

# COVID-19 EMERGENCY MEASURES AND THEIR IMPLICATIONS FOR DISADVANTAGED AND VULNERABLE GROUPS IN AUSTRALIA: A HUMAN RIGHTS PERSPECTIVE

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*During the COVID-19 pandemic, and particularly prior to the availability of vaccines, the emergency measures for reducing the risk of COVID-19 outbreaks have been considered widely effective by the World Health Organization (WHO). Yet almost all these public health emergency measures infringe upon well-established human rights recognised under international law. Against this exceptionally challenging global scenario, this paper aims to analyse the human rights implications of emergency measures for disadvantaged and vulnerable groups in Australia; and examine to what extent the emergency measures are consistent with Australia's human rights obligations under international law. In achieving these aims, this paper firstly discusses the COVID-19 mitigation strategies Australian governments have implemented and the rights affected; second, it reviews whether the current limitations to the application of Australia's international obligations including the Siracusa Principles are justified in terms of Australian Society as a whole; and finally, it analyses the disproportionate effect of these limitations on vulnerable groups and the shortfall of the Siracusa Principles as a justification tool in respect of these groups and argues for further intervention and makes recommendations to ameliorate the effects of COVID-19 emergency measures on these groups.*

## I INTRODUCTION

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The world is faced with one of the most significant threats to public health, with about 600 million confirmed COVID-19 cases and COVID-19 deaths as of the time of writing this paper passing 6.45 million people worldwide.<sup>4</sup> It is a difficult pandemic to manage due to high levels of global mobility and higher levels of virus transmission. COVID-19 has brought with it exceptional circumstances, which have caused governments to introduce human rights restrictions usually only seen in war-like situations. World leaders wanting to highlight the seriousness of COVID-19 have described their COVID-19 response as the ‘war against an invisible enemy’<sup>5</sup> and have referred to healthcare workers as being on the frontline.<sup>6</sup> This warlike rhetoric has been used to justify restrictions that are unique both in their broad scope and length of duration.<sup>7</sup>

During the COVID-19 outbreak, and particularly the pre-vaccination stage, the implementation of social distancing and lockdowns restricting the movement of people within communities have been widely considered the most effective and widely recommended emergency measures to reduce the risk of COVID-19 outbreaks.<sup>8</sup> The reduction of contacts outside the household has arguably been successful in managing the COVID-19 outbreak in many places around the world. Likewise, in Australia, the Commonwealth, State, and Territory governments have focused on controlling the transmission of COVID-19 by using lockdowns, social distancing, and strictly controlling entry into Australia in an attempt to ensure that there are adequate health facilities and workers to prioritise scarce medical resources.<sup>9</sup>

Almost all these public health emergency measures have infringed upon well-established human rights guaranteed under major international human rights

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<sup>4</sup> World Health Organisation (WHO), ‘WHO Coronavirus (COVID-19) Dashboard’ *World Health Organisation* (Web Page) < <https://covid19.who.int/>>. [updated until 18 August 2022]

<sup>5</sup> Alessandra Spadaro, ‘COVID-19: Testing the Limits of Human Rights’ (2020) 11(2) *European Journal of Risk Reputation* 317, 317.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> World Health Organisation, *Considerations for Implementing and Adjusting Public Health and Social Measures in the Context of COVID-19* (Interim Guidance, June 2021) 7.

<sup>9</sup> John Halligan, ‘Australia’s Response to the COVID-19 Pandemic’ in Paul Joyce et al (eds), *Good Public Governance in a Global Pandemic* (Afnil, 2020) 1, 235.

instruments. However, these instruments allow putting limitations on some human rights where it is necessary to restrict the human rights of individuals for the collective good. The World Health Organisation (WHO) advocates that any restrictive measures being placed upon the movement of individuals must take into account the Siracusa Principles which were drafted in 1984.<sup>10</sup> The Siracusa Principles are a persuasive set of non-binding interpretation guidelines which provide direction on the general interpretive principles in relation to the limitations clauses of the ICCPR, to utilise when examining whether or not limitations on civil and political rights are justified.<sup>11</sup> They were developed by a panel of 31 subject matter experts in international law after examining the limitations and derogations established in the ICCPR.<sup>12</sup>

Thus, when viewed through the lens of the Siracusa Principles, Australia's human rights limitations in response to COVID-19 are arguably justified, reasonable and proportionate due to the novelty, unpredictability, and gravity of a pandemic.

However, upon deeper examination of the Siracusa Principles, it is submitted that certain groups within the population have been disproportionately affected due to the emergency measures such as border closures restricting human movement, lockdowns, and social distancing undertaken to manage the COVID-19 outbreaks. For instance, incidents of reported domestic violence and family violence have increased during COVID-19 restrictions such as lockdowns and social distancing, as victims are forced to stay more contact hours with their abusers; and asylum seekers and refugees have been disadvantaged because of restrictions on human movement and are being held in cramped facilities with inadequate medical care.<sup>13</sup>

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<sup>10</sup> World Health Organisation, 'Addressing Human Rights as a Key to the COVID-19 Response' (Web Page, 21 November 2021) <<https://apps.who.int/iris/bitstream/handle/10665/331811/WHO-2019-nCoV-SRH-Rights-2020.1-eng.pdf>>.

<sup>11</sup> Katherine W Todrys, Elizabeth Howe and Joseph J Amon, 'Failing Siracusa: governments' obligations to find the least restrictive options for tuberculosis control' (2013) 3(1) *Public Health Action* 7, 8.

<sup>12</sup> American Association for The International Commission of Jurists Inc, 'Siracusa Principles: on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' (Report, April 1985) 3. ['Siracusa Principles']

<sup>13</sup> Thomas Alexander Aleinikoff et al, 'Human mobility and human rights in the COVID-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons' (2020) 32(3) *International Journal of Refugee Law* 549, 555.

This paper identifies these disadvantaged people as those who are vulnerable due to their reliance on others, usually the State, and are open and exposed to exploitation and harm.<sup>14</sup> Under international human rights law as well as in Australian national policies, there is no one clear definition for disadvantaged and vulnerable groups (DVGs). However, this paper, in particular, focuses on the victims of domestic and family violence, LGBTQTIA+ people, and refugees and asylum seekers within the definition of DVGs with the acknowledgment that the scope of the disadvantaged and vulnerable groups is wider than is often identified in official government policy documents.

