

## COVID-19 Hotel Quarantine Inquiry

### Witness Statement and Submission of Hugh William de Kretser

#### Introduction

- 1 I am the Executive Director of the Human Rights Law Centre. Because this statement and submission relate to my personal experiences in hotel quarantine, I make it in a personal capacity. In doing so, I draw on over two decades of experience as a lawyer, and particularly as a human rights lawyer and law reformer. A significant part of my work over many years has focussed on human rights issues in places where people are detained, such as prisons and immigration detention facilities. A summary of my professional experience is at the end of this statement and submission.
- 2 I am making this statement and submission because I want to assist the Inquiry to identify strengths and weaknesses in the quarantine program in order to help the Victorian Government to improve it. I believe the Inquiry is critical to informing the Victorian public and beyond about issues which are of significant public interest. I hope that this statement and submission might also assist other Australian governments to improve their quarantine programs.
- 3 This statement and submission draw on human rights principles, which are embedded in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, to suggest ways to improve the quarantine program. Human rights provide a compass to guide us in situations like the COVID-19 crisis. Applying human rights principles will help governments to make the right decisions. Human rights principles can also help communities assess whether our governments are doing enough, getting it right or going too far in responding to the pandemic.
- 4 This statement and submission is in three parts; the summary; my personal experience of quarantine and a human rights analysis of quarantine.

#### SUMMARY

- 5 Governments have human rights obligations to protect life and public health. A quarantine program for people coming to Australia from overseas is an important part of that protection during this pandemic. Some form of quarantine program is justified, and arguably required, from a human rights perspective given current circumstances in Victoria.
- 6 However, while some form of quarantine detention is justified, it must be done properly and humanely to protect the community, the staff and the people being detained.
- 7 My family, being my wife and I and our two children, aged 10 and 7, returned to Australia from the United States on Saturday 27 June 2020. We were detained in hotel quarantine at the Rydges on Swanston hotel from Saturday 27 June until Saturday 9 July 2020.
- 8 My experience of quarantine at the Rydges was that while some things worked very well, others fell short, creating risks to the Victorian community, quarantine staff and the people being detained. My key concerns were:
  - The rooms were unclean. This undermined confidence in infection control procedures.
  - Staff seemed to change constantly and move between facilities creating unnecessary transmission risks between facilities.
  - On at least two occasions a staff member came to our room without a face mask.
  - People were being detained in their rooms for the entire, or almost the entire 14 day period without any fresh air or exercise breaks. This is particularly concerning for children and people with mental health concerns.

#### Summary of things that worked well

- 9 I believe the following things worked well during our detention period:
  - The airport arrival procedure was well-organised.

- We were provided with two adjoining rooms with a connecting door. Both rooms had large windows and plenty of natural light.
- Hotel staff were generally very helpful and responsive.
- The nursing staff generally took their job seriously and seemed to genuinely care for the welfare of people being detained.
- The nurse welfare check took place every morning.
- We had two COVID-19 tests on day 3 and day 11 in accordance with what I understand is the normal procedure. The staff conducting the test were professional, friendly and helpful and wore full personal protective equipment (PPE).
- The care package procedure under which family and friends could send one package per week, generally worked well.
- The ability to order in groceries and outside meals was helpful and the delivery system generally worked well.
- Meals were always delivered on time. Cooked food was always delivered hot. The hotel kitchen seemed to make a genuine effort to provide healthy food, catering for dietary requirements.
- With some exceptions, things were delivered to our room in a way that minimised the risk of transmission.
- Our final fresh air and exercise break was well-coordinated and done in safe manner.

