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Inquiry into the Australian Government's response to the COVID-19 Pandemic

Joint submission coordinated by Community Legal Centres NSW, Kingsford Legal Centre, and the HIV/AIDS Legal Centre, and endorsed by:

**MIGRANT
EMPLOYMENT
LEGAL SERVICE**

FREE CONFIDENTIAL LEGAL HELP



Immigration Advice
and Rights Centre



11 June 2020

Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
By email: covid.sen@aph.gov.au

Submission to the Inquiry into the Australian Government's response to the COVID-19 Pandemic

Dear Committee Members,

We welcome the opportunity to make this submission to the inquiry into the Australian Government's response to the COVID-19 pandemic. This submission was coordinated by Community Legal Centres NSW, Kingsford Legal Centre and the HIV/AIDS Legal Centre, with significant contributions from member community legal centres including, but not limited to, Redfern Legal Centre, Women's Legal Service NSW, Youth Law Australia, the Tenants' Union of NSW, Seniors Rights Service, the Financial Rights Legal Centre, and the Refugee Advice and Casework Service.

The submission recommends interventions to support people and communities who are marginalised or experience economic hardship or discrimination, and to increase safety and access to justice for all. The submission makes particular reference to:

- Social security
- Employment
- Tenancy
- Sexual, domestic and family violence
- Family law
- The rights of senior Australians
- The rights of children and young people
- The rights of refugees, people seeking asylum and people without visas
- Law enforcement
- Financial rights
- Changes to demand for legal assistance services due to COVID-19

We also endorse the submissions to this inquiry from Economic Justice Australia, Youth Law Australia, Financial Rights Legal Centre, and our national peak body, Community Legal Centres Australia.

Yours sincerely,

Tim Leach
Executive Director
Community Legal Centres NSW

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1. About Community Legal Centres NSW, Kingsford Legal Centre and the HIV/AIDS Legal Centre

Community Legal Centres NSW

Community Legal Centres NSW is the peak representative body for almost 40 community legal centres in NSW. Community legal centres are independent, not-for-profit organisations that provide free legal assistance to over 50,000 people across NSW every year, particularly people facing poverty, homelessness, violence and discrimination.

Community legal centres across NSW and Australia have formed a vital part of the safety net that helps protect already marginalised people and communities from the social and economic impacts caused by governments' necessary but harsh responses to the COVID-19 pandemic.

Community Legal Centres NSW represents the views of community legal centres to government and the broader community, advocates on key law reform and policy issues, and supports community legal centres to improve the efficiency and quality of services they deliver to the community, with the aim of increasing access to justice for people in NSW.

Detailed information about our sector, including the role of Community Legal Centres NSW, is available on our website: www.clcnsw.org.au.

We are advised on matters relating to the impacts of the COVID-19 pandemic by our Law Reform and Policy Network. This network is made up of specialist and generalist lawyers and law reform experts from a broad range of member community legal centres. The recommendations in this submission are informed by extensive consultation with member centres, networks and working groups in the community legal sector in NSW.

Kingsford Legal Centre

Kingsford Legal Centre (**KLC**) provides free legal advice, casework and community legal education to its local community in south-eastern Sydney. KLC runs the NSW statewide Discrimination Law Clinic and a specialist Workers' Rights Clinic, and helps provide the Migrant Employment Legal Service (**MELS**), addressing the exploitation of migrant workers in NSW.¹

In 2019, KLC gave 1687 legal advices, opened 63 representation matters and undertook 211 legal task assistance matters.

KLC is part of the UNSW Sydney Law Faculty and provides clinical legal education to over 500 of its students each year. KLC has been part of the south-eastern Sydney community since July 1981.

The HIV/AIDS Legal Centre

The HIV/AIDS Legal Centre (HALC) is a not-for-profit, specialist community legal centre. HALC is funded to provide free and comprehensive legal assistance to financially disadvantaged

¹ MELS is a joint initiative of the Inner City Legal Centre, Kingsford Legal Centre, Marrickville Legal Centre and Redfern Legal Centre.



people in NSW with HIV or Hepatitis-related legal matters. HALC delivers services to people from vulnerable social and cultural backgrounds, including people from the LGBTQI community, people suffering from mental illness, sex workers, injecting drug users and culturally and linguistically diverse (CALD) communities.

HALC is the only full-time funded HIV/AIDS specialist legal centre in Australia. HALC provides direct legal assistance to clients in a wide range of legal practice areas.

As a community legal centre focused on justice for people with health concerns, HALC welcomes the opportunity to provide expert insights into the intersection between public health, law and justice.

2. Summary of recommendations

Social security rights

1. The Federal Government must maintain the increase to the rate of JobSeeker, Youth Allowance and related payments following the expiry of the Coronavirus Supplement.

Employment

2. The Federal Government should make JobKeeper available to all workers in eligible businesses, including workers on temporary visas and casual workers who have not been with the same employer for 12 months.
3. The Federal Government should hold employers accountable for spending the JobKeeper payment as intended and provide an effective remedy for workers who are disadvantaged by their employer's JobKeeper decisions.
4. The Federal Government should amend the JobKeeper Rules to include the 'one in, all in' rule and provide a clear pathway for workers to challenge a breach of this rule.
5. The Federal Government should stop the hard exit from JobKeeper and review Australia's social and economic status on 1 August 2020.
6. The Federal Government should guarantee 2 weeks paid special leave to all workers who are unable to work as a result of COVID-19.
7. The Federal Government should urgently increase funding to the FWO to assist the FWO to re-open its mediation service and respond to the heightened need for proactive enforcement of workers' rights.

Tenancy

8. The Federal Government working with state and territory governments through National Cabinet should support a stop to all evictions for all people who rent their home (except for people removed for perpetrating violence) for the duration of the COVID-19 crisis, and develop a plan to transition out of the evictions moratorium that does not leave people who rent their home in hardship.
9. The Federal Government working with state and territory governments through National Cabinet should ensure implementation of the evictions moratorium in every jurisdiction provides the minimum standard of measures to ensure impacted tenants are not pushed into further financial hardship and/or homelessness.
10. The Federal Government working with state and territory governments through National Cabinet should urgently fund increased access to crisis accommodation and homelessness services to ensure they can meet increased demand for services from people experiencing homelessness and housing insecurity.

Responding to sexual, domestic and family violence

11. Federal, state and territory governments should provide adequate additional funding of specialist women's and sexual, domestic and family violence services to respond to the anticipated surge in help-seeking behaviour post the removal of COVID-19 restrictions, including from the Federal Government's national awareness raising campaign that seeks to combat domestic violence during COVID-19.

12. Federal, state and territory governments should provide adequate and affordable safe housing during and post COVID-19, including temporary accommodation, short-term and crisis accommodation, social housing, community housing and other safe and affordable housing options.
13. Services deemed by governments to be essential services should include sexual and reproductive health services.

Family law

14. The Federal Government should implement and support Women's Legal Services Australia's (WLSA)'s safety first in family law plan:
 1. Strengthen family violence responses in the family law system
 2. Provide effective legal help for the most disadvantaged
 3. Ensure family law professionals have real understanding of family violence
 4. Increase access to safe dispute resolution models
 5. Overcome the gaps between the family law, family violence and child protection systems.
15. Federal, state and territory governments should work together to ensure during COVID-19 and in any other similar crisis the provision of some face to face contact centre services where physical distancing or other relevant safety measures can be practised.

Refugees and people seeking asylum

16. The Federal Government must extend eligibility for Centrelink payments including JobSeeker, Youth Allowance, the Disability Support Pension and the Aged Pension to people on Bridging Visas (all sub-classes), Student Visas, Temporary Resident (Skilled Employment) Visas, Pacific and Seasonal Worker Visas and Temporary Graduate Visas.
17. The Federal Government must extend eligibility for the Special Benefit as a payment of last resort to include people on Bridging Visas (all sub-classes), Student Visas, Temporary Resident (Skilled Employment) Visas, Pacific and Seasonal Worker Visas and Temporary Graduate Visas.
18. The Federal Government must relax the eligibility criteria for Status Resolution Support Service payments for people on Bridging Visas who are in immediate 'financial hardship'.
19. The Federal Government should provide adequate medical and housing support, including Medicare eligibility and housing grants, for temporary protection visa holders and asylum seekers, including those on Bridging Visas.
20. The Federal Government should provide information resources in appropriate languages (particularly video) about the availability of free healthcare, especially COVID-19 healthcare.
21. The Federal Government should provide information resources in-language (particularly video) about the protection of privacy and health information, and to what extent a firewall exists between health service providers (particularly for COVID-19) and the Department of Home Affairs.
22. The Federal Government should establish a just, clear policy during the pandemic to guide visa processing and to ensure that COVID-19 does not negatively impact the legal rights of people seeking asylum. This should include putting all visa application rejections and visa cancellations on hold for the duration of the COVID-19 crisis, introducing priority processing of Bridging Visa applications, and granting Protection Visas without interview where possible.

23. The Federal Government should swiftly and significantly reduce the current population of immigration detention facilities by releasing people who do not pose a threat and/or have serious health conditions into the community, and improve the health and safety of these facilities for those people that remain within them.
24. The Federal Government should provide a clear pathway for resumption of family reunion and humanitarian resettlement and allow temporary protection visa holders currently overseas to return to Australia.
25. Federal, state and territory governments should take urgent action to ensure women and children experiencing violence on temporary visas have protection, income, housing, healthcare and legal support.

People without visas

26. The Federal Government should swiftly introduce an adequate financial support package for people without visas.
27. The Federal Government should grant access to Medicare to people without visas.
28. The Federal Government should provide clear assurances of the information firewall between health services and other government departments, particularly the Department of Home Affairs, in appropriate language and preferably in video format.
29. The Federal Government should grant an amnesty for people without visas in Australia for the duration of the pandemic.

Older Australians

30. The Federal Government, in consultation with relevant state government agencies, service providers and stakeholders should develop a framework for responding to crisis and emergency situations in the aged care sector that clarifies responsibilities between federal and state governments and service providers, and clearly identifies lines of communication. This process should develop a flexible Plan of Response to any crisis affecting the broader aged care community.
31. The Federal Government should support appropriate community legal centres across Australia to deliver a communication and training program for all aged care services, private solicitors, financial institutions and other community organisations addressing the potential for an increase in financial abuse of older Australians during the COVID-19 pandemic.

Children and young people

32. The Commonwealth Attorney-General's Department should prioritise the issue of access to justice by children and young people during the COVID-19 crisis and recovery phase in recognition of the social and economic burden they will experience.

Law enforcement

33. The Federal Government should ensure transparency and uniformity of public health fines on a national scale.
34. The Federal Government should clarify the exception relating to the collection of COVID app data where the collection is incidental to the collection of non-COVID app data and permitted under Australian law. It should clearly state in law that this is limited to the exceptions under Australian Privacy Principle 6.

35. Governments should legally prohibit law enforcement agencies from accessing the information stored in the COVIDsafe application.