In this context, this paper aims to analyse the human rights implications of emergency measures for disadvantaged and vulnerable groups in Australia; and examine to what extent the emergency measures are consistent with Australia's human rights obligations under international law. In achieving these aims, this paper firstly gives an overview of the human rights implications of COVID-19 emergency measures in Australia; second, it briefly discusses the COVID-19 mitigation strategies Australian governments have implemented and the rights affected; third, it reviews whether the current limitations to the application of Australia's international obligations including the Siracusa Principles are justified in terms of Australian Society as a whole; and finally, it analyses the disproportionate effect of these limitations on vulnerable groups and the shortfall of the Siracusa Principles as a justification tool in respect of these groups and argues for further intervention and makes recommendations to ameliorate the effects of COVID-19 emergency measures on these groups.

## II ANALYSING AUSTRALIA'S COVID-19 STRATEGIES

Australia's system of government consists of the Commonwealth government and State & Territory governments. These are further supported by local governments, which are governed by the relevant state or territory governments. During the ongoing COVID-19 pandemic, the Commonwealth Government has closed

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<sup>14</sup> Lourdes Peroni and Alexandra Timmer 'Vulnerable Groups: The promise of an emerging concept in European Human Rights Convention Law' (2013) 11(4) *International Journal of Constitutional Law* 1056, 1058.

Australia's international borders, sourced and distributed vaccines to states, and formed a national cabinet, the latter being an attempt to develop a consistent approach in COVID-19 responses between the Commonwealth, state, and territorial governments. The state and territory governments responded by implementing social distance measures, closing state borders, conducting COVID-19 testing, and administering vaccines. States have also enacted their own public health legislation to limit the movement within communities, imposed lockdowns, closed schools and places of worship and other public facilities such as libraries.<sup>15</sup> It has been the limiting of movement within communities and the imposition of lockdowns that has arguably caused the greatest harm to disadvantaged and vulnerable groups.

#### A *National Cabinet*

The establishment of the National Cabinet was to ensure that all levels of Australian government were responding to the COVID-19 pandemic in a consistent manner. Decisions were to be based on uniform medical advice resulting in minimum divergence in the way COVID-19 was dealt with in each state and territory.<sup>16</sup> While the National Cabinet was intended to result in a unified approach, it did not deliver on that promise. Ultimately, States gave way to localised political issues and took different approaches in their management of the COVID-19 pandemic.<sup>17</sup> This resulted in significant policy diversification between the states and territories. As a COVID-19 response strategy, the National Cabinet has not directly focused on disadvantaged and vulnerable groups. The main focus has been on flattening the curve by restricting domestic and international border

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<sup>15</sup> Anne Twomey, 'Multi-level government and covid-19: Australia as a case study' (Conference Paper, 2020 Melbourne Forum, 17 September 2020) 1.

<sup>16</sup> Julian R. Murphy and Erika Arban, 'Assessing the Performance of Australian Federalism in Responding to the Pandemic' (2021) 51(4) *Publius: The Journal Of Federalism* 627, 630.

<sup>17</sup> Twomey (n15) 4. Twomey refers to the different border policies in the states and territories with Tasmania, WA, and NT adopting border closures with the result that most Covid-19 spread occurred in other States with less strict policies, most notably Victoria and NSW, the two most populous states.

movements, the procurement and provision of personal protective equipment and testing equipment, contact tracing, and social distancing.<sup>18</sup>

### *B International COVID-19 Borders Closure Restricting International Travel*

Australia's initial response to the unfolding COVID-19 pandemic was to restrict travel from countries deemed to be high risk. On 19 March 2020, Australia closed its international borders to all non-citizens and non-residents. Shortly thereafter, on 27 March 2020, all returning citizens and residents were required to undertake a mandatory 14-day quarantine period.<sup>19</sup> The influx of people into Australia was further reduced as the states had to assume responsibility of the quarantining of returning citizens and residents due to inaction on the Commonwealth's part. In order for the states to effectively manage the quarantine process, the Commonwealth further reduced the number of citizens and residents returning to Australia at any one time.<sup>20</sup> This left a number of Australian citizens and residents stranded overseas with no ability to return home.

### *C Closing of State Borders, Restriction of Movement, and Social Distancing*

By far the most intrusive COVID-19 response strategies have been the imposition of state border closures, the restriction of movement, and social distancing measures. These response strategies have had a significant impact on local, state, and national economies as well as those living under these measures. These response strategies have been extraordinary in nature which in normal circumstances would be inconceivable.<sup>21</sup> People have been forced to remain

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<sup>18</sup> Ingrid Johnston, 'Australia's public health response to COVID-19 what have we done, and where to from here?' (2020) 44(6) *Australian and New Zealand Journal of Public Health* 440, 442.

<sup>19</sup> David J Price et al, 'Early Analysis of the Australian COVID-19 Epidemic' *e-Life* 9 (2020) 4.

<sup>20</sup> Huy Van Nguyen et al, 'The COVID-19 Pandemic in Australia: Public Health Responses, Opportunities and Challenges' (2022) 37(1) *The International Journal Health Planning and Management* 5 1, 4.

<sup>21</sup> Michelle Foster, Helene Lambert and Jane McAdam, 'Refugee Protection in the COVID-19 Crisis and Beyond: The Capacity and Limits of International Law' (2021) 44(1) *UNSW Law Journal* 104, 104.

locked down within their homes for long periods of time, with one Australian city breaking the world record for a lockdown period.<sup>22</sup> In most lockdown circumstances, people have only been allowed to leave to shop for necessary food items or to undertake essential work.

Of course, none of these exceptional measures were purely arbitrary given they were implemented against the backdrop of the most serious global pandemic, since the 1917 Spanish flu, over a century ago. But were the hardships and impacts imposed on individual freedoms justified and proportionate to ending the mischief they were seeking to address?

