

4 June 2020

Senator Katy Gallagher  
Chair  
Senate Select Committee on COVID-19  
Department of the Senate  
Parliament House  
CANBERRA ACT 2600

Dear Senator Gallagher,

Re: Submission to the SELECT COMMITTEE ON COVID-19 INQUIRY INTO THE GOVERNMENT'S RESPONSE TO COVID-19

The Australian Human Rights Institute at UNSW Sydney (the Institute) welcomes this opportunity to provide a submission to the Committee in relation to its scrutiny of federal bills and instruments which deal substantially with matters related to COVID-19.

The Institute was established in 2018 as part of the 2025 Strategy of the University of New South Wales (UNSW). The Institute is unique in its interdisciplinary approach, which draws on expertise from all academic disciplines to address the major human rights challenges of our times. It also takes an applied approach to its work, seeking to develop evidence-based research of value to policymaking by government, industry, and civil society. The Institute is responsive to emerging issues, and currently a number of its members are focused on examining the human rights dimensions of the COVID-19 pandemic. For example, the Institute has developed a new website and newsletter, [On Guard](#), which serves as a clearing house for and database of essential research material on the human rights implications of the pandemic.

As a research community, Institute members realise there are multiple, compounding human rights concerns emerging from this crisis. In our submission, we focus on four key issues that, in our view, require specific and urgent government attention in the context of COVID-19 and the post-pandemic environment: the rights of persons with disability, the rights of migrant workers, women's right to economic security, and privacy rights impacted by the use of drones.

Other key issues are covered in the submission made by our colleagues at the Kaldor Centre for International Refugee Law; our submission, made jointly with UNSW's Gender Violence Research Network, on gender-based violence; and the submission of the Snap Forward Feminist Policy Network.

Yours sincerely,



Professor Louise Chappell, on behalf of the Institute's participating members (listed at the end of the submission)

## Summary

- 1.1. The COVID-19 pandemic is exposing a range of human rights concerns in Australia, including violations of civil and political rights and social, economic and cultural rights. This submission highlights a number of key issues, which we ask the Government and Parliament to address as they adopt new policies and legislation to respond to the pandemic.
- 1.2. The submission includes matters related to the rights of persons with disability, migrant worker's rights, women's rights to economic security, and the right to privacy and protection from surveillance.
- 1.3. While the submission does not include other key human rights concerns, including those related to the rights of older persons, the rights of women to be free from violence, and the rights of refugee and asylum seeker communities, it recognises that these rights are also under threat.
- 1.4. We endorse the submissions by others related to these issues including the submission of the Kaldor Centre for International Refugee Law and the Institute's joint submission with the Gender Violence Research Network and other UNSW partners on violence against women in the context of the pandemic.

## Recommendations:

- (1) Establish a nationally consistent humanitarian emergency framework to ensure the protection of the rights of persons with disability on an equal basis with others in line with the Convention on the Rights of Persons with Disabilities (CRPD), the Sustainable Development Goals, and the Sendai Framework on Disaster Risk Reduction.
- (2) Extend the focus of the Management and Operational Plan for People with Disabilities beyond healthcare to include violence and abuse and the use of restrictive practices.
- (3) As part of COVID-19 recovery, resource and operationalise the National Disability Strategy to address pre-existing inequality and discrimination as factors that increase risks and vulnerability for persons with disability, in line with CRPD standards and jurisprudence, the United Nations' *Policy Brief: A Disability-Inclusive Response to COVID-19*, and the United Nations Member States and Observers' *Disability-Inclusive Response to COVID-19 – Towards a Better Future for All* (both May 2020).
- (4) The Government should extend eligibility for JobKeeper and JobSeeker Payment schemes (JobKeeper and JobSeeker, respectively) to migrant workers holding temporary visas, including working holiday makers, temporary skilled visa holders, and international students.
- (5) The Government should provide funding to Government or reputable non-Government support programs, including emergency relief programs, for workers in these categories.
- (6) The Government should introduce or support initiatives to help workers within these categories find employment to meet their immediate living expenses.
- (7) The Government should relax its expectation that workers within these categories support themselves without any Government assistance, recognising that their financial precarity at this time has been caused by unprecedented external circumstances outside their control.