Financial rights

36. The Federal Government should more finely hone criteria for early access to superannuation to ensure people may only access those funds where there is no alternative source of financial support. Should any similar crisis arise in future that the Federal Government believes warrants granting early access to superannuation, criteria must ensure accessing superannuation remains an absolute last resort.
37. The Federal Government should ensure appropriate information and resources are always made available to Australians to enable them to consider the full pros and cons of accessing their superannuation early.
38. The Federal Government should promote Women's Legal Service Victoria's '5 steps to consider before accessing superannuation'.
39. The Federal Government should implement recommendations 4.3 and 4.8 of *The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* as soon as possible and prioritise the *Disclosure in General Insurance* review upon completion of the Royal Commission implementation.

Impact of COVID-19 on demand for legal assistance

40. The Federal Government should invest an additional \$56.7 million per year in the community legal centre sector through the National Legal Assistance Partnership.
41. Federal, state and territory governments should work together to swiftly make available funding for community legal centres to meet legal need in the community.
42. Federal, state and territory governments should commit to reviewing this funding allocation at the end of the first twelve months, to assess whether it is sufficient to meet community needs over the medium- and longer-term.
43. Federal, state and territory governments should adequately fund specialist women's legal services and community controlled Aboriginal and Torres Strait Islander legal services to help women navigate their way through the family law system and prioritise the safety of children.
44. During the economic recovery from the COVID-19 crisis, governments must avoid austerity measures that would ultimately harm people, communities and the economy.

3. Social security rights

We endorse the recommendations made by Economic Justice Australia to this inquiry regarding social security rights.

We note the final report from the recently completed 'Inquiry into the adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia' ('**Newstart inquiry**') stated:

the committee received compelling evidence that the rates of income support payments for working-age jobseekers are inadequate. Further, they impede peoples' ability to engage socially and economically within their community. Significantly, the committee found that the income support system is not meeting its objective of ensuring a minimum standard of living for working-age jobseekers, as too many live in poverty.

The inquiry recommended that:

... once the Coronavirus Supplement is phased out, the Australian Government increase the JobSeeker Payment, Youth Allowance and Parenting Payment rates to ensure that all eligible recipients do not live in poverty.

All people, including those on government support payments, must have the right to live in dignity and free from poverty. As such, we recommend that increases to the rate of JobSeeker, Youth Allowance and related payments be maintained following the expiry of the Coronavirus Supplement.

3.1 Gender and social security rights

We particularly note the gendered impact of inadequacies of the current social security arrangements. Before the pandemic, women received unemployment payments for longer periods than men and made up the significant majority of recipients of part-rate payments, showing that social security is an important safety net for women.² Women are also over-represented as employees in industries that have been worst effected, such as tourism and hospitality.³ Retaining the increased rate of social security payments will help to ensure that this crisis does not further increase gendered economic inequality.

Recommendation

1. The Federal Government must maintain the increase to the rate of JobSeeker, Youth Allowance and related payments following the expiry of the Coronavirus Supplement.

² Equality Rights Alliance, 'National Plan on Gender Equality: Economic Wellbeing' (2019) <<http://www.equalityrightsalliance.org.au/wp-content/uploads/2019/12/19703-ERA-Economic-Wellbeing-web.pdf>>

³ Claudia Farhart, 'Women have been the hardest hit by Australia's coronavirus job losses', *SBS News*, 8 May 2020, <https://www.sbs.com.au/news/women-have-been-the-hardest-hit-by-australia-s-coronavirus-job-losses>

4. Employment

4.1 Workers experiencing disadvantage or discrimination are disproportionately impacted by the pandemic

The COVID-19 pandemic is having a catastrophic impact on working people in Australia. Community legal centres have seen a surge in people seeking legal help because they have lost their jobs, had their hours at work cut or been stood down.

People experiencing disadvantage or discrimination were more likely to experience employment law issues before the pandemic and are experiencing a spike in such issues during the pandemic. When mass job loss happens, it impacts disproportionately on marginalised people, who are more likely to rent their home, may have pre-existing debts and are less likely to have significant assets or savings to help them weather the storm.

The Senate Select Committee on the Future of Work and Workers recognised that there has been a rapid rise in insecure work, including casual work, temporary contract work and sham contracting, in which employees are falsely labelled “independent contractors” with fewer rights and protections.⁴ Insecure work is a feature of the “gig economy” and disproportionately affects marginalised workers.

The rise of insecure work has increased the vulnerability of working people and the Australian economy to economic shocks, such as the pandemic. It is disappointing that the Federal Government has allowed insecure work to rise to such levels, only to abandon many people in insecure work at a time of uniquely high need.

4.2 JobKeeper should be expanded

The Federal Government has put in place a temporary wage subsidy for many employers, known as the JobKeeper payment. The JobKeeper payment consists of \$1500 per eligible employee per fortnight, paid to the employer as a subsidy for the employee’s wages. JobKeeper is a subsidy for wages that have already been paid. In other words, employers must first pay eligible employees at least \$1,500 per fortnight, then get the JobKeeper payment as reimbursement.

The JobKeeper payment has been a great start in responding to the impact of the COVID-19 pandemic on working people in Australia. It is helping many people to keep their jobs and maintain a minimum standard of living. However, it is troubling that many working people are not eligible for the JobKeeper payment, even if their employer has experienced the required fall in turnover.

We are particularly concerned that casual workers are not eligible for the payment unless they have worked with the same employer for 12 months and workers on temporary visas are not eligible for the payment unless they are from New Zealand. There are over a million casual workers and about a million workers on temporary visas who are not eligible for the JobKeeper payment,⁵ including some of the most marginalised workers in the community.

⁴ Senate Select Committee on the Future of Work and Workers, Parliament of Australia, *Hope Is Not a Strategy – Our Shared Responsibility for the Future of Work and Workers* (2018) [4.31]–[4.33] < https://www.aph.gov.au/-/media/Committees/future_of_work_and_workers_ctte/report.pdf?la=en&hash=3012219EB72912AEF9859D0FEAE53722B2FAE178>.

⁵ Australian Council of Trade Unions, ‘Key Points on the JobKeeper Payment’ <https://www.actu.org.au/media/1449028/cv04-41-jobkeeper_factsheet.pdf>.

As noted above, people on temporary visas are not eligible for the JobSeeker payment (formerly known as the Newstart Allowance) or most other social security payments. For many workers on temporary visas, losing their jobs means being left without any form of income at all.

We also note that women are more likely to be employed as casual workers.⁶ This increases the risk of job losses for women at all times, but especially during a pandemic. The risk to many women is made worse by various forms of discrimination, including discrimination on the grounds of sex, pregnancy and family responsibilities, and intersectional discrimination.⁷

The exclusion of many workers from the JobKeeper payment is causing many preventable job losses. Employers are losing workers who they want to keep, workers are losing jobs they need, and communities are suffering from the social and economic flow-on effects of widespread job losses. Many working people who lose their jobs at this time are forced into unsafe situations, including poverty, work in the underground economy, overcrowded housing and homelessness. People in such situations are less able to follow health advice and practise social distancing.

Further, the dire consequences of job losses increase pressure on marginalised people to accept unsafe situations at work, such as situations in which social distancing is not effectively practised. In this way, the exclusion of many workers from the JobKeeper payment poses a health risk to marginalised people and increases the risk of COVID-19 transmission within the community.

Treasurer Josh Frydenberg has said that to include one million more people in the JobKeeper program would cost \$18 billion.⁸ Given that the Federal Government now expects JobKeeper to cost \$60 billion less than first anticipated, including a further 1–2 million workers should be easily manageable.

■■■■'s story

■■■■ is on a temporary visa. She is the mother of 3 children. Her husband suffers PTSD and is unable to work. She is the sole income earner in her family. In March 2020 she was stood down from her role in a large hospitality management chain. She works in human resources in accounts. She is the most experienced staff member. The business is eligible for the JobKeeper subsidy. The accounts team have been brought back into the business to manage the JobKeeper payments. They are all working from home. ■■■■ is the only staff member in the human resources team that is not eligible for JobKeeper. The business has not re-instated ■■■■ as she is a temporary visa holder, so her wages cannot be reimbursed via JobKeeper. Her family are relying on food from a local community group but cannot access any funds to pay for their living expenses.

Source: Kingsford Legal Centre

⁶ Tanya Carney and Jim Stanford, 'The Dimensions of Insecure Work: A Factbook' (The Australia Institute, 29 May 2018)

<https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/2807/attachments/original/1528337971/Insecure_Work_Factbook.pdf?1528337971>.

⁷ Intersectional discrimination refers to discrimination on the basis of more than one characteristic. For example, a woman of colour may experience sexism, racism and intersectional discrimination.

⁸ David Speers, Interview with Josh Frydenberg, Treasurer of Australia (Television Interview, 12 April 2020)

<<https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/transcripts/interview-david-speers-insiders-abc-0>>.



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4.3 Limitations of JobKeeper

Two significant limitations come from paying JobKeeper to employers, rather than workers. First, an eligible employer can choose not to seek the JobKeeper payment, regardless of the negative impact this may have on their employees. Some employers have chosen not to seek JobKeeper for a variety of reasons, including difficulties in navigating the red tape, the requirement to pay wages before getting the subsidy and personal aversion to claiming what they perceive as a social security payment.⁹ Although some of these concerns may be understandable from the employer's perspective, they are not good policy grounds for working people to lose their jobs.

Second, paying JobKeeper to employers rather than workers increases opportunities for wage theft. Wage theft is endemic in Australia and impacts marginalised workers disproportionately. We hold serious concerns that some employers are committing wage theft as a means to push the financial pressures of the pandemic onto their employees. Some employers are underpaying their workers, yet still claiming the \$1500 wage subsidy, while some employers are illegally requiring employees to work increased hours to get their subsidised wage.¹⁰

The Federal Government must ensure that no worker is disadvantaged as a result of the decision to pay JobKeeper to employers, rather than workers.

4.4 'One in, all in'

According to the Explanatory Statement to the JobKeeper Rules, a 'one in, all in' rule applies. In other words:

Once an employer decides to participate in the JobKeeper scheme and their eligible employees have agreed to be nominated by the employer, the employer must ensure that all of these eligible employees are covered by their participation in the scheme.¹¹

However, the Explanatory Statement does not have legal force and the 'one in, all in' rule does not appear in the JobKeeper Rules themselves.¹² Although the Australian Tax Office has required employers to notify each eligible employee that the employer intends to nominate them for the JobKeeper payment, this falls short of a rule-based requirement to include all eligible employees in the scheme. It is unclear what would stop an employer in practice from including some eligible employees, but not others, or how an eligible employee could challenge this.

We are concerned that some employers are making arbitrary choices to exclude eligible employees from the scheme, and that the consequences for many workers include job losses, cut hours and stand-downs without pay.

⁹ Daniel Ziffer, 'JobKeeper payments start next week, but hundreds of thousands of businesses hit by coronavirus aren't signed up', ABC News (online), 29 April 2020 <<https://www.abc.net.au/news/2020-04-29/businesses-not-signed-up-jobkeeper-payments-coronavirus/12193698>>.

¹⁰ Rachel Riga, 'What you can do if your employer is ripping you off with the JobKeeper subsidy', ABC News (online), 23 April 2020 <<https://www.abc.net.au/news/2020-04-23/how-to-report-a-jobkeeper-dispute-if-youre-being-exploited/12173560>>.