### III APPLYING SIRACUSA PRINCIPLES TO MEASURE THE PROPORTIONALITY AND JUSTIFICATIONS OF AUSTRALIA'S COVID-19 MEASURES

Under Article 6 of the International Covenant on Civil and Political Rights (ICCPR),<sup>23</sup> States have a fundamental and positive obligation to the protection of life which is non-derogable. In the context of the COVID-19 pandemic, it is not an option to do nothing. The first response of Commonwealth and State Governments within Australia was to place their populations into lockdown, shut down state, and international borders, and implement social distancing.<sup>24</sup> As alluded to above, this has affected: (a) the right to life and health, affecting those requiring COVID-19 medical care, and those currently in medical care; (b) the enjoyment of freedom of movement preventing people from travelling overseas and limiting interstate travel; (c) the right of peaceful assembly preventing people from attending peaceful protests; and (d) freedom of association. Other affected

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<sup>22</sup> ABC News, 'Melbourne passes Buenos Aires' world record for time spent in COVID-19 lockdown' (Web Page, 20 November) <<https://www.abc.net.au/news/2021-10-03/melbourne-longest-lockdown/100510710>>.

<sup>23</sup> *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR).

<sup>24</sup> Kylie Evans and Nicholas Petrie, 'COVID-19 and the Australian Human Rights Acts' 2020 45(3) *Alternate Law Journal* 175, 176.

rights include the freedom of belief to the extent of preventing people from practising their religions in congregations, and the right to education.

Under Article 4(1) of the ICCPR, States can in times of public emergencies ‘which threaten the life of the nation’ derogate from their human rights obligations or restrict those human rights obligations so long as they are not non-derogable rights.<sup>25</sup> Article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>26</sup> provides States with a similar ability to place limitations upon rights, so long as they are determined by law, and so long as they are for the ‘purpose of promoting the general welfare in a democratic society’.<sup>27</sup> *Prima facie*, the circumstances in which the limitations and restrictions are justifiable are apparent when interpreted with such a purposive approach.

Prior to the Siracusa Principles being drafted, in the mid-1980s, there was significant concern that some States were invoking the limitations to limit or deny fundamental human rights by falsely declaring a State of Emergency or making an illegal Declaration of Martial Law.<sup>28</sup> Importantly, this concern illustrates that States were able to manipulate the provisions predominantly within the ICCPR for the suppression of human rights while maintaining the limitations that were necessary.<sup>29</sup> In 1982, the Commission on Human Rights commissioned a Special Rapporteur to undertake a study reviewing the implications for human rights, concerning recent developments in states that were either in a state of siege or emergency.<sup>30</sup> The report found instances of emergency powers becoming

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<sup>25</sup> ICCPR (n23).

<sup>26</sup> *Ibid*

<sup>27</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1996, 993 UNTS 3 (entered into force 3 January 1976) (ICESCR) art 4. Subsequent articles in both the ICCPR and ICESCR allow for limitations or restrictions of human rights for the protection of public health. Addressing each of these articles individually is beyond the scope of this paper.

<sup>28</sup> Siracusa Principles (n 10) 3.

<sup>29</sup> Mohamed M. El Zeidy, ‘The ECHR and States of Emergency: Article 15 – A Domestic Power of Derogation from Human Rights Obligations’ (2003) 4(1) *San Diego International Law Journal* 277, 283.

<sup>30</sup> Nicole Questiaux, *Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency*, 35<sup>th</sup> sess, UN Doc E/CN.4/Sub.2/1982/15 (27 July 1982).



institutionalised. Paraguay, by way of example, had been in a declared state of emergency since 1969, with 35 laws and subsidiary legislation being passed, extending the state of emergency every four to six months.<sup>31</sup> Other examples cited included the principle of proportionality becoming less fundamental in the decision-making process, and that no time limit for the expiration of the state of emergency was considered.<sup>32</sup> Judicial power being interfered with by the executive by either appointing favourable judicial candidates or by reducing jurisdictional power was highlighted as a major concern in the report.<sup>33</sup> Clearly, the United Nations (UN) had to take immediate and positive steps to resolve the issue of states applying an interpretation to emergency measures which often aided in the suppression of their citizens' human rights. In recognition of the requirement for interpretation guidelines on the limitation clauses within the ICCPR, the Siracusa Principles were developed.

The Siracusa Principles in the first instance establish a number of general interpretation principles to be applied when restricting human rights.<sup>34</sup> Any interpretation must be applied narrowly and in favour of the rights being restricted. Limitations must be strictly used for the purpose for which it was prescribed and must not be applied arbitrarily.<sup>35</sup> Limitations must be subject to challenge, and a limitation cannot be imposed other than for those established within the ICCPR.<sup>36</sup> Importantly, the Siracusa Principles reinforce non-derogable rights and expressly forbid any interference with these rights.<sup>37</sup>

Applying the Siracusa Principles to the decisions by Commonwealth and State governments to lockdown Australian society and introduce social distancing, it is submitted that the lockdown response is justified from a utilitarian point of view

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<sup>31</sup> Ibid. 28

<sup>32</sup> Ibid 86.

<sup>33</sup> Ibid 33.

<sup>34</sup> UN Commission on Human Rights, *Status of the International Covenants on Human Rights*, 44<sup>th</sup> sess, UN Doc E/CN.4/1984/4 (28 September 1984) 3. [*Status of the International Covenants on Human Rights*]

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid 11.

and benefited Australian society as a whole. Apart from the issue of mere preservation of life from a life-threatening illness, without lockdowns and social distancing, there was and continues to be a very real threat to the ability of state hospital systems to respond to large numbers of COVID-19 infected people. Lockdowns and social distancing, based on the legitimate aim of stopping local transmission of COVID-19, are necessary, non-discriminatory, and based on current scientific evidence; they are arguably the best strategy to reduce the serious threat that COVID-19 presents to the Australian population.

However, in a democratic society like Australia, due consideration must be given to the criteria used to limit civil and political rights for the purposes of reducing the spread of an infectious disease such as COVID-19.<sup>38</sup> Doing so by using the Siracusa Principles provides a persuasive argument in favour of the lockdown social distancing policies. These principles require any limitations to be prescribed by law, necessary in a democratic society, and to only be invoked for public health emergencies as illustrated below.<sup>39</sup>

#### *A Public Emergency Which Threatens the Life of the Nation*

The overarching Siracusa Principles set out in Article 4 the interpretation of ‘public emergency which threatens the life of the nation’,<sup>40</sup> a term that allows a State Party to the ICCPR to derogate from their human rights obligations. To invoke Article 4 of the ICCPR, a State Party must be faced with a danger that is exceptional and imposes a direct threat to the life of the nation. A threat to the life of the nation is defined as a threat that ‘affects the whole of the population’.<sup>41</sup> Further, it must affect the ‘physical integrity’ of the population, threaten political

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<sup>38</sup> Leonard Rubenstein and Matthew Decamp, ‘Revisiting restrictions of rights after COVID-19’ (2020) 22(2) *Health and Human Rights Journal* 321, 321.

