COTA QUEENSLAND

COTA Queensland's Submission to the

QUEENSLAND PARLIAMENTARY INQUIRY INTO THE QUEENSLAND GOVERNMENT'S HEALTH RESPONSE TO COVID-19

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QUEENSLAND PARLIAMENTARY INQUIRY INTO THE QUEENSLAND GOVERNMENT'S HEALTH RESPONSE TO COVID-19

COVID-19 has had a profound impact on the lives of all Queenslanders – actions undertaken by the Queensland Government, health care workers and the broader community have ensured that to date the numbers infected have not been as high as originally forecast. It is hoped that a continued cautious approach to re-opening the community and the economy will ensure the future spread of COVID-19 is eliminated. COTA Queensland believes that more community participative planning and preparation needs to be undertaken to better safeguard Queenslanders from future pandemics once the threat from COVID-19 is fully addressed and to protect the human rights of all Queenslanders.

Safeguarding Human Rights during COVID-19

Older Queenslanders were thrust to the forefront of battling this pandemic given the reported greater risks of them getting seriously ill from this virus. Those seniors with pre-existing medical conditions were reported to be more likely to become infected. Older Queenslanders were given the message through the media that being infected with COVID-19 was a virtual death sentence. This was reinforced by the reporting from other countries such as Italy that showed high numbers of older people dying each day coupled with a shortage of intensive care capacity and the rationing of access with preference being given to younger victims.

Worryingly, in some countries, a shortage of intensive care unit beds, respirators and other supports has led to what are fundamentally 'ageist' calls for the prioritisation of younger, healthier patients with a higher chance of recovery. Anecdotal evidence suggests health professionals in some of these nations are under considerable moral strain to engage in decision making practices that prioritise those who are likely to have more positive outcomes from treatment, or, more generally, those who have longer life expectancies and a greater potential for 'life years saved'.[1]

COTA Queensland became concerned in this regard when it was asked to comment on the Queensland Health document ***Queensland ethical framework to guide clinical decision making in the COVID-19 pandemic***[2]**.** This document provides an ethics based framework to **assist** in making clinical decisions about whether to withdraw or withhold life-sustaining measures from a patient at a time when those medical resources must be rationed due an overwhelming demand for intensive clinical support generated by a pandemic. The question from COTA Queensland's perspective was how large a consideration does your age receive in making these decisions especially when you are over 65 years of age. The 2018 Queensland Health document Queensland Health document, ***Queensland Health End-of-life care: Guidelines for decision-making about withholding and withdrawing life-sustaining measures from adult patients***[3]**,** states that age by itself should not influence these decisions:

[1] United Nations. Policy Brief: The Impact of COVID-19 on older persons. p2 May 2020. https://www.un.org/development/desa/ageing/news/2020/05/covid-19-older-persons/

[2] Queensland Health. Queensland ethical framework to guide clinical decision making in the COVID-19 pandemic. https://www.health.qld.gov.au/__data/assets/pdf_file/0025/955303/covid-19-ethical-framework.pdf

[3] Queensland Health. Queensland Health End-of-life care: Guidelines for decision-making about withholding and withdrawing life-sustaining measures from adult patients. https://www.health.qld.gov.au/__data/assets/pdf_file/0033/688263/acp-guidance.pdf

In providing end-of-life care to the elderly, health professionals must be mindful of a number of biases that may affect the thinking of any of those involved in making the decisions. These include: a common, but unspoken ethical concern, that health resources should be rationed for the elderly so that they could be used elsewhere where they might 'do more good' , the fact that some younger members of society undervalue many aspects of the lives of elderly people, the belief that elderly people use a disproportionate share of the medical resources available.