¹¹ Explanatory Statement, *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Cth).

¹² Ian Neil, David Chin and Christopher Parkin, 'Guide to the JobKeeper Scheme April 2020' (20 April 2020) 12 [17] <<https://static1.squarespace.com/static/5e4f0f07b9b78d325e1d33de/t/5e9ce534056db926f386449a/1587340605933/JobKeeper+Guide+%2820+April+2020%29.pdf>>.

█'s story

█ had been working as a regular casual for six years, and has an intellectual disability. His job was very important to him. When the COVID-19 restrictions on gathering and movement were put in place he was the first person to be stood down. His employer would not consider other duties for him. █ had concerns about whether he would receive JobKeeper payments and, if he did, how they would impact on his disability support pension. He is worried there are no options for him to keep his job and feels his employer is using this time to get rid of him.

Source: Ability Rights Centre

4.5 The JobKeeper end date

The fortnight ending 27 September 2020 is the last fortnight for which JobKeeper is payable.¹³ It is alarming that this vital support for working people will suddenly drop off in September. This appears to underestimate the catastrophic impact of the pandemic on working people, the uncertainty of the recovery process and the ongoing investment required for the Australian community to recover from the pandemic and thrive.

We do not support a sudden cut-off to this vital support on 27 September 2020.

4.6 Paid special leave for COVID-19

Public health advice has required people to stay home in a variety of circumstances.¹⁴ Many working people have been unable to work from home during the pandemic. Staying at home has required that they do not attend work.

The existing system of sick leave is not enough to effectively enable working people to stay home in accordance with public health advice. This is for two reasons. First, Australia has about 2.6 million casual workers who usually do not have a right to sick leave.¹⁵ Second, some workers do not have enough sick leave because they have not yet accrued it or have used it when they were sick.

For workers who do not have sick leave, the loss of pay is a major disincentive to staying home. Workers living paycheque to paycheque cannot afford to miss shifts at work. Paid special leave for all workers would help workers to stay home in accordance with public health advice. We support the campaign from Australian Unions calling on Prime Minister Scott Morrison to guarantee paid special leave for all workers.¹⁶

4.7 The Fair Entitlements Guarantee

The Fair Entitlements Guarantee (FEG) is a scheme of last resort that gives financial help for unpaid employee entitlements when a business becomes insolvent. As the COVID-19 pandemic

¹³ *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Cth) r 6(5).

¹⁴ NSW Government, 'What You Can and Can't Do under the Rules' (19 May 2020)

<<https://www.nsw.gov.au/covid-19/what-you-can-and-cant-do-under-rules>>.

¹⁵ Geoff Gilfillan, 'COVID-19: Impacts on Casual Workers in Australia – A Statistical Snapshot' (8 May 2020)

<https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/StatisticalSnapshotCasualWorkersAustralia>.

¹⁶ Australian Unions, 'Coronavirus: Guarantee Paid Special Leave for All Workers' (Petition, 9 June 2020)

<<https://www.megaphone.org.au/petitions/coronavirus-support-paid-sick-leave-for-casual-workers>>.

has increased financial pressures for many businesses and workers, the FEG has become increasingly important as a last resort for workers to get wages for hours already worked.

Workers on temporary visas are not eligible for the FEG unless they are from New Zealand.¹⁷ This is a long-standing issue that has been made worse by the COVID-19 pandemic. Workers on temporary visas are often in insecure roles in industries that have been hit the hardest by COVID-19, such as hospitality and retail. If these businesses fail, many workers on temporary visas not only lose their income, but – due to being ineligible for the FEG – are also unable to access wages and entitlements for hours already worked.

██████'s story

A community legal centre recently advised a client, ██████, who works as a chef for a catering company. ██████ was stood down without pay for 1 month due to a COVID-19 related downturn in business. The company advised ██████ that they do not have enough funds to pay him 10 weeks of annual leave and that they are heading towards insolvency. If the business proceeds on this course, ██████ will never access his annual leave through the FEG as he is not a citizen or permanent resident.

Owing to the work restrictions on his visa sponsorship, ██████ cannot seek alternative employment for fear of jeopardising his Permanent Residency application. He cannot return to his home country due to closed borders and cannot access welfare benefits. ██████ is destitute and willing to work in any role, such as casually at a supermarket, but cannot due to his visa conditions.

The community legal centre could only advise on the employment law issues ██████ faced and refer him to other services that may offer support. Unfortunately, he had very few options.

██████ said, 'I've been working in Australia for almost 5 years. I've paid my taxes and abided by the law. I worked hard to make Australia my home. Because of COVID-19 I've been stood down. I cannot receive any of the government benefits because I am not a citizen plus my visa prevents me from working for another business. Work owes me 10 weeks of annual leave but they can't afford to pay me. Who's gonna help me?'

Source: Redfern Legal Centre

4.8 Funding for the Fair Work Ombudsman

The Fair Work Ombudsman (FWO) has been grossly underfunded to address work issues during the pandemic. The underfunding of the FWO is highlighted by the suspension of the FWO's mediation service at this time of heightened need.

The FWO's mediation service plays an important role in providing access to justice for working people by providing a relatively accessible forum for resolving a workplace dispute. Without the FWO's mediation service, often the only way for working people to enforce their rights is to seek a decision in the Federal Court or Federal Circuit Court. This is a more adversarial process that

¹⁷ Fair Entitlements Guarantee Act 2012 (Cth) s 10(1)(g).

requires the worker to pay a significant filing fee, usually involves legal representation and exposes each party to the risk of being ordered to pay the other party's costs.

Many marginalised workers will be deprived of their rights as a result of the inaccessibility of mediation. Other working people will seek court decisions in cases that could have been more quickly and cheaply dealt with by the FWO's mediation service. This will add strain to the already under-resourced federal court system, which had delays of about 2 years even before COVID-19. Funding to the FWO must be urgently increased to assist the FWO to re-open its mediation service.

■■■■'s story

■■■■ worked for a busy florist for 7 years. She was told that there was no more work for her because all the offices in the area had closed and no one wanted flowers. ■■■■ contacted a CLC because she didn't receive her pay for the next week she worked. ■■■■ said she didn't know how she would survive as she wasn't eligible for JobKeeper or JobSeeker so she was hoping to get her last pay so she could at least buy food.

The CLC advised ■■■■ that she had not been paid properly – she had been receiving less than the minimum wage. ■■■■ also didn't know that she was entitled to be paid accrued annual leave and entitlements because she was made redundant. The CLC calculated that the employer owed ■■■■ more than \$30,000. ■■■■ was initially relieved, stating that that money would support her until she could get another job while her permanency residency application was processed. The CLC advised that the FWO mediation service had been suspended and resources redirected due to the increase in calls from people who had lost their jobs because of the pandemic. ■■■■'s only option was to make an application to the Federal Court. However, this process could take over two years.

■■■■ doesn't know what to do, asking how it's allowed to happen that she has worked long hours for years and there is no real way for her to get the money she is owed.

Source: Kingsford Legal Centre

In addition, the FWO's funding must be increased to respond to the heightened need for proactive enforcement of workers' rights. Given the structural nature of issues like wage theft and the power imbalance between employers and workers, it is neither realistic nor fair to expect workers to pursue all claims on an individualised basis. In our experience, working people often accept breaches of their rights for fear of losing their jobs.

The Productivity Commission has recommended that, 'The Australian Government should give the Fair Work Ombudsman additional resources to identify, investigate, and carry out enforcement activities against employers that are underpaying workers, particularly migrant workers.'¹⁸ We support the Productivity Commission's recommendation.

¹⁸ Productivity Commission, 'Workplace Relations Framework' (Inquiry Report, No 76, vol 2, 30 November 2015) 926 <<https://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume2.pdf>>. See further WEstjustice, Migrant Employment Legal Service and Redfern Legal Centre International Student Service, Submission No 47 to Senate Standing Committee on Economics, Parliament of Australia, *Inquiry into Unlawful Underpayment of Employees' Remuneration*, 6 March 2020, 39-40 <<https://www.aph.gov.au/DocumentStore.ashx?id=08d67c31-a84f-4ce1-9b77-75c9efe461f3&subId=679267>>.



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Recommendations

2. The Federal Government should make JobKeeper available to all workers in eligible businesses, including workers on temporary visas and casual workers who have not been with the same employer for 12 months.
3. The Federal Government should hold employers accountable for spending the JobKeeper payment as intended and provide an effective remedy for workers who are disadvantaged by their employer's JobKeeper decisions.
4. The Federal Government should amend the JobKeeper Rules to include the 'one in, all in' rule and provide a clear pathway for workers to challenge a breach of this rule.
5. The Federal Government should stop the hard exit from JobKeeper and review Australia's social and economic status on 1 August 2020.
6. The Federal Government should guarantee 2 weeks paid special leave to all workers who are unable to work as a result of COVID-19.
7. The Federal Government should urgently increase funding to the FWO to assist the FWO to re-open its mediation service and respond to the heightened need for proactive enforcement of workers' rights.

5. Tenancy

5.1 Evictions

The financial pressures of the pandemic have placed people who rent their home at increased risk of eviction. Throughout the crisis, a coalition of civil society groups, academics and members of the community have repeatedly called on Federal, State and Territory governments to ensure no evictions during the pandemic. As the coalition explained:

'People facing eviction are less able to take actions required to minimise transmission of COVID19, particularly where they become homeless, and will become more vulnerable to illness.'

'An eviction into homelessness at this time puts great pressure on families and communities in overcrowded homes, crisis accommodation and people sleeping rough. Support services will already be struggling to deal with increased demand and as a community we cannot afford to make it worse.'

On 29 March 2020, the National Cabinet agreed to a six-month moratorium on evictions for commercial and residential tenants in financial distress and unable to meet their commitments due to COVID-19. While we welcome this first step in addressing the issue, it falls significantly short of ensuring that no evictions take place during the pandemic.

Community legal centres in NSW are aware that renters have been evicted from their homes during the pandemic. One centre represented a family of six (two elderly pensioners and four children) in termination proceedings at the NSW Civil and Administrative Tribunal at the height of the pandemic. The family were facing homelessness. The landlord in that case was a community housing provider who we would expect to be a model landlord. This is illustrative of the risk of eviction for people who rent their homes.

A stop to evictions should not apply to people removed for perpetrating violence, as this is necessary for the safety of people at risk of domestic and family violence.

5.2 Other renting issues

Protections for renters introduced during the pandemic must also adequately ensure that people can afford to remain in their homes without accumulating significant debt or being pushed into further financial hardship. In NSW many renters impacted by COVID-19 have not been able to successfully negotiate a rent reduction they can afford in the short term, or that protects them from accumulating a significant debt they are not confident they will be able to repay. Many are being forced to end their tenancies, with some facing significant penalties for early break of lease in the process.