### Summary of issues of concern

10 The following things concerned me:

- In mid-late May when we were planning our return to Australia, Victorian Government information about hotel quarantine was very poor.
- It was very difficult to maintain physical distance on the bus from the airport to the hotel, creating unnecessary risks of transmission.
- The reception procedure on arrival at the hotel was poorly organised.
- The rooms were unclean.
- Department of Health and Human Services (DHHS) staff seemed to be unfamiliar with the hotel, seemed to change constantly and move between facilities, creating risks of infection spread and contributing to inconsistent information about policies.
- The lack of fresh air and exercise breaks for people detained was very concerning. We spent almost 12 days straight in the two adjoining hotel rooms before being allowed approximately 15 minutes to exercise in fresh air in a small area on the hotel roof deck each day for the final two days. I understand some people did not get any fresh air and exercise break for the entire 14 day period.
- We were provided with very inconsistent information about fresh air and exercise breaks.
- On at least two occasions, staff came to our room without face masks or other PPE.
- At the end of the quarantine period, instead of being allowed to arrange for our car to be dropped off for us to drive home in, we were required to travel away from the hotel in a taxi, which created unnecessary risks of transmission.
- There seemed to be no procedure to undertake a daily review of our detention as required by the *Public Health and Wellbeing Act 2008* (Vic). DHHS authorised officers seemed to be completely unaware of this requirement.
- Information on the fresh air and exercise break policy and the detention review policy should be made available to people being detained. My requests for these policies were not successful and were ultimately referred to a freedom of information process which is likely to take many months.
- The approach to managing the risk of COVID-19 amongst returning Australians through hotel quarantine seemed very inconsistent when compared to the approach for managing the risk of people who test positive to COVID-19 in the Victorian community.

11 I expand on some of these issues in more detail below.

## Recommendations

- 12 Based on my personal experience and the human rights analysis in Part 2 of this statement and submission, I recommend that the Victorian Government:
- Adopt a human rights approach to managing quarantine. This should be underpinned by the need to protect the life and health of Victorians, but should adopt the least restrictive measures necessary to achieve that goal.
  - Mandate daily access to fresh air and exercise breaks in policies governing the operation of quarantine facilities.
  - Use detention facilities, such as serviced apartments, that provide easier ways to safely manage access to fresh air and exercise.
  - Make publicly available the policies that govern the operation of the quarantine program, and particularly policies that concern the welfare of people being detained and how mandated reviews of detention are conducted.
- 13 I have not made any recommendations around how best to manage the risk of transmission in quarantine facilities as I understand that this Inquiry will consider expert medical evidence on those issues.

## PART 1 – PERSONAL EXPERIENCE OF QUARANTINE

### Travel to the United States

- 14 I live in Melbourne with my wife and our two children, who are 7 and 10 years old. We are all Australian citizens. My wife is also a US citizen. She has family and friends in the US. I travelled with my family to the United States on 27 February 2020 for a period of four months long service and annual leave.

### Poor information about hotel quarantine for people planning to return

- 15 We spent most of the four month period based in a town in Utah where my wife used to live. The scale and impact of COVID-19 became clear to us in mid-March. We carefully considered our options and decided not to return home at that stage. The local government where we were staying handled the pandemic well with its lockdown measures. The local healthcare system was good. Social distancing was promoted heavily by the local authorities. By the time we left, you could not enter shops without a mask.
- 16 We were originally due to fly home to Melbourne on 27 June 2020. Qantas cancelled our return flight home on around 7 May 2020 and so we began to investigate other flight options.
- 17 Through the media I was aware of the requirement to be detained in hotel quarantine for two weeks on return to Australia in the city in which you landed. I wanted to learn more about what to expect for our family; in particular the type of facility we would be detained in and access to fresh air and exercise breaks.
- 18 I could not find this information on any Australian or Victorian Government websites. I understood that DHHS was involved in managing the quarantine program in Victoria. I could not find any email address on the DHHS website for questions about quarantine so I used the generic contact form on the DHHS website, sending a message on around 16 May 2020. On 18 May, I received a reply which simply referred me to the Australian Government Smart Traveller website which I had already viewed and which did not have answers to the questions I was asking.
- 19 On around 28 May, I saw on social media that a friend was being detained in a quarantine hotel in Melbourne. I messaged her and asked questions about the conditions and the best way to ask questions of DHHS. She said there was no email address to use, only a 1800 phone number. She told me about her experience and said people were allowed only a weekly fresh air break for 10 minutes.