<sup>39</sup> *Status of the International Covenants on Human Rights* (n34) 4.

<sup>40</sup> ICCPR (n23) art 4.

<sup>41</sup> Siracusa Principles (n 10) 3.

independence of territorial infringements, or affect functions which provide for human rights.<sup>42</sup>

Clearly, due to COVID-19 with its high infection rates and morbidity rates, the whole population of Australia, and its physical integrity are affected. Australian government's limitations on human rights were undertaken to prevent a public emergency that had a very real potential to threaten the life of the nation.

### *B Strictly Required the Exigencies of the Situation*

Any limitations on human rights must be applied only if strictly necessary. Factors to be considered when deciding on the scope of any limitations are the severity of the threat, the length of the threat, and any geographic considerations. Due to the unique geographic and demographic factors of the Australian population, each state has had to develop its own COVID-19 limitations. In the Northern Territory and Western Australia, there have been few limitations imposed due to the geographically dispersed populations outside of the major cities. Similarly, Tasmania with its natural borders has imposed few limitations on its population. Contrast this response with the restrictions placed on Melbourne and Sydney, where significant limitations have been placed on human rights due to large COVID-19 infections caused mainly due to high-density populations.

These responses arguably indicate that States have been imposing restrictions only as required and limiting human rights, only to the extent required to mitigate any risk from COVID-19. In addition to taking measures to prevent a threat that threatens the life of the nation, there are other grounds that may be invoked to limit human rights.

#### *1. Public Health as a Ground for Limiting Certain Rights*

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<sup>42</sup> Ibid 7.

For certain human rights to be limited under the scope of public health, there must be a ‘serious threat to the health of the population or individuals of the population’,<sup>43</sup> and the limiting measures must be specifically aimed at preventing the disease or providing for the proper medical care of those requiring medical attention.

There is conclusive evidence that the current limitations imposed on Australians are to prevent the spread of COVID-19 which is a serious threat to the population and individuals within Australia. Without these limitations in place, Australian health facilities and healthcare workers face the very real threat of being hit by a pandemic tsunami they are unable to manage<sup>44</sup> due to limited quantities of ventilators, drugs, vaccines, hospital beds, and healthcare workers.<sup>45</sup>

The scope of the public health limitations must consider the requirements of individuals in the population.<sup>46</sup> Vulnerable individuals who are already within the health system such as cancer patients and dialysis patients must continue to have access to healthcare resources. Under the current exceptional circumstances, with the aim of preventing of overwhelming healthcare facilities and workers, and the provision of medical attention to current patients, it is submitted that Australia’s lockdown and social distancing policies which seek to limit COVID-19 infections are mainly justifiable.

The second limb of using public health as a ground for limiting human rights requires that any decisions or limitations shall be undertaken with due regard given to any regulations set out by WHO. As evidenced in early Commonwealth COVID-19 strategies, due regard was given to WHO’s advice and research.<sup>47</sup> This

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<sup>43</sup> Ibid 7.

<sup>44</sup> Audrey Lebet, ‘COVID-19 pandemic and derogation to human rights’ (2020) 7(1) *Journal of Law and the Biosciences* 1, 3.

<sup>45</sup> Marcel Verweij, ‘Moral Principles for Allocating Scare Medical Resources in an Influenza Pandemic’ (2009) 6(1) *Bioethical Inquiry* 159, 160.

<sup>46</sup> Spadaro (n 5) 319.

<sup>47</sup> Department of Health, *Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)* (Plan, 07 February 2020) 13.

advice was used to implement social distancing and lockdown measures and to shut down borders due to the high infection rate of COVID-19.

In order to apply the Siracusa Principles to limitations imposed for public health reasons, the following international treaty rights have been identified as limited in the Australian Covid -19 context: the right to freedom of movement;<sup>48</sup> the right to freedom of thought, conscience, and religion;<sup>49</sup> the right to peaceful assembly;<sup>50</sup> and the right to freedom of association<sup>51</sup>. Each of these rights allow derogation of rights for public health purposes so long as the limitation is necessary, prescribed by law, and necessary in a democratic society. The following general interpretative principles apply when justifying limitations.

## 2. *Necessary Limitation*

Where a limitation is considered to be necessary it must respond to a pressing public need, pursue a legitimate objective, and be proportionate. The test of what is a necessary limitation is objective.<sup>52</sup> Any limitations that are deemed necessary will have the following implied terms applied:<sup>53</sup>

- a) The limitation must be based on one of the limitations that are recognised within the ICCPR;
- b) The limitation must be enacted to respond to a critical or public need;
- c) There must be a legitimate aim being pursued; and
- d) The limitation is proportionate in its application.

The application of lockdowns and social distancing is a response to a pressing public need, and for a legitimate objective, that is, the prevention of the spread of

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<sup>48</sup> ICCPR (n23) art 12.

<sup>49</sup> ICCPR (n23) art 18.

<sup>50</sup> ICCPR (n23) art 21.

<sup>51</sup> ICCPR (n23) art 22.

<sup>52</sup> Siracusa Principles (n10) 5.

<sup>53</sup> Ibid 3.

COVID-19 and to prevent our healthcare system from collapsing. It is submitted the limitations are proportionate, however, they should be refined.

In New South Wales (NSW) by way of example, it has become preferable to place hotspot suburbs into lockdown while maintaining social distancing throughout the state, to reduce the limitations on the population.<sup>54</sup> In Western Australia (WA), however, the entire metropolitan region and southern suburbs have, on occasion, been placed into lockdown when just one case of COVID-19 community spread is identified. While each strategy has its strengths and weaknesses, it is submitted the NSW approach is more proportionate and less restrictive.

