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Submission to Victorian Ombudsman Investigation into the treatment of people and conditions of detention at 33 Alfred Street, North Melbourne

About Inner Melbourne Community Legal

Inner Melbourne Community Legal (**IMCL**) is an independent community legal centre working for social purpose. Since 1978 we have served the inner Melbourne area.[1]

We are a small but dedicated team of lawyers, administrative and project staff supported by volunteer law students and pro bono corporate partners. Our lawyers are experts in community law.

We are funded by government, grants and donations.

Who we help

People experiencing chronic disadvantage (such as homelessness, mental illness or low literacy) are more likely to experience a cluster of legal and non-legal issues. This can result in more frequent interaction with the justice system, which affects their wellbeing and ability to achieve stability. We aim to minimise this impact.

Adverse circumstances in a person's life, (such as ill health, family violence, relationship breakdown or unemployment) can put them in an acutely vulnerable position and trigger legal issues, putting them at further risk of longer-term, entrenched disadvantage. We aim to break this cycle.

For our clients, legal issues often do not occur in isolation, but are inter-related with other non-legal issues. We work holistically and tailor solutions to achieve sustained outcomes for our clients.

How we work

We provide free legal help in the form of information, advice, casework and representation. We provide help in our office and through integrated outreach services to reach people who face barriers in accessing help. By reaching people earlier with their legal issues, we prevent problems from escalating.

We work in partnership with other community organisations that are committed to improving community health and wellbeing. Together we strengthen the impact of our work. Our partnerships include homelessness services, hospitals, community health services and maternal and child health services.

We are informed by our work with clients and community partners. Through our casework we identify systemic issues and work with others to come up with solutions and influence decision makers.

To make sure we are effective in what we do, we continually monitor and evaluate our work.

Our legal outreach partners

- Ozanam Community Centre – VincentCare Victoria
- The Royal Melbourne Hospital
- The Royal Women's Hospital
- Peter MacCallum Cancer Centre

[1] Until 2014, Inner Melbourne Community Legal was known as the North Melbourne Legal Service Inc.

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- Inner-West Police and Clinician Emergency Response (PACER)
- City of Melbourne - Family Services
- Carlton Housing Estate - Carlton Neighbourhood Learning Centre
- North Melbourne Language & Learning
- The River Nile School
- St Joseph's Flexible Learning Centre

Our lawyers also provide duty lawyer services twice per week in Family Violence Intervention Order matters at Melbourne Magistrates' Court.

Introduction

IMCL was extremely alarmed at the unprecedented impact on the liberty of public housing residents in North Melbourne and Flemington as a result of the lockdowns initiated by the Victorian State Government on **4 July 2020**. It was a disproportionate response to what is a health crisis, not a law and order issue.

We were seriously concerned about the over-policing of public housing estate residents, a community that has a long history of racist and violent police interactions. The extreme police presence was re-traumatising for residents with lived experiences of war or persecution, and stoked racist community sentiment that further stigmatised already marginalised people. We knew that there was heightened potential for racial profiling and other forms of discriminatory policing.

Throughout the lockdown, the inability for people to leave their homes for any reason caused extreme stress and anxiety. There was no planning or forethought for the health and safety of vulnerable tenants in lockdown, including those living in severely overcrowded conditions or in units that are in a longstanding state of disrepair, or the further risks to women and children experiencing family violence. The intervention put residents at risk of other equally serious forms of health and safety problems.

We have long been concerned about the lack of investment in public housing, including appropriate housing maintenance and the provision of social supports for tenants. The lockdown highlights the need for long-term housing reform to address the underlying systemic issues that have contributed to the spread of COVID-19 through high density public housing towers. The Department of Health and Human Services (**DHHS**) was not able to ensure adequate access to food, essential services and exercise while residents were in lockdown, because of restricted lift access. Meaning that their lack of investment in public housing and poor maintenance of public housing infrastructure had directly contributed to these problems and led to the adverse impacts on residents' rights.

There was no justification for the discriminatory application of the health directions, especially when the Detention Directions (33 Alfred Street, North Melbourne) dated 4 July 2020 (**detention directions)** were lifted. There was no reason why residents at 33 Alfred Street, North Melbourne (**33 Alfred Street**) continued to be restricted in their movement, with a persisting Police presence. There should have been one set of rules for everyone. That public housing residents were being treated differently speaks volumes about the Victorian Government's view of the people living in these buildings. The government should have confidence in the resilience, capability and civic responsibility of the public housing communities they are working with, and engaged with them collaboratively from the start rather than assume an overbearing enforcement approach. All efforts should have been placed on health and welfare, led by the

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community, with residents trusted to be responsible for their safety and wellbeing as were all other Victorians.

The lack of engagement dismissed residents' attempts to participate constructively in the management of the health risks, and subsequent organisation of relief efforts. For months the residents have called for protective measures to be put in place, such as sufficient hand sanitiser and cleaning, but were ignored. When the inevitable occurred, residents and their community organisations continued to successfully manage the crisis response by coordinating medical care and food efforts and quickly translating health and legal information. The Victorian Government has consistently failed to recognise this. Had they, they would have first consulted with the residents and organisations they work with before making an unnecessary and heavy-handed unilateral decision destined from the start to cause legitimate outrage.

This submission is informed by the countless conversations and interactions that IMCL staff have had with residents, their family, members of the community, community advisors, volunteers, support organisations and others. Wherever possible and to maintain client confidentiality, our clients have not been expressly named or otherwise identified. While we have not been able to ascertain the truth of what residents and others have told us, we have no reason not to believe them. Their voices need to be heard. We make these submissions in full knowledge of our underlying obligations as lawyers, including our duty of honesty.

Initial complaints to the Victorian Ombudsman

We have made four complaints in total on behalf residents and volunteers affected by the public housing lockdowns. Two of the complaints related to the lack of clear, accessible information about the applicable directions issued by the Chief Health Officer (**CHO**), the other complaints related to concerns for the health and safety of residents and volunteers.

Lack of clear, accessible information

On **10 July** we made our first formal complaint to the Victorian Ombudsman, as we were trying to clarify what restrictions applied to the residents at 33 Alfred Street. The detention directions were revoked but there was no clarity about what directions applied to the residents. There was conflicting information as to whether further detention directions were issued, based on reports from ABC News.

At that time we needed to urgently confirm what directions applied to these residents in order to be able to provide accessible information to residents (especially translated versions), and to be able to advocate on their behalf where they need us to do so in relation to denial of their basic rights and lack of compliance with the directions by DHHS, Victoria Police and others. The Ombudsman was able to confirm that the applicable Directions were the Diagnosed Persons and Close Contacts Directions (No 4).

We then had to make a further complaint on **15 July** as there was a lack of clarity around the end of lockdown for residents. It was unclear whether the notice requirements in the Diagnosed Persons and Close Contacts Directions had been met, with residents being given confusing and sometimes conflicting information about when their quarantine period would end. This meant that, three days before the date that had been publicly announced as the end of the quarantine period for residents of 33 Alfred Street, residents were still experiencing significant uncertainty about the quarantine period that applied to them.

The lack of accessible and translated information for residents, was only compounding residents' anxiety about what would happen. We were working to disseminate information on different platforms including

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Webchats used by community services and WhatsApp groups used by residents, but it was not enough to counter the late and contradictory information provided by DHHS and the Premier. Again, the Ombudsman was able to clarify that residents who had not been diagnosed with COVID-19 or assessed as being a 'close contact' would move to stage 3 restrictions by 11:59pm on **18 July**.

Concerns for resident's health and safety

On **15 July** we wrote to the Victorian Ombudsman about the continued impacts on residents' rights due to the lockdowns with:

- **Lack of access to exercise** – in spite of the fact that the Diagnosed Persons and Close Contact Directions (**close contact** directions) came into effect for the residents as of **10 July**, in the five days subsequent only 72 residents in total had been able to exercise or enjoy fresh air since the lockdown was imposed on **5 July**;
- **Inability to access hardship payments** – not all residents across the 9 towers have been able to access hardship payments specifically offered to public housing residents in lockdown or the Coronavirus (COVID-19) Worker Support payment.
- **Access to building amenities –** shared laundry facilities had all been closed across the towers, and 33 Alfred Street residents particularly had to rely on third party contractors for any laundry; and
- **Lack of support for community volunteers** – DHHS and other agencies had heavily relied on community members volunteering their time to support residents affected by the lockdowns, particularly in providing welfare checks, culturally appropriate food and essential items (including disinfectant, PPE, medication and prescriptions). Their efforts were needed in the short and long term to support these residents but it comes at an enormous cost to them.

On **20 July** after meeting with residents and community volunteers, we raised further concerns with the Ombudsman. Volunteers that had been attending the Emergency Management Team (EMT) and Incident Management Team (IMT) meetings that were held each day at North Melbourne, had repeatedly raised these concerns about the risks to residents but felt that they had not been addressed by DHHS and other agencies. Additionally, the discussions and action items of these meetings had consistently not been accurately captured, leading to concerns that DHHS was seeking to deliberately avoid accountability.

The residents and volunteers expressed concern that there had been no thorough risk assessment, or disclosure of any such risk assessments if they have been carried out, for the residents at 33 Alfred Street, North Melbourne or across any other high density public housing towers (including those previously under lockdown in North Melbourne and Flemington, or in Carlton where further cases of COVID-19 have been detected). Further, if there had been any risk assessments, it was clear that any actions by DHHS or its partners agencies required to mitigate those risks were inadequate. Residents and volunteers felt that the risks and impacts of COVID-19 could have been effectively mitigated by the State Government if it had properly heeded the concerns of residents and community members in February and March of this year.

The current investigation

We welcomed the investigation by the Victorian Ombudsman when it was formally announced on 17 July 2020, into:

- the conditions under which people were, and continue to be, detained at 33 Alfred Street
- the nature and accessibility of official communications with residents and advocates

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- the nature and appropriateness of restrictions upon people's access to fresh air, exercise, medical care and medical supplies while detained
- whether, in relation to the above, the Department of Health and Human Services and other relevant authorities have acted compatibly with, and given proper consideration to, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Charter**).

This submission will attempt to highlight our experiences in assisting our community to come to grips with a sudden and catastrophic decision by the Victorian State Government, that was ostensibly justified by the serious threat to public health. However, from our own observations and for the majority of residents that we have spoken to, their families and community, this unprecedented intervention was discriminatory. In effect residents were detained in their homes, with no regard for their fundamental rights or dignity.