- (8) The Government should demonstrate, through its initiatives, a willingness to reciprocate for migrant workers' valuable contribution to Australia. Put differently, the Government's initiatives should not be exclusively directed to meeting Australia's perceived immediate needs.
- (9) The Government should urgently undertake a gender analysis of the early access superannuation scheme.
- (10) The Government should reconsider allowing access to the second tranche of early access funding, to protect against long-term economic gender inequalities of the scheme.
- (11) The Government should use unspent stimulus funds to repay the superannuation accessed early as part of this scheme to protect the retirement income of all Australians without discrimination based on sex or gender.
- (12) The Government should exercise caution in adopting emerging technologies, including new drone technology, computer vision, algorithmic analysis, thermographic temperature sensing, and body mapping analysis, if not ban their use altogether.
- (13) Strict rules about data protection, storage and deletion need to be applied to any use of drones or related technologies in pandemic response
- (14) At a minimum, Australian jurisdictions should require extensive testing and independent assessment of the efficacy and potential harm of pandemic drones prior to deployment, as well as sunset clauses for winding back their use once no longer required.
- (15) Australian jurisdictions should introduce regular rights-based review mechanisms by an existing independent body, such as the Australian Human Rights Commission, and/or new state-level independent bodies to monitor current and planned police use of drones and related emerging technologies.

## 2. Rights of Persons with Disability

- 2.1. People with disability are at much greater risk than the general population from the COVID-19 disease, particularly older people with disability, First Peoples with disability, people with intellectual disability, people with psychosocial disability, and those with chronic health conditions, co-morbidities, dependence on ventilators, and compromised immunity. Yet despite the heightened risk faced by people with disability, Australia's initial planning and response to COVID-19 failed to address the health and economic issues faced by people with disability during the pandemic.
- 2.2. We acknowledge and welcome Australia's commitment to the UN policy brief on a disability-inclusive response to the pandemic, as demonstrated by its endorsement of [Disability-Inclusive Response to COVID-19 – Towards a Better Future for All](#).<sup>1</sup> The UN policy brief highlights the disproportionate impact of the pandemic on people with disability and provides guidance for States on how to take immediate action to build equitable, sustainable and resilient societies that have the mechanisms to prevent and respond rapidly to future public health emergencies and to ensure that 'no-one is left behind'. The Government needs to reflect this international commitment in domestic action.

<sup>1</sup> On 18 May 2020, Australia joined with 137 other UN Member States and Observers to support the United Nations policy brief on a disability-inclusive response to the pandemic. Their response, *Disability-Inclusive Response to COVID-19 – Towards a Better Future for All* is available at <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/05/Joint-statement-Disability-inclusive-response-to-COVID-19.pdf>