### 3. *Prescribed by Law*

In Australia, laws utilised to enforce lockdowns and social distancing have been made clear and accessible to everyone and they have been provided for and carried out within the legislative bodies of both Commonwealth and State Parliaments. The laws which have been enacted appear to have been for the purpose of limiting COVID-19 spread and thus do not appear to have been arbitrary. Further, while it could be argued that such laws have been at times unreasonable, Australian governments at all levels have put in place significant social programs such as JobKeeper and JobSeeker to minimise the impact on those who were potentially most impacted.<sup>55</sup>

### 4. *Necessary in a Democratic Society*

This expression is to be interpreted as a further safeguard, as any proposed limitations must not impair the democratic functioning of a State. A society which

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<sup>54</sup> Cecilia Connell, 'Three-week coronavirus lockdown lifts in northern zone of Sydney's northern beaches' (Web Page, 10 January 2021) <<https://www.abc.net.au/news/2021-01-10/northern-beaches-reopen-after-three-week-covid-lockdown/13045954>>.

<sup>55</sup> Ben Spies-Butcher, 'The Temporary Welfare State: The Political Economy of Job Keeper, Job Seeker and 'Snap Back' (2020) 85(Winter) *Journal of Australian Political Economy* 155, 160

‘recognises, respects and protect human rights’ as set out by the Universal Declaration of Human Rights (UDHR) will be seen to have met this requirement.<sup>56</sup>

This is important as limitations cannot interfere with the functions of a democratic society. By way of an example, limitations must not interfere with democratic functions such as voting rights and elections.

##### 5. *Least Restrictive Means*

All reasonable alternatives must be considered to ensure the least restrictive means are used for the purposes of the human rights restriction. *Enhorn v Sweden*<sup>57</sup> (“Enhorn”), a case brought before the European Court of Human Rights (ECHR) is illustrative of this principle. The applicant’s human rights were found to be breached as the Swedish Government elected to detain him, rather than manage him.

*Enhorn* is persuasive as it illustrates that while Australia has been quick to impose lockdown and social distancing restrictions upon its citizens, it has quickly reduced the limitations when the risk of community spread of COVID-19 subsides. Where possible, limitations have been the least restrictive and proportionate. During lockdown situations, Australians were still mostly allowed to exercise, shop, get haircuts and work with very few formalities. In contrast, Italy and France required that citizens were only allowed out of their homes in exceptional circumstances without a written declaration.<sup>58</sup>

In contrast to Australia’s response, Sweden went against contemporary health guidelines and elected to not impose any lockdowns. It imposed minimal social distancing restrictions, with low enforcement rates, only requiring reasonable

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<sup>56</sup> *Status of the International Covenants on Human Rights*, (n34) 4.

<sup>57</sup> [2005] European Court of Human Rights 56529/00.

<sup>58</sup> Spadaro (n 5) 319.

measures to be taken to avoid the spread of COVID-19.<sup>59</sup> Controversially, Sweden went against WHO COVID-19 guidelines recommending the wearing of masks, and only required their use in hospitals where COVID-19 patients were being treated.<sup>60</sup> As a result, Sweden suffered a longer and more severe outbreak than its Scandinavian neighbours. Sweden's elderly people were the most affected and ninety percent of Sweden's COVID-19 fatalities were aged over 70.<sup>61</sup>

Throughout the early stages of the pandemic, Australia maintained a comparatively low infection rate, less hospitalisation and fewer deaths by global standards. Therefore, it can be argued that the response from all levels of the Australian government has been appropriate when compared to most other nations.

#### IV HUMAN RIGHTS IMPLICATIONS ON DISADVANTAGED AND VULNERABLE GROUPS (DVGS)

The imposition of lockdowns and social distancing measures can be directly attributed to economic stress and instability within the community. Forced lockdowns have clearly increased levels of family and domestic violence during the COVID-19 pandemic. Importantly, this has increased victims' exposure to abusive relationships while reducing support services offered to victims.<sup>62</sup> This increases their risk of harm. Increased periods of isolation have enabled perpetrators with the ability to apply increased levels of coercive control, and leverage COVID-19 lockdown measures to further restrict partners from leaving the family home.<sup>63</sup>

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<sup>59</sup> Amitai Etzioni, 'Community and COVID19: Japan, Sweden and Uruguay' (2021) 63(1) *Survival: Global Politics and Strategy* 53, 59.

<sup>60</sup> Heba Habib, 'COVID-19: What Sweden taught Scandinavia for the second wave', (Webpage, November 2020) <<https://www.bmj.com/content/371/bmj.m4456.full>>.

<sup>61</sup> *Ibid.*

<sup>62</sup> Kim Usher et al, 'Family Violence and COVID-19: Increased Vulnerability and Reduced Options for Support' (2020) 29(4) *International Journal of Mental Health Nursing* 549, 550.

<sup>63</sup> *Ibid.*



Likewise, worsening the situation, as lockdown measures came into effect, sales of alcohol in some states increased by 36%. With most public facilities such as pubs, nightclubs, and restaurants closed, many people were drinking with increased frequency in their family homes. This has caused a perfect storm for victims of family and domestic violence.<sup>64</sup>

Particularly concerning is the restriction of movement has imposed additional hardships on people who were already in a disadvantaged or vulnerable position prior to these COVID-19 response strategies. In particular, domestic and family violence victims and LBGTQIA+ have now been disproportionately disadvantaged, as they no longer have access to support and community. Previous to lockdown measures, domestic and family violence victims were afforded some relief from abuse while their perpetrators were at work. Post COVID-19 response strategies, domestic and family violence victims were trapped in their homes with little chance of escape.

Furthermore, mobility is a critical necessity for refugees. For a person to be considered a refugee, they must cross an international border.<sup>65</sup> Without it, refugees are not able to escape their current situation, nor travel to a country willing to support their escape from prosecution.<sup>66</sup> Australia's COVID-19 response strategy of closing international borders to all but citizens and residents clearly infringed on a person's fundamental human right to seek asylum, and thereby escape persecution.<sup>67</sup>

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<sup>64</sup> Usher (n62) 550 .

<sup>65</sup> *Convention Relating to the Status of Refugees*. art 1(A)(2).

<sup>66</sup> Foster, Lambert and McAdam, (n21) 109.