All the promises of support from the Premier and Ministers, and their thanks for the sacrifices that residents were forced to make, ultimately rang hollow for most of them. The Housing Minister Richard Wynne commented on **9 July** that: "*For those residents who are confirmed cases or close contacts, we'll continue to support you any way we can.*" That support was simply not forthcoming. The Minister for Police and Emergency Services Lisa Neville commented that same day, that they: "*have in place operational arrangements to ensure the health and safety of all residents while supporting the needs of those who are in quarantine.*"[2] In fact, there were no sufficient arrangements in place for residents at that time and any safeguards to mitigate the impact on resident's fundamental rights were simply not adhered to. One resident that we spoke to was upset by this narrative, and remarked that it "*is the opposite of what happened.*" He noted that they:

"would sit and watch the news about what they had promised but it was all lies. I gave them the benefit of the doubt but this has changed how I feel...I was put in a position where I had to beg. They made everything, something I had to beg for, even our freedom. They took things from us that they shouldn't have taken, our rights."

Engagement with the investigation

When speaking to residents, community members and volunteers, we have encouraged them to contact the Ombudsman directly to share their experiences. We also have provided a few written accounts from residents, where they felt they could not directly contact the Ombudsman or wished to remain anonymous. We also note that others in the legal assistance sector, such as the Melbourne Activist Legal Support and Flemington Kensington Community Legal Centre have or will make their own submissions to the Ombudsman.

We have not been able to always directly reference the residents or community members that we have spoken to in this submission, but this submission is informed by the hundreds of conversations that we have had with them since the hard lockdown started. While we have not been in a position to verify the accounts of each resident and community member, we have no doubt that they shared with us the utmost truth.

[2] https://www.premier.vic.gov.au/stage-3-restrictions-for-flemington-and-north-melbourne-estates/

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Term of Reference 1: The conditions under which people were, and continue to be, detained at 33 Alfred Street

The use of Police

While we acknowledge that it is not within the scope of this investigation or even with the Ombudsman's remit to consider the actions of Victoria Police (**Police**), we understand that DHHS controlled the response to the lockdowns and that included directing the actions of Police. We understand that this involved DHHS requesting or directing the Police to undertake certain actions, including, but not limited to, the initial attendance of 500-600 police officers at the North Melbourne and Flemington estates at the start of the lockdown and their sustained presence thereafter. DHHS used Police to ensure community compliance with the directions issued by the Chief Health Officer (**CHO**)**,** and more specifically the detention of public housing residents within their homes.

To our knowledge no other group or community was policed as intensively as public housing residents were in North Melbourne and Flemington. Other Victorians that had tested positive for COVID-19 or who had been identified as close contacts, were trusted to observe the directions and were not forced to comply to the same degree as public housing residents. The difference in their treatment only contributed to their fear and anger. They felt that they were being policed because of their differences. This othering in a supposedly proud multicultural city as Melbourne, led to one resident telling us that they felt that they were being "*punished*" for living in public housing. The continued Police presence at 33 Alfred Street, North Melbourne after the detention directions were revoked, highlighted the fact that the paternalistic and enforcement-first responses to a health issue took away residents' dignity and agency. There was no lawful justification for the continued Police presence.

The use of Police had other far reaching consequences. For those communities that had already suffered years of significant racial profiling and over policing, the presence of Police served as a painful reminder of what they had experienced and exacerbated their beliefs that they were being unfairly targeted. For those from asylum seeker and refugee backgrounds that had fled to Australia from war and authoritarian regimes, the massive and unexplained influx of Police without warning was retraumatising. One resident told us how she had run away from war when she 11 years old, and that now as an adult "*she is now treated less than human in the same way*". At a time during a global pandemic where Victorians are advised that they must stay at home, many residents no longer felt safe in their homes with the number of Police surrounding them.

With the intensive, over policing of residents, we document below in our submission that many residents could not leave their homes even when they were permitted to by the directions. Residents and their advocates would spend hours and sometimes days lobbying to be able to leave, and even after DHHS had indicated that they were authorised to leave, they would often be stopped by Police and told to return to their homes. There were no attempts to speak to an authorised officer, or to clarify whether permission had been granted, instead there was an outright refusal to consider those residents circumstances.

There was a consistent breakdown in communication between DHHS, Police and the authorised officers onsite. It often led to considerable confusion as to who was effectively in charge, with DHHS indicating it was Police and Police indicating it was DHHS. The denial of any responsibility pervaded every layer of communication to residents and those working with them. While the actions of Police cannot be scrutinised by the Ombudsman as part of their investigation, the: decision to utilise Police; the ways in which information was communicated (or in many cases not communicated) between DHHS and Police;

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and DHHS failure to ensure that all support agencies such as Police were complying with the directions, needs to be carefully considered.

Communication of the lockdown to residents

The residents of 33 Alfred Street, like the residents of the other eight buildings, were given no prior notice of the hard lockdown. The earliest opportunity at which residents could have become aware of this was during the Premier's press conference on the afternoon of **4 July.** However, before the conclusion of this press conference a large Police contingent had already been deployed and for many the hard lockdown had effectively been implemented. The residents of 33 Alfred Street and the other buildings were deprived of their liberty before the Premier had even finished his press conference. Until **4 July** such a militarized response to the current pandemic had not been witnessed in Victoria and more broadly in Australia. Practically, even for residents or visitors who had become aware of the lockdown, it was not necessarily evident that this was linked to the sudden influx of Police, with some people thinking that a serious crime had taken place on the estate.

The Premier's Statement was published online but was not made available in any other language, meaning that residents could not readily access any information in their first language in relation to the lockdown. The impact of this is noted further below.

Non-residents prevented from leaving 33 Alfred Street

Non-residents that were in 33 Alfred Street and other buildings subject to the hard lockdown were stopped from leaving and unable to return to their ordinary place of residence. We have heard from both residents and volunteers that upon attempting to leave the affected buildings, non-residents were told by members of Police stationed at the bottom of each building that they were unable to do so. Police told non-residents that they had been given directions that people were not allowed to leave irrespective of where they lived.

We have identified two issues that arise from this:

- Firstly, was Victoria Police directed to prevent non-residents from leaving by DHHS or another agency in which the Ombudsman has jurisdiction?
- Was there any legal basis for denying non-residents the ability to leave?

In relation to the first issue, we have been unable to ascertain how the Police came to adopt this position. In terms of the second issue, we understand that the detention directions did not provide a basis for this. We are unaware of DHHS informing non-residents that they are subject to a separate direction or that they were deemed to be close contacts.

The detention directions clearly only apply to residents of 33 Alfred Street, being those who ordinarily reside there. This is demonstrated by the following provisions:

1. That residents are required to limit their interactions with others by restricting the circumstances in which they may leave the premises where they ordinarily reside (clause 1(2) - preamble)
2. That the reason for the notice, amongst others, is that the subject ordinarily resides in a detention location and that residents will be detained where they ordinarily reside for a period of 14 days (clause 4) and

3. That except for authorized people, the only other people allowed in your premises are the people who are being detained with you, which under the Direction is only other people who ordinarily reside in the premises (clause 5(3)).

There was no basis for other people to be detained at 33 Alfred Street, if they did not reside there. However, there was no explicit consideration of how non-residents should be treated and many were detained without any legal basis.

We assisted a resident Mohamed, who ordinarily resides at 33 Alfred Street. At the time of the lockdown he was visiting friends in a flat on 12 Sutton Street, North Melbourne that was also subject to the lockdown. He attempted to leave and was told by Police that he could not. He was forced to stay at his friend's house until the restrictions at Sutton Street were relaxed. In Mohamed's case, the detention directions explicitly required him to return home but he was actively prevented from doing so. We are assisting Mohamed to speak to the Ombudsman in relation to his experience which goes beyond the above issue.

In the first few days of the lockdown non-residents and residents alike did not have clear information about the conditions of their detention and how they could seek assistance from DHHS, or how to get permission to leave. Information was disseminated in multiple languages and different formats by dedicated community member and volunteers who themselves had difficulty finding clear information from official sources. There is further detail about this below.

Residents unable to re-enter their homes during the hard lockdown

Residents that were not in their homes at the time of the lockdown were prevented from returning although the detention directions required them to immediately return. This left some residents sleeping rough in their cars, staying with friends or family even though it was not safe to do or facing severe financial hardship to secure accommodation while they waited for permission to return home.

When the lockdown at Sutton Street was relaxed Mohamed (the resident, referred to above) was told that he had to return to 33 Alfred Street despite the fact that his brother had tested positive and was isolating in Mohamed's bedroom. We advocated on Mohamed's behalf and DHHS ultimately agreed that it would be unsafe for Mohamed to return. We attempted to negotiate for DHHS to place Mohamed in accommodation as he had been rendered effectively homeless. DHHS initially agreed to place Mohamed in a hotel for confirmed COVID19 cases. Again, we advocated on Mohamed's behalf that this was inappropriate given that he had tested negative for COVID-19. Ultimately, Mohamed arranged to stay in a hotel for three nights which he paid for himself as he had nowhere to go and it appeared that DHHS were unable to find an appropriate place for him to stay in a timely manner after days of contact with them. After this DHHS offered Mohamed accommodation in a hotel that was not housing positive cases. We were required to continue to advocate on Mohamed's behalf though because he was told by DHHS that he would be required to leave the hotel on **19 July** after 33 Alfred Street moved to stage 3 restrictions despite it remaining unsafe for him to return home because his brother was still in isolation.

As the lockdown began at 33 Alfred Street, another resident was outside the home and she later became aware that a family member within the residence had tested positive for COVID-19. The resident was in contact with her family member the morning before the lockdown commenced and she was therefore a close contact. The resident paid for accommodation as she was unable to return to 33 Alfred St, and was put into severe financial hardship by doing so. After about 6 days of staying in a hotel, she contacted DHHS to seek alternate accommodation as she could not afford to extend her stay. After DHHS failed to respond,

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the resident contacted our organisation, fearing that she would be made homeless and expose the greater community to COVID-19 as she was a close contact. After much advocacy on behalf of our client, her hotel accommodation was extended. When the resident was due to check out of her hotel, the lockdown was ongoing at 33 Alfred St and her family member was still positive for COVID-19. We began the process of contacting DHHS three days prior to when she was due to check out. On the day she was due to check out, DHHS had still not organised further accommodation. To avoid the resident being rendered homeless, our organisation paid for another night in the hotel. The following day DHHS informed us that the resident's accommodation for the previous week was paid for by the Salvation Army and her case was being treated as crisis accommodation for people experiencing homelessness. As she had been in the 'crisis accommodation' for 7 days, DHHS advised our office that she was not eligible for any further accommodation and that Salvation Army had referred her to a youth homelessness organisation to seek additional accommodation. DHHS also advised that because the 33 Alfred St lockdown was to be lifted that night, the resident could return to 33 Alfred St, despite there still being a positive case within her home. We advocated for the resident to be put in DHHS funded accommodation, and DHHS ultimately agreed that she was eligible for DHHS funded accommodation as she was a close contact. The resident was put under immense stress each time her check out date approached, and feared that she would be left homeless and ultimately put the greater community at risk because she was required to be self-isolating.