- 20 My friend referred me to several Facebook support groups for Australians in quarantine or who are planning to return to Australia. She also sent me a link to a Facebook post where someone had taken photos of the information sheets provided to them when they were detained in quarantine in Victoria which answered some of the questions I had emailed DHHS about. It made no sense to me that this information would be provided to people in hardcopy form by DHHS but was not made available on the DHHS website. I understand this material is now available on the DHHS website. If it hasn't already, in addition to the 1800 number, DHHS should also provide a dedicated email or message contact point for Australians overseas who are planning their return to Victoria and who are seeking information about quarantine.
- 21 The Facebook group posts from people detained in hotel quarantine had very helpful information about how to prepare for quarantine and what conditions were like. There was information for people who were asking about applying for exemptions for quarantine on different grounds. People's experience of hotel quarantine seemed to vary considerably depending on what jurisdiction they were in and which facility they were detained in. For example, in NSW some families were detained in serviced apartments with balconies and kitchen facilities to prepare food. In Queensland, people seemed to be getting more access to fresh air breaks. Some people were detained in rooms with plenty of natural light and views. Others received little or no direct sunlight in their rooms and looked out onto concrete walls.

### **Return to Australia**

- 22 We purchased new flights with Air New Zealand flying home to Melbourne via Auckland. Our flight, NZ 123, landed at around 11am on Saturday 27 June 2020. After a delay of around an hour and half, we were taken off the plane. Staff checked our temperatures and handed us detention notices informing us that we would be detained at the Rydges on Swanston. Because we were a family of four, we were asked if we would like adjoining hotel rooms instead of a single room. We said that we would. Apart from the initial delay, the airport reception and intake procedure seemed to be well-organised. While people on our flight all seemed to be wearing masks in the airport, I do not remember being asked to wear a mask. We had our own masks which we purchased earlier in the United States.

### **Bus from the airport**

- 23 We were directed out of the airport and onto buses on the tarmac. I do not remember being asked to wear a mask on the bus nor were there any instructions around maintaining distance on the bus, for example by having people sit only in alternative rows. A significant proportion of the bus was taken up with luggage making distancing very difficult. People were sitting in the rows in front, behind and next to us.

### **Detention intake procedure at the hotel**

- 24 The intake procedure at the hotel was poorly organised. The bus stopped on Lincoln Square North outside the entrance to the underground carpark where the intake procedure was being conducted. We were held on the bus for around 20 minutes. There was little coordination around who should get off the bus and how to get the luggage off in an orderly way. The person communicating with us seemed to be a hotel employee. He told us there was only one small luggage trolley. Three armed police officers were standing outside the bus but were not assisting in any way. A young girl in one family needed to use the bathroom so the passengers coordinated themselves for her family to get off first with their luggage.
- 25 There were a number of tables set up to do the intake in the underground carpark with many staff sitting behind tables or standing around. The tables were close together, there was a lot of luggage lying around and there was a queue for the one small lift to take people up to the floors where people were being detained. We found it uncomfortable how close people were together in the carpark. As we were there, one intake team moved their table closer to the carpark entrance to create more space.
- 26 We were surprised at how disorganised the intake procedure was, particularly given the hotel quarantine program had been running for several months by the time we arrived. From

conversations with DHHS employees, I later understood that many of the DHHS staff were new to the hotel and that staff moved between different hotel facilities.

### **Health intake**

- 27 Our 10 year old son has asthma. I have had to take him to hospital before for his asthma. It is triggered, amongst other things by dust. His doctor wrote a letter for us noting this and asking if possible that we could get a room with a window that opened for ventilation to minimise the risk of asthma. We asked about this at the airport and were told to raise it with the nurse at the hotel intake. At the hotel intake in the carpark, we raised this issue and were told this was not possible. Our son had mild asthma over the first few days but fortunately it subsided.

### **Lift to the room**

- 28 We were detained in two adjoining rooms, 223 and 224, with a door that opened between them. Once we completed the intake procedure we were shuffled towards the lift. Someone who had cleaning equipment pressed the button for level 2 and exited the lift and we got in. The lift doors closed and then opened on level 2. We were surprised to find no staff present when we exited the lift. We followed the hotel signs to find our rooms and went in using the keycard we had been given during the reception procedure.