- 2.3. Australia has clear obligations under the CRPD. In particular, Art. 11 on situations of risk and humanitarian emergency requires States Parties to take 'all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk'.<sup>2</sup>
- 2.4. On February 2020, the Australian Health Protection Principal Committee (AHPCC) released the *Australian Health Sector Emergency Response Plan for the Novel Coronavirus (COVID-19)*. Healthcare and aged care workers were ensured access to Personal Protective Equipment (PPE). In contrast, people with disability, many of whom rely on disability support services for essential daily living tasks, had no or very limited access to PPE to reduce the risk of transmission.<sup>3</sup>
- 2.5. Measures to ensure continuity of essential support for NDIS participants, workers and providers during the coronavirus outbreak were not announced until 21 March 2020, following discussions by the Council of Australian Governments' Disability Reform Council (DRC). An open letter<sup>4</sup> to the National Cabinet on 2 April 2020 from a group of over 70 organisations from across Australia representing the interests of people with disability, their families, carers, and support persons expressed deep concern at the lack of specific and targeted measures from Australian Governments to proactively protect and support people with disability, their families, carers and support persons from the impact of COVID-19.
- 2.6. An advisory group was established to inform the development of the *Management and Operational Plan for People with Disability*.<sup>5</sup> Its first meeting was held on 3 April 2020, its Plan was delivered to the AHPCC on 9 April 2020 and adopted by the National Cabinet on 16 April 2020, more than eight after the release of the initial response plan. During this time, people with disability had no access to targeted information on the impact of the Government's emergency response on them. This created high levels of fear, anxiety and confusion.<sup>6</sup>
- 2.7. COVID-19 disability response has been heavily focused on NDIS recipients. NDIS recipients are only 10% of the 4.5 million Australians with disability. Information has been filtered through the NDIA and NDIS Service Providers and has not reached people with disability who are not NDIS recipients. This NDIS focus has also meant that avenues for the acquisition of PPE are restricted to NDIS recipients, and some supermarkets have even required 7-digit NDIS recipient numbers for people to access home delivery of groceries.<sup>7</sup>
- 2.8. COVID-19 has exposed and exacerbated pre-existing inequality and discrimination, increasing the vulnerability of people with disability. There are heightened risks of greater segregation and social isolation experienced by persons with disability living in congregate settings. While measures taken to 'lockdown' shared accommodation and congregate care settings may assist in managing the spread of the virus, these measures are also likely to result in an escalation of violence, abuse, exploitation and neglect against people with disability in these settings.
- 2.9. There has been an increased risk of violence and the use of restrictive practices in congregate settings during COVID-19. There are instances of residents of group homes being locked in their rooms to enforce

<sup>2</sup> CRPD, Art. 11. Australia has also accepted obligations under the United Nation's Sendai Framework for Disaster Risk Reduction 2015–2030, which is available at [https://www.preventionweb.net/files/43291\\_sendaiframefordrren.pdf](https://www.preventionweb.net/files/43291_sendaiframefordrren.pdf).

<sup>3</sup> See *Disability Support Workers and COVID-19*, available at <https://hsu.net.au/wp-content/uploads/2020/05/Report-Disability-workers-and-COVID-19.pdf>. See also <https://www.sbs.com.au/news/calls-for-australia-s-disability-carers-to-get-the-same-coronavirus-protections-as-aged-care-workers>

<sup>4</sup> *An Open Letter to the National Cabinet: Immediate Actions Required for Australians with Disability in Response to Coronavirus (COVID19)*, available at <https://pwd.org.au/media-release-now-is-the-time-to-act-on-pandemic-measures-for-people-with-disability/>

<sup>5</sup> <https://www.greghunt.com.au/immediate-response-plan-to-focus-on-people-with-disability-during-coronavirus/>

<sup>6</sup> <http://wwda.org.au/open-letter-to-the-prime-minister-and-all-the-premiers/>.

<sup>7</sup> For example, Harris Farm.

physical distancing requirements and being denied visitors. Restrictions on people being able to engage in outdoor exercise<sup>8</sup> and the extension of guardianship orders to restrict people from going to the shops<sup>9</sup> have also been reported. There is a lack of clarity around the oversight mechanisms of the NDIS Quality Safeguards Commission in monitoring what has been happening. This has been compounded by the suspension of Community Visitors Schemes due to physical distancing restrictions, weakening oversight of closed environments such as group homes.

### Recommendations:

- (1) Establish a nationally consistent humanitarian emergency framework to ensure the protection of the rights of persons with disability on an equal basis with others in line with CRPD, the Sustainable Development Goals and the Sendai Framework on Disaster Risk Reduction.
- (2) Extend the focus of the Management and Operational Plan for People with Disabilities beyond healthcare to include violence and abuse and the use of restrictive practices.
- (3) As part of COVID-19 recovery, resource and operationalise the National Disability Strategy to address pre-existing inequality and discrimination as factors that increase risks and vulnerability for persons with disability, in line with CRPD standards and jurisprudence, the United Nations' *Policy Brief: A Disability-Inclusive Response to COVID-19*, and the United Nations Member States and Observers' *Disability-Inclusive Response to COVID-19 – Towards a Better Future for All* (both May 2020).