Residents not able to relocate

For those residents and their family that had not yet tested positive to COVID-19 when the hard lockdown started, they feared that it was only a matter of time before they would contract COVID-19. While at this stage it is still not clear how many positive cases were at Alfred Street when the hard lockdown was first initiated, after the initial round of testing was conducted following the first 5 days of hard lockdown, there were reported to be 53 confirmed cases at Alfred Street. On **9 July** the Premier Daniel Andrews announced that:

"For positive cases and their close contacts who live in these buildings, a dedicated and integrated management response has been developed to support them while also protecting other residents. That includes encouraging positive cases and close contacts to take up alternative accommodation offsite for the period of their isolation."[3]

Residents who had tested positive or their families that tried to temporarily relocate, faced huge obstacles in trying to obtain temporary accommodation. It regularly took many days for this to be organised if at all, and this is only if the residents or family members can self-advocate. When they could not due to language barriers or low literacy levels, they relied on other family members, residents, community organisations or members of their community. We spoke to one resident [redacted], who lived at 33 Alfred Street. He tested positive after the initial hard lockdown. While it is unclear where he contracted the virus, he spoke for assisting residents in his building in the initial days of the lockdown to deliver them food because they were completely unprepared for the lockdown. He did not have any PPE to mitigate the risk of him contracting the virus. He tried for a number of days to get alternative accommodation for himself, also his mother who was outside of the home when the hard lockdown started. No arrangements were ever made

[3] https://www.premier.vic.gov.au/stage-3-restrictions-for-flemington-and-north-melbourne-estates/

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for him or his mum. Volunteers also informed us that DHHS had told them that the offer of alternative accommodation was not open to residents of 33 Alfred Street irrespective of their circumstances.

Failure to perform risk assessments for families, individuals and children at risk

To the best of our understanding DHHS did not conduct any risks assessments or put in place any plans for residents and non-residents detained in 33 Alfred Street to manage:

- the risk of family violence and/ or child abuse
- pre-existing mental health issues, or
- chronic illness or people with disabilities.

A member of our staff attended a meeting with DHHS, Police and volunteers on **15 July** at the North Melbourne Community Centre. DHHS and Police were directly asked if they had conducted risks assessments for individuals who they knew were at risk or needed additional support. DHHS and Victoria Police also were specifically asked if they had looked at their respective databases and if individuals or families at risk could be given priority for "*air time*" so that they had an opportunity to raise concerns or make connections with support services outside of their homes. Victoria Police confirmed that they had contacted some individuals known to them but they were unable to provide detailed information in relation to this.

DHHS confirmed that there had been some discussion about utilizing their data for this purpose but had not done so yet and were unable to confirm if they would. It is concerning that DHHS would not proactively contact residents to see if they had underlying vulnerabilities or past experiences of mental health or family violence to see whether additional support was required when they could have obtained this information. Residents who are victim/survivors of family violence, or with pre-existing mental health issues are at more risk of harm given the strict enforcement of the directions that kept them detained in their homes. The potential for their situations to rapidly deteriorate while being completely confined to their homes is self-evident. The fact that DHHS could have, but did not, reach out to these vulnerable residents shows a concerning disregard for their safety and wellbeing.

These residents were cut-off from their supports and carers without notice. It included residents that received intensive home-based care through NDIS, other services and family. Unless the residents were able to contact DHHS and persistently self-advocate there was a real risk that they would have experienced irreparable harm which could have been avoided or minimized by DHHS accessing the data they already had or proactively trying to engage with residents. In one case we understand that a resident had to be hospitalised following a suicide attempt given the lack of care she was denied and her complete disconnection from her mental health support worker. Given that there are still restrictions in place and also concerns about safety in the building, it is conceivable that these vulnerable residents are still experiencing substantial hardship or are quite unwell and unable to seek support.

Lack of access to food and necessities

Given the sudden nature of the lockdown and the immediate Police presence at 33 Alfred Street, most residents were unprepared for the lockdown and the restrictions on their movement. One resident, who lives in a three-bedroom home with seven other family members, indicated that she had no time to prepare for the lockdown and that "*DHHS gave us no warning*". On the first day of lockdown she contacted DHHS using the direct access number (**DHHS phone line**) that was set up for public housing residents in lockdown seeking food and essential supplies like personal protective equipment (**PPE**) and feminine

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hygiene products for her teenage daughters. They did not respond after five days, and it was only through speaking with us that she learned that direct requests for supplies could be made through the Australian Muslim Social Services Agency (**AMSSA**) and we worked with her to request the food and supplies she needed. While the volunteers at AMSSA were quick to arrange what she needed, they could not immediately get the items to her because of the logistical problems they faced in getting supplies up to residents.

The resident mentioned above already had one adult family member test positive for COVID-19 when the lockdown started, and they tried to self-isolate within the home by locking themselves in a room. There was only one bathroom in the whole home that had to be shared between eight people, including the family member that had tested positive. She tried to arrange for the infected family member to stay at a hotel to quarantine away from the rest of the family, but DHHS never organised anything for them in spite of her requests. After five days she said she gave up trying. They ran out of everything, food, soap and cleaning products. Her girls had no feminine hygiene products that they could use, and nowhere for them to wash their clothes. She was like one of many residents that could not access even soap to try to maintain basic hygiene and sanitary conditions within her home to minimise the spread of the virus.

The resident said she had some PPE and supplies she could have used in lockdown sitting in her car. She tried to get permission from Police to leave the building and go to her car that was parked on the premises, but they refused. She had nothing to stop her other family members from getting sick, and so it was unavoidable that one of her children later tested positive for COVID-19. She made a further attempt for the two family members that had tested positive for COVID-19 to be transferred to a hotel, as she did not believe that she could avoid her child touching and contaminating surfaces throughout the home. Again, this request was not acted upon.

As well as experiencing extreme difficulties in obtaining food and basic supplies, other issues that residents had in obtaining food included obtaining halal food or food that met their dietary requirements (for example if they were Coeliac). Residents also consistently noted that food initially provided by DHHS was expired and inedible. They also had concerns about infection controls when they saw bags of food being delivered by volunteers that were not wearing gloves, but on other occasions bags of food were left downstairs in the building and not taken up because of concerns that people had gone through the bags without gloves and that they had been contaminated.

No access to fresh air and exercise

Residents of 33 Alfred Street were not allowed fresh air or exercise for 3 days after the detention directions were revoked. This was in spite of the fact that the close contact directions expressly provided for them to do so. On **11 July**, a fenced-off area of approximately 10sqm was built for residents to walk around in. Residents reported that the temporary fencing used to create the sectioned off area was like a "*cage*" or "*prison yard*".

Some residents came downstairs for the first time in days for fresh air, only to be immediately confronted by the sight of the cage and an enormous Police presence. They included some young men who became immediately distressed by what they saw. Community advisors that had been working with the residents tried to support and calm the men. The advisors contacted a lawyer from IMCL, who was on call that night. They arranged for IMCL staff members that were onsite at North Melbourne to return to support them, and the staff member remained on the phone while they waited for their colleagues to arrive. They could hear the advisors trying to calm the young men who were shouting and upset by what they were faced

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with. While it was difficult to hear what they were saying, their distress was evident and she could hear the advisors trying to explain what was happening to them. They showed tremendous empathy and care for the men, and it was clear that they were trusted by them. Eventually they were able to deescalate the situation and persuade the men to return to their homes, because there were real concerns that there would be a confrontation with Police. Community advisors asked the Police for their details but they refused. Part of this interaction has been captured by the summary produced by the Melbourne Activist Legal Service (**MALS**) who were also present with IMCL staff members, and which we understand has already been provided to the Ombudsman.

Afterwards more community advisors attended 33 Alfred Street to raise their concerns with the fencing to Police who were monitoring the "yard time" of residents. Throughout the discussion, an additional 20 or so Police officers attended the estate where the discussion was taking place and closed the community advisors and IMCL staff in. Residents were witnessing the incident from their windows. An IMCL staff member witnessed a resident yelling from their unit "*they want to keep us in a cage*". Through the advocacy of IMCL staff members and community advisors, the temporary fencing was removed by contractors at around 1:00am the following morning.

We spoke to one of the male residents some days later, who was confronted by the Police presence and cage. The resident described a long history of chronic mental health issues that began when he was a teen, and alleged that he had been twice assaulted by Police when he was ostensibly being conveyed to hospital for emergency mental health treatment. Seeing the vast number of Police on the estate bought back the memories of his assaults, and was clearly retraumatising for him. He said that one of his relatives remarked to him that the fence reminded him of Port Phillip prison. He said that he felt "*humiliated*" when he saw the cage, when "*this, this is my home*". Another resident that we spoke to ████ said that: "*seeing the cage, as a youth worker, was appalling and insane. It feels like to them we are a criminal, and not even human beings."*

At a meeting with DHHS the following day, the community advisors raised their concerns about what happened with the cage and tried to plan with them how residents could access exercise at 33 Alfred Street. The plan though did not accommodate residents that had tested positive, or who were close contacts from living with them. Community advisors and an IMCL staff member that was present at the meeting, stressed that no Police should be used when facilitating access to fresh air and exercise for residents. DHHS agreed that it would be inappropriate for Police to be involved and they would be kept on the periphery, however, it is our understanding that Police were still used to monitor residents when exercising.

DHHS later claimed some days after at a meeting, that all residents that had requested exercise had been able to do so. When speaking to community advisors and volunteers though, they have disputed this. They have said that some residents have given up asking because it was laborious and time intensive to organise, it was not simply a matter of making one call to the central number. They would have to call to make the request, wait to hear back from someone else in DHHS or a support agency which could involve calls back and forth until it was organised. This was the process that residents had to follow each day to organise exercise, even then the most time that any resident could spend outside was 20 minutes per day. No resident that we have spoken to had been able to exercise each day. Some residents said they gave up on requesting exercise because it was so difficult to access, or did not ask because they felt that being supervised by Police was humiliating.

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Lack of access to compassionate leave

We are aware that sadly some residents living at 33 Alfred Street passed away after contracting COVID-19 during the lockdown. To our knowledge one such death occurred after the detention directions were revoked, which specifically allowed for residents to be granted permission to leave on compassionate grounds (clause 5(2)(a)(iii)). When the detention directions were revoked, the applicable directions for the residents at 33 Alfred Street were deemed to be the close contact directions. The close contact directions did not grant residents the ability to leave their residence on compassionate grounds. Instead ostensibly they had to seek an exemption from the Chief Health Officer or Deputy Chief Health Officer (under clause 9(1)).