It is Queensland Health's policy that ***decisions to withhold or withdraw life-sustaining measures must be made on a case by case basis, and age or race or lifestyle*** *must never be used to qualify these decisions*

The elderly, like other demographic groups in our society, are deserving of value, care and respect. *The health care team must always consider that the interests of the elderly may not necessarily be the same as the interests of their families, health professionals or health institutions.*

However, the Ethical Framework document[4] indicates that agreement has been reached to use a Threshold Test (an evidence based objective assessment) to assess the risk of death, with and without treatment. The document states that … *The threshold test will contribute to an equitable triage process and assist in identifying patients most likely to benefit from critical care treatments AND provide rationale for excluding those who, in the current context, are less likely to survive and enjoy a reasonable quality of life. The palliative care question often used, "would you be surprised if the person were to die in the next year" from the underlying condition, is another useful rationale for excluding patients from intubation, ventilation, given the low likelihood of benefit and exacerbation of harm.*

Within the ethical framework document, the 'life-cycle' consideration is introduced as a possible factor for prioritising access to care. The framework document states[5]: … *Feedback from the community, identified this consideration as appropriate in complex occasions. Such that, when equivalent scores occur priority be given to children and adults <50, adults who have not yet 'lived a full life', 50-69 years and followed by those older …the 'life-cycle' principle is also described by the Ethics Subcommittee, Ventilator Document Workgroup for CDC 6. While the life-cycle principle grants each individual equal opportunity to live through phases of life, there is relative priority to younger individuals. Also understood by arguments of a 'fair innings' and ethical justification that this principle enables opportunity for younger individuals to live through 'life's stages.* ***The clinician's duty of care, however, remains and is fundamental to all health care and by nature includes the relief of suffering.***

COTA Queensland is concerned that the rationing of access to urgently required healthcare to seriously ill people over 65 years of age could be considered.

The Office of the High Commissioner, Human Rights provides the following guidance in respect to older persons:

- *Older persons have the same rights as any other age group, and they should be protected equally during the pandemic. Special attention should be paid to the particular risks faced by*

[4] Queensland Health. Queensland ethical framework to guide clinical decision making in the COVID-19 pandemic.p13. https://www.health.qld.gov.au/__data/assets/pdf_file/0025/955303/covid-19-ethical-framework.pdf

[5] Ibid.p10.

older persons, including isolation and neglect resulting from physical distancing and age-based discrimination in access to medical treatment and other support.

- *Ensure that medical decisions are based on individualized clinical assessments, medical need, ethical criteria and on the best available scientific evidence and not on age or disability.*[6]

In Queensland we are fortunate that the Queensland Human Rights Act came into effect in January 2020, this Act should hopefully protect older Queenslanders from health care rationing based on age. Section 37 of the Act provides for the right to health services. Section 37(1) *Every person has the right to access health services without discrimination.* Section 37(2) *A person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person*[7].

COTA Queensland, however, is concerned that it is possible under two provisions of the Human Rights Act to limit the application of the Act. Section 13 (1) states: *A human right may be subject under law only to reasonable limits that can demonstrably justified in a free and democratic society based on human dignity, equality and freedom*. Section 13 (2) then sets out seven factors that could be used to assess "whether a limit on a human right is reasonable and justifiable" these are:

(1) (a) the nature of the human right;

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose;

(e) the importance of the purpose of the limitation;

(f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;

(g) the balance between the matters mentioned in paragraphs (e) and (f).

Section 43(1) states: *Parliament may expressly declare in an Act that the Act or another Act, or a provision of the Act or another Act, has effect despite being incompatible with 1 or more human rights or despite anything else in this Act.*

Section 43(4) states: *It is the intention of Parliament that an override declaration will only be made in exceptional circumstances.*

Examples of exceptional circumstances—

war, a state of emergency, an exceptional crisis situation constituting a threat ***to public safety, health*** *or order*

[6] United Nations. COVID-19 Guidance. Office of the High Commissioner Human Rights. https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx

[7] Queensland Parliament. Human Rights Act 2019 https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2019-005

An example of Section 13 being applied during COVID-19 was to enable the Public Health (Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020 to be applied. The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee[8] when considering this proposed regulation had to decide whether "reasonable limits" could be set on aspects of the proposed regulation that limited the following provisions of the Act; Section 25 – right to privacy and reputation, Section 19 – right to freedom of movement, Section 29 – right to liberty and security of person and Section 24 – right to not be arbitrarily deprived of one's property. The Committee determined that the limitation of rights was reasonable and justifiable in respect to each of these four provisions.