<sup>67</sup> While Australia is not alone in denying non-citizens and non-residents access to Australia, it is in a small minority. According to the United Nations Commissioner for Refugees (UNHCR), as of 18 November 2021, 46 countries had no COVID-related restrictions, 75 countries had restrictions but with exemptions for asylum seekers, and 43 countries (which includes Australia) where access to territory is denied. (UNHCR, 'COVID-19 Platform: Temporary Measures and Impact on Protection', *UNHCR* (Web Page, 18 November 2021) <[https://im.unhcr.org/covid19\\_platform/](https://im.unhcr.org/covid19_platform/)>

Clearly, disadvantaged and vulnerable groups such as those referred to in the previous two paragraphs face extra challenges. Although this paper has discussed the fact that COVID-19 emergency measures may benefit Australian society as a whole through the utilitarian lens of the Siracusa principles, this paper will now examine in further detail the impact the COVID-19 emergency measures have had on disadvantaged and vulnerable groups and argues that the Siracusa Principles as a tool for justification with respect to those groups is not sufficient and outlines the further measures that ought to have been (or should now be) taken to minimise harm to those groups.

### *A Victims of Domestic and Family Violence*

Domestic and family violence occurs within a family setting which can include couples who have children, couples who are separated or include violence against family members including children.<sup>68</sup> Within the Australian context, it includes physical, psychological, emotional, sexual, and financial acts, along with other behaviours that amount to control and coercion of a person.<sup>69</sup> While family and domestic violence affects all genders, women are overwhelmingly at the greatest risk of violence, most commonly from a partner they share a domestic home with.<sup>70</sup> The health effects of violence within the family setting are significant, with victims suffering physical and mental injuries, reproductive issues, sexually transmitted diseases, and unplanned pregnancies due to lack of access to medical facilities.<sup>71</sup>

With this form of violence often occurring within the family home, the only respite from violence, and access to support services and supportive friends was by

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<sup>68</sup> Australia's National Research Organisation for Women's Safety, 'Domestic and family violence and parenting: Mixed insights into impact and support needs: Final Report' (Report, June 2017) 15.

<sup>69</sup> *Ibid.*

<sup>70</sup> Australian Institute of Health and Welfare, 'Family, Domestic and Sexual Violence in Australia' (Report, 2018) 37.

<sup>71</sup> World Health Organisation, 'COVID-19 and Violence against Women: What the Health Sector/System can do', (Report, April 2020). <<https://apps.who.int/iris/handle/10665/331699>>

leaving the family home while the partner was out of the house, such as at work. COVID-19 lockdown and social distancing policies severely limited this respite and access to services.

Further exacerbating a victim's circumstances are the disruption to the ability to earn a living, increasing their economic reliance on their spouse. As their economic reliance increases, so too does their risk of being subjected to economic abuse.<sup>72</sup>

Increases in domestic and family violence have been attributed to the COVID-19 lockdown and social distancing policies, restricting people to their residences.<sup>73</sup> In Australia, reports of domestic violence increased by 5% while Google reported the search term 'domestic violence' increased by 75%.<sup>74</sup> The United Nations has reported there has been an increase of up to 30% of reported domestic violence in a number of countries during this period.<sup>75</sup>

Notwithstanding the disproportionate effects of lockdown and social distancing measures on these vulnerable and disadvantaged groups, governments must carefully balance the rights of individual community members, against the rights of the wider community. To protect domestic and family violence victims during this period, innovative practices must be introduced which allows them to reach out to authorities without alerting their abusers. Lockdowns and social distancing measures have reduced the opportunities that victims of family and domestic violence have to seek help from domestic violence services or police.<sup>76</sup> This has resulted in an increase of violence perpetrated against women and a reduction in access to services. Importantly, women who were subjected to domestic and family violence prior to COVID-19 reported an increase frequency and severity in

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<sup>72</sup> Ibid

<sup>73</sup> Usher (n62) 550.

<sup>74</sup> Ibid.

<sup>75</sup> Lebret, (n44) 9.

<sup>76</sup> Hayley Boxall, Anthony Morgan and Rick Brown, 'The prevalence of domestic violence among women during the COVID-19 pandemic' (2021) 12(1) *Australasian Policing* 38

the violence suffered by them<sup>77</sup>. Clearly, Australia should look to other human rights jurisdictions to provide innovative solutions that reduce exposure to violence. France has introduced pop-up counselling centres within shopping centres and installed alert systems within pharmacies.<sup>78</sup> Italy commissioned hotels and utilised religious accommodation buildings to provide shelter for the increased levels of victims seeking shelter.<sup>79</sup>

Lockdowns and social distancing have further enabled perpetrators of domestic and family violence, increasing risks to an already overrepresented and vulnerable group. Other nations, as mentioned above, have demonstrated that simple solutions can provide enormous relief, and Australia must do more. To strengthen the position of those experiencing violence, Australia must consider increasing awareness of the issue, and support the reclassification of safe places. By way of example, Australia can follow France's program of repurposing unoccupied hotels and other types of tourism and hospitality-based accommodation to be used as safe places for victims.

Increasing community awareness of this issue will cause community members to be more alert to the signs of domestic violence and be more empathetic to the complexities of domestic and family violence within the current COVID-19 environment, and make them more willing to help.

### *B LGBTQIA+ People*

LGBTQIA+ people which includes Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual people, are subjected to family and domestic violence; however, research has illustrated they are in unique circumstances. Many in this

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<sup>77</sup> *Ibid* 43.

<sup>78</sup> Brian J. Hall and Joseph D. Tucker, 'Surviving in place: the coronavirus domestic violence syndemic' (2020) 53(1) *Asian Journal of Psychiatry* 1, 2.

<sup>79</sup> Sophie Davies and Emma Batha, 'Europe braces for domestic violence abuse 'perfect storm; amid coronavirus lockdown' (Web Page, 26 March 2020) <<https://news.trust.org/item/20200326160316-7l0uf>>.

group have had to return to their hometowns and parents' home due to loss of jobs, leaving the support networks they have developed and have 'returned to the closet' or worse, been forced into homelessness.<sup>80</sup> In many of these domestic situations, family members are unsupportive which can increase their risk of domestic violence. LGBTQIA+ people are also at risk of deprioritised health services, especially those with HIV, and increased discrimination, stigmatisation and hate speech, as many in the community have often blamed this group for disease-related disasters.<sup>81</sup>

LGBTQIA+ people are more susceptible to mental health issues than the general population. Many have expressed concerns about not being able to associate with their communities who are their chosen families; as they are not biological families, they are not able to visit them during lockdowns.<sup>82</sup> They have lost the ability to participate in their leisure activities and attend leisure spaces, all of which have reduced their opportunities to socialise with others and enjoy a sense of belonging. All of these factors have led to a significant impact on the mental health of LGBTQIA+ people who already suffering from higher rates of mental health issues prior to the COVID-19 pandemic.<sup>83</sup>

Furthermore, early research highlights within this community, transgender people are most at risk. Transgendered people are subjected to higher levels of discrimination, family and domestic violence, homelessness, mental health issues, and poor access to health support services, resulting in higher-than-average

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<sup>80</sup> Luke Graham and Kathryn Almack, 'Experiences of and Responses to Disempowerment, Violence, and Injustice within the Relational Lives of Lesbian, Gay, Bisexual Transgender, and Queer people' 2020 56(4) *Journal of Sociology* 501, 509.