There was no clear or defined method of obtaining such an exemption quickly or even basic information for residents, which was imperative for the families of those who had passed that were Muslims and wanted to observe their traditional customs and religion of burying the deceased within 24 hours or as soon as possible. For those residents that were not able to self-advocate because of language barriers or being overcome with grief, they relied on family, friends or community advisors to try to navigate this maze for them. This was impossible though, with family members waiting for days for permission to be able to leave to bury the deceased.

In what we understand is another unrelated case, a resident at 33 Alfred Street also passed away after the detention directions were revoked. A number of the resident's family members had also tested positive for COVID-19, and so their ability to visit their family member in hospital before they died and to leave to attend the burial was similarly only possible if they were granted an exemption from the Chief Health Officer. We understand that an exemption was granted for the members of the deceased family that were still residing at 33 Alfred Street, and they would have buried the deceased in accordance with traditional customs as Muslims, but the body was not prepared in time. They were then granted an exemption to attend on the following day, only when they were preparing to leave for the funeral, they were belatedly told that DHHS had received a communication from the CHO that one family member would not be permitted to leave. Presumably their exemption was revoked, but the decision was so sudden and there was no power for review in the directions. Cruelly, that family member was therefore forced to remain at home, while the other members of their family from the same residence, were able to leave to pay their final respects. We understand that it was only through the interventions of community advisors, that this bereft family member was linked in with suitable counselling.

Lack of access to medical treatment

During the initial hard lockdown there was no sufficient access to onsite medical care. When residents sought treatment onsite, we understand that they were turned away by medical staff, who said that they were only there to conduct testing. Later, Cohealth had a regular presence onsite but it is unclear to us when this started.

We understand that the lockdown had further impacts with:

- Residents that needed to access dialysis treatment prevented from leaving by Police
- Residents that had insulin dependent diabetes relying on calling ambulances to get access to insulin because there was no mobile pharmacy of immediate access to life saving medication
- Residents not being able to access vital medication for chronic mental health issues and

- Residents unable to access even basic medicines such as Children's Panadol when they had young children sick with high fevers.

For those residents that needed prescription medication it was not as simple as those scripts being filled and then delivered to residents. Many had family members that were not affected by the hard lockdowns who would bring those prescription medications to 33 Alfred Street but they were then not physically bought up to residents. In the case of one resident, he had not been able to return to 33 Alfred Street after the hard lockdown had been imposed so he stayed with family. He was not aware of the detention directions requiring him to return initially but he was prepared to comply with the direction and made attempts to return. DHHS would not allow him to return because of the risk of him contracting COVID-19 but he asked to be able to simply collect from his home his wallet and prescription medication. He was told that he could not enter and that no material goods would be allowed to leave the building. Ultimately, he had to obtain a further script from his general practitioner and to have it filled.

It was also not clear that the health of high-risk residents was being actively monitored or managed by health care practitioners while they remained in their homes initially, beyond those that they had existing connections with such as their local General Practitioner. When the health of those residents that had tested positive for COVID-19 quickly deteriorated, residents and their family members that were not fluent in English sometimes struggled to understand why emergency medical practitioners recommended that they be hospitalised. This left some residents being unaware of why a family member had been removed. As rumors of deaths in hospital spread, some residents felt that if their family members left in an Ambulance then they would never return to their homes alive.

Onsite medical services, when it was provided, was only available onsite at the ground floor of the building and it was not available after hours. Some residents who were immuno-compromised or in a high-risk category felt unsafe to leave their home due to insufficient cleaning or access to basic PPE. This meant some residents went without medical care they required.

Mental health support was also hard to obtain early on, with residents struggling to obtain medication for their family members living in 33 Alfred Street when they were becoming acutely unwell. Others had difficulty in having family members assessed. Valium was dispensed for one resident, with a serious history of mental health issues that was becoming increasingly anxious and paranoid while confined to his home with his family as a temporary measure while his family tried to find other means of support. It was only after close to a week of lockdown that he was able to be assessed by the Inner West Area Mental Health team that had been set up onsite.

Those acting as a network of support for other residents in lockdown, either through Whatsapp groups and other social media, would hear about the deteriorating mental health of other residents in lockdown. One resident commented that in the first two weeks of lockdown, there had been at least 12 suicide attempts at 33 Alfred Street. Even if residents were not part of these groups, they could still be confronted by other residents' deteriorating mental health when they could hear them screaming from their homes or in the corridors.

For the young resident that we mentioned above, who felt humiliated when he saw the cage set up for exercise, the presence of Police and conditions of detention had created the perception in his mind that his home had become a prison. It meant that he no longer felt safe staying in his home, particularly with the continued Police presence. While his family was fortunate enough to move to Stage 3 restrictions at 11:59pm on **18 July** because they had not been diagnosed with COVID-19 or deemed a close contact, they

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tried without success to arrange alternative accommodation for him because he no longer felt safe staying there. DHHS would not organise accommodation as he was no longer subject to the CHO directions.

Access to testing

While residents have been able to access testing on site, in most cases they have had to leave their homes to access it. In the initial wave of testing that was conducted during the first five days, residents noted that social distancing was not implemented and no residents had access to PPE. Mobile testing was only available for high risk residents, and only during the second wave of testing that commenced in the week starting **13 July**.

Lack of access to laundry facilities and cleaning

Shared communal spaces, such as mail rooms, laundries and rubbish facilities, were closed during the first weeks of lockdown because they were identified as a health risk. Many residents relied on the laundry facilities because they did not have access to washing machines in their own homes, but with the closure of laundry rooms and them being confined to their homes they had no way to wash clothing and bedding. After a week of lockdown, DHHS organised for residents to send laundry off site for cleaning. Initially the number of items that could be cleaned was too restrictive though, with them only permitting 8 items to be washed per household. For those residents living with a number of people in their homes, this was not enough for one person let alone many.

Laundry facilities were later re-opened to residents, although the timing of this is unclear. Residents were unsure though of what measures had been taken (if at all) to ensure that any health risks that were previously identified when it was closed, were suitably managed. On **26 July** after making persistent enquiries with DHHS about what action had been taken, a resident was advised that a member of the central infection prevention team had completed an audit of the laundry and had noted that they were clean and had appropriate signage. A number of the hand sanitisers though were identified as being faulty and it was unclear what other cleaning supplies or PPE was available to make sure that there was no risk of the virus spreading from the shared use of the facilities.

Residents were also worried about the lack of PPE, mainly hand sanitiser, throughout the entire building. The lack of these materials even since the majority of the building moved to stage 3 restrictions, only contributed to residents' fears that it was not safe to leave their homes even if they were permitted to. These feelings are only exacerbated when they see DHHS or staff from other agencies attending the building in full PPE while they are at work, whereas they have nothing but makeshift masks to protect them when moving around an area that is part of their home.

Insufficient cleaning of all shared spaces given the volume of people entering and exiting the buildings was, and still is a cause for concern for residents and community advisors. They consistently requested 24-hour cleaning of 33 Alfred Street, but instead there was only one “deep clean” per day together with 4 further minimal cleans. The insufficient cleaning regime gave rise to concerns that other residents would contract COVID-19, particularly if they had to leave their homes just to get tested.

Hardship payments

Hardship payments for residents, their friends and family that became inadvertently trapped at 33 Alfred Street when the lockdowns started, have been incredibly difficult or impossible to access. The hardship payments to households as opposed to individual adults living or staying in the homes did not adequately

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address the financial impacts on all residents and others as a result of the lockdowns. There was no indication that they had considered how such a policy would impact on those experiencing family violence and/ or elder abuse, particularly where that abuse manifests in economic abuse and a family member could be actively prevented from accessing any form of economic relief. Even then many homes had a number of adults living there, so a payment to one household member was always going to be completely ineffective and inadequate in addressing their financial hardship.

It was our experience that DHHS did not have sufficient details for all people affected by the lockdowns, and that there was no basic audit conducted of who was in each home. Sometimes this could have been a result of concerns that DHHS would conduct a rental audit, and would be actively checking occupants against the rental agreements or records that they had. We understand that some tenants had informally assigned their tenancy to family members and were no longer living in their homes, but DHHS may not have had any information about this or they were too scared to tell them for fear of losing their home. This then led to residents being shut out from any relief, which was already quite onerous on some residents that could not access any other hardship payments or relief from Centrelink, and had no access to formal leave entitlements through their usual paid employment. We understand that one single parent who cares for two children was not officially listed as a resident with DHHS, and therefore could not access any payments at all. She had no income at all for over two weeks. Given that she, like many other residents live below the poverty line, she did not have any savings to be able to rely on in a crisis.

We also found that DHHS were only making the Worker Support payments to individuals that they had identified as diagnosed persons or close contacts, but we know that not every resident at 33 Alfred Street had been given individual confirmation that they were a close contact. Some residents reported just a single letter or notice going to an entire household, so therefore DHHS would not necessarily have this information. This has essentially left residents, their friends and family caught in the lockdowns, to be penalised because of DHHS own poor record keeping. We know of many residents that received no payments from DHHS as a result of the lockdown at 33 Alfred Street and in the other 8 public housing towers that were locked down.

Term of Reference 2: The nature and accessibility of official communications with residents and advocates

Lack of lockdown information provision to residents

Residents and community organisations have reported that lack of consultation with public housing residents and lack of information from DHHS has been a consistent problem since the onset of the pandemic. We have been told that little to no contact was made with residents to ascertain their needs, nor information about COVID-19 and how residents could protect themselves provided in appropriately tailored formats that took into account accessibility needs (for example simplified English digital or hardcopy factsheets, visible posters in high-traffic areas or audio or video content for people with low literacy or sight impairments). As a result, community organisations had been forced to step in to create a lot of the necessary preventative material themselves, including by using non-traditional communication means.

Lack of consultation and official communication and accessible information provision continued to be an ongoing theme throughout the subsequent lockdown. Like the rest of Melbourne, IMCL became aware of the hard lockdown at 4:00pm on **Saturday 4 June** through media reports. It quickly became apparent to

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us through these media stories that the public housing residents had been given no prior warning and had also received the news through disjointed media reports and social networks - and at the same time as Police descended upon the estates - creating a lot of fear, anxiety and uncertainty, as noted earlier in this submission. Furthermore, it is understood that core community support organisations who work directly with residents at 33 Alfred Street, such as the co-located North Melbourne Language and Learning, were also not notified when the decisions were first made and were therefore unable to provide clarifying or reassuring information to their resident networks.

On **Sunday 5 July**, an emergency morning meeting was convened with representatives from the local community legal centres that had affected public housing towers within or near their catchments (‘**the CLC group’**). Information sharing and communications with residents was a central conversation topic given the media reports. We were also starting to receive direct reports of residents not understanding the detention directions and their obligations, and querying the lawfulness and appropriateness of the intervention, and in particular the enforcement of the directions by Police. It was understood that neither DHHS nor Police had provided explanations of the directions and their powers to residents or key organisations in any format, creating an atmosphere of fear and confusion.