COTA Queensland accepts that situations may arise that necessitate the limitation of rights, however, at no time should such a limitation have an adverse health or safety impact on any individual or be based on the age of an individual.

Pandemic Planning Shortfalls

In responding to any emergency event, for example a cyclone, we are taught to prepare, act and survive. However, this level of community preparedness does not appear to be required in the event of a large-scale health emergency occurring. Despite the annual outbreaks of various strains of influenza which can result in a high number of deaths, governments and the population as whole were not prepared to respond effectively to this new and potentially deadly health crisis.

In Australia, national pandemic planning has been underway since 1999[9]with the most recent, **The Australian Health Management Plan for Pandemic Influenza (AHMPPI)**, produced in August 2019. The AHMPPI is a very detailed document that covers all the response measures the Australian population has experienced. The AHMPPI shows that Commonwealth, State and Territory governments did have response measures planned to contain the spread of a pandemic including shutting down to a large extent many sectors of the economy and the education system. These measures would enable community members to practice social distancing and where possible self-isolate at home especially if you are over 65 years of age or more susceptible to infection due to other health issues.

The first serious test of pandemic planning in Australia occurred in 2009 with the H1N1 pandemic. The Australian Health Sector's response to this pandemic was evaluated and reported on in the **Review of Australia's Health Sector Response to Pandemic (H1N1) 2009. Lessons identified[10].** The Review identified a broad range of response areas that needed strengthening to improve future responses. A key area of concern in these planning activities relates to communication, the focus is on how to communicate information during a pandemic when those in the various sectors of the community are in a reactionary mindset. While this information is essential it would be better

[8] Queensland Parliament. Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee Report No. 36, 56th Parliament Subordinate legislation tabled between 5 February and 20 February 2020.
https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T506.pdf

[9] Australian Government. Australian Health Management Plan for Pandemic Influenza. August 2019. P14
https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-ahmppi.htm

[10] Australian Government. Review of Australia's Health Sector Response to Pandemic (H1N1) 2009. Lessons identified. 2011. https://www1.health.gov.au/internet/publications/publishing.nsf/Content/review-2011-l/$File/lessons%20identified-oct11.pdf

understood throughout the community if a more comprehensive and ongoing pandemic education campaign had commenced after the 2011 review.

The 2011 Review made the following observation:

The purpose of voluntary quarantine was not well understood by the community in 2009. Quarantine is inconvenient for individuals and difficult to enforce as a public health measure. The challenge is to communicate, facilitate and encourage the message to 'stay away from others' without invoking the concerns associated with the idea of 'quarantine'. People who did not comply with voluntarily quarantine were identified as mostly being motivated by the financial losses that would be incurred from staying home for the seven-day quarantine period. Educating the community and building social expectations about what individuals can do after they have been exposed to the disease is important.[11]

Despite this recognition of the importance of ensuring that people better understood the importance of social distancing no concerted campaign of public education followed. The 2019/20 Black Summer bushfires devastated many communities, bushfires occur annually, and all Australians know this and those in the most at risk communities know they should prepare for a possible fire. In part this has been built on a combination of lived experience and community education campaigns. Most people living in bushfire prone areas know to have their Bushfire Survival Plan which documents how household members would safeguard themselves in the event of a fire. Why isn't this the case with pandemics? Governments across Australia acknowledge in their joint planning documents that we can expect more pandemics, therefore why are not all households not expected to prepare their Pandemic Survival Plan. Survival relates to physical, social, mental, and economic well-being, we should all be encouraged to consider how we can learn and grow from our 2020 Covid-19 experiences.

In February 2020, under the AHMPPI, **the Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)[12] (Response Plan)** was released to guide the response of the health sector. The Response Plan stated that: *A comprehensive communications strategy, implemented across all stages of the outbreak, is a key component of a successful response to a novel coronavirus outbreak. …. Communication with the public, through the media and other sources, will shape the public perception of risk and the way in which the public is engaged in measures to address the novel coronavirus outbreak.*[13]

Despite the well laid communication plans of governments confused and often contradictory statements have been made at various levels of government.

