

Australian Council of Human Rights Authorities

Statement - April 2020

The Australian Council of Human Rights Authorities (ACHRA) which comprises the state, territory and federal human rights, equal opportunity and anti-discrimination authorities, met via videoconference on 16 and 17 April 2020 to consider a number of issues of common concern and interest. Consideration of the various human rights implications of restrictions implemented to manage the COVID-19 pandemic featured prominently in discussion.

In addition to the issues outlined in the statements below, topics discussed included the right to education for children, particularly children with disability and additional needs, Australia's Universal Periodic Review process with the United Nations Human Rights Council, and a number of additional issues related to the COVID-19 pandemic including considerations regarding Australia's First People, approaches of the judiciary in conducting jury trials and best practice approaches for conciliating anti-discrimination complaints.

The ACHRA members listed at the bottom of this document endorse the following statements. We thank Emeritus Professor Rosalind Croucher AM, President of the Australian Human Rights Commission and her fellow federal Commissioners for their assistance in shaping these statements.

Decision-making in the provision of healthcare

ACHRA members are monitoring efforts to address discrimination and unconscious (implicit) bias in the health system's response to the COVID-19 crisis. Sadly, it has been the experience of several other nations responding to the pandemic that health resources are insufficient to deal with the crisis, particularly in the emergency care setting.

We acknowledge that health practitioners seek to apply a sophisticated set of ethical frameworks in decision making. Significant work has been done by the Australian, and state and territory governments and professional bodies in this area. This work is ongoing.

However, these frameworks must continue to ensure that human rights, and especially the operation of the Convention on the Rights of Persons with Disabilities, are considered in decision making throughout the health system, particularly regarding critical care. While there is capacity in the acute health sector, we have the opportunity to provide some certainty for health professionals and the community about how critical decisions will be made.

ACHRA members support this work and look forward to continuing to engage with governments at all levels to prevent unconscious (implicit) bias and discrimination in the provision of health.

COVID-19 and the rise in race-based vilification and discrimination

ACHRA is deeply concerned by reports of racist abuse and discrimination across Australia since the outbreak of the COVID-19 pandemic. Such incidents deeply affect individuals and their communities and undermine our ability to respond effectively to the pandemic. They harm our collective wellbeing at a time when we need to be working together. Social cohesion is more important now than ever.

COVID-19 has nothing to do with race or nationality, and neither fear of the virus nor frustration at the difficulties we all face are excuses for abusing people or treating them unfavourably based on race, nationality or ethnicity. We urge all people in Australia to show kindness and to support each other in these difficult times.

ACHRA considers it is the responsibility of all Australians to stand up to racism. We are all in this together.

COVID-19 measures and implications for older people

ACHRA is concerned about the potential for increased targeting of older people by scammers, and strongly advises heightened vigilance among older Australians and their supporters to ensure the safeguarding of personal information. The Australian Government's Scam Watch website provides information on known scams, including scams related to COVID-19. For more information, see <https://www.scamwatch.gov.au/>.

ACHRA notes there has been a reported increase in requests for legal assistance to write wills since the onset of the COVID-19 pandemic and advises older people and their legal representatives to ensure wills completed during this time of increased family and financial pressure are truly reflective of the testator's wishes.

ACHRA is concerned about the impact on people in aged care facilities where regular visits by volunteers, family and friends have been curtailed, where they were previously involved in assisting to meet the daily care needs of high-needs residents.

Impacts of COVID-19 on people with disability

ACHRA is concerned by the increase in many jurisdictions of disability discrimination inquiries and complaints. Overcoming this public health emergency will require social cohesion. The adoption of discriminatory practices will impact adversely on individuals, undermine our community response to overcome the pandemic and leave individuals and businesses open to liability for unlawful discrimination.

ACHRA welcomes the release of the Management and Operational Plan for COVID-19 for People with Disability and emphasises the need for government to take all necessary steps to ensure the protection and safety of people living with disability during public health emergencies.

ACHRA cautions that in the absence of a clear provider of last resort in the National Disability Insurance Scheme, people with disability who are unable to receive services from their usual provider may forego adequate care or be forced to seek assistance from hospitals.

ACHRA is concerned about equal and informed access to healthcare for people with disability if capacity constraints occur in the emergency healthcare system.

Law enforcement of COVID-19 measures

ACHRA cautions against the incidental criminalisation of a public health pandemic and urges fines for breaching social distancing to be issued as a last resort and with careful and proper discretion. ACHRA also recommends a rigorous collection of data to analyse which communities are most at risk of receiving infringements.

COVID-19 measures in detention settings

ACHRA acknowledges the work of the Australian Health Protection Principal Committee in providing advice to Government on preventing and managing a potential outbreak of COVID-19 in detention settings. Overcrowding and the use of shared facilities remain active concerns.

Isolation impacts of physical distancing measures

ACHRA is concerned about the safety, wellbeing and mental health impacts on people in vulnerable situations as a result of the increased social isolation associated with physical distancing measures.

Isolation and loneliness have significant and potentially devastating impacts on the health and wellbeing of all people, especially those with reduced social networks or a predisposition to loneliness.

Australian Government's contact tracing application

ACHRA welcomes the development of a contact tracing app by the Australian Government. An app of this type could more accurately identify and inform the public of their possible exposure to COVID-19 and is consistent with the right to life.

ACHRA urges that the app, and the legal and policy framework that supports it, protect individual's human rights—for example, through strong security features and restrictions against use of personal information for any purpose other than contact tracing. Further, the app must include accessibility features, particularly for people with limited exposure to technology.

National Inquiry into Workplace Sexual Harassment

ACHRA supports the findings and endorses the recommendations of the Respect@Work report by federal Sex Discrimination Commissioner, Kate Jenkins. A key finding of the report is that workplace sexual harassment is prevalent and pervasive across all levels, locations and industries in Australia. The report is the first of its kind to attempt to quantify the impact of workplace sexual harassment on a country's economy, conservatively estimated to be \$3.8billion to Australia in 2018, contributing to our existing understanding of the significant economic, health and wellbeing costs experienced by victims.

ACHRA calls for the consideration and implementation of all 55 recommendations in the report by governments, employers and industry associations, including the expeditious establishment of Workplace Sexual Harassment Council to improve consistency of approach between the multiple legislative schemes involved in workplace sexual harassment.

For further information contact the following ACHRA members:

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