It was also noted early on that communication by Police with residents on the ground was inconsistent. For example, some residents and non-residents were being allowed to exit and enter the buildings within the first 24 hours, but not others, and it was unclear how emergency and welfare departures were being managed. This suggested that Police were also unclear about the directions they were enforcing, leading to ad hoc application and further uncertainty for residents.

To address the identified information gaps and alleviate resident uncertainty, the CLC group produced an initial plain English written information sheet to help residents understand the broad powers under the *Public Health and Wellbeing Act 2008* (Vic) (**PHWA)** and the basis for the restrictions, as well as their legal rights and obligations under the lockdown. It was envisaged that this document would be printed and initially distributed with resident food packages. This was identified as being the most likely effective process at that juncture given we did not have any identified means of formally collaborating with DHHS or the Police. Moonee Valley City Council undertook to distribute the material on behalf of the CLC group to all affected towers, but was unable to do so as they were advised that the paper documents posed a contamination risk.

To address the restrictions in hardcopy delivery, we developed a digital version of our English lockdown information sheet on our website **Sunday 5 July**. This page was updated three times as the directions changed, and at the request of community advisors who informed us that there was a high level of need for simple and up-to-date information given the lack of timely and clear, and often contradictory, DHHS communication. As at 29 July the information page has been viewed 1,254 times since 4 July, with almost 5,500 total views of our website (which is considerably higher than our average views). During the period we also had very high engagement rates across Twitter and Facebook, where we cross-promoted our website content and amplified key legal messages.

Pre-empting an influx of calls from residents with questions about the lockdown due to poor DHHS information provision and concerns about potential rights breaches, as well as other legal problems, on **Monday 8 July** the CLC group worked with VLA to activate the 1800 Disaster Legal Help Victoria (**DLHV)** helpline from 8am – 6pm Mon – Fri to immediately increase the capacity to triage calls and refer residents to their local CLC for necessary assistance. The decision was also made in anticipation of the imposition of hard lockdowns at other estates as a consequence of potential further outbreaks. The CLC group also

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activated an out of hours emergency mobile number staffed by community lawyers from a number of CLCs on a rotating roster. These lines were advertised on our information sheets and across social media. It was originally anticipated that the after-hours emergency mobile would only operate for the first 24 hours, but due to the ongoing crisis, it was extended and a mobile number remains in operation, staffed by IMCL lawyers. Upon the revocation of the detention directions, the DLHV helpline ceased to be the primary entry point, and instead callers were directed to call IMCL directly. To date, IMCL has assisted a total of 76 residents across all estates, with 45 instances of information provision, 37 legal advices, 24 legal tasks and 4 ongoing cases opened. These residents were reached through a combination of our helplines, assertive outreach and through on-the-ground volunteer and lawyer engagement. These figures do not include residents who were assisted by Victoria Legal Aid, or other community legal centres.

The CLC group had originally expected that calls to the helplines would predominately relate to common everyday legal issues such as employment problems, tenancy, infringements, family violence or Police interactions. However, it quickly emerged that in the absence of formal DHHS communication, residents wanted basic clarification about the applicable directions and their rights, or required practical assistance with accessing essentials like food or medical supplies. Lack of timely and accurate DHHS information about the directions and poor coordination of relief efforts was a consistent theme throughout the lockdown that persisted beyond the initial decision to place the towers under hard lockdown, necessitating the intervention by volunteers and community organisations like IMCL to plug information gaps.

For example, it became apparent that by day four of the hard lockdown on **Tuesday 8 July** residents had not been informed about the exceptions under s 5(5) of the PHWA that permitted them to leave for health, emergency or compassionate grounds, and nor was there a clear process set forth to invoke these exceptions. As noted elsewhere in this submission, there was a persisting lack of information or knowledge of who could authorise these processes among DHHS, Police, Authorised Officers and other support agencies. Identifying this as a serious breach of the safeguards contained in the PHWA that could lead to significant rights violations and potential ill-health, IMCL advocated directly to government to request that they explain the rights to residents and the process and timeframe for a response. To amplify our calls, we also engaged mainstream media. While our advocacy led to us being advised of the process, and that Authorised Officers made decisions on the exemptions, this was never communicated to residents and it was confirmed to us so late during the duration of the detention directions that it became obsolete.

The communication shortfalls continued through further stages of the lockdown. When the close contact directions extended lockdown of 33 Alfred Street was announced on **Thursday 9 July,** reports were made to us that residents there had once again received limited and conflicting information, and were confused and distressed about the directions, with some thinking extended detention directions had been issued upon receiving new but out-of-date written DHHS correspondence under their doors. After receiving confirmation of the situation from the Victorian Ombudsman, and at the request of community representatives, we updated our legal information webpage the same day, and distributed short key messages about the change in directions applicable to 33 Alfred Street across our social media platforms so that they could be easily and widely shared, and translated quickly by community members orally and in writing. Furthermore, despite no longer being detained, DHHS were still managing the movements of residents and required them to call the DHHS phone line to arrange permission to leave for matters such as exercise but the process was poorly communicated to residents and inadequately operationalised on the ground, meaning residents gave up making requests as identified above. On **15 July** there was once

again a lack of clarity around the quarantine period that applied to individual residents declared to be close contacts on **10 July.** After further clarification from the Ombudsman, we once again quickly distributed written information in English, as well as provided clarification to volunteers on the ground and to residents who called our helplines to counter the information void and inconsistent decision-making between DHHS, Police and other agencies.

To date, despite the revocation of the detention directions and despite repeated calls from residents and their supporters, there remains a very concerning absence of transparent information about the assessments that have been conducted about the risks of residents contracting COVID-19, what measures have been put in place to mitigate these risks, and what measures may be put in place in the forthcoming weeks to preserve health and safety. Residents attending the onsite community engagement meetings have consistently requested information, but it has not been forthcoming. On **Monday 27 July**, IMCL wrote to the Deputy Chief Health Officer requesting urgent access to the risk assessment and mitigation information.

The consistent lack of information clearly amounts to a breach of the PHWA which requires that those administering its powers ensure that decisions, as far as practicable, are 'transparent, systematic and appropriate'. To this end, members of the public must be given 'access to reliable information in appropriate forms to facilitate a good understanding of public health issues, and opportunities to participate in policy and program development' (s 8). Further, all decisions and actions are to be proportionate and should be not be taken in an arbitrary manner (s 9). Taken together, these provisions appear to require decision makers to be more transparent than in non-emergency conditions and to make decisions and take actions in consultation with members of the public, which has simply not occurred.

Lack of plain English and translated material for residents throughout the lockdown, and failure to disseminate information on appropriate platforms and in appropriate formats

Based on community reports, DHHS did not provide any plain English or translated material when the hard lockdown was first imposed, nor during the subsequent 14 days, amounting to a failure to acknowledge the diverse information needs. At some point, a hardcopy daily DHHS newsletter was distributed, but it was only in English and not simplified, and there were no other information formats. Phone calls to residents by DHHS were also said to have been made, but this consisted of the callers reading verbatim scripts of the English letters that had been distributed to residents, without interpreters. When residents asked clarifying questions, they were told they could not be answered as the DHHS representatives had just been instructed to read out the information. Similarly, any announcements over the communal loudspeaker were only in English. In the absence of appropriately tailored, translated or formatted information, volunteer community members felt like they had no choice but to take the matter into their own hands, and they did so for the entirety of the enforced lockdown. Had government spoken with community members and organisations, they could have identified what was needed and adapted quickly to produce it, harnessing existing community knowledge, resources and networks. Instead, this fell to volunteer community members to coordinate alone and unrecognised, with the limited support of under-resourced community organisations.

By the morning of **Monday 6 July**, to fill the initial information void, volunteers had begun to create plain English and multilingual content in written, audio and video format, and were working around the clock to produce it. This included drafting and translating simplified written information about the legal and DHHS helplines. They also included explicit directions about how residents could access phone interpreters, a fundamental explanation they reported was missing and would act as a barrier to residents

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being able to actually access the services. The volunteers were already disseminating this tailored information quickly across digital platforms known to be used by residents, such as via Youtube, closed WhatsApp groups, Twitter, Facebook (including private pages and groups) and other social media platforms like Instagram, Viber and WeChat, as well as facilitating opportunities for residents to participate in live video meetings and webinars.

Identifying the insufficiency of official communications and the urgent need for authoritative information, the CLC group attempted to find out who was leading the DHHS communications, to determine what information was being provided by them and how, and to ascertain whether we could coordinate and streamline efforts. When we were unable to determine this, the CLC group instead worked quickly to leverage the emerging community information and networks by identifying and connecting with the key individuals and groups creating and disseminating content. This engagement further exposed ongoing communication failures and lack of intervention on the part of the DHHS, as well as a distrust among residents of the department, which volunteer community members attempted to address throughout by taking on the work themselves.

Some of these individuals were professional translators who were volunteering their time to coordinate efforts and source multilingual translations, frequently from other professionally qualified translators working at rapid speed for free. Where professionally accredited translators could not be sourced for certain less widely used languages, the coordinators were able to obtain translations from community members locally and overseas, and arrange for those translations to be cross-checked by others to ensure accuracy. These volunteer translators reported that DHHS had not attempted to recruit professional translators at any point. Instead, the Department had only put a call-out for volunteer community or professional interpreters to accompany nurses conducting testing, coordinated through the Victorian Multicultural Commission. This was despite the Translators and Interpreters Australian Union indicating that professional translators and interpreters were available to formally assist. We also understand that the Police also did not use interpreters when communicating with LOTE-speaking residents.

We quickly established that in the absence of DHHS planning and coordination of translated content, we would need to work closely with - and be guided by - these coordinating individuals to transmit timely translated legal information demanded by residents about the lockdown and how they could seek help. We saw this information as being crucial to ensuring the residents could access justice. Working closely with these community members was also necessary due to an absence of our own pre-existing relationships and trust with various communities living within the estates. Accordingly, to avoid duplication of effort, maximise efficiency and capitalise on trusted networks, IMCL began working hand-in-hand with these key community representatives by **Wednesday 8 July**, using a shared Google drive to track joint work and upload and share translated material. Throughout the evolving lockdown, the community coordinators provided us with crucial advice about the communities and their information, linguistic and cultural needs, as well as their information seeking habits. DHHS did not seek out this information, which would have provided them with invaluable insights to draw upon in developing an effective communications strategy. For example, we were advised by our community coordinators to focus our efforts on creating and disseminating multilingual audio files promoting our helplines within private digital information sharing spaces, which they accessed through their connections. Recognising these individuals were in effect unfairly doing the job of the DHHS, but were not being acknowledged, IMCL arranged to pay for the work of the community coordinators, as well as over 30 multilingual audio translations. We were able to procure translations through these community pathways at a much faster rate than through corporate services commonly used by the government or legal sector. Had the

government attempted to work with the community, they would have been able to similarly harness their speed and effectiveness.