Divided responsibilities inevitably cause gaps, fragmentation and confusion. Getting eight jurisdictions and the Commonwealth to agree on a joint approach can slow the response to a fast-moving and rapidly changing environment…. During Australia's response to the epidemic thus far, different governments have provided conflicting advice. People experiencing symptoms have been told to visit their GP, to call (but not visit) their GP, to ring Healthdirect, to self-monitor, or to go to a public hospital for testing. Communication between governments, GPs and hospitals has been inadequate, with GPs receiving inconsistent information about testing protocols and facilities…. This

[11] Ibid. p40
[12] Australian Government. Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) https://www.health.gov.au/resources/publications/australian-health-sector-emergency-response-plan-for-novel-coronavirus-covid-19
[13] Ibid. p29.

fragmentation is not just a practical problem. It also adds to the confusion and anxiety in the community and reduces trust in governments' ability to coordinate an effective response to the pandemic.[14]

COTA Queensland believes that planning to prepare for and respond to a pandemic is vital, however, if community members are unaware that such a plan exists and are not prepared to contribute to the plan's implementation the response to the pandemic will not be fully effective particularly in respect to the health and mental health impacts that result from social distancing. Future reviews of the national pandemic plan must involve more community level input and the implementation of the plan must be supported by a comprehensive public education campaign.

Social Distancing and the Health Implications

The pandemic planning factored in health considerations, economic impact of community lockdowns and the disruption to all education sectors. The adverse social, health and mental health consequences of social distancing were not as well understood. The AHMPPI clearly spells out the need to ensure that responses to a pandemic factor in the higher risk exposure of vulnerable groups in the community and the need for measures to assist those at most risk. Older Queenslanders over 65 years of age became the most publicised at risk group for COVID-19. The strategy to protect those older Queenslanders who are more susceptible to COVID-19 due to pre-existing medical conditions through strong social distancing was a sound approach. However, it had several unintended consequences that are having negative impacts on that age group.

COTA Queensland believes that governments need to more effectively balance the messaging used during this type of emergency event. Yes, some older Queenslanders were at greater risk of contracting COVID-19, but not all older Queenslanders were at equally high risk. Many Queenslanders under 65 were also in the high-risk category due to existing illnesses, however, the focus remained on older Queenslanders.

To achieve effective social distancing many sectors of Queensland's economy had to close leading to industry shutdowns (including Tourism, Retail, Education, Hospitality) and large-scale job losses. Many in the community related these outcomes to the need to safeguard older Queenslanders. Articles on the economic impact of COVID-19 highlight the financial impact on the younger age groups through the loss of income and employment. There is little mention of the fact that many employed mature aged people have also lost jobs with little prospect of being re-employed as the economy recovers. A recent Centre for Social Research and Methods survey indicates that …*The worst hit economically are the relatively young (those aged 18 to 24) and those just beyond retirement age (those aged 65 to 74 years). These two groups were the least likely to have maintained their employment, and recorded the biggest falls in income*.[15] The survey also found that *… There were, however, very large differences in the expected probability of finding an equally good job. Specifically, those near or above retirement age (55 years and over) were far less likely to think they could find a new job.*[16]

[14] Doggett, Jennifer. Covid-19's six lessons for Australian healthcare. https://insidestory.org.au/covid-19s-six-lessons-for-australian-healthcare/

[15] Biddle,N. et al. Hardship, distress, and resilience: The initial impacts of COVID-19 in Australia. ANU Centre for Social Research and Methods.2020. p27 https://csrm.cass.anu.edu.au/sites/default/files/docs/2020/5/The_initial_impacts_of_COVID-19_in_Australia_2020_3.pdf

[16] Biddle,N. ibid. p14

Safeguarding jobs of older people makes sense. History tells us that regaining employment is harder in late age. For example, two years after the 1991 recession, the share of long-term unemployment (over 12 months) among 25-to-34-year-olds increased to 33%; the rate for 55-to-64-year-olds peaked at 56% (ABS 2020d). In(d)eed, older people are more likely to become discouraged and retire. Based on HILDA 2001-18, about 22% of those aged 55+ were neither looking nor available for work one year after an unemployment spell. For those in their 20s the rate was 7%.[17]