## 3. Migrant Workers Rights

- 3.1. Migrant workers are generally temporary visa holders, and include working holiday makers, temporary skilled visa holders, and international students. Migrant workers make up approximately 6% of the Australian workforce.
- 3.2. On 4 April 2020, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs announced changes to temporary visa holder arrangements. As a result of those changes, working holiday makers, temporary skilled visa holders, and international students were permitted for a limited time to access a capped amount of Australian superannuation (\$10,000 per financial year), subject to eligibility requirements (see 2.4 below).
- 3.3. As a result of those changes, working holiday makers working in critical sectors (i.e. health, aged and disability care, agriculture and food processing, and childcare) will be exempt from the usual limitation of six months per employer and will be eligible for a further visa in some circumstances. This demonstrates that the Government recognises that migrant workers make a valuable contribution to both the Australian economy and the Australian community.
- 3.4. Temporary visa holders are ineligible to receive payments from their employer under JobKeeper. Temporary visa holders are also generally excluded from receiving payments from Services Australia, including payments under JobSeeker.
- 3.5. To be eligible for the superannuation scheme, workers in these categories must be unable to meet their immediate living expenses.<sup>10</sup> International students must also have held their student visa for twelve months or more.<sup>11</sup> This scheme is an inadequate substitute for JobKeeper and/or JobSeeker eligibility for several reasons, including:
  - a) some workers within these categories will be ineligible to use superannuation for this purpose, e.g. international students who have held their visa for less than twelve months;

<sup>8</sup> <https://thenewdaily.com.au/news/coronavirus/2020/05/18/coronavirus-care-home-rules-go-too-far/>

<sup>9</sup> GZK [2020] NSWCATGD 5, <https://www.caselaw.nsw.gov.au/decision/5ea112d3e4b0d927f74af263>

<sup>10</sup> <https://www.ato.gov.au/individuals/super/withdrawing-and-using-your-super/early-access-to-your-super/#Compassionategrounds>

<sup>11</sup> Ibid.

- b) some workers within these categories will have accrued less than \$10,000 in superannuation and so may not be able to meet their immediate living expenses, even after using their superannuation for this purpose; and
- c) the use of superannuation for this purpose could adversely affect the affected worker's future retirement income.

#### **Recommendations:**

- (4) The Government should extend eligibility for JobKeeper and JobSeeker to migrant workers holding temporary visas, including working holiday makers, temporary skilled visa holders, and international students.
- (5) The Government should provide funding to Government or reputable non-Government support programs, including emergency relief programs, for workers in these categories.
- (6) The Government should introduce or support initiatives to help workers within these categories find employment to meet their immediate living expenses.
- (7) The Government should relax its expectation that workers within these categories support themselves without any Government assistance, recognising that their financial precarity at this time has been caused by unprecedented external circumstances outside their control.
- (8) The Government should demonstrate, through its initiatives, a willingness to reciprocate for migrant workers' valuable contribution to Australia. Put differently, the Government's initiatives should not be exclusively directed to meeting Australia's perceived immediate needs.

#### **4. Women's Right to Economic Security**

- 4.1. In Australia, men and women experience significant differences in economic security and ability to accrue retirement savings. According to the Workplace Gender Equality Agency, women's earnings are on average 14% less than those of men. This wages gap, combined with disrupted work patterns due to caring responsibilities, result in a significant gender superannuation gap. Australian Bureau of Statistics data from 2017–18 suggests women's median superannuation account balances are 30.8% lower than men. As a consequence, women in retirement are more likely to live in poverty than men.<sup>12</sup>
- 4.2. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), specifically protects women's economic rights. Article 11 provides that women have:
  - a) 'the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work'; and
  - b) 'the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave'.
 Article 13 provides: 'States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights'.
- 4.3. Section 14 of Australia's *Sex Discrimination Act* also protects against discrimination in employment and the provision of superannuation.
- 4.4. In March 2020, the Government introduced a COVID-19 scheme to allow those without other forms of income support access to up to \$10,000 of their superannuation before July 1 2020, and a further \$10,000 from July 1 until 24 September 2020.<sup>13</sup>

<sup>12</sup> <https://www.wgea.gov.au/data/wgea-research/womens-economic-security-in-retirement>

<sup>13</sup> <https://www.ato.gov.au/Individuals/Super/In-detail/Withdrawing-and-using-your-super/COVID-19-early-release-of-super/>