In addition to the utilisation of digital spaces, IMCL also tried to reach residents with hardcopy translated information promoting the helplines by distributing it within AMSSA food packages. We elected to do this given an inability to work collaboratively with DHHS. However, due to the resource–intensive nature of this exercise requiring an IMCL staff member to physically oversee the process, and the fact that the food packs were only being distributed selectively, we only attempted this distribution approach on a couple of discreet occasions. Furthermore, early community relief coordination efforts were regulated thwarted by DHHS directives which were changing by the hour. The Greens had agreed to cover our printing costs, but we ultimately did not pursue this given this distribution approach was ad hoc and likely to be stymied.

Despite our efforts, we were consistently informed by our community advisors that it was likely that the translated information was still not being received by more marginalised residents as they did not all have connections to external or internal networks. It was likely that many African communities were being infiltrated due to the strong involvement of volunteer support groups like AMSSA, The Ubuntu Project, Voices from the Block and SE Mutual Aid, and because they were using digital communication channels (especially the young residents), but there were doubts about whether smaller ethnic groups or individuals who were less connected or digitally literate were receiving any appropriately translated information whatsoever. To attempt to address this and access hard-to-reach residents in particular, we asked a DHHS representative stationed on the ground at 33 Alfred St to assist us to print and distribute hardcopies of our multilingual helpline information on **15 July.** It is not known whether or not this occurred, and we were unable to facilitate a more coordinated response through more senior officials as we were unable to ascertain who was ultimately responsible.

It is worth noting that in order to produce and disseminate translated information in an appropriately tailored and timely way, IMCL staff members, community advisors and translators worked for 15 consecutive days, at all hours. We have not outlined the work that we had undertaken to showcase our efforts, but only to highlight how community members and community organisations had to work intensively together to ensure that residents could obtain clear and accessible information that they could understand. This was information that DHHS should have provided, and a cooperative way of working they should have adopted, but did not. Despite early assurances from the Premier about the provision of culturally and linguistically appropriate support, this did not materialise. There was no systematic effort by the DHHS to provide translated materials to residents. This created a vacuum where fear and uncertainty prevailed, forcing the community itself to intervene. This experience has demonstrated that it is imperative that multicultural communities are listened to, invested in and engaged as equal partners in the future to prevent, prepare for and respond to crises. Their expertise, resourcefulness and effectiveness in being able to manage their own lives must be acknowledged.

1800 DHHS phone line limitations

We understand that a dedicated phone line (1800 961 054) was established on **Monday 6 July** as a way for residents and their advocates to communicate their needs directly with the Department. Despite this being the purported intention, residents and advocates reported consistently poor, and frequently unacceptable, outcomes. Calling the DHHS phone line would not lead to the immediate resolution or actioning of their request, it was simply the means by which residents and others could make a request. It was staffed by untrained and unauthorised DHHS workers that had insufficient knowledge of what restrictions applied to residents and the requisite supports in place for them. On one occasion when we

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contacted the DHHS line to facilitate requests for residents, we were advised that the worker was based in Gippsland and usually responds to maintenance requests. We could therefore not rely on this line as a definitive information source, nor to secure resident outcomes.

What records they kept for each request made to the DHHS phone line was unclear, because often when they were contacted they had no previous records with which they could look up as a reference point. It meant that residents would have to repeat themselves many times when asked to give any sort of context to their request. It also meant that they were asked the same list of questions each time, which went beyond just their name and address. It included whether they identified as Aboriginal or Torres Strait Islander, did they have any disabilities and were their children living with them, for example. The process was exhausting, with one resident reporting that they felt as though they spent the "*3 days on the phone*" during the initial hard lockdown. We had similar experiences when advocating for residents, with it taking several hours at best and if not days to resolve issues (if at all). It left us feeling powerless and ineffective, so we can only imagine how residents felt after several days and weeks of this. We also heard instances of residents and community organisations not receiving any further response after contacting the line with a query and being told they would be called back.

The inability by DHHS to establish a record of residents and their requirements can be contrasted with the approach adopted by AMSSA and community advisors. They very quickly developed a record of residents and their cultural and medical needs, to which they would refer when receiving requests for assistance. The record itself was low-fi and quite basic, but it was effective in recording the needs of residents, preventing repetition of information and demonstrating a genuinely tailored response.

To overcome limitations with the phone line, we then began to use the special web form set up by DHHS in parallel, with the only advantage being that presumably it would go directly to staff supporting residents and it enabled us to better document the request. In any event after days of no improved tangible results it became increasingly clear to us and to residents, that the DHHS phone line and web form were ineffective and grossly inadequate if urgent help was needed. Some residents became visibly upset and frustrated, and that was sometimes aimed at our staff who were understandably disappointed that they would be contacted by multiple different people and still with no clear resolution of their problems. It meant that some residents simply gave up. They gave up asking for alternate accommodation for other family members in their home that had tested positive for COVID-19 and could not effectively isolate from others, or that they gave up on trying to get even some financial support. Sometimes they also gave up on getting medical care or requesting vital supplies.

Given that the DHHS phone line did not allow us to immediately escalate urgent or pressing inquiries, we began resorting to using any direct contact numbers we could obtain for DHHS staff. Obtaining these numbers was piecemeal and often only after that DHHS staff member contacting us in relation to a resident, and then using it again for other residents where needed. This was not completely effective though because they were not always consistently located near operations for 33 Alfred Street or were working in shifts with responsibility given to another DHHS staff member. We were also never able to establish a clear line of communication or central contact point for any Authorised Officer for 33 Alfred Street, which was often crucial in seeking permission to leave for residents.

As noted earlier, DHHS later established newsletters that were sent out to residents, but this was only in English. Some included direct contact numbers for medical support and mental health support on some days, however to our knowledge it was never provided in a more accessible format or translated. Some of these numbers were not monitored or available 24 hours. Other newsletters simply gave the DHHS

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phone line as the main contact point for all requests. When an IMCL staff member queried whether this would be translated, they were advised that this was not possible to turn around within one day and they intended to distribute them daily.

Poor communication with advocates

Like all other community organisations with a connection to the public housing estates, IMCL was not provided with advanced notice of the hard lockdown, and we found it almost impossible to obtain basic information about the chain of command throughout the intervention, suggesting a high level of dysfunction that started at the top. From the beginning, we could not get timely official confirmation about who was overseeing the intervention at the highest departmental level, nor who was delegated authority to manage the response on the ground as noted above. We resorted to exploiting professional and personal networks to try to get the information we needed, but that took a lot of time and was not always fruitful. Furthermore, the governance structure on the ground appeared to change frequently, based on informal information we were able to gather. We were variously told the onsite management first rested with DHHS, that it had shifted to Red Cross, then to the Emergency Management Victoria and finally that it sat with various Community Service Agencies. As a consequence of these constant changes, we were unable to determine with any certainty who had decision making powers at various levels so that we could contact them in the first instance, nor could we determine to whom problems could be escalated. This was made more complicated by the fact that on the rare occasions we were able to identify individuals on the ground with authority, we could not rely on them on any given day given changing shifts and the absence of handover details.

IMCL was invited and attended the 'sector briefing' webinars convened by DHHS on **5, 7 and 9 July**. The webinars were useful in learning factual information from Directors and Deputy Secretaries, particularly in relation to directions that had been made by the Deputy CHO, rates of testing and rates of infection across the towers. Participants were invited to ask questions in the chat function of the webinar. During the first two meetings there were so many questions by the approximately 200 people attending that the convenors attempted to thematise the questions and respond. Not all questions were answered in the hour-long time provided. Although the webinars provided some clarity of thinking at an executive level within DHHS, the forum did not provide answers on how circumstances of individuals were being considered, or the practical process that residents ought to follow to have their needs met. In the first few days issues largely related to residents accessing appropriate food and medication, with assertions by DHHS that it was rapidly organising. What was said during briefings was often not reflected with the experience by residents or IMCL staff on the ground. Initially there was no mention of coordinating with community agencies to deliver food and medication, but rather an assertion that DHHS was responding. This created two disparate systems that were not communicating or coordinating with each other in an effective way: a higher-level system of decision making that was not keeping up to speed with what was happening on the ground; and onsite volunteers and lower-level decision makers who were trying to swiftly develop solutions in the absence of timely direction and resourcing.

On **6 July** we contacted Ministers offices, executives within DHHS and senior staff at Red Cross, using pre-existing relationships, requesting information on the best point of coordination on the ground, and method of ensuring the CLCs' information and referral lines were provided to residents. We were alternately informed that DHHS and Red Cross were leading the response, and appropriate details would be provided. Despite these promises were not provided with the most appropriate contact point. As an example, on, **6 July** we were told that Red Cross were 'formulating a response plan' and would come back

to us, however this never eventuated. On **7 July** we were informed by a colleague at Flemington Kensington CLC that Emergency Management Victoria had taken over control of the response. On the same day we wrote to EMV seeking to coordinate, and were informed that our offer to provide assistance would be 'assessed in the coming days'. On **8 July** we spoke with EMV in relation to facilitating access by residents to the exemptions in the detention directions. The importance of accessing those safeguards was noted, with an undertaking to return with clarification on process, however this too never eventuated.

By **9 July** we were informed that coordination at each tower had been handed to community agencies, with Melbourne City Mission managing the response at Alfred Street. However, we only obtained contact details for the right person at MCM through informal personal networks.

Community agencies like North Melbourne Language and Learning also reported that DHHS did not communicate with them directly at all during the course of the lockdown, despite their proactive attempts to gather information and establish a communication flow. They described being "*ignored*". This meant the agency was also unable to establish who appropriate decision-makers were in order to direct residents to appropriate help or to raise concerns. Instead they too were directed to use the DHHS phone line, and experienced the same poor results, with no escalation point. The staff members were surprised to hear that IMCL had been provided with two email addresses in addition to the DHHS phone line, and they had no knowledge about the webform. They had not been afforded the same communication opportunities. *"It was like they didn't actually want us to be able to escalate problems,"* one of the community development workers said to us. As a consequence of their sole reliance on the DHHS phone line, they reported that many residents never achieved the outcomes they required.

Having considered the fourth term of reference and the experiences that we have highlighted above, the following questions arise:

1. Why were the community and relevant community organisations not consulted with at the early stages of the pandemic?
2. Why did DHHS not create a simple plain English document that could be translated into multiple languages about the different numbers or services available?
3. Why was other critical information not provided in formats that were accessible to residents?
4. Why was there no clear information for residents about what options they had if they could not obtain on site medical care or needed urgent prescriptions after hours?
5. Why was there no apparent central collation of information collected by DHHS and support agencies so that the circumstances of each resident, any priority needs and confirmation of whether they had been diagnosed or specifically identified as a close contact?
6. Why was there not consistent and timely information shared with advocates or other community services assisting residents?
7. Why was the tireless work of community translators and organisers not recognised and harnessed?