### **Room was unclean**

- 29 Before flying home, I had read media reports about COVID-19 outbreaks at the Rydges on Swanston and the Stamford Plaza. Given the reports, we expected that our room would be thoroughly clean and smelling of disinfectant. It was the opposite. We found a plastic glove and a children's toy at the edge of one of the beds. I found a face mask under another bed and later found another plastic glove. There were food crumbs on the floor, stains on the doonas and walls, mould in the bathroom and dust everywhere.
- 30 The state of the room made us worried about our safety in the hotel, particularly after the media reports about the outbreaks. I had also read reports that said the hotel had been used to provide accommodation for infected people (not people returning from overseas) who could not isolate safely at home, such as some of the Cedar Meats workers.
- 31 Our concerns were magnified the following morning when we learned that one of the people being detained at the hotel with her children at the same time as us, had discovered a bed bug infestation in her room. I did a quick internet search and found two public reports on hotel feedback websites where people had reported bed bugs or similar at the Rydges on Swanston, one in March 2020 and one in October 2019.
- 32 I read media reports responding to the bed bug incident on 29 June that quoted the Chief Health Officer saying that "the hotel was emptied on 1 June and underwent a deep clean of every room and common area in line with the Chief Health Officer Guidelines for coronavirus cleaning procedures." Our experience of the state of the hotel rooms completely undermined our confidence about the quality and effectiveness of these cleaning procedures.

### **Cleaning our room**

- 33 Because of the state of our room, we rang family who arranged for a package of cleaning products to be sent to us as part of our first weekly care package. When it arrived on Sunday 28 June, we thoroughly cleaned the room. The hotel provided a vacuum cleaner which we used.

### **No fresh air or exercise breaks for almost 12 days**

- 34 One of my key concerns about hotel quarantine was the lack of fresh air and exercise breaks. Our rooms had no windows that opened. Most of the room was taken up by beds and other furniture. There was very little space to do any kind of exercise, particularly for our children.

- 35 The information we received when we were first taken to the hotel said that “You will have access to weekly fresh air breaks”. I considered this to be completely inadequate. Even this inadequate standard was not complied with.
- 36 On Sunday 26 June (our first full day) and subsequent days, we asked the nursing staff at the daily welfare check if and when we would be allowed out of the room for a fresh air and exercise break. Sometimes the nursing staff suggested we speak to DHHS staff. Each day either the nursing staff or DHHS staff would tell us that we could not have a break that day and we would then receive very inconsistent information about if and when we might be allowed out of the room and what the policy was around breaks.
- 37 Finally, on Thursday 9 July, after spending almost twelve straight days in our hotel rooms, we were surprised to be told that we would be getting a fresh air and exercise break at 12.30pm that day. We were escorted to the roof deck on level 4 to spend around 15 minutes in the fresh air in a small open area on the deck. We had to split up. One parent took one child for 15 minutes. Then the other parent took the other child for a similar period. A staff member, I believe from DHHS or Corrections Victoria, accompanied us up in the lift. While he was wearing a mask, it seemed to create an unnecessary risk of transmission for him to be in the lift with us.
- 38 While it was a very short period of fresh air and exercise, it made a big difference to us.
- 39 On Friday 10 July (the day before we were allowed to leave), we were again surprised to be told we would be getting another fresh air break that afternoon. This time, we were allowed to go up together as a family of four. A staff member escorted us to the lift but this time we went in the lift alone. One of the staff radioed to level 4 that we were coming up and the staff member on level 4, a Corrections Victoria guard, radioed down that we had arrived. This type of procedure, where the staff member does not travel in the lift with you, seems preferable to prevent transmission. We were allowed about 15-20 minutes in the same open area. I was impressed at the procedure used to safely manage this fresh air and exercise break.
- 40 I understand from social media messages that at least one other family at the Rydges when we were there had a similar experience to us with no fresh air and exercise breaks until the final days of the 14 day period. Another family detained in another Victorian hotel at the same time as us told us she had more fresh air breaks. A woman detained at another Victorian hotel at around the same time told me that she received no fresh air breaks at all during the 14 days. I understand from the Facebook groups that people’s experience of fresh air and exercise breaks varied considerably between jurisdictions and facilities.

#### **Staff changing constantly and moving between facilities**

- 41 Over the two week period, we had many telephone conversations with the nurses and DHHS staff about issues like fresh air breaks, cleaning and delivery of packages. From these conversations it became apparent to us that staff changed constantly and moved between facilities. These changes seemed to contribute to inconsistent information about policies and seemed to pose an unnecessary risk of transmission between detention facilities.