Failing to provide adequate support or a clear requirement for binding arbitration towards a reasonable rent reduction will only delay the risk of eviction for impacted tenants until the moratorium protections are lifted. In addition to a stop on all evictions for people who rent their home we suggest the eviction moratorium implemented in all states and territories include the following minimum standard measures:

- Support for renters to terminate a rental contract that is no longer viable and is causing hardship, without being burdened with unfair debts or penalties

- A requirement for binding arbitration where tenants and landlords cannot reach agreement on a rent reduction. This arbitration should take into account the financial position of both tenants and lessors
- A temporary freeze on any rent increases
- Direct financial support for tenants who, after genuine rent reductions have been applied, would struggle to afford their rent
- A requirement for banks and insurers to offer genuine relief to landlords who have reduced rent.

We are aware that the National Association of Tenants' Organisations is providing a submission to the Inquiry and recommend this to the committee for further detail and discussion of residential tenancy matters.

5.3 Homelessness and insecure housing

The high number of people experiencing homelessness or living in insecure housing remains a significant concern in Australia. Australia's homelessness and crisis shelters are underfunded relative to need. Even before the pandemic they turned people in need away every night. For many, early government messages to 'stay at home' simply highlighted the lack of safe and secure housing. There is real concern across the community sector that without adequate support, the economic and social implications of the pandemic will significantly worsen Australia's homelessness crisis.

The National Cabinet's agreement to stop evictions applied only to housing situations where there was a formal tenancy agreement. This excluded many people who were homeless or at risk of homelessness in marginal accommodation like some share housing and other lodging arrangements, student accommodation, or hostels. Any moratorium on evictions must include this sector. Further, additional funding should be injected into crisis accommodation in recognition that the temporary accommodation sector is difficult to regulate, meaning many more people are likely to fall into homelessness or insecure housing through the pandemic. This should include a priority on funding shelters for women and children escaping violence.

█'s story

█ is a young person with a cognitive disability. He was kicked out of a shared housing arrangement as a result of not understanding, and having trouble complying with, physical distancing requirements. He became homeless after he was deemed too high risk for provision of public housing or alternative accommodation such as living by himself in a motel. With help from the Ability Rights Centre and his disability advocate, █ made a complaint that resulted in him being provided with accommodation. It is not clear this will be permanent.

Source: Ability Rights Centre

Recommendations

8. The Federal Government, working with State and Territory Governments through National Cabinet should support a stop to all evictions for all people who rent their home



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(except for people removed for perpetrating violence) for the duration of the COVID-19 crisis, and develop a plan to transition out of the evictions moratorium that does not leave people who rent their home in hardship.

9. The Federal Government, working with State and Territory Governments through National Cabinet should ensure implementation of the evictions moratorium in every jurisdiction provides the minimum standard of measures to ensure impacted tenants are not pushed into further financial hardship and/or homelessness.
10. The Federal Government, working with State and Territory Governments through National Cabinet should urgently fund increased access to crisis accommodation and homelessness services to ensure they can meet increased demand for services from people experiencing homelessness and housing insecurity.

6. Responding to sexual, domestic and family violence

We acknowledge the Federal Government's efforts to address the gendered impacts of COVID-19. This has included:

- the Prime Minister's recognition of the pandemic's gendered economic impact in his National Press Club address on 26 May 2020.
- The launch of the Federal Government's national awareness raising campaign that seeks to combat domestic violence during COVID.¹⁹ The campaign refers people to 1800 RESPECT and MensLine.

Research clearly highlights the increase in domestic and family violence during and post natural disasters.²⁰ Consistent with this, countries around the world have reported increases in domestic and family violence during COVID-19.²¹

Federal, state and territory governments must provide adequate support for victims-survivors of sexual, domestic and family violence during and post COVID-19. There must be adequate funding for services working with victim-survivors, particularly for specialist women's services and Aboriginal and Torres Strait Islander-controlled services, including women's health, counselling, support and legal services as well as other specialist services responding to the needs of marginalised people who have experienced sexual, domestic and family violence, including for case management.

Some services, such as Women's Legal Service NSW, have experienced an overall increase in demand for services and complexity of matters during COVID-19. At the same time, it has been more difficult for some victims-survivors to access some services. For example, there has been a decrease in demand for duty lawyer services on domestic violence protection order list days when women have been encouraged not to attend Court due to COVID-19 and so have had more limited opportunities to access legal advice.

Many victims-survivors have faced barriers in accessing the support they need during the COVID-19 restrictions. There have been fewer, if any opportunities to safely contact a service when service delivery during COVID-19 has been primarily via telephone. When the victim-survivor and perpetrator are living in the same house and both are at home for longer periods and unable to leave except for an essential purpose, phoning a service has been difficult for women.

It is vital that specialist women's and sexual, domestic and family violence services (including Aboriginal and Torres Strait Islander controlled services) are adequately funded to respond to the anticipated surge in help-seeking behaviour post the removal of COVID-19 restrictions, including people responding to the national awareness campaign. Case management services must be included in this funding.

¹⁹ Australian Government, 'Campaign to Combat Domestic Violence During COVID-19 Crisis', (Media Release, 3 May 2020) <<https://www.liberal.org.au/latest-news/2020/05/03/campaign-combat-domestic-violence-during-covid-19-crisis>>.

²⁰ Debra Parkinson and Claire Zara, 'The hidden disaster: domestic violence in the aftermath of natural disaster' (2013) 28(2), *Australian Journal of Emergency Management*; Hayley Gleeson, 'A new bushfire crisis is emerging as experts brace for an imminent surge in domestic violence', *ABC News* (24 February 2020) <<https://www.abc.net.au/news/2020-02-24/domestic-violence-anticipated-spike-bushfires-crisis/11980112>>.

²¹ Amanda Taub, 'A New Covid-19 Crisis: Domestic Abuse Rises Worldwide', *The New York Times* (6 April 2020) <<https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>>.

Victims-survivors also need adequate and affordable safe housing during and post COVID-19, including temporary accommodation, short-term and crisis accommodation, social housing, community housing and other safe and affordable housing options.

6.1 Sexual and reproductive health care as essential services

Women's Legal Service NSW has been concerned by reports of limited access to sexual and reproductive health care during COVID-19, particularly in towns that are close to or span state borders, between states with different border controls and COVID-19 restrictions. It is important in any similar crisis to ensure that women and others can continue to access sexual and reproductive health care as an essential service. This is particularly important for women and others who are experiencing reproductive coercion.

Recommendation

11. The government should provide adequate additional funding of specialist women's and sexual, domestic and family violence services to respond to the anticipated surge in help-seeking behaviour post the removal of COVID-19 restrictions, including from the Federal Government's national awareness raising campaign that seeks to combat domestic violence during COVID-19.
12. The government should provide adequate and affordable safe housing during and post COVID-19, including temporary accommodation, short-term and crisis accommodation, social housing, community housing and other safe and affordable housing options.
13. Services deemed to be essential services should include sexual and reproductive health services.

7. Family law

Women's Legal Services around Australia have seen an increase in COVID-19 related family law matters, where COVID-19 restrictions have been used as a tool to increase the level of control and coercion over the mother. We have been concerned for the safety of children and adult victim-survivors.

7.1 Safety First in Family Law

Women's Legal Services Australia (**WLSA**) has been advocating for a number of years for Safety First in Family Law. WLSA's Safety First in Family Law plan was publicly re-launched with the support of Rosie Batty OAM, last year.²² The plan, which has been endorsed by over 100 organisations across Australia,²³ includes 5 steps for reform to keep women and children safe:

1. Strengthen the family violence response in the family law system
2. Provide effective legal help for the most disadvantaged
3. Ensure family law professionals have real understanding of family violence
4. Increase access to safe dispute resolution models
5. Overcome the gaps between the family law, family violence and child protection systems.

Adoption of WLSA's Safety First in Family Law Plan is also a recommendation included in the Joint Submission on behalf of the Australian Non-Government Organisations Coalition in response to Australia's Third Universal Periodic Review.²⁴

7.2 COVID-19 family law list

We welcome the introduction of the COVID-19 list for parenting matters in the Family Court of Australia and the Federal Circuit Court of Australia.²⁵ The list enables urgent matters, including matters involving family violence, to be listed for hearing within 72 hours.

It is important that the COVID-19 family law list is supported by access to legal advice and representation. It is important that some of the announced additional \$63.3 million funding for the legal assistance sector, as well as the additional \$56.7 million per year we recommend below in section 14, go to specialist women's legal services around the country and community controlled Aboriginal and Torres Strait Islander legal services (including Family Violence Prevention Legal Services) that are helping women to navigate their way through the family law system and prioritise the safety of children.

²² Women's Legal Services Australia, 'Rosie Batty urges Government to adopt new reform plan' (23 October 2019) <http://www.wlsa.org.au/media_releases/rosie_batty_urges_government_to_adopt_new_reform_plan_-_23_october_2019>.

²³ Women's Legal Services Australia, 'Endorsements for WLSA Safety First in Family Law Plan (23 October 2019) <http://www.wlsa.org.au/media_releases/endorsements_for_wlsa_safety_first_in_family_law_plan>.

²⁴ Australian NGO Coalition, 'Joint NGO Submission on behalf of the Australian NGO Coalition', Submission to the Human Rights Council Universal Periodic Review (April 2020) <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5e8e6cfef801a755b68f6627/1586392327843/Australia%E2%80%99s+Human+Rights+Scorecard+-+Australia%E2%80%99s+2020+United+Nations+UPR+NGO+Coalition+Report.pdf>>.

²⁵ Family Court of Australia 'National COVID-19 List' (2020) <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-list>>.

7.3 Contact centres as essential services

Contact centres are places that provide supervised contact and are essential, for example, when a family court orders a party have supervised contact with a child. Contact centres can also provide a safe place for the handover of children by one parent to another parent. Handover can occur with neither parent having contact with the other. Both supervised contact and a safe handover venue are particularly important in cases where family violence is a factor. Where contact is occurring in the absence of these protections, children and adult victims-survivors risk being exposed to further family violence.

We have been hearing anecdotally that many contact centres have not been providing services such as supervising face-to-face contact ordered by a court or being open for the purposes of being a safe place for the handover of children. It is particularly important that in matters involving family violence such services continue to be provided during COVID-19 or any other similar future event.

Recommendation

14. The Federal Government should implement and support Women's Legal Services Australia's (WLSA's) safety first in family law plan:

1. Strengthen family violence response in the family law system
2. Provide effective legal help for the most disadvantaged
3. Ensure family law professionals have real understanding of family violence
4. Increase access to safe dispute resolution models
5. Overcome the gaps between the family law, family violence and child protection systems.

15. Federal, state and territory governments should work together to ensure during COVID-19 and in any other similar crisis the provision of some face to face contact centres services with physical distancing or other relevant measures should remain in place.

8. Refugees and people seeking asylum

At the end of March 2020 there were a total of 84,210 people who had arrived by plane in Australia, applied for protection, and remained in the country at various stages of the assessment process, including on temporary protection visas or Bridging Visas.²⁶ There are also about 32,000 people in Australia who arrived by boat between 2012 and 2014, most of whom remain on different types of Temporary Protection Visas, including Bridging Visas. Altogether, there are over 100,000 people in Australia who need or are seeking Australia's protection, and are stuck on temporary protection visa or Bridging Visas. This is a significant number of people - enough to impact the efficacy of public policy responses to national issues like the COVID-19 pandemic.