Term of Reference 3: The nature and appropriateness of restrictions upon people's access to fresh air, exercise, medical care and medical supplies while detained

Quarantine does not mean detention, but for most residents at 33 Alfred Street that is what it was and many residents still remain restricted to their homes. Potentially as a result of ineffective management of

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infection controls at 33 Alfred Street through the lockdown, many residents remain confined to their homes beyond the initial 14-day period and will be self-isolating for close to a month. This includes families with young children, and single parent families.

Imposing immediate, Police-enforced detention on the residents of the public housing towers limited those residents' rights to freedom of movement, liberty and humane treatment when deprived of liberty (and also arguably other rights, such as equality before the law). Presumably these limitations were justified as proportionate under s 7(2) of the Charter, partly on the basis of the presence of certain exceptions or safeguards in the directions, such as those that allowed for residents to leave for the purpose of obtaining medical care. However, our experience was that these exceptions were practically impossible to access. We understand that only some residents were able to leave during the initial hard lockdown if they could demonstrate to Police that they needed urgent medical care, but this was not always guaranteed.

Using the restrictions on accessing exercise as an example, even after the detention directions were lifted residents at 33 Alfred Street were denied access to fresh air and exercise. Unlike any other persons, they were not trusted to safely exercise those rights like every other Victorian. Instead they had to wait until DHHS had formulated a plan for them to be able to exercise, which did not happen till 3 days after the detention directions were revoked. On **11 July**, a fenced-off area of approximately 10sqm was built for residents to walk around in, but as noted above it was removed in the early hours of **12 July** because community advisors and residents reported that the temporary fencing used to create the sectioned off area was like a "cage" or "prison yard".

At a press conference on **28 July** the CHO was questioned as to whether people in quarantine that had tested positive, could exercise. As reported in *The Australian* newspaper, he had the following exchange with a reporter:

'"Those in quarantine because they have tested positive, are they allowed to leave for exercise?" she asked.

"They are, otherwise it is detention and we do not have detention for cases in Victoria. They are entitled to exercise within their home and their garden, ideally.

The reporter followed up, commenting that the direction "would appear to go against what we have been hearing for months about what people should be doing in quarantine".

But Prof Sutton said the advice had not changed and related only to people who have limited space in their home to exercise.

"People who have no garden and have no other option … have a right to exercise," he said.

"So the Victorian Charter of Human Rights and Responsibilities is clear that if you are not giving people an option to exercise then you are effectively putting them in prison and that is not something that can be done for a case of coronavirus or for anyone else for that matter."'[4]

[4] https://www.theaustralian.com.au/news/latest-news/victorians-who-have-covid19-and-are-in-quarantine-do-not-have-to-remain-inside-home/news-story/6f73d6f5fbca2c41af536f3393aa842b

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If this was his earnest belief, then why were residents in public housing issued detention directions and why were they so heavily policed that they could not access any exercise or fresh air as clearly permitted by the close contact directions later?

Simply put, the nature of the restrictions placed on the residents and any safeguards that would lessen the impact on residents' rights were not adhered to. While being detained in their homes and forced to comply with the various directions, most residents had no access to fresh air, exercise, medical care, or basic necessities. There were no limits placed on the exercise of power by DHHS and support agencies, and no clear or quick options for review. There has been no clear evidence that even though the detention directions required a review of their detention every 24 hours as per section 200(6) of the PHWA, that this process was even followed. In the midst of a pandemic and a state of emergency, the need to stem the spread of COVID-19 and prevent the deaths of Victorians, took precedence over residents' fundamental human rights. Admittedly balancing the rights of one set of people against another is difficult, but the risks posed by the virus do not justify residents' detention.

Term of Reference 4: Whether the Department of Health and Human Services and other relevant authorities have acted compatibly with, and given proper consideration to, the *Charter of Human Rights and Responsibilities Act 2006* (Vic)

Given the above, it is impossible to suggest that DHHS and other relevant authorities have acted compatibly with the Charter, or given proper consideration of residents' rights. Residents were denied access to the safeguards provided for in the directions, which only created distress among them and contributed to a feeling that they had been "wrongfully imprisoned". These feelings were only further compounded by the militaristic Police presence. It was a clear violation of their human rights.

DHHS obligations under section 38 of the Charter

Section 38(1) of the Charter imposes obligations on a public authority not to act in a way that is incompatible with a human right, and to give proper consideration to relevant human rights in making a decision.

In determining whether a public authority has breached section 38 by an act or decision, consideration should be given to the following three-stage process of enquiry:

1. Has a Charter right been engaged?
2. If so, have any limitations been imposed on the right?
3. If so, was the limitation reasonable and justified under section 7(2)?[5]

The threshold for determining whether a Charter right is engaged or limited by a decision or act is low, and the right should be constructed 'in the broadest way possible'.[6] Once it has been determined that a Charter right was engaged or limited by the public authority's act or decision, the standard of proof required to show that the limitation was justified is high.[7]

[5] Judicial College of Victoria, '5.2 Limitations test under s 7(2)' Charter of Human Rights Bench Book (10 October 2018).
[6] *Certain Children v Minister for Families and Children (No 2)* (2017) VR 441, 498 [179].
[7] *Ibid.*

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Proportionality of limitations to Charter rights: section 7(2)

Section 7(2) of the Charter provides that any limitation on a human right must be reasonable and "justified in a free and democratic society based on human dignity, equality and freedom" with reference to the following factors:

1. the nature of the right
2. the importance of the purpose of the limitation (the 'end');
3. the nature and extent of the limitation (the 'means')
4. the relationship between the limitation and its purpose; and
5. any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.[8]

Did DHHS properly consider the Charter and residents rights when making the lockdown decisions?

In making a decision, a public authority must give proper consideration to the Charter rights before the decision has been made. [9] [5] While there is no exact formula for this process, it requires more than "merely invoking the Charter 'like a mantra'". [10] This obligation requires the decision maker to have seriously turned their mind to the effect of their decision on the Charter rights, and extends to consideration of how the decision will operate in practice, including whether any guidelines issued to assist in implementation will operate effectively. [11] This obligation is not suspended in emergency circumstances or where critical decisions need to be made quickly. [12] Proper consideration will also require the public authority to consider whether the limitation to the Charter rights is reasonable and justified in the circumstances, as outlined in section 7(2). [13]

While we have little insight into the decision-making process which led to the hard lockdown, there are real questions to be answered surrounding the extent to which the rights were given proper consideration to the degree required under the Charter. We submit that, had proper consideration been given to the Charter rights of residents, we would not have seen the adoption of such excessive measures to achieve the purpose of protecting the health of residents and the wider community from COVID-19.

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[8] *Charter of Human Rights and Responsibilities 2006* (Vic), s 7(2).

[9] *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* (2016) 51 VR 473, [190]-[191].

[10] *Ibid.*

[11] Judicial College of Victoria, '3.2 Obligations on public authorities (s 38), Charter of Human Rights Bench Book (1 September 2017) < http://www.judicialcollege.vic.edu.au/eManuals/CHRBB/index.htm#57276.htm>; see also Certain Children v Minister for Families and Children (No 2) (2017) VR 441.

[12] *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* (2016) 51 VR 473, [190]-[191].

[13] *Charter of Human Rights and Responsibilities 2006* (Vic), s 7(2).

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In its decision, it appears that DHHS failed to seriously turn its mind to the Charter rights outlined below and did not properly assess the measures against section 7(2) of the Charter to determine whether they were reasonable and justified, particularly in relation to section 7(2)(e) of the Charter which requires consideration of any less restrictive means reasonably available to achieve the purpose that the limitation in question seeks to achieve. [14]

How was the right to liberty impacted?

Section 21(1) of the Charter provides that every person has the right to liberty. [15] Section 21(4) requires that any person who is detained must be informed at the time of detention of the reason for detention. [16] [12] Section 21(1) was clearly engaged by the hard lockdown. Residents were deprived of their liberty by means of physical detention, [17] imposing obvious and extreme limits on residents' liberty.

As outlined throughout this submission, many residents were not properly notified of the lockdown before large numbers of Police were deployed and began implementing the hard lockdown on the afternoon of 4 July 2020. Some were only given a copy of the detention directions, days after they were made if at all. The failure to notify residents sufficiently before the lockdown was implemented, and the lack of plain English and translated information both at the time the lockdown began being implemented and throughout the lockdown period puts into serious question whether residents were sufficiently informed of the reason for their detention at the time of the detention, as required by section 21(4). [18]

The issue in relation to residents' rights under section 21 is clearly one of proportionality. The proportionality assessment of section 7(2) requires consideration of all the factors in subsections (a) to (e), outlined above. The right to liberty is fundamental to enabling a person to participate equally in a free democratic society, [19] and is essential to enabling the enjoyment of other human rights.

While the protection of public health and the health of the residents is of "pressing and substantial" importance, [20] the restrictions imposed on residents to achieve this end were extreme and excessive. This is particularly so in circumstances where safeguards in the directions, such as to allow residents to leave for health, emergency or compassionate grounds, were practically impossible for residents to access. These exceptions were also not properly communicated to residents. Throughout this submission we have highlighted the repeated failure of those responsible for implementing the directions to give effect to the safeguards designed to ameliorate the impact of the limitation to residents' liberty. We have also highlighted how residents were denied basic needs such as access to fresh air and exercise.

The practical effect of these failings for many residents amounted to a total and unjustified restriction to their liberty. These restrictions cannot be said to be 'rationally connected' and 'carefully designed' to

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[14] *Charter of Human Rights and Responsibilities 2006* (Vic), s 7(2)(e).
[15] *Charter of Human Rights and Responsibilities 2006* (Vic), s 21(1).
[16] *Charter of Human Rights and Responsibilities 2006* (Vic), s 21(4).

[17] Explanatory Memorandum, Charter of Human Rights and Responsibilities Bill 2006 (Vic), 16; Antunovic v Dawson (2010) 30 VR 355, [72].
[18] *Charter of Human Rights and Responsibilities* 2006 (Vic), s 21(4).
[19] *Director of Public Prosecutions v Kaba* (2014) 44 VR 526, [110].
[20] *Director of Public Prosecutions v Kaba* (2014) 44 VR 526, [110]; *PJB v Melbourne Health* (2011) 39 VR 373, [340].

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achieve the intended outcome of protecting public health. [21] Finally, the limitation to residents' liberty was excessive and disproportionate on the basis that less restrictive means were reasonably available to achieve the intended purpose. [22] While there were formal safeguards to reduce the impact on the right, these safeguards were not exercised in practice.