#### **Protective equipment**

- 42 Because we were detained in our room for almost the entire time, we had very little physical interaction with staff. Food and other packages were normally left at our door with a knock. We would wait for a short period and then open the door to retrieve whatever was there. This procedure worked well from a safety perspective.
- 43 On some occasions staff did come to our room to do the COVID-19 tests or to do maintenance in our room (our heater did not work, one toilet stopped working and our towel rack broke in the first three days). On nearly every occasion, they were wearing a face mask or full PPE.
- 44 However, on at least two occasions, a staff member came to our room, waited at the door for us to open it, and when we did, they were not wearing any mask or other PPE which was concerning. I

cannot remember if staff were wearing masks in the basement carpark during the intake procedure at the hotel but my wife has told me that at least one staff member was not wearing a mask.

### **Tests**

- 45 All four members of our family took COVID-19 tests on Tuesday 30 June (our third full day) and Wednesday 8 July (our 11<sup>th</sup> full day) in accordance with what I understand is the normal procedure. There was some discussion in the media at the time about saliva tests, particularly for children. The only tests available for us were the nose and throat swab tests. The staff conducting the test were professional, friendly and helpful and wore full personal protective equipment (PPE). The tests were quick and caused only mild discomfort. Both our tests came back negative for all of us. We received the results by phone 2 or 3 days after the tests. We also received documentation confirming the second test was negative which we were asked to show when leaving the hotel.

### **Food, deliveries and care packages**

- 46 Meals were always delivered on time. Cooked food was always delivered hot. We were told that the hotel kitchen was preparing all the meals. Kitchen staff seemed to make a genuine effort to provide healthy food, catering for dietary requirements.
- 47 The care package procedure under which family and friends could send one package per week, generally worked well. We had things sent to us like toys, food, bowls and plates, a toaster and cleaning equipment.
- 48 We were able also to order groceries from Woolworths or Coles as well as outside meals or coffee. We did this and the system generally worked very well.
- 49 On our final night, when putting our rubbish in the corridor as instructed, we noticed an Uber Eats delivery of around four bags sitting outside our door. We had not ordered them. We informed hotel reception who told us that it had been delivered to the wrong room. The staff member asked us if we could deliver it to that room. Given our detention requirements, which threatened us with a \$19,826 fine if we left our rooms without permission, we declined. The following morning the food was still there.

### **Health issue**

- 50 On one night our daughter hurt her leg when she banged it into the corner of the bed while we were getting her to run around the room to exercise. We rang hotel reception to ask for some ice but were told we had to be referred to the nurse. The nurse said she couldn't give us ice but said we could get a cold pack delivered to the room but that it would take two hours to arrive from offsite. The next day another nurse apologised to us and said that she had written a message at the nurses' station to say that it was ok to provide ice to people being detained.

### **Exit procedure**

- 51 The exit procedure was generally well organised. However, we were told that we had to take a taxi away from the hotel and could not have our car delivered by friends or family so we could drive ourselves home. Being required to travel in a taxi seemed to create an unnecessary risk of community transmission.

### **No reviews of detention as required by legislation**

- 52 Subsection 200(6) of *Public Health and Wellbeing Act 2008* (Vic) provides that if someone is detained using the emergency public health powers, an Authorised Officer must review every 24 hours whether the continued detention of a person is reasonably necessary to eliminate or reduce a serious risk to public health. Review requirements such as this provide important safeguards to ensure that detention is only used when strictly necessary and that decisions take into account individual circumstances, such as any mental health concerns.

- 53 I was aware of this requirement when I was detained at the Rydges on Swanston. Over the two week period, I asked three different people who I was told were DHHS Authorised Officers or Team Leaders, whether our detention was being reviewed daily. One officer seemed surprised by the question and told me we were being detained for 14 days. Another told me that the nurses do the review (presumably referring to the daily nurse welfare check) and another told me that the detention “wasn’t really reviewed”.
- 54 Those conversations led me to believe that at least some DHHS authorised officers seemed to be completely unaware of the legislative requirement to review detention daily, and therefore that this requirement was not being complied with.