There are roughly 13,000 people who arrived in Australia by boat and are now on Bridging Visas. These people are not eligible to receive a permanent protection visa as they arrived in Australia by boat. Many within this cohort have had this change of law apply to them retrospectively, meaning many people at their time of arrival ought to have been afforded permanent protection.

If a person who arrived by boat is recognised as a refugee, they are placed on a temporary protection visa, either a Temporary Protection Visa (TPV) or a Safe Haven Enterprise Visa (SHEV). There are currently about 8,400 people on TPVs and 16,000 people on SHEVs in Australia. They must re-apply for temporary visas every three or five years to demonstrate they should still be granted protection. This process and the uncertainty involved is very traumatic.

Due to the Temporary Visa status of many asylum seekers, or status as holding an indefinite Bridging Visa, these people face visa-based discrimination in job-hunting, and are more likely to be employed in casual or unstable roles. As a result, many have lost all income since the beginning of the COVID-19 crisis, and are faced with impending destitution and in many cases homelessness, with limited or no access to government financial, social and medical support.

8.1 Social security rights

Temporary protection visa and Bridging Visa holders are not eligible for most Centrelink Support programs. In some limited circumstances temporary protection visa holders can access the "Special Benefit" payment. However, this can inhibit SHEV holders meeting the requirements they need to satisfy to be able to apply for permanent visas.

Some Bridging Visa holders may apply for Status Resolution Support Service payments, however, eligibility requirements for these payments are very strict. And exclude the vast majority of people seeking asylum

The economic support measures implemented in response to COVID-19, including JobKeeper and JobSeeker, are not available to asylum seekers or refugees on Temporary Visas. This should be rectified.

²⁶ Department of Home Affairs, *Monthly Update: Onshore Protection (Subclass 866) Visa Processing – March 2020*, <https://www.homeaffairs.gov.au/research-and-stats/files/monthly-update-onshore-protection-866-visa-processing-march-2020.pdf>

8.2 Exclusion of refugees and people seeking asylum from social and medical support mechanisms

Bridging Visa holders are often not eligible for long-term homelessness and crisis support services. This endangers people, particularly those who are already at risk such as women and children experiencing domestic violence, LGBTQI people, asylum seekers with disabilities including mental health conditions.

The Canberra Statement²⁷ identifies homelessness and insecure housing for LGBTQI Asylum Seekers in particular to be a key concern, and calls for broader government assistance for LGBTQI asylum seekers, including in housing assistance. The Federal Government must provide housing and crisis support services to Bridging Visa holders and other refugees and people seeking asylum.

Many people seeking asylum with Bridging Visas are also ineligible for Medicare. This means that provision of healthcare to these potential or actual COVID-19 patients – including preventative public health measures such as GP advice and COVID-19 testing, and acute COVID-19 related healthcare such as hospital admission and ambulance fees – is simply not provided for by Federal Government policy. The Federal Government must expand Medicare eligibility to include all refugees and people seeking asylum including those on Bridging Visas.

8.3 Processing of protection visas during COVID-19

During this time refugees and people seeking asylum face an increased likelihood of experiencing changing, unstable accommodation, becoming homeless, experiencing disruptions from service providers. They may have to stay in unsafe spaces or simply spaces with limited privacy and still be required to discuss sensitive issues relating to their visa applications to Departmental officers or legal representatives. They may also have to deal with a sudden lack of income. As such, many will have difficulty receiving and responding appropriately to Immigration correspondence.

Given the strict legal time limitations with regard to visa refusals or cancellations, all decisions to refuse visa applications, or to cancel visas, should be put on hold by the Department of Home affairs until the COVID-19 crisis has passed, so they can be dealt with fairly. This included a lifting of travel bans, and an alleviation of the excessive social and economic hardship caused by the crisis.

Any correspondence from the Department to refugees and people seeking asylum at this time should be followed up with telephone calls with interpreters to recipients. Timeframes to respond to requests for information should also be increased.

We recognise that any delays or suspensions in protection visa processing may add to the government's already significant backlog. As such, the Department of Home Affairs should continue to assess applications on the papers alone, and where possible, grant visas without requiring an interview.

²⁷ <http://tinadixson.com.au/canberra-statement/>

8.4 Ongoing detention of vulnerable migrants in dangerous conditions

As of 31 March 2020, there were 1,373 people in the immigration detention facilities across Australia including Christmas Island.²⁸ A significant number of these people have been transferred to Australia for medical treatment, and have underlying medical issues.

Detention facilities present a high risk for the spread of COVID-19, and as many people in detention as possible should be assisted to be transferred out into the community.

The Australian Government's own Department of Health Services Guideline on COVID-19 Outbreaks in Correctional and Detention Facilities,²⁹ developed by the Communicable Diseases Network Australia (CDNA), recognises that "detention facilities are higher risk environments for outbreaks because of difficulties practicing social distancing in these facilities" where people are located in close proximity.

Other leading medical experts and peak bodies have also raised serious concerns in relation to the impact of COVID-19 on people held in immigration detention facilities, including in a joint statement by Associate Professor Joshua Davis from the Australasian Society for Infectious Diseases (ASID) and Associate Professor Philip Russo from the Australasian College for Infection Prevention and Control (ACPIC) who recommended:

"We understand that around 1400 asylum seekers and other non-citizens are being held in detention in crowded conditions that would preclude adequate social distancing or self isolation. This would potentially pose a risk to their health in the event of an outbreak of COVID-19, as outbreaks in other crowded settings, including detention facilities, have been well documented to date.

*...As a minimum standard, we would recommend that detainees should be held in single rooms with their own bathroom facilities."*³⁰

8.5 Disruptions to Australia's international humanitarian programs

The Federal Government should take steps to minimise the disruption to its overseas humanitarian programs at this time. Temporary protection visa holders who have travelled overseas must be clearly supported in returning to Australia. Travel bans should not exclude those who have been recognised as in need of Australia's protection from returning. The travel bans have also halted family reunions and resettlement of refugees. This should be rectified so that refugees and people seeking asylum can be safe and with their families in Australia.

8.6 Women and children on temporary visas

Women and children experiencing sexual, domestic and family violence on temporary visas are in particular need of support. Depending on their visa type, some women may be eligible for Special Benefit and Medicare, but this is only a small group of women out of all the women on temporary visas experiencing violence.

²⁸ Department of Home Affairs & Australian Border Force, *Immigration Detention and Community Statistics Summary*, 31 March 2020, <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf>

²⁹ Communicable Diseases Network Australia (CDNA), *Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities*, 31 March 2020, <https://www.health.gov.au/sites/default/files/documents/2020/03/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>

³⁰ Australasian Society for Infectious Diseases and the Australian College of Infection Prevention and Control, statement dated 19 March 2020, <https://www.asid.net.au/documents/item/1868>

Besides this support, women who are experiencing sexual, domestic and family violence and their children are relying on food vouchers and living in refuges for lengthy periods of time. There are too few places available in refuges to accommodate all who need this accommodation option. Many remain with the perpetrator because there is no other option. Proper supports for women and children experiencing sexual, domestic and family violence on temporary visas are required – including income, housing, healthcare and legal support.

This is a long-standing issue with the NSW Domestic Violence Death Review team repeatedly recommending the Federal Government work with the NSW Government and other stakeholders to provide better support for women and children experiencing sexual, domestic and family violence on temporary visas, including access to medical care, crisis accommodation and ongoing safe housing, income and legal support.³¹

The significant gap in supports for women and children experiencing violence on temporary visas has again been highlighted during COVID-19.

We are deeply saddened by the recent domestic violence homicide of Ms Sidhu in Quakers Hill. Ms Sidhu was on a student visa.³² It should not take the preventable deaths of women to galvanise the Government to take action.

On 11 April 2020 the Federal Government announced \$7 million funding for Red Cross to provide emergency relief for people who are on temporary visas and in severe financial hardship over the next 6 months.³³ However, these are only one-off payments for people who cannot afford medicine or food.

We note some state/territory government have also taken action on this issue, including Tasmania, Victoria, South Australia, Queensland, New South Wales, the Northern Territory and the ACT.

State, Territory and Federal Governments must take urgent action now to protect and support women and their children on temporary visas experiencing violence, including through medical, housing, income and legal support.

Recommendation

16. The Federal Government must extend eligibility for Centrelink payments including JobSeeker, Youth Allowance, the Disability Support Pension and the Aged Pension to people on Bridging Visas (all sub-classes), Student Visas, Temporary Resident (Skilled Employment) Visas, Pacific and Seasonal Worker Visas and Temporary Graduate Visas.
17. The Federal Government must extend eligibility for the Special Benefit as a payment of last resort to include people on Bridging Visas (all sub-classes), Student Visas, Temporary Resident (Skilled Employment) Visas, Pacific and Seasonal Worker Visas and Temporary Graduate Visas.

³¹ NSW Government, *NSW Domestic Violence Death Review Team Report 2015-17*, Recommendations 20.1-20.5; NSW Government, *NSW Domestic Violence Death Review Team Report 2017-2019*, Recommendation 17 and p 100, 181-182.

³² Hayley Gleeson, 'Domestic violence victims on temporary visas need urgent protections, experts warn', *ABC News* (24 May 2020) <<https://www.abc.net.au/news/2020-05-24/women-domestic-violence-temporary-visas-urgent-calls-protection/12276132>>.

³³ Ministers for the Department of Social Services, 'Urgent support for 300 charities and community organisations', (Media Release, 11 April 2020) <<https://ministers.dss.gov.au/media-releases/5726>>.



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18. The Federal Government must relax the eligibility criteria for Status Resolution Support Service payments for people on Bridging Visas who are in immediate 'financial hardship'.
19. The Federal Government should provide adequate medical and housing support, including Medicare eligibility, and housing grants, for temporary protection visa holders and asylum seekers, including those on Bridging Visas.
20. The Federal Government should provide information resources in-language (particularly video) about the availability of free healthcare, especially COVID-19 healthcare.
21. The Federal Government should provide information resources in-language (particularly video) about the protection of privacy and health information, and to what extent a firewall exists between health service providers (particularly for COVID-19) and the Department of Home Affairs.
22. The Federal Government should establish a just, clear policy during the pandemic to guide visa processing and to ensure that COVID-19 does not negatively impact the legal rights of people seeking asylum. This should include putting all visa application rejections and visa cancellations on hold for the duration of the COVID-19 crisis, introducing priority processing of Bridging Visa applications, and granting Protection Visas without interview where possible.
23. The Federal Government should swiftly and significantly reduce the current population of immigration detention facilities by releasing people who do not pose a threat and/or have serious health conditions into the community, and improve the health and safety of these facilities for those people that remain within them.
24. The Federal Government should provide a clear pathway for resumption of family reunion and humanitarian resettlement and allow temporary protection visa holders currently overseas to return to Australia.
25. Federal, state and territory governments should take urgent action to ensure women and children experiencing violence on temporary visas have income, housing, healthcare and legal support.

9. People without visas

It is estimated that there are more than 60,000 people without visas in Australia.³⁴ This is likely to have increased during the pandemic as people's visas have expired while borders have remained closed. These people are also unable to access government economic supports and so if they become ill they are forced to either continue to work while sick or face destitution and homelessness. People without visas are also ineligible for Medicare, or any of the economic support packages the government has introduced in response to the COVID-19 pandemic. This is both unjust, and a serious public health risk at this time, particularly given that many in this cohort work in essential and frontline services such as hospitality, cleaning, fruit and vegetable industries, and agricultural industries - essential services.