- 4.5. The Government introduced this measure without applying a gender lens to the scheme and without accounting for the long-term gender inequalities this early access scheme will create, including exacerbating the gender superannuation gap.
- 4.6. APRA figures show that as at May 2020 more men than women have availed themselves of the early access scheme, but, with fewer women with superannuation accounts, and with women's superannuation balances being lower than men's, this is not surprising. 581,700 women have withdrawn amounts of, on average, \$7942.<sup>14</sup>
- 4.7. Analysis from AMP, one major superannuation fund, found that 21% of women were withdrawing their starting super balances, compared to 17% of men. Further, female AMP clients were also more likely to clear out their entire super savings (14%) compared to their male counterparts (12%).<sup>15</sup>
- 4.8. The average superannuation [balance](#) for a woman in her early 40s is just under \$62,000. A withdrawal of the maximum amount permitted under the scheme is likely to wipe out the compound interest on their superannuation.
- 4.9. Women's ability to make up for their decreased superannuation through future earnings has also been reduced, with 55% of jobs lost in Australia held by women. Female work hours also fell by 11.5% in April, compared to a 7.5% reduction suffered by male workers.<sup>16</sup>
- 4.10. Women's Legal Service Victoria has also warned that women experiencing family violence almost always experience economic abuse, which could take the form of being forced into accessing their super early by violent partners.

#### **Recommendations:**

- (9) The Government should urgently undertake a gender analysis of the early access superannuation scheme.
- (10) The Government should reconsider allowing access to the second tranche of early access funding, to protect against long-term economic gender inequalities of the scheme.
- (11) The Government should use unspent stimulus funds to repay the superannuation accessed early as part of this scheme to protect the retirement income of all Australians without discrimination based on sex or gender.<sup>17</sup>

#### **5. Right to freedom of assembly, privacy rights and the use of drones (unmanned aerial vehicles)**

- 5.1. Responding to COVID-19 has rapidly emerged as a crucial driver for innovation and deployment of drones. Using drones to combat the pandemic can be beneficial, but there are significant risks to privacy, public safety and civil liberties, as their use in various jurisdictions around the world has demonstrated.
- 5.2. Drone technologies can have a number of distinct benefits in a pandemic, such as delivering urgent medical supplies,<sup>18</sup> facilitating testing in remote areas,<sup>19</sup> and supporting the accelerated construction of

<sup>14</sup> <https://www.apra.gov.au/covid-19-early-release-scheme-issue-4>

<sup>15</sup> <https://www.financialstandard.com.au/news/super-release-widens-gender-gap-amp-162043849>

<sup>16</sup> <https://www.wgea.gov.au/topics/gendered-impact-of-covid-19>

<sup>17</sup> <https://womensagenda.com.au/latest/580000-women-have-already-accessed-early-super-no-one-should-be-forced-to-choose-between-retirement-food-on-the-table/>

<sup>18</sup> Kretchmer (2020) 'How drones are helping to battle COVID-19 in Africa – and beyond' <https://www.weforum.org/agenda/2020/05/medical-delivery-drones-coronavirus-africa-us/>

<sup>19</sup> WeRobotics (2020) 'The Roles of Flying Labs in Response to COVID-19' <https://blog.werobotics.org/2020/03/24/flying-labs-response-covid-19/>

hospitals through aerial mapping.<sup>20</sup> While consumer delivery applications are more debatable,<sup>21</sup> the potential for drones to help map infections has been discussed for some time.<sup>22</sup>