<sup>81</sup> Office of the Human Rights Commissioner for Human Rights (OHCHR), COVID-19 and the Human Rights of LGBTI People (Web Page) <<https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>>.

<sup>82</sup> Steven P. Philpot, 'Qualitative Findings on the Impact of COVID-19 Restrictions on Australian Gay and Bisexual Men: Community Belonging and Mental Well-being' 2021 31(13) *Qualitative Health Research* 2414, 2419.

<sup>83</sup> *Ibid* 2420.

thoughts of self-harm or suicide. It is three times higher than the national average with COVID-19 human rights limitations only exacerbating their circumstances.<sup>84</sup>

Lockdown emergency measures have had a disproportionate impact on the LBGTQIA+ community. Prior to lockdown measures, they already felt isolated and experienced higher levels of mental health issues than the general community.<sup>85</sup> Forced into lockdowns for extended periods, their reduced exposure to support networks, such as family and friends has increased their feelings of loneliness and rejection. In turn, this has increased their feelings of anxiety and depression.<sup>86</sup> Unemployment has followed lockdowns, particularly for younger generations. This has forced some LBGTQIA+ to return home to families not always supportive of them, and forced them 'back into the closet' so to speak. A return to the family home has also caused some LBGTQIA+ people to suffer from family and domestic violence.<sup>87</sup>

Gender reaffirming surgery, which can be a critical pathway for a transgendered person transitioning from their presumed gender, has been cancelled in many States within Australia as part of the COVID-19 emergency response.<sup>88</sup> The results from one survey indicated that the majority of transgendered people who had their gender reaffirming surgery cancelled, and who were experiencing depression were more likely to have thoughts of suicide.<sup>89</sup> This clearly demonstrates that transgendered people are at a higher risk of mental health issues and suicide than the general population.

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<sup>84</sup> Sav Zwickl et al, 'The impact of the first three months of the COVID-19 pandemic on the Australian trans community' 2021 *International Journal of Transgender Health* 1, 6.

<sup>85</sup> Henrique Pereira et al, 'Psychosocial Impacts of COVID-19 Pandemic on Lesbian, Gay and Bisexual People Living in Portugal and Brazil – A Qualitative Study' (2021) 3(2) *Journal of Psychosexual Health* 146, 155.

<sup>86</sup> *Ibid.*

<sup>87</sup> Graham and Almack, (n80) 509.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

Support services specifically focusing on these issues must receive funding and resourcing as a priority, and gender reaffirming surgery should be escalated on the resumption of elective surgery, to prevent further harm to them.

Similarly, LGBTQIA+ are faced with higher levels of economic inequity and are more at risk of being poverty-stricken.<sup>90</sup> Traditionally, the hospitality and tourism industry suffers from low wages, seasonality, and insecurity of employment.<sup>91</sup> Large numbers of LGBTQIA+ are employed within the hospitality and tourism industry which has been severely impacted by COVID-19, disproportionately affecting this vulnerable group.<sup>92</sup> Consequently, research clearly demonstrates that this group is more likely to have significant concerns over loss of wages, financial security, and continued employment during the COVID-19 pandemic.<sup>93</sup> Importantly, this supports the view that COVID-19 public health emergency measures have had a relatively severe impact on the LGBTQIA+ community than the general population.

Clearly, LGBTQIA+ people live within strong communities with like-minded people who provide support, friendship, intimate partners, and general social opportunities which have been denied due to COVID-19 emergency measures. Without these social and support structures in place, it is argued that many LGBTQIA+ members are likely to experience disproportionate effects, particularly in regard to mental health issues when compared with the general population.<sup>94</sup>

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<sup>90</sup> James K. Gibb, et al, 'Sexual and gender minority health vulnerabilities during the COVID-19 health crisis' (2020) 32(5) *American Journal of Human Biology* 1, 3.

<sup>91</sup> Tom Baum et al., 'COVID-19's Impact on the Hospitality Workforce – New Crisis or Amplification of the Norm?' (2020) 32(9) *International Journal of Contemporary Hospitality Management* 2813, 2816.

<sup>92</sup> Tyler Adamson et al, 'Rapid, Application-based Survey to Characterize the Impacts of COVID-19 on LGBTQ+ Communities around the World: an Observational Study' (2022) *BMJ Open* 1, 3.

<sup>93</sup> *Ibid* 3.

<sup>94</sup> Jamie Barrientos et al, 'Psychological Impact of COVID-19 Pandemic on LGBT People in Chile' (2021) 30(1) *Sexologies* 35, 40.

State and Commonwealth Governments must recognise the significant impact and hardship placed on this group and provide extra support services. This should include mental health services, the ability to socialise with members of their chosen families as opposed to their biological families, and the resumption of gender reaffirming surgery and class it as an essential surgery.

### *C Refugees and Asylum Seekers*

Refugees and asylum seekers, being already in a vulnerable position, are particularly disadvantaged often being forced to live in cramped conditions, in shared facilities that are purposely remote with no access to appropriate medical care.<sup>95</sup> The remoteness of immigration detention facilities and inadequate medical facilities have a significant impact on human life.

Over 1500 people are in Australian immigration detention facilities.<sup>96</sup> Lockdown policies and social distancing disproportionately affect this vulnerable group. They are often placed into cramped living conditions, which they are often required to share with others in migrant camps or accommodation facilities, with inadequate services such as healthcare which when available is only basic and not equipped to deal with infectious diseases like COVID-19.<sup>97</sup>

In August 2020, the Australian Border Force reopened the North West Point Immigration Detention Centre ('NWP IDC') on Christmas Island and transferred detainees from the mainland to the facility.<sup>98</sup> This was undertaken to relieve capacity pressures at the mainland facilities.