As Australia goes into lockdown, many undocumented migrants continue to work and provide essential services; they have to, because there is no safety net.

Even before COVID-19 there was well-documented, systematic exploitation of migrant labour.³⁵ This exploitation includes working for poverty wages, under dangerous conditions, and without access to workplace benefits such as health care, insurance, paid sick leave, or access to income support. Due to fear of deportation there is often no recourse to justice for people without visas if they are exploited by unfair work practices or unpaid wages.

Many people without visas are reluctant to seek health services, because of fears of detention and deportation. A consistent concern voiced by these people is that of whether, by engaging with health services - such as getting COVID-19 testing, information will be passed on to the Department of Home Affairs.³⁶

The Federal Government must guarantee that people without visas are able to engage with COVID-19 health services (and general health services) without fear of deportation or debt. The Federal Government must spread the message of this information firewall in-language, preferably in video format.

In Italy, some half a million undocumented workers are set to be granted 6 month visas.³⁷ This has been done in response to pragmatic need to engage with the population of people without visas in that country in order to ensure public health during the COVID-19 pandemic, and in recognition of the essential services that many undocumented workers provide. The Federal Government should similarly introduce an amnesty for people without visas in Australia for the duration of the pandemic.

Recommendations

³⁴ Maani Truu, "The group of migrants in Australia likely to be most impacted by coronavirus", *SBS News*, 20 April 2020, <https://www.sbs.com.au/news/the-group-of-migrants-in-australia-likely-to-be-most-impacted-by-coronavirus>

³⁵ Marie Segrave, What it's like to live and work illegally in Australia, *The Conversation*, 25 July 2017, <https://theconversation.com/what-its-like-to-live-and-work-illegally-in-australia-81478>

³⁷ Tom Kingston, 'Coronavirus: Italy to give 600,000 illegal migrants right to stay', *The Australian*, 7 May 2020, <https://www.theaustralian.com.au/world/the-times/coronavirus-italy-to-give-600000-illegal-migrants-right-to-stay/news-story/fd804b188081863a2ac5fbb1475c991a>



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26. The Federal Government should swiftly introduce an adequate financial support package for people without visas.
27. Access to Medicare should be extended to people without visas.
28. Assurances of the information firewall between health services and other government departments, particularly the Department of Home Affairs, should be made very clear, in-language, preferably in video format.
29. There should be an amnesty for people without visas in Australia for the duration of the pandemic.

10. Older Australians

Older people in the community, particularly those who are vulnerable, frail or have chronic illness, are at heightened risk of COVID-19. According to the Australian Government Department of Health, the median age of COVID-19 fatalities in Australia is 80 years old, and 29% of deaths in Australia have occurred at residential aged-care facilities.³⁸

Seniors Rights Service (SRS) is the leading community legal centre and aged care advocacy organisation representing the rights of seniors in NSW. SRS has been at the forefront of the community's response to the COVID-19 pandemic.

Between March and the end of May 2020, SRS received over 900 calls specifically related to COVID-19. This is an unprecedented increase in demand for community legal services for older people and has given SRS an in-depth understanding of the many complex economic, social and psychological impacts the pandemic has had on older people in the community.

During the COVID19 pandemic, callers to the SRS have expressed a range of concerns and fears including:

- restrictions and bans on visiting loved ones in aged care facilities
- whether it is safe for their elderly relatives to continue to receive home care visits, and what impact cancelling these visits might have on their loved ones' future care plans
- discrimination and abuse of residents in retirement villages by operators and of residents in strata living by strata managers
- financial pressures brought on by economic stress in the COVID-19 lockdown.

There has also been an increase in the number of older people reporting stress and anxiety due to the impacts of COVID-19 on their lives, their increased isolation from family and caregivers, and the greater potential for abuse, both financial and psychological, of older people where their family members are also under increased pressure and strain.

As the effects of the pandemic play out across the community over the coming months and years, SRS expects increasing demand for its services, particularly in relation to further COVID outbreaks in aged care facilities as well as increasing instances of financial abuse of older people, domestic violence, and abuse of the rights of older people to safe and consistent care and protection wherever they may reside.

10.1 A national framework for responding to crisis and emergency situations in the aged care sector

SRS provided on the ground advocacy services to the residents and families at Newmarch House in Western Sydney, as that aged care facility responds to one of Australia's biggest COVID-19 clusters.

Through talking with families and carers of residents, it became clear that there was confusion about the roles of the Federal Government, the Aged Care Quality and Safety Commission, NSW Health, the Older Persons Advocacy Network (OPAN) and the operators of the facility (Anglicare), as well as the internal management of the facility. Consequently, families and residents did not know who was making the decisions that affected them, nor who to contact

³⁸ Australian Government Department of Health, *Coronavirus (COVID-19) at a glance*, last updated 4 June 2020, <https://www.health.gov.au/resources/publications/coronavirus-covid-19-at-a-glance>

about their concerns. For example, it was not clear to families and residents who was responsible for making the decision to restrict visits to residents and therefore, who they could appeal to for an exemption to this rule in a particular circumstance (for example, where a resident was dying). This lack of a clear response framework led to the appearance of a fragmented response, and the feeling for many that ‘nothing was being done’ or that no one knew who was in control of the situation.

It is critical that there is a method for all sectors of government and community to liaise and identify who is responsible for different areas of the response, and to delegate these responsibilities. This should be worked up into a framework for crisis response that simply sets out key responsibilities, which can be clearly communicated to all stakeholders, including families affected.

10.2 Financial abuse of older people

Financial Abuse of older people is one of the most prevalent forms of elder abuse in Australia and has been described as reaching ‘epidemic proportions’ in Australia.³⁹ The life-time prevalence of economic abuse for women in Australia is 15.7 per cent, while for men it is 7.1 per cent. This means that more than two million Australians have or will experience financial exploitation within a relationship of trust in their lifetimes.⁴⁰

SRS deals with over 700 elder abuse issues in its legal practice every year with the majority of these cases involving financial abuse. Its recent experience is that the COVID-19 pandemic and the resulting isolation of older people, coupled with the increasing financial pressure on families, is exposing an increasing number of older people to financial and psychological abuse. As the pandemic progresses, and as more people lose their jobs and cannot pay rent or other expenses they may turn to their elderly parents and relatives, pressuring them for financial support. Often these older people are vulnerable themselves and are isolated from friends or social contacts who they could normally turn to for help or advice. This financial stress is resulting in increased anxiety and fear for many older marginalised seniors.

10.3 Broader psychological impacts on older people

The impact of the pandemic on the physical health of many older people is clear. What is less clear at this time, is the extent of its adverse psychological impacts. Community legal centres are concerned that even once the virus has been brought under some control, its psychological, economic and social impacts on older people will be felt for many months, if not years, to come. Many older people in the community have become increasingly isolated from families, grandchildren, friends, and carers during this time, and many of the social activities older people commonly participate in have been closed. The psychological impact of this sudden isolation will be long felt.

In SRS experience to date, callers to the service are more anxious and fearful than they were prior to the COVID-19 crisis. Many are highly emotional and require longer consultations, and social support. This has put an additional strain on already stretched resources. The SRS legal team is preparing for the post-COVID-19 influx that is anticipated long after the immediate

³⁹ Bianca Hartge-Hazelman, “Financial abuse reaching ‘epidemic proportions’”, The Sydney Morning Herald, 10 April 2018, <https://www.smh.com.au/money/planning-and-budgeting/financial-abuse-reaching-epidemic-proportions-20180409-p4z8hp.html>

⁴⁰ Jozica Kutin, Roslyn Russell & Mike Reid, ‘Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress’, *Australian and New Zealand Journal of Public Health*, Volume 41, Issue 3, 28 February 2017.



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devastating impacts of the virus have declined. Therefore, the recommendation we make below in section 14 regarding the need for medium- to longer- term funding for community services, is particularly important for services supporting older people.

Recommendation

30. The Federal Government, in consultation with relevant state government agencies, service providers and stakeholders should develop a framework for responding to crisis and emergency situations in the aged care sector that clarifies responsibilities between federal and state governments and service providers, and clearly identifies lines of communication. This process should develop a flexible Plan of Response to any crisis affecting the broader aged care community.
31. The Federal Government should support appropriate community legal centres across Australia to deliver a communication and training program for all aged care services, private solicitors, financial institutions and other community organisations addressing the potential for an increase in financial abuse of older Australians during the COVID-19 pandemic.

11. Children and young people

11.1 COVID-19 period data shows increase in access

Youth Law Australia's data throughout the COVID-19 period indicates a significant increase in children and young people accessing the service across Australia.

Nationally, Youth Law Australia (YLA) has seen its client intake grow 55% during COVID-19 (25 January to 31 May 2020) compared to last year (1,044 clients cf. to 672 clients). Page views of the YLA website, a rich source of legal information on a range of issues affecting children and young people has already reached 2,035,285 page views for the current financial year which represents unprecedented growth in demand.

Disturbingly, these trends have partly been driven by growth in family, domestic and online violence/abuse. Matters during COVID-19 have also been more complex and urgent than previously, with image-based abuse matters ("revenge porn"/ "sextortion"/ grooming etc.) increasing at an unprecedented rate and requiring same-day responses.

As compared to the same period in 2019, there has been a marked increase in children and young people accessing YLA with issues around:

- online abuse, harassment, and bullying
- family violence, child abuse and sexual assault
- credit and debt
- concerns around homelessness
- employment and social security.

11.2 A failure to invest in access to justice for children and young people

Broadly considered, the Federal Government's COVID-19 measures during the period March to June 2020, including the JobKeeper and JobSeeker initiatives, are particularly welcome and commendable.

However, a review of government announcements shows a failure to invest in access to justice for children and young people at a time not only of unprecedented demand but also demand for legal assistance in areas of particular vulnerability and harm. The need for investment in legal assistance services specifically for children and young people will continue to be essential as that generation continues to navigate its way through the challenges of a post COVID-19 environment.

YLA currently receives funding under the Federal Legal Services Program (CLSP), along with other specialist national legal services. Under that level of funding, YLA can only offer legal assistance to just approximately 1,100 children, young people, family members and others. Based on trends of service demand outlined above, this means the legal assistance needs of an estimated 3,300 children and young people will go unmet under current funding arrangements.

Recommendation

32. The Commonwealth Attorney-General's Department should prioritise the issue of access to justice by children and young people during the COVID-19 crisis and recovery phase in recognition of the social and economic burden they will experience.

12. Law enforcement

12.1 Fines issued in relation to COVID-19

From the commencement of the restrictions on public gatherings in New South Wales by the Health Minister on 30 March 2020⁴¹ until 15 April 2020, NSW Police had issued 560 on-the-spot infringement notices – a total of \$560,000 in fines. Some initial analysis about where the fines are being handed out is cause for concern. NSW police data shows that 15 per cent of all fines issued to date have been in just three local government areas – Liverpool, Canterbury–Bankstown and Fairfield, areas that represent just 5 per cent of total recorded COVID-19 cases across the state.⁴² Lower socioeconomic areas like Liverpool, Canterbury-Bankstown and Fairfield also have higher concentrations of ethnically diverse communities.