Did residents receive humane treatment when deprived of their liberty?

Section 22(1) requires that all persons deprived of liberty receive humane treatment and respect of the inherent dignity of the human person. [23] This requires that persons who are deprived of liberty are not subjected to any hardship or constraint beyond that resulting from the deprivation of liberty. [24] When detained, individuals must be provided with services to meet their essential needs, including accommodation, adequate food, hygiene facilities, opportunities for exercise and access to adequate medical treatment. [25]

As outlined throughout this submission, residents have been subjected to hardships caused by lack of access to exercise; the inability to access building amenities such as communal laundries; overcrowding caused by an inability of residents and non-residents to leave the buildings; the failure to manage risks of family violence and child abuse; the failure to provide adequate support for residents living with disabilities, chronic illness and pre-existing mental health issues; and the lack of access to adequate, culturally appropriate food and basic necessities including personal protective equipment. As one resident noted: "*This was just... it was inhumane*".

None of the hardships listed above can be said to be hardships directly resulting from the deprivation of their liberty, but instead relate to their treatment while being deprived of their liberty. Particularly when taken together, these hardships experienced by residents have limited their right to humane treatment when deprived of liberty and have severely impacted on their sense of human dignity in a manner which is unjustified and unacceptable.

Was the use of the Police or fencing off an area for residents to exercise, in that it made resident feel like they were in a prison, cruel, inhuman or degrading treatment?

Section 10(b) of the Charter protects against cruel, inhuman or degrading treatment. This provision was modelled on article 7 of the ICCPR. Neither the Charter or the ICCPR define "cruel, inhuman or degrading treatment". The case law suggests that conduct which humiliates or demeans, causes fear, anguish or feelings of inferiority may amount to cruel, inhuman or degrading treatment[26] where it meets the

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[21] Judicial College of Victoria, '5.2 Limitations test under s 7(2)' Charter of Human Rights Bench Book (10 October 2018); *PJB v Melbourne Health* (2011) 39 VR 373, [347]; *Re Kracke and Mental Health Review Boar*d (2009) 29 VAR 1, [153].

[22] Judicial College of Victoria, '5.2 Limitations test under s 7(2)' Charter of Human Rights Bench Book (10 October 2018); *PJB v Melbourne Health* (2011) 39 VR 373, [352]; *Momcilovic v The Queen* (2011) 245 CLR 1, [556] (Crennan and Kiefel JJ)).

[23] *Charter of Human Rights and Responsibilities Act 2006,* s 22(1).

[24] *Castles v Secretary to the Department of Justice* (2010) 28 VR 141, [108], [113].

[25] Judicial College of Victoria, '6.16.2 Scope of the right: Humane treatment and respect for the dignity of persons deprived of liberty' Charter of Human Rights Bench Book (1 September 2017).

[26] Judicial College of Victoria, '3.2 Obligations on public authorities (s 38), Charter of Human Rights Bench Book (1 September 2017) < http://www.judicialcollege.vic.edu.au/eManuals/CHRBB/index.htm#57276.htm>; *Kracke v*

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minimum standard of "severity or intensity that can manifest in bodily injury or physical or mental suffering" is required.[27] Whether this threshold is met will depend on the circumstances of each case, including "the duration of the treatment, its physical or mental effects, and the sex, age and state of health of the alleged victim".[28] The right will be engaged where the conduct is grossly disproportionate to its intended purpose and results in pain and suffering which reaches the minimum standard of "severity or intensity" in all the circumstances.[29]

Our submission has detailed the severe impact that the sustained and disproportionate Police presence has had on residents' mental health and that some residents commented that they felt "*humiliated*" by what happened. Racial profiling, over policing and generally negative Police experiences is an unfortunate but common experience among many residents, and for residents from asylum seeker and refugee backgrounds, the impact on their mental health has been even more severe. The large influx and sustained presence of Police has retraumatised many of these residents and has made them feel imprisoned, fearful and unsafe in their own homes.

Our submission has detailed the severe impact that the sustained and disproportionate Police presence has had on residents' mental health, but we have only skimmed the surface of it. The true depths of what residents have experienced and the extent to which it will impact on them in the long term remains to be seen. It also made residents feel that they were being "*punished*" for living in public housing.

The fencing off of the exercise area discussed in detail above further exacerbated residents' distress and sense that they were being imprisoned. The disproportionate Police presence and 'caging-in' of residents' exercise area cannot be justified as a proportionate response to protect public health and prevent the spread of the virus.

What was the impact on their freedom of movement?

Section 12 of the Charter provides that every person lawfully in Victoria has the right to move freely in Victoria, enter and leave Victoria, and the freedom to choose where they live.[30] This right is strongly linked to the right to liberty, and the focus of section 12 is on restrictions to movements which fall short of physical detention.[31] We refer to our comments above in relation to the impact to the right to liberty, which are also relevant in relation to the section 12 Charter right.

As residents were 'detained' rather than merely restricted in their movements, this right may be less relevant, however it may be relevant for any circumstances we have highlighted which do not involve residents being physically detained, for example, once detention orders were lifted.

Were residents discriminated against?

Mental Health Review Board (2009) 29 VAR 1; *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* (2016) 51 VR 473, [160]; *Certain Children v Minister for Families and Children (No 2)* (2017) VR 441, [250].

[27] *Certain Children v Minister for Families and Children (No 2)* (2017) VR 441, [250].

[28] *Ibid.*

[29] Judicial College of Victoria, '5.2 Limitations test under s 7(2)' Charter of Human Rights Bench Book (10 October 2018).

[30] *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 12.

[31] *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, [588].

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We noted in our introduction that residents felt that the lockdowns were discriminatory, and indeed no other population or group of people were treated as differently as the residents in public housing. While it may not be possible for us to meet the established tests for discrimination or denial of equality, on the basis of adverse action against a protected attribute such as race, we cannot ignore that the decisions and their application were discriminatory. They rightly feel that they were targeted because they live in public housing, their economic and social marginalisation could have well contributed to what took place. There is a real sense or belief from residents that we have spoken to, that they felt like an easy target and that few in society would care about their different and adverse treatment.

Conclusion

Investment in public housing

This crisis shows us that the sustained lack of investment in the maintenance of public housing and surrounding infrastructure over several decades has caused issues during the lockdown with:

- Impacts on the transport of vital supplies and food to residents - with only two lifts in the entire building it would take hours for food and essentials to be delivered and for cleaning to occur between each use of the lift (if at all). This also dramatically reduced the amount of time that residents had to exercise if they were able to arrange it at all.
- An exacerbation of health problems caused by poor housing - Homes that were already in significant disrepair due to severe mould, that had not been adequately treated or remedied, had already caused respiratory problems for those residents. During the lockdown, this put them at high risk if they were to contract the virus, of which we have one client who did. Prior to the lockdowns we had been advocating on her behalf for an urgent transfer, particularly as she was pregnant and she and three of her six children had respiratory problems. She was not transferred and has then subsequently contracted COVID-19. She is a single mother who has been caring for her seven children all while in lockdown and being unwell herself.
- Lack of access to exercise - While we understand that it was difficult for DHHS to arrange this for residents due to restricted lift access, it was our view that the lack of investment in public housing and poor maintenance of public housing infrastructure has directly contributed to this problem and led to the adverse impacts on residents rights.

While the Government has announced further funding to keep Victorians experiencing homelessness in temporary accommodation during the pandemic, longer term and sustained investment in public or social housing is desperately needed.

Support for communities

DHHS and other agencies had heavily relied on community members volunteering their time to support residents affected by the lockdowns, particularly in providing welfare checks, culturally appropriate food and essential items (including disinfectant, PPE, medication and prescriptions), as well as translations. This is work they felt that they had to do. They filled obvious gaps left by DHHS and other agencies and were instrumental in providing residents with access to basic relief, but there has been little consideration to financial support for those volunteering and/ or ensuring their health and safety. They have all been potentially exposed to COVID-19, and some have tested positive for the virus.

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They have also been retraumatised by their interactions with Police and when trying to intervene on behalf of residents and community who are being over policed. On one occasion late at night they tried to intervene on behalf of a young woman, who had been immediately surrounded by Police as she tried to talk to her friend at 33 Alfred Street through a window. Like many other confrontations with Police they asked for their identities and Police refused. They then observed Police intently monitoring them and recording their details, including their car registration numbers. This made them feel unsafe and they had no choice but to leave, wondering if Police were going to consider some form of enforcement action when they were working. It is our view that there is an obvious risk that these volunteers will suffer from vicarious trauma and possibly more effects because of the support that they have provided to residents in crisis. Their efforts may be needed in the short and long term to support these residents and others if further lockdowns are imposed at other high-density public housing sites, but it comes at an enormous cost to them. Proper support is needed for them to continue, and consideration of how they worked without any basic safety net in terms of any insurance. They have put their jobs, and their lives on the line to support their community when all levels of Government failed to do this.

Further options for review

Tigist Kebede, who volunteered and worked as a community advisor throughout the lockdowns, has said:

"*Institutional gaslighting – when you keep pointing out injustice, but those in power keep denying it exists. The betrayal is especially traumatic and compounded as the perpetrator, the institutions, are framed as places of safety and arbiters of justice. Institutional gaslighting reinforces social norms, institutional abuse and systemic inequality, further ostracising and oppressing communities and groups."*

If there are not sufficient avenues for redress for residents, those caught in the lockdowns and volunteers, then serious consideration needs to be given to any other support that they can receive and further options for review. Otherwise we risk further marginalising the most vulnerable members of our community.

We know that it was not only the residents and others caught in the lockdowns at 33 Alfred Street, that have been affected by the decisions made by DHHS and others since **4 July.** While we welcome the Ombudsman investigation, further attention needs to be drawn to the experiences of other residents living in public housing and also the actions of Police. We spoke to one resident who had family members that had tested positive, and Police were persistently contacting them to ensure that they were staying in their home. To the extent that they asked them to wake their sick children up, and have them wave to Police from their window. We raised this with Police and it was immediately denied. When we have spoken to residents and community advocates, they consistently say that they want broader levels of inquiry or review. They want the continued enforcement mechanisms by Police to be heavily scrutinized. It varies between seeking a complete judicial inquiry to a Royal Commission.

It is clear that there are not sufficient safeguards in the PHWA and more broadly, to protect the rights of Victorians during a pandemic. Legislative reform is urgently needed if the public health emergency continues. Beyond this there are obvious lessons for DHHS and other support agencies after what has happened with the lockdown at just 33 Alfred Street, with urgent changes that need to be implemented to ensure that other residents living in public housing do not share the same fate. Residents and volunteers still believe that it has fallen to them to highlight any risks and concerns about avoiding the further spread of COVID-19. It should not be up to them to ensure that risks to public health are effectively managed for residents living in public housing.