Refugees and asylum seekers have been particularly exposed to vulnerable health and medical conditions on Christmas Island. There are no ventilators available on

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<sup>95</sup> Australian Human Rights Commission, *Management of COVID-19 Risks in Immigration Detention Review 2021* (Report, June 2021) 25.

<sup>96</sup> Australian Human Rights Commission, *Inspections of Australia's immigration detention facilities 2019 Report* (Report, December 2020) 5.

<sup>97</sup> *Ibid* 4.

<sup>98</sup> *Ibid*.



the island and testing for COVID-19 must be undertaken in Perth, Western Australia. This places refugees, asylum seekers, community members, and facility staff at significant health risk as there is minimal capacity to manage a COVID-19 outbreak.<sup>99</sup> The geographical remoteness of Christmas Island is likely to affect the ability of refugees and asylum seekers to communicate to friends and family, along with their legal representatives. With poor mobile phone networks and limited internet access, refugees and asylum seekers feel isolated and without support. It has been suggested that poor communication systems were partly responsible for protests occurring at NWP IDC in January 2021.<sup>100</sup>

Information is often provided by authorities whom migrants do not trust and significant language barriers exist preventing accurate and reliable information from being absorbed.<sup>101</sup> Further, a number of these facilities are already subject to overcrowding and a high number of these people have pre-existing medical issues which could put them at a higher risk of contracting COVID-19.<sup>102</sup>

However, in parallel with lockdowns and social distancing, the Australian Government enforced strict border controls to limit the number of people allowed entry into Australia, as part of its overall strategy to keep COVID-19 infections managed and in low numbers. This in turn was intended to prevent Australia's healthcare system from becoming overwhelmed.

Refugees and asylum seekers have often had to undertake arduous journeys to escape conflict zones, political persecution, or other dangerous situations.<sup>103</sup> Border closures are placing these people at further risk with many people still trapped within those areas, situations, and in some cases stranded at sea.<sup>104</sup>

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid

<sup>101</sup> Refugees International, *COVID-19 and the Displaced: Addressing the Threat of the Novel Coronavirus in Humanitarian Emergencies* (Report, 30 March 2020) 3.

<sup>102</sup> Ibid 12.

<sup>103</sup> Kaldor Centre for International Refugee Law, Submission No 39 to Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade* (29 June 2020) 3.

<sup>104</sup> Refugees International, (n101) 11.

Given this higher risk of contracting COVID-19 and the small numbers of people being held in immigration detention facilities in comparison to the Australian population as a whole, these people should be released into community-based facilities which will provide them with non-discriminatory levels of healthcare, housing, education and allow them to enjoy their human rights. This would reaffirm Australia's commitment to global human rights and ensure Australia does not offend the principle of non-refoulement by forcing an asylum seeker or refugee back to an unsafe foreign territory.<sup>105</sup>

Under international law, Australia has an obligation under Article 14 of the UDHR and Article 33(1) of the 1951 Refugee Convention to not use its power to control borders to reverse the rights of refugees and people who are seeking asylum.<sup>106</sup> While the Australian Government can lawfully apply stricter border controls to manage the public health risks imposed by COVID-19, this must not result in denying a person the opportunity to seek asylum or expose them to the risk of refoulement.<sup>107</sup> Australia must consider the unintended consequences of stricter border controls and denying entry to everyone other than Australian citizens and permanent residents. The continuation of this policy will place Australia at greater risk of COVID-19 infection, as people seeking asylum may find alternative routes into the country, effectively circumventing health checks and quarantine processes.<sup>108</sup>

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<sup>105</sup> UN High Commissioner for Refugees (UNHCR), 'Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the Context of the COVID-19 Response' (Web Page) <<https://www.refworld.org/docid/5e7132834.html>>.

<sup>106</sup> Kaldor Centre for International Refugee Law, 'Knowing all of the law, all of the time – Responding to COVID-19' (Web Page) <<https://www.kaldorcentre.unsw.edu.au/publication/knowing-all-law-all-time-%E2%80%93-responding-covid-19>>.

<sup>107</sup> UNHCR, 'Key Legal Consideration on Access to Territory for Persons in Need of International Protection in the context of the COVID-19 Response' (Web Page, 16 March 2020) <<https://www.refworld.org/docid/5e7132834.html>>.

<sup>108</sup> Jane McAdam, 'A Watching Brief on the Impacts of COVID-19 on the World's Displaced People', (2020) 32(2) *International Journal of Refugee Law* 364, 365.

Therefore, to maintain effective public health measures in relation to border controls, Australia should, not to mention the numerous humanitarian reasons which are beyond the scope of this paper to address here, provide clearer migration pathways for asylum seekers to follow and utilise. This will reaffirm its commitment to international law, and continue to reduce the risk of COVID-19 infections from overseas travellers.

## V CONCLUSION

It is clear the fundamental human rights of vulnerable groups have been affected by the limitations imposed on Australian society in the various government responses to COVID-19. The issue of protecting society while minimising the effects those limitations have on vulnerable groups is a complex issue that has troubled human rights and ethical thinkers for a long time. This paper has argued the limitations that have been imposed in response to COVID-19 when viewed through the lens of the Siracusa Principles are justified among the general population but discusses particular strategies for how their effects on vulnerable groups might be mitigated as these groups are affected in disproportionate ways in terms of discrimination and imposition of hardship not experienced in the general population. It, therefore, concludes that because limitations disproportionately affect vulnerable groups, these groups require extra consideration and further intervention. The experience in jurisdictions such as France and Italy and some of the suggestions in this paper show the solutions are not particularly complicated or resource intensive and the main issue is likely to be recognising the problem rather than failing to be mindful of vulnerable groups and just letting them fall through the cracks when it comes to COVID-19 responses. A problem identified is a problem half-solved. As this is a common issue throughout international jurisdictions, a United Nations-sponsored forum could identify the common problems facing these vulnerable groups and explore solutions and directions with an eye to better consistency of emergency measures with obligations under international law and across jurisdictions within Australia, along with raising awareness within the community of the extra pressures faced

by disadvantaged and vulnerable groups in the face of COVID-19 responses. More empathy within the community won't solve these groups' problems but it certainly cannot hurt.