- 5.3. In Australia, drone flight is regulated primarily by the Civil Aviation Safety Authority (CASA). This means that when companies such as Swoop Aero seek to use drones to transport test kits, they need to work with CASA and the Federal Government to obtain the necessary clearance.<sup>23</sup> From an airspace and public safety perspective, this process is sensible, however many non-delivery drone applications need to be more tightly regulated, with appropriate oversight mechanisms.
- 5.4. When drones are used for applications such as social distancing enforcement, temperature monitoring, and surveillance of public space, they can have significant negative impacts on privacy, public safety and civil liberties without demonstrable social benefit. For example, in addition to crime scene and disaster response, police drones are already used to monitor crowd behaviour at sporting and other public events and, in theory, identify potential terrorist threats, justified on the basis that they enhance existing deployments and enable a fast, flexible response.<sup>24</sup> Using police drones<sup>25</sup> to enforce social distancing guidelines sets a dangerous precedent for the monitoring of public spaces and social control of Australians. Reporting in the United States indicates that social distancing enforcement targets minorities, while in Australia early evidence indicates Indigenous and migrant Australians have been disproportionately fined.<sup>26</sup> The addition of loudspeakers and a mandate to control behaviour is a significant expansion of an already intrusive technology, but the potential for unproven biometric technologies such as thermographic temperature sensing<sup>27</sup> and body imaging analysis<sup>28</sup> to significantly impact on civil liberties is enormous, particularly for already marginalised groups.
- 5.5. New drone technology developed at the University of South Australia in partnership with Canadian company Draganfly amplifies those concerns, using computer vision and algorithmic analysis to identify coughing, monitor body temperature, and track proximity to others.<sup>29</sup> As the controversy that swiftly

<sup>20</sup> Perez / DJI (2020) 'Aerial Data Accelerates Emergency Hospitals Construction' <https://enterprise-insights.dji.com/blog/drones-assist-to-rapidly-construct-emergency-hospitals-in-rush-to-expand-healthcare-system>

<sup>21</sup> Taylor (2020) 'Could 'Pandemic Drones' Help Slow Coronavirus? Probably Not—But COVID-19 Is A Boom For Business' <https://www.forbes.com/sites/petertaylor/2020/04/25/could-pandemic-drones-help-slow-coronavirus-probably-not-but-covid-19-is-a-boom-for-business/#ab89ddd62a46>

<sup>22</sup> Fornace et al (2014) 'Mapping infectious disease landscapes: unmanned aerial vehicles and epidemiology' <https://www.sciencedirect.com/science/article/abs/pii/S1471492214001469>

<sup>23</sup> Spires (2020) 'Swoop Aero aims to deliver COVID-19 test kits in Australia' <https://dronedj.com/2020/04/27/swoop-aero-deliver-covid-19-test-kits-australia/>

<sup>24</sup> Pearson (2019) 'Police drones to monitor crowds at footy, public events from next month' <https://www.theage.com.au/national/victoria/police-drones-to-monitor-crowds-at-footy-public-events-from-next-month-20190709-p525jf.html>; Neville MP (2019) 'Media Release: New police eye in the sky to keep Victorians Safe' <https://www.premier.vic.gov.au/wp-content/uploads/2019/07/190710-New-Police-Eye-In-The-Sky-To-Keep-Victorians-Safe.pdf>

<sup>25</sup> AAP (2020) 'WA police to use drones to enforce coronavirus restrictions' <https://www.9news.com.au/national/coronavirus-outbreak-wa-police-to-use-drones-to-enforce-restrictions/30387b30-f34d-40bd-84af-479cd10ff9fe>

<sup>26</sup> Kaplan & Hardy (2020) 'Early Data Shows Black People Are Being Disproportionally Arrested for Social Distancing Violations' <https://www.propublica.org/article/in-some-of-ohios-most-populous-areas-black-people-were-at-least-4-times-as-likely-to-be-charged-with-stay-at-home-violations-as-whites>; Faruqi (2020) 'Compliance fines under the microscope' <https://www.thesaturdaypaper.com.au/news/health/2020/04/18/compliance-fines-under-the-microscope/1587132009710>

<sup>27</sup> Kelly et al (2019) 'Challenges and Best Practices for Deriving Temperature Data from an Uncalibrated UAV Thermal Infrared Camera' <https://www.mdpi.com/2072-4292/11/5/567>

<sup>28</sup> Al-Naji et al (2018) 'Remote Optical Cardiopulmonary Signal Extraction With Noise Artifact Removal, Multiple Subject Detection & Long-Distance' <https://ieeexplore.ieee.org/document/8306266>