Meanwhile, regional towns like Walgett and Bourke, with small populations but high numbers of Aboriginal and Torres Strait Islander people, have seen a comparatively high number of fines issued, even though there have been no cases of coronavirus recorded there.

While it appears areas with low to zero coronavirus cases have been hit the hardest when it comes to on-the-spot fines, the local government areas of Woollahra, Northern Beaches and Waverley, (which includes Bondi Beach), have received fewer than 1.8 per cent of infringements, despite having recorded 15 per cent of NSW cases.⁴³

This correlation is particularly harmful for those of lower socio-economic backgrounds, given that the fines of \$1,000 (or \$5,000 for the more serious offence of coughing or spitting on a public official) are not means tested. The cost of these fines is at least three times the base weekly amount that a person on the JobSeeker payment (equivalent to the maximum payment for a single person previously on Newstart) receives and double the amount of many speeding fines. Failure to pay fines drives many people into contact with the criminal justice system, simply because they cannot afford to pay.

With respect to these public health fines, we are yet to see whether NSW Police have been issued with guidelines or Standard Operating Procedures around the application of these new powers, which would inform whether a fine should be issued. In this time of tremendous uncertainty, overwhelming levels of unemployment and high level of confusion around public health directions, communities are deeply impacted by additional fines.

This problem is also made worse by inconsistent understanding and application of public health orders across state and territory systems. Confusion about the specific nature of obligations has been heightened by media reporting. For example, in the same 15 day period in which NSW Police issued 560 fines, authorities in the ACT issued no fines despite enacting similar police

⁴¹ Public Health (COVID-19 Restrictions on Gatherings and Movement) Order 2020, *Government Gazette of the State of NSW*, No 54, Monday 23 March 2020.

⁴² Osman Faruqi, 'Compliance fines under the microscope', *The Saturday Paper* (online, 18 April 2020) <<https://www.thesaturdaypaper.com.au/news/health/2020/04/18/compliance-fines-under-the-microscope/15871320009710>>.

⁴³ Ibid.

powers.⁴⁴ By contrast Victorian Police issued 1,200 fines.⁴⁵ Amongst the states, only Queensland has indicated that all fines issued will be subject to internal review processes.⁴⁶

Inconsistency is a national consideration. If there were uniformity and transparency across all states and territories, it may have assisted to ensure consistency in practice. This may have been particularly impactful for the policing of groups experiencing disadvantage, such as Aboriginal and Torres Strait Islander people, people in rural areas, and people from lower socioeconomic backgrounds.

12.2 The potential for Federal and State Police use of primary and metadata from the COVIDSafe application

The *Privacy Amendment (Public Health Contact Information) Act 2020* (the Privacy Amendment Act) provides restrictions on the collection and use of 'COVID app data'. The Act refers to data generated through the COVIDSafe app, including registration data, and data stored on the device.⁴⁷ 'COVID app data' excludes information which is not directly from the COVIDSafe app, but generated in the health investigation process, or data which has been de-identified for statistical purposes.⁴⁸ The current proposed legislation distinguishes further that the use of 'non-COVID app data' is not prohibited. 'Non-COVID app data' is not positively defined in the legislation, though presumably includes any data not meeting the description of COVID app data.⁴⁹

The Privacy Amendment Act further indicates that COVID app data is taken to be 'personal information'⁵⁰ under the meaning of the *Privacy Act*.⁵¹ Under the Australian Privacy Principles, such information may not be used for secondary purposes unless there is an exception by consent, or where such disclosure is permitted or required by an Australian court or tribunal.⁵² In addition, there is an exception which means the collection of COVID app data is not an offence where that collection is incidental to the collection of non-COVID app data and permitted under an Australian law. The reference to 'an Australian law' could be read as limited to Australian Privacy Principle 6. We submit that having this clearly stated within the law will ensure consistency across states and found greater public confidence in the application.⁵³

Further, we share concerns about the potential uses of the metadata generated by the application, which may be excepted from the definition of COVID app data.⁵⁴ Federal legislation including the *Telecommunications (Interception and Access) Act*⁵⁵ and the *Assistance and Access Act*⁵⁶ create the possibility that access to data through service providers may not be excluded. This is because the laws allow for access to metadata, which is held by service

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Osman Faruqi, 'Compliance fines under the microscope', *The Saturday Paper* (online, 18 April 2020) <<https://www.thesaturdaypaper.com.au/news/health/2020/04/18/compliance-fines-under-the-microscope/15871320009710>>.

⁴⁷ *Privacy Amendment (Public Health Contact Information) Act 2020* (Cth) s 94D(5)(a)–(b).

⁴⁸ *Privacy Amendment (Public Health Contact Information) Act 2020* (Cth) s 94D(5)(c)–(d).

⁴⁹ *Privacy Amendment (Public Health Contact Information) Act 2020* (Cth) s 94D(3).

⁵⁰ *Privacy Amendment (Public Health Contact Information) Act 2020* (Cth) s 94Q.

⁵¹ *Privacy Act 1988* (Cth) Pt II s 6.

⁵² *Privacy Act 1988* (Cth) Sch 1 pt 3 s 6.

⁵³ *Privacy Amendment (Public Health Contact Information) Act 2020* (Cth) s 94D(3)(b).

⁵⁴ David Watts, 'COVIDSafe, Australia's Digital Contact Tracing App: The Legal Issues' (2 May 2020), 10–11 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3591622>.

⁵⁵ *Telecommunications (Interception and Access) Act 1979* (Cth) s 172.

⁵⁶ *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth)

providers (not merely data held on a device) and due to the possible exception of metadata from the definition of ‘personal information’ under the *Privacy Act*.⁵⁷

We acknowledge the statement made by the Attorney-General that Australian Federal Police will not be permitted to access the information from the COVIDSafe app.⁵⁸ There are limitations to the information stored by the app directly, including allowing people to use pseudonyms and the lack of inbuilt location capability.⁵⁹ However, other data discernible from metadata or directly from the app may indeed enable government agencies to make inferences about users associations, movement and identity.

Given the context of the COVIDSafe app as a tool to encourage the responsible re-opening and continuation of approved public activities such as employment, it is important that all people (especially the most marginalised) are confident their privacy is appropriately protected through transparent and explainable legislation and technology.

Recommendation

33. The Federal Government should ensure transparency and uniformity of public health fines on a national scale.
34. The Federal Government should clarify the exception relating to the collection of COVID app data where the collection is incidental to the collection of non-COVID app data and permitted under Australian law. Clearly state in law that this is limited to the exceptions under Australian Privacy Principle 6.
35. Governments should legally prohibit law enforcement agencies from accessing the information stored in the COVIDsafe application.

⁵⁷ David Watts, ‘COVIDSafe, Australia’s Digital Contact Tracing App: The Legal Issues’ (2 May 2020), 10–11 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3591622>.

⁵⁸ Max Koslowski, ‘Attorney General to ban police from accessing coronavirus app metadata’, *Sydney Morning Herald* (online, 22 April 2020) <<https://www.smh.com.au/politics/commonwealth/attorney-general-to-ban-police-from-accessing-coronavirus-app-metadata-20200422-p54m6e.html>>.

⁵⁹ Australian Government Department of Health, *COVIDSafe App* (28 May 2020) <<https://www.health.gov.au/resources/apps-and-tools/covidsafe-app>>.

13. Financial rights

We endorse the recommendations made by the Financial Rights Legal Centre to this inquiry, in particular those relating to early access to superannuation, landlord insurance, debt collection practices and travel insurance.

13.1 Early access to superannuation and COVID-19

We refer to the Federal Government's announcement of early access to superannuation in certain circumstances because of COVID-19. This includes up to \$10,000 in the 2019-20 financial year and up to \$10,000 in the 2020-21 financial year.

By early May, 1.1 million Australians had applied for access to superannuation, with \$9.4 billion of retirement savings approved for early release.⁶⁰ We are deeply concerned that early access to superannuation was announced before the JobKeeper program, and that Australians considering drawing on their superannuation were not given sufficient information on the costs and benefits of doing so. Superannuation is intended to provide for people's future and long-term financial security, and this is in part possible due to superannuation's compounding nature. Early withdrawal of even relatively modest amounts of superannuation can have very significant financial consequences for someone over the long-term.

Whether people access their superannuation early is dependent on individual circumstances. It is vital, however, that people are aware of all other supports available and that superannuation is accessed as a last resort.

██████'s story (early May 2020)

██████ is a veteran with long-standing psychological issues, including problem gambling. He borrowed \$300 from a small lender, which he gambled and lost. He then lost his job due to COVID-19 and was unable to pay his debt. During the period ██████ had no income (while waiting for JobSeeker), the lender applied default fees increasing the amount owing to over \$1,000, despite ██████ telling them he was in hardship and unable to pay his rent. ██████ contacted our service for assistance and we were able to negotiate a reduction in the fees and an affordable repayment arrangement. However, because ██████ was so stressed about it, he went ahead and applied for early access to superannuation under the COVID-19 arrangements and used this to pay the lender in one lump sum. He did not obtain legal or financial advice before taking this step.

Source: Financial Rights Legal Centre

We are concerned that due to the gender pay gap and interruptions to working due to family and carer responsibilities, women already have much lower superannuation compared to men. We are further concerned about any pressure exerted on victims-survivors of domestic and family violence to withdraw their superannuation.

⁶⁰ <https://www.theguardian.com/australia-news/2020/may/07/australian-authorities-reveal-alleged-of-early-access-to-superannuation>

We endorse the 5 steps outlined by Women's Legal Service Victoria in making a decision to access superannuation.⁶¹ These steps are outlined below.

- Step One: Assess your situation and how long you can last financially
- Step Two: Work out what financial assistance you may be able to access
- Step Three: Work out what other financial assistance might be available to pay your bills
- Step Four: Assess the long-term financial impact of accessing super too early
- Step Five: As a last resort, apply to access superannuation early due to COVID-19

13.2 Travel insurance

When the COVID-19 crisis emerged, many people across Australia were forced to cancel overseas trips they'd booked and paid for. Many had purchased travel insurance, but most found they were unable to claim for cancellation losses because their policies included broad exclusions for pandemic, which most people were unaware of when they purchased the insurance.

Travel insurance was the most called about product on the Insurance Law Service national helpline in March 2020. There were several different problems relating to travel insurance that became apparent at this time.

Many policies were complex with many clauses and definitions, and complex wording. Many people were confused as to their rights to cancel, claim or receive a refund for the insurance premiums they had paid.

██████'s story (early April 2020)

██████ had to return to Australia in a hurry from overseas when the pandemic was declared, and the changed flights cost nearly \$1,500. She tried to claim on her travel insurance, but her claim was rejected because the insurer said her costly return was caused by "government intervention" which was excluded under the policy. But her policy also had a more specific clause that deals with pandemics, which stated she is only excluded from cover if she "did not follow advice in the mass media or an official body's warning" or if she "did not take the appropriate action to avoid or minimise any potential claim". But she came back right away, following her government's advice!

