown-20200709-p55akp.html>>

Truu, Mani and Ahmed Yussuf, 'Melbourne tower lockdowns expose what it's like to live inside high-density public housing', *SBS News* (online, 8 July 2020) <<https://www.sbs.com.au/news/melbourne-tower-lockdowns-expose-what-it-s-like-to-live-inside-high-density-public-housing>>

United Nations, 'UN rights chief urges quick action by governments to prevent devastating impact of COVID-19 in places of detention', *United Nations* (Web Page, 25 March 2020) <<https://news.un.org/en/story/2020/03/1060252>>

Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948)

United Nations Commission on Human Rights, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights', UN Doc E/CN.4/1985/4 (28 September 1984)

United Nations Committee on Economic, Social and Cultural Rights, 'Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights', UN Doc E/C.12/2020/1 (17 April 2020)

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant, 5th sess, UN Doc E/1991/23 (14 December 1990)

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 6th sess, UN Doc E/1992/23 (13 December 1991)

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The right to adequate food (art. 11)*, 20th sess, UN Doc E/C.12/1999/5 (12 May 1999)

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd sess, UN Doc E/C.12/2000/4 (11 August 2000)

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15 The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th sess, UN Doc E/C.12/2002/11 (20 January 2003)

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)*, 35th sess, UN Doc E/C.12/GC/18 (6 February 2006)

United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* UN Doc E/C12/GC/20 (2 July 2009)

United Nations Committee on the Rights of Persons with Disabilities, *General Comment No. 6 on Equality and Non-discrimination*, UN Doc CRPD/C/GC/6 (26 April 2018)

United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019)

United Nations General Assembly, *Basic Principles for the Treatment of Prisoners*, UN GAOR, 45th sess, 67th plen mtg, UN Doc A/RES/45/111 (28 March 1991)

United Nations General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, UN GAOR, 43rd sess, UN Doc A/RES/43/173 (9 December 1988)

United Nations General Assembly, *Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)*, UN GAOR, 44th sess, UN Doc A/RES/45/110 (14 December 1990)

United Nations General Assembly, *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN GAOR, 70th sess, Agenda Item 3, UN Doc A/RES/70/175 (8 January 2016)

United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, UN GAOR, 3rd Comm, 65th sess, Agenda Item 105, UN Doc A/C.3/65/L.5 (6 October 2010)

United Nations Human Rights Committee, *General Comment No 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 33rd sess, UN Doc HRI/GEN/1/Rev.9 (8 April 1988)

United Nations Human Rights Committee, *General Comment No. 21: Human Treatment of Persons Deprived of Their Liberty (Article 10 of the International Covenant on Civil and Political Rights)*, 44th sess (10 April 1992)

United Nations Human Rights Committee, *General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 39th sess (27 July 1990)

United Nations Human Rights Committee, *General Comment No. 35: Liberty and Security of a Person (Article 9 of the International Covenant on Civil and Political Rights)*, UN Doc CCPR/C/GC/35 (16 December 2014)

United Nations Human Rights Committee, *General Comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 36th sess, UN Doc CCPR/C/GC/36 (30 October 2018)

United Nations Human Rights Committee, *General Comment No. 37 on Article 21 The right of peaceful assembly*, Un Doc CCPR/C/GC/37 (27 July 2020)

United Nations Human Rights Committee, *Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic*, UN Doc CCPR/C/128/2 (Statement, 30 April 2020)

United Nations Office of the High Commissioner for Human Rights, *Fact Sheet No. 21: The Human Right to Adequate Housing* (November 2009)

United Nations Office of the High Commissioner for Health and the World Health Organisation, *Fact Sheet No. 31: The Right to Health* (June 2008) <<https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>>

United Nations Office of the High Commissioner for Human Rights, 'COVID-19 Guidance', United Nations Office of the High Commissioner for Human Rights (Web Page, 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>>

United Nations Office of the High Commissioner for Human Rights, 'COVID-19 not an excuse for unlawful deprivation of liberty – UN expert group on arbitrary detention' (Media Release, 8 May 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25876&LangID=E>>

United Nations Office of the High Commissioner for Human Rights, 'Emergency Measures and COVID-19: Guidance', (Statement, 27 April 2020) <https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf>

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA Res. 45/113 (14 December 1990)

United Nations Working Group on Arbitrary Detention, *United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, UN GAOR, 30th sess, Agenda Item 3, UN Doc A/HRC/30/37 (6 July 2015)

Victorian Department of Health and Human Services, 'Housing and Homelessness', *Victorian State Government* (Web page, 2020) <<https://www.dhhs.vic.gov.au/housing-and-homelessness>>

'Victoria coronavirus cases rise by 108 as Daniel Andrews strengthens lockdown at nine public housing estates', *ABC News* (online, 4 July 2020) <<https://www.abc.net.au/news/2020-07-04/victoria-coronavirus-cases-rise-by-108-lockdown-new-postcodes/12422456>>

'Victoria records 74 new coronavirus cases, public housing lockdown tenants have rent waived', *ABC News* (online, 5 July 2020) <<https://www.abc.net.au/news/2020-07-05/coronavirus-victoria-new-cases-public-housing-melbourne-lockdown/12423700>>