<sup>29</sup> 'UniSA working on 'pandemic drone' to detect coronavirus' <https://www.unisa.edu.au/unisanews/2020/autumn/story11/>



erupted when in April 2020 police in Westport, Connecticut sought to test their use, shows such technologies can spark public outrage due to concerns over encroachment on civil liberties. New investigations cast doubt on the effectiveness of these technologies and the benefits claimed by tech companies.<sup>30</sup>

- 5.6. Even in a pandemic, people should have the right to privacy. To date, there is no evidence that drones are more effective than other measures, such as public information campaigns and clear signage. In addition, police drones could easily violate the privacy of individuals, including by obtaining an aerial view into homes and backyards. Alongside producing live footage, drone vision is typically recorded, which exposes people to additional risks related to data security.
- 5.7. Drones used in response to COVID-19 could have a chilling effect on public protest, free expression and free assembly. In the future, drones combined with facial recognition software could intensify those dangers significantly. While smartphones and other digital technologies have significantly eroded privacy, drones do not ask for consent, nor do they differentiate between individuals. At present, no reliable research exists on the effectiveness of pandemic drones for social distancing and other potentially intrusive pandemic responses.
- 5.8. At present, policing and related drone applications lack clear and purpose-designed oversight. Drone flight is regulated by CASA, which considers issues of safety, while in different state jurisdictions, police drones are overseen by a mix of mechanisms, such as the NSW Law Enforcement Conduct Commission and NSW Ombudsman. As COVID-19 accelerates the deployment of drones and related technologies for unforeseen uses, more robust frameworks are essential.

#### **Recommendations:**

- (12) The Government should exercise caution in adopting emerging technologies, including new drone technology, computer vision, algorithmic analysis, thermographic temperature sensing, and body mapping analysis, if not ban their use altogether.
- (13) Strict rules about data protection, storage and deletion need to be applied to any use of drones or related technologies in pandemic response.
- (14) At a minimum, Australian jurisdictions should require extensive testing and independent assessment of the efficacy and potential harm of pandemic drones prior to deployment, as well as sunset clauses for winding back their use once no longer required.
- (15) Australian jurisdictions should introduce regular rights-based review mechanisms by an existing independent body, such as the Australian Human Rights Commission, and/or new state-level independent bodies to monitor current and planned police use of drones and related emerging technologies.

## **6. Conclusion**

This submission highlights some emerging human rights concerns related to the Covid-19 pandemic and the public policy and legislative responses to it. We recognise that there are other urgent human rights issues which also require investigation including in relation to Indigenous rights, violence against women, refugees and asylum seekers, older persons and homeless people, among others. We also acknowledge that the human rights concerns are likely to be intersectional, compounding and dynamic, shifting as the economic and health implications of the pandemic emerge over time. We ask the parliament to continue monitor these changes closely through both the Covid-19 Committee and its human rights monitoring machinery and develop responses to the pandemic with fundamental human rights principles as the starting point. Without an Australian legislative or constitutionally entrenched bill of rights, the Australian Parliament carries much of the

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<sup>30</sup> Greenwood (2020) 'Fever-Detecting Drones Don't Work' <https://slate.com/technology/2020/05/fever-detecting-drones-coronavirus-dragonfly-research.html>

burden for safeguarding human rights, and we ask that it pay special attention to this responsibility during these extraordinary times.

Yours sincerely,

**Scientia Professor Louise Chappell FASSA**

Director, Australian Human Rights Institute, UNSW

Expertise: Gender Justice

**Rosemary Kayess**

Senior Research Fellow, Social Policy Research Centre, UNSW

Deputy Chair, UN Committee on the Rights of Persons with Disabilities

Expertise: Disability and Human Rights

**Professor Jackie Leach Scully**

Director, Disability Innovation Institute

Expertise: Bioethics

**Professor Justine Nolan**

Professor, UNSW LAW, UNSW

Expertise: Business and Human Rights

**Dr Michael Richardson, School of the Arts & Media, UNSW**

Senior Research Fellow (ARC DECRA)

Co-lead, Data Justice, Allens Law & Technology Hub

Expertise: Drones

**Professor Andrew Byrnes**

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Expertise: Human Rights