#### **Availability of key policies**

- 55 Given my concerns about the fresh air policy and whether mandated reviews of detention were happening, I asked DHHS staff for a contact email to ask questions about those issues and was provided with two email addresses.
- 56 On 8 July I wrote to both email addresses asking for a copy of the policy that deals with if and when fresh air and exercise breaks are allowed. On 10 July I wrote to both addresses, referring to the legislative requirement for reviews of detention, and asking for information about how reviews of my, and my children's detention, had been conducted. I did not receive a response to my requests other than being copied into an email forwarding on my request to another area within DHHS.
- 57 On 19 July I followed up both requests by email, and noted that the information was needed to help me prepare a statement and submission to this Inquiry. On 21 July I received a reply from one team in DHHS saying the request had been sent to another team. I still did not receive any substantive reply.
- 58 On 2 August I again followed up the request by email. On 5 August the DHHS freedom of information team contacted me to say the “most appropriate” action for me to take was to submit a freedom of information request.
- 59 I have lodged many freedom of information requests through my work. The statutory timeframe in Victoria for making a decision about a valid request is 30 to 45 days. In my experience, this timeframe almost never complied with and it normally takes many months to receive a formal decision on a request which is then often followed by argument over whether the relevant agency has complied with legislation in refusing or redacting documents. Given this experience and the timeframe of this Inquiry, I have not proceeded with this request.
- 60 I am not aware of any legal reason why DHHS could not simply provide this information to me. In fact, I believe information about the fresh air and exercise policy, and the policy on how reviews of detention are conducted, should be freely available to the public, and in particular to the people being detained.

#### **Inconsistent approach to risk**

- 61 I understand that:
- Many people who test positive for COVID-19 do not have any symptoms at the time they test positive.
  - Some people who test positive never show any symptoms.
  - COVID-19 has a median incubation period of around 5-7 days but the period can extend up to 14 days.
  - Testing is not perfect. There are false negatives and false positive tests, and a positive test does not necessarily mean a person can transmit the virus to others.
- 62 I understand from media reports that around 1% of the approximately 20,000 people who have gone through Victoria’s hotel quarantine program have tested positive for COVID-19.



- 63 As set out below, in the current circumstances in Victoria, I believe that some form of quarantine detention is not only justified, but required from a human rights perspective, to protect rights to life and health when community transmission overseas is higher than in Victoria.
- 64 However, during our period in hotel quarantine detention, I was very surprised to learn about a very inconsistent approach to risk when comparing the response to people coming to Victoria from overseas with the response to people in the Victorian community who test positive for COVID.
- 65 People being detained in hotel quarantine were statistically around 1% likely to have COVID-19. By the second week of detention, if people had no symptoms and had a negative result on their first test, the risk of them having COVID-19 was presumably much lower. They continued to be detained in a hotel instead of being allowed to isolate at home and were allowed few if any opportunities to get fresh air and exercise.
- 66 This contrasted against the approach taken to people in the Victorian community who tested positive to COVID-19. They were allowed to isolate at home if it was safe to do so and could leave their homes to go into public areas to exercise whenever they wanted, provided they took reasonable steps to maintain physical distance from others.
- 67 If it was not safe for them to isolate at home, the Victorian Government provided them with accommodation to isolate in. From media reports, I understand that the Rydges on Swanston was used for this purpose. On reception at the Rydges, we were provided with information which also covered the situation for people in that category. This information explained that they could leave their room when they wanted for the purpose of fresh air provided they took reasonable steps to maintain physical distance from others.
- 68 It made no sense to me to take a less strict approach for people who actually tested positive to COVID-19 compared with people who were statistically only 1% (or less in the second week) likely to have COVID-19.
- 69 To be clear, I do not think the Victorian Government should respond to this inconsistency by requiring people who test positive to be detained in a facility if it is safe for them to isolate at home. The Victorian Government has recently responded to this issue by preventing those who test positive to COVID-19 from leaving their homes to go into public areas for the purpose of fresh air and exercise. Below, this statement and submission discusses the need to follow human rights principles to ensure the right approach to risk in the quarantine program.