Source: Financial Rights Legal Centre

From the experiences of Financial Rights Legal Centre's Insurance Law Services, many travel insurance salespeople engaged in poor sales practices at the time when travel insurance was purchased, and many insurance companies are only agreeing to offer vouchers or travel credit rather than refunds.

██████'s story (Mid-April 2020)

⁶¹ Women's Legal Service Victoria, '5 Steps to take before you access your superannuation early' (Factsheet, April 2020) <<https://womenslegal.org.au/files/file/Coronavirus%20Superannuation%20Brochure%20-%20FINAL.pdf>>.

_____ and her partner had an overseas trip planned for May. On 10 March she purchased travel insurance because she heard of one company that was still giving cover for travel restrictions caused by COVID-19. When _____ paid for the policy, she double checked that she would be covered if her trip was cancelled because of the virus and the customer service rep told her yes, she was covered. She even has a voice recording of this conversation. However, now _____'s insurer is telling her she is not covered because she purchased the insurance after COVID-19 became a known event. The travel agent she booked the trip through is offering _____ a travel credit, but she has to use it by September 2020, and she doesn't think the travel bans will be lifted before then.

Source: Financial Rights Legal Centre

We refer to the submission made by the Financial Rights Legal Centre to this inquiry for further detail on the issues surrounding COVID-19 and travel insurance. In particular, we endorse their statement that:

Ultimately the coronavirus crisis and its impact on travel insurance consumers has highlighted a number of problems in the general insurance sector that need to be addressed by government. Some of the issues will be addressed via legislation mooted to address Royal Commission recommendations including:

- *removal of the exclusion of handling and settling an insurance claim, or potential insurance claim, from the definition of a 'financial service',⁶²*
- *introduction of a deferred sales process for add-on insurance (including travel insurance)⁶³*

while others are currently being considered by Treasury including disclosure practices in general insurance.⁶⁴

We therefore endorse their recommendation that the Federal Government should implement recommendations 4.3 and 4.8 of *The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* as soon as possible and prioritise the *Disclosure in General Insurance* review upon completion of the Royal Commission implementation.

Recommendations

36. The Federal Government should more finely hone the criteria for early access to superannuation should be more finely honed to ensure people may only access those funds where there is no alternative source of financial support. Should any similar crisis arise in future that the government believes warrants granting early access to superannuation, criteria must ensure superannuation remains an absolute last resort.
37. The Federal Government should ensure appropriate information and resources are always made available to Australians to consider the full pros and cons of accessing their superannuation early.

⁶² <https://treasury.gov.au/consultation/c2019-36687>

⁶³ <https://treasury.gov.au/consultation/c2020-48919d>

⁶⁴ <https://treasury.gov.au/consultation/c2019-t354736>



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38. The Federal Government should promote Women's Legal Service Victoria's 5 steps to consider before accessing superannuation.
39. The Federal Government should implement recommendations 4.3 and 4.8 of *The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* as soon as possible and prioritise the *Disclosure in General Insurance* review upon completion of the Royal Commission implementation.

14. Impact of COVID-19 on demand for legal assistance

COVID-19 is not only a public health emergency, but a social and economic emergency. In addition to ill-health and deaths, it has caused business closures, tens of thousands of job losses, evictions from residential and commercial tenancies, mortgage foreclosures and escalating public and private debt. These impacts throw up many legal issues that disproportionately harm the people and communities that community legal centres make it our core business to support: people living on low incomes or with insecure work, people with disabilities, Aboriginal and Torres Strait Islander people, renters and people experiencing homelessness, older people, young people, people experiencing domestic violence and more.

Community legal centres are responding to changed patterns of demand for legal assistance since the COVID-19 crisis began. Traffic to Community Legal Centres NSW's service finder app was up 34% in March of 2020 compared to March 2019. Across the sector and the state, many centres are reporting big spikes in requests for legal assistance in some areas, particularly tenancy, welfare, parenting arrangements, domestic and family violence, discrimination and police complaints.

14.1 Community legal centres already struggle to meet legal need

Due to resource constraints, many community legal centres already struggle to meet regular demand for services, outside of periods of crisis. The NSW Department of Justice's 2017 report, *Review of NSW Community Legal Services* (The Cameron Review), found community legal centres do excellent work with limited resources and are extremely efficient. Grounded in strong governance structures, they are administratively lean and there is very little service duplication across the sector and the state. The Cameron Review also found the sector is underfunded and the 'vast majority of community legal centres would not be able to absorb a reduction in funding without compromising frontline service delivery.'⁶⁵ The experience of centres contributing to this submission certainly backs up this finding, along with the converse: that the increase in demand due to COVID-19 will not be able to be absorbed on current funding levels.

Despite these strengths in efficiency and governance, chronic underfunding of community legal centres means there is significant unmet legal need in NSW. For example, between 1 July 2019 and 3 April 2020, the Welfare Rights Centre received almost 11,000 calls to its telephone advice line and over 4,900 calls to its admin line. However, about one third of callers were unable to get through, often despite making repeated attempts. Of the callers who did get through, many assessed as having meritorious cases requiring representation were turned away due to resource constraints. Similarly, in 2019, around two-thirds of people who called the Tenants' Union of NSW during an advice shift were unable to get through. Of the one-third who did get through, more than 60% had to call multiple times.

14.2 COVID-19 will expand community legal centres' constituency over the coming years

Despite governments' best efforts to limit the social and economic impacts caused by strict social distancing measures, the pandemic will increase the number of people experiencing economic hardship. For many, it will be their first direct experience of disadvantage. It is widely accepted that recovering from the social and economic impacts of this crisis will likely take far

⁶⁵ NSW Department of Justice (2017), *Review of NSW Community Legal Services*, Executive Summary <https://www.justice.nsw.gov.au/Documents/publications-research/Final-Report-CLC-Services.pdf>

longer than containing its immediate public health impacts. The community legal centres sector will have a much-expanded constituency, who will need support not just for a few weeks, but for years. To play its role in responding to the crisis effectively, our sector needs sustained additional funding over the medium to long term. While welcome, one-off funding injections are insufficient to ensure community legal centres are able to meet legal need in the community through the long recovery period from this crisis.

14.3 Communities need community legal centres to be funded sustainably to meet long-term need

Community legal centres in NSW welcomed the National Cabinet's announcement on 6 May 2020 of \$63.3 million in funding for the legal assistance sector across Australia to address increased demand due to COVID-19. However, once divided between jurisdictions and different legal assistance providers (including Legal Aid Commissions and Aboriginal and Torres Strait Islander Legal Services), it is nowhere near adequate to meet actual legal need in the community, now and into the future. It is vital the Federal Government increase its funding contribution to community legal centres and maintain these funding increases over the long term. State and Territory governments must also follow Victoria's lead and immediately inject additional funding to support front-line legal assistance services in their jurisdictions.

Community legal centres are well-placed to respond to the evolving legal needs of communities across the country. As well as being efficient and well-governed, community legal centres are locally embedded and responsive to the immediate and emerging needs of their communities. Our network of community legal centres has been on the frontline of responses to the legal problems the pandemic has begun to throw up. It was also amongst the first organisations to recognise and adapt to the shifting trends in communities' legal needs.

We endorse the Community Legal Centres Australia recommendation that an additional \$56.7 million per year be earmarked for community legal centres through the National Legal Partnership Agreement. This would amount to an investment of about \$315,000 additional funding per year per community legal centre across Australia.

We acknowledge and support the proposition that 40% of the recently announced additional funding must be used in matters relating to domestic violence. We recommend that some of the money for the legal assistance sector must go to specialist women's legal services around the country and community controlled Aboriginal and Torres Strait Islander legal services which are helping women to navigate the family law system and prioritise the safety of children through the crisis.

Additional funding should also be earmarked to assist Aboriginal and Torres Strait Islander people and communities impacted by COVID-19, through Aboriginal and Torres Strait Islander Legal Services (ATSILSs) and Family Violence Prevention Legal Services (FVPLSs).

14.4 Transitioning to remote service delivery models

At the same time as experiencing increased demand for services, community legal centres also faced the significant challenge of transitioning to remote service delivery models that meet physical distancing safety requirements.

Across NSW, centres have shown great agility and flexibility in maintaining the continuity of vital services for the community while undergoing a rapid digital transformation. These changes have been made more complex by the fact centres have experienced a loss of service multipliers (like volunteers and pro bono partners) and non-government sources of funding (like donations).

Practically, this has meant fewer personnel available to deliver services at a time when increased stress and anxiety amongst clients has meant they have needed more help than ever.

Most community legal centres have also had to dedicate significant additional resources to set up the ICT infrastructure necessary to transition staff to a work-from-home model.

We acknowledge the Federal Government's contribution of \$13.5 million for IT costs to support the sector's transition to delivering assistance virtually and online, about \$1 million of which will flow to community legal centres in NSW.⁶⁶ This equates to just over \$27,000 per centre which, while very welcome and appreciated, falls far short of meeting the additional costs centres have already and will continue to incur. For example, some centres have invested as much as \$180,000 in transitioning staff to work-from-home models that allow them to continue service provision through this crisis.

14.5 Swift funding rollouts are vital

Delays in roll-out of funding mean that people are missing out on legal assistance they urgently need. When funding rollouts are delayed by weeks or months, the people that community legal centres are unable to assist due to resource constraints remain in hardship, and their legal problems become more severe and complex. This is unjust for the people affected, and is also wasteful as centres end up spending more time assisting people to unravel more complex problems down the line. It is vital that Federal and State Governments work together to get funding out to front-line services as swiftly as possible. Having already transferred emergency legal assistance funding to the states and territories, the Federal Government should set and enforce strict timeframes for distribution to ensure people in need get the help they urgently require.

14.6 Policy reform through economic recovery must be designed to reduce legal need

Factors such as a financial hardship, discrimination, homelessness, unemployment and limited social security eligibility all contribute to increased demand for legal assistance services and other social and community services. During the economic recovery from the COVID-19 crisis, it is vital that all governments consider these factors and avoids austerity measures that would work to increase reliance on already-stretched services. High-quality social and community services are an integral part of a productive economy. As such, any investment in community legal centres and other social services not only benefits the people and communities we support, but also serves to enhance the overall productivity of the economy.

Recommendations

40. The Federal Government should invest an additional \$56.7 million per year in the community legal centre sector through the National Legal Assistance Partnership. This should include funding for increased service delivery and to meet centres changing IT needs.
41. Federal, state and territory governments should work together to swiftly make available funding for community legal centres to meet legal need in the community.

⁶⁶ Prime Minister of Australia, 'Update on Coronavirus Measures' (Media Statement, 5 May 2020) <<https://www.pm.gov.au/media/update-coronavirus-measures-050520>>.



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42. Federal, state and territory governments should commit to reviewing this funding allocation at the end of the first twelve months, to assess whether it is sufficient to meet community needs over the medium- and longer-term.
43. Federal, state and territory governments should adequately fund specialist women's legal services and community controlled Aboriginal and Torres Strait Islander legal services to help women navigate their way through the family law system and prioritise the safety of children.
44. During the economic recovery from the COVID-19 crisis, governments must avoid austerity measures that would ultimately harm people, communities and the economy.