Victorian Department of Corrections, Prisons and Parole, 'Monthly prisoner and offender statistics 2019-20', *Victorian State Government* (Web Page, 2020) <<https://www.corrections.vic.gov.au/monthly-prisoner-and-offender-statistics-2019-20>>

Victorian Department of Corrections, Prisons and Parole, 'Our response to coronavirus (COVID-19)', *Victorian State Government* (Web page, 2 August 2020) <<https://www.corrections.vic.gov.au/covid19#update10>>

Victorian Department of Health and Human Services, 'Coronavirus (COVID-19) information for Aboriginal and Torres Strait Islander communities', *Victorian State Government* (Web Page, 2020) <<https://www.dhhs.vic.gov.au/coronavirus-information-aboriginal-and-torres-strait-islander-communities>>

Victorian Equal Opportunity and Human Rights Commission, 'Embedding Human Rights During COVID-19', *Victorian Equal Opportunity and Human Rights Commission* (Web Page, 2020) <<https://www.humanrights.vic.gov.au/legal-and-policy/covid-19-and-human-rights/embedding-human-rights-during-covid-19/>>

Victorian Government Solicitors' Office, 'Charter Guide', *Victorian Government Solicitors' Office* (Web Page, 2020) <<https://humanrights.vgso.vic.gov.au/charter-guide/charter-rights-by-section/section-9-right-life>>

Victorian Parliament, *Statement of Compatibility, COVID-19 Omnibus (Emergency Measures) Bill 2020* <[https://www.parliament.vic.gov.au/images/COVID-19 Omnibus Emergency Measures Bill 2020-stat_com-2nd_read.pdf](https://www.parliament.vic.gov.au/images/COVID-19_Omnibus_Emergency_Measures_Bill_2020-stat_com-2nd_read.pdf)>

Victorian Public Tenants Association, 'Public Housing Lockdowns', *Victorian Public Tenants Association* (Web Page, 2020) <<https://vpta.org.au/public-housing-lockdowns/>>

Victorian State Government, 'Coronavirus (COVID-19) restrictions Victoria', *Victorian State Government* (Web Page, 2020) <<https://www.vic.gov.au/coronavirus-covid-19-restrictions-victoria>>

Visontay, Elias, 'Six Victorian prisons in Covid-19 lockdown as lawyers call for low-risk inmates to be released', *The Guardian* (online, 21 July 2020) <<https://www.theguardian.com/australia-news/2020/jul/21/six-victorian-prisons-in-covid-19-lockdown-as-lawyers-call-for-low-risk-inmates-to-be-released>>

Wahlquist, Calla and Margaret Simons, 'Melbourne's 'hard lockdown' orders residents of nine public housing towers to stay home as coronavirus cases surge', *The Guardian* (online, 4 July 2020) <<https://www.theguardian.com/world/2020/jul/04/melbournes-hard-lockdown-orders-residents-of-nine-public-housing-towers-to-stay-home-as-coronavirus-cases-surge>>

Wynne, Richard, Minister for Housing, 'More Homelessness And Public Housing Support In COVID-19 Fight' (Media Release, 18 March 2020) <<https://www.premier.vic.gov.au/more-homelessness-and-public-housing-support-in-covid-19-fight/>>

Wynne, Richard, Minister for Housing, 'Safe Places For The Homeless To Recover And Isolate' (Media Release, 10 April 2020) <<https://www.premier.vic.gov.au/safe-places-for-the-homeless-to-recover-and-isolate/>>

Wynne, Richard, Minister for Housing, 'Statement From The Minister For Housing' (Media Release, 4 July 2020) <<https://www.premier.vic.gov.au/statement-from-the-minister-for-housing/>>

Young, Evan and Ahmed Yussuf, 'Melbourne public housing residents demand eased restrictions, removal of police amid lockdown confusion', *SBS News* (online, 7 July 2020) <<https://www.sbs.com.au/news/melbourne-public-housing-residents-demand-eased-restrictions-removal-of-police-amid-lockdown-confusion>>

Yussuf, Ahmed, 'Meet the Separated Families of the Melbourne Public Housing Towers', *SBS News* (The Feed) (online, 9 July 2020) <<https://www.sbs.com.au/news/the-feed/meet-the-separated-families-of-the-melbourne-public-housing-towers>>

Yussuf, Ahmed 'The Aftermath of Melbourne's Public Housing Lockdown: I Don't Know if I'll Ever be the Same Again', *SBS (The Feed)* (online, 15 July 2020) <<https://www.sbs.com.au/news/the-feed/the-aftermath-of-melbourne-s-housing-tower-lockdown-i-don-t-know-if-i-m-ever-going-to-be-the-same-again>>

Zwi, Anthony, 'COVID-19 in Melbourne's high-rise towers: Rights at stake?', *University of NSW Andrew and Renata Kaldor Centre for International Refugee Law* (Article, 13 July 2020) <<https://www.kaldorcentre.unsw.edu.au/publication/covid-19-melbourne%E2%80%99s-high-rise-towers-rights-stake>>