## **PART 2 – HUMAN RIGHTS ANALYSIS**

### **Human rights and COVID-19**

- 70 The COVID-19 pandemic is a global human rights crisis threatening people's human rights to life and health. Worldwide, millions of people have been infected and hundreds of thousands of people have lost their lives. Governments have responded to the pandemic by imposing often severe restrictions on other human rights, including people's rights to earn a living, receive education, see loved ones, worship and move about. The decisions governments are making are agonisingly hard. How to save lives without destroying livelihoods?
- 71 Human rights can provide a compass to guide us through this crisis. Whether it's about masks, curfews or quarantine, human rights can help governments make the right decisions. They can help our communities assess whether our governments are doing enough, getting it right or going too far.
- 72 In Victoria, human rights are protected in the *Charter of Human Rights and Responsibilities Act 2006* (Vic). The Charter protects many of our rights such as freedom of expression and freedom of association. Relevant to this Inquiry, the Charter protects:
- The right to life.
  - The right to liberty and security of person.
  - The right to humane treatment while detained.

- Freedom from cruel, inhuman and degrading treatment, including the right not to be subjected to medical treatment without consent.
- Freedom of movement.

- 73 The Charter requires public authorities, including government departments and public servants, to properly consider, and act compatibly with, human rights.
- 74 The Charter allows the Victorian Government to restrict people's rights, in broad terms, if it is genuinely necessary to achieve a legitimate purpose. The restriction must be reasonable and must be no more restrictive than necessary to achieve the purpose. In other words, any restriction on rights must be the lowest level needed to get the job done.
- 75 Restrictions on human rights to protect public health must be based on scientific evidence, time-limited and regularly reviewed, they must respect human dignity and the right to equality and must not be applied arbitrarily.
- 76 Other human rights, such as the right to health, are protected in international treaties that the Australian Government has agreed to be bound by, such as the International Covenant on Economic Social and Cultural Rights. Australia is required to comply with these treaties under international law but they cannot be directly enforced by people under Australian domestic law.

**Governments have human rights obligations to protect life and health. Establishing a quarantine program is consistent with these obligations**

- 77 The right to life doesn't just stop governments from taking life. It also requires governments to take positive steps to protect life and health. In the context of COVID-19, these positive steps could include things like setting up testing and tracing programs, resourcing our hospitals properly and requiring people to wear masks in areas where there is community transmission.
- 78 In Australia, around 400 people have died from COVID-19. In Canada, a nation of a similar population and wealth, around 9,000 people have died. In the USA, around 170,000 people have died. The way Australian governments have responded to COVID-19, assisted by our geography, has likely saved thousands of lives. A quarantine program for people coming to our country from overseas has been an important part of this protection. In my view, some form of quarantine program is not only justified from a human rights perspective, but required in the current circumstances (being circumstances in which community transmission in Australia is very low compared with most other countries).

**A human rights approach to quarantine**

- 79 Decisions around the quarantine program involve issues of balancing different human rights; the rights of people in the Victorian community to have their life and health protected, balanced against the rights of people arriving in Victoria from overseas not to be detained unfairly.
- 80 As set out above, the Charter requires the Victorian Government to properly consider and act compatibly with the human rights protected in the Charter. The process of properly considering human rights when making decisions is critically important. It involves considering whether the planned decision might restrict any human rights and if so, whether any restriction is reasonable and justified. This involves considering the purpose for the restriction and whether there are any less restrictive means to achieve that purpose.
- 81 As set out above, I strongly believe that some form of quarantine detention is justified to protect life and health. However, while quarantine is justified, under the Charter, the Victorian Government must adopt an approach which is the least restrictive on the rights of people being detained.
- 82 A human rights approach to quarantine would:
- Adopt the least restrictive form of detention which will be effective to protect life and health.
  - Detain people for the shortest period necessary to protect life and health.

- Protect all other human rights that do not need to be restricted (for example, allowing people detained to communicate freely, to remain in detention as a family unit etc).
- Adopt a tailored approach that allows flexibility where detention may have specific impacts on certain people or groups (such as people with mental illness or who require specialist medical treatment).
- Explore a tailored approach to respond to different levels of risk (for example, by looking at the risk profile of the country that the person is travelling from).
- Involve regular reviews to adapt the program to respond to the best available medical evidence on transmission risks and the current circumstances around community transmission in the geographic region where quarantine is being imposed.

### **Should people be detained at home or in a quarantine facility?**

- 83 Detention, and in particular detention of children, is a serious restriction on human rights and should only be used as a last resort when strictly necessary. When a government detains someone, it assumes responsibility for most aspects of their welfare including food, accommodation, health and safety. Detention of any form involves risks around safety, mental health and mistreatment. Detention in a quarantine facility carries additional risks of virus transmission to otherwise healthy people who are being detained, and to staff.
- 84 Requiring a person to quarantine in their own home will reduce risks to that person's safety and welfare. It will reduce risks to staff. However, it may increase risks to the community.
- 85 I understand that the initial quarantine response for people arriving in Australia from overseas involved people being quarantined at home if they had suitable accommodation. I understand that this approach was abandoned after people were found to be breaching their quarantine restrictions. This suggests that allowing people to quarantine at home may involve unacceptable risk to the life and health of the Victorian community.
- 86 The question of whether people should be allowed to quarantine at home for some or all of the quarantine period should continue to be reviewed, taking into account:
- Comparative international experience of any countries where there is evidence that quarantine is being safely and effectively managed by allowing people to quarantine at home.
  - Other effective ways to manage compliance where people are being quarantined at home – for example by increasing resources for phone and in-person compliance checks or exploring electronic monitoring at home as an alternative to detention in a quarantine facility.
  - Current medical evidence about the timeframes during which people may be at risk of transmitting the virus and whether there are more effective ways to carry out COVID-19 tests (or antibody tests) to reduce the period or conditions of detention.
  - Current community transmission rates in Victoria compared with rates in other countries that people are travelling from.
  - The transmission risks to staff and the people being detained which are inherent in operating any quarantine detention facility.
- 87 Consideration of this issue should also take into account the Victorian Government experience in managing people who test positive to COVID-19 who are required to isolate at home, including the effectiveness of the new regime of increased compliance checks using defence force and other staff.

### **Which detention facility should be used?**

- 88 I do not know what other detention facilities were contemplated when establishing the quarantine program. Given the very high numbers of people being detained, there may not be many other appropriate options available. I do know that the choice to detain people in high rise, mostly inner-city hotels, creates significant challenges around safely and humanely detaining people. In Queensland and New South Wales, governments have used serviced apartments to detain some families. At a minimum, this approach should be adopted in Victoria to provide better access to fresh air, exercise and food preparation facilities for families.

### **Daily fresh air and exercise breaks should be provided**

- 89 Under the Charter, the Victorian Government must treat people humanely when it detains them. This includes ensuring adequate regular access to fresh air and exercise breaks. This is particularly important for children and people with mental health concerns.
- 90 In the prison context, the UN Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules), provide that “Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits” (Rule 23). In Victoria, this standard is set out in section 47(1)(a) of the *Corrections Act 1986* (Vic) which provides that each prisoner has “if not ordinarily engaged in outdoor work, the right to be in the open air for at least an hour each day, if the weather permits”.
- 91 A similar standard should be adopted in the quarantine program.
- 92 Providing safe access to fresh air and exercise breaks is harder when people are detained in high rise inner-city hotels. Wherever possible, appropriate detention facilities should be chosen that facilitate safe access to fresh air and exercise.

### **Should people be forced to pay for their quarantine?**

- 93 In conducting quarantine programs, governments should adopt the least restrictive approach necessary to protect life and health. Charging Australian citizens and permanent residents for their own detention is not consistent with this approach. The Victorian Government should not adopt the approach of other states.

### **Summary of Professional Experience**

- Executive Director, Human Rights Law Centre, 2013 - present
- Director, Sentencing Advisory Council, 2010 - present
- Commissioner (part-time), Victorian Law Reform Commission, 2008 - 2012
- Executive Officer, Federation of Community Legal Centres (Victoria) 2007 - 2013
- Manager and Principal Solicitor, Brimbank Melton Community Legal Centre 2004 - 2007
- Solicitor, Mallesons Stephen Jaques (now King & Wood Mallesons) 2000 – 2004 (Articled Clerk 1999 – 2000)
- Advisory Council, University of Melbourne Law School, 2014 - present
- Stanford Australia Foundation Non-Profit Leaders Scholarship, 2019
- Advisory Board, McCaughey Centre, University of Melbourne School of Population & Global Health, 2015-2016
- Governance Committee, knowmore, 2013-2015
- Board member, National Association of Community Legal Centres, 2012 – 2014
- Intern, Australian Mission to the United Nations, New York, 1998
- University of Melbourne, Bachelor of Laws (Honours), Bachelor of Arts, 1997



Hugh William de Kretser

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