Many self-funded retirees have also experienced substantial investment losses due to the COVID-19 related market downturn. *These results show the impact of COVID-19 on our economy has caused significant stress among Australians, affecting their mental and financial wellbeing…Sixty-five percent of retirees are concerned about their income during retirement, and 57% said they plan to make changes to their finances. Due to feeling uncertain about the future, unfortunately for many this means they are cutting back on necessities like food and energy bills.*[18]

Unlike the younger age cohorts, these individuals will have virtually no chance of fully recovering those investment losses. The Commonwealth Government did not offer this group any substantive financial assistance to help offset this loss of income which will continue into future years. This financial loss will place those individuals under severe emotional and financial stress that will impact upon their health and mental wellbeing.

COTA Queensland acknowledges that governments had to take strong action to halt the spread of COVID-19, no reasonable person could argue otherwise. However, in implementing those strong measures Governments in their planning must also be aware of the broader social, health and economic consequences that flow from those actions and implement measures that mitigate the adverse impacts on individuals.

These impacts … *include a lack of credible and up-to-date information due to difficulties in accessing on-line communication channels used by public health and other key agencies. They also include the increased risk of social isolation, and heightened levels of loneliness, due to the disruption of social and support networks because of the need for restricted interpersonal contact and 'cocooning'.*[19]

There is consistent evidence for a relationship between loneliness, health and wellbeing. Loneliness is associated with poorer physical health (strong evidence for cardiovascular health and mortality), mental health (particularly anxiety and depression, but also self-harm and suicide), and a lower quality of life. The available evidence indicates social isolation and loneliness are both associated with poor health. Understanding relationships between social isolation, loneliness and health is complicated. It can be difficult to unpick whether poor health leads to isolation and/or loneliness, or whether isolation and/or loneliness lead to poor health, or both.[20]

… Monash University's School of Public Health and Preventive Medicine undertook a national survey to determine the mental health of people in the first month of COVID-19 restrictions…Almost 14,000

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[17] CEPAR, COVID-19 AND THE DEMOGRAPHIC DISTRIBUTION OF HEALTH AND ECONOMIC RISKS, p2. https://cepar.edu.au/sites/default/files/COVID-19-and-populations-at-risk.pdf

[18] Challenger. Older Australians concerned about the impact of COVID-19 on their financial security. 30 May 2020 https://www.challenger.com.au/about-us/media-centre/media-releases/older-australians-concerned-about-the-impact-of-covid-19-on-their-financial-security

[19] Walsh Kieran. Combatting exclusions and ageism for older people during the COVID-19 Pandemic: Four key messages. http://rosenetcost.com/combatting-exclusions-and-ageism-for-older-people-during-the-covid-19-pandemic/#

[20] Social Wellbeing Agency, Short Report: Social Isolation, loneliness and COVID-19, May 2020. https://apo.org.au/node/305785

responses were recorded from people aged from 18 to 90 years. They came from all Australian states and territories and from rural and urban areas. This was largest survey of nationwide mental health during the height of the restrictions in Australia. It was available online from 3 April to 2 May 2020 and was completed anonymously. The survey found a widespread increase in psychological symptoms, including anxiety, depression, and irritability that people attributed to the COVID-19 restrictions. People experiencing the worst symptoms were more likely to have lost their jobs, be caring for children or other dependent family members, or to be living alone or in an area with fewer resources. Nevertheless, on average people were more optimistic than pessimistic about the future and many described good things that had happened to them because of the restrictions.[21]

Technology helped overcome some of the forced separation issues that families and friends faced during COVID-19 social distancing with various social media and video conferencing options available to allow face to face communication. Needless to say, not everyone has access to the technology or possess the necessary skill sets to utilise this form of social interaction. The digital divide is still a real issue for many older people who may not be able to afford the technology, who live in regional/rural areas with poor communication infrastructure and those who do not have the knowledge to benefit from the communication technology available today.

The Queensland Government must now consider how it will ensure that more investment is made into services that help those suffering from the adverse social and health impacts that have resulted from the management of the COVID-19 pandemic.

[21] Monash University School of Public Health and Preventive Medicine, How are you? Living with COVID-19 restrictions in Australia, https://www.monash.edu/medicine/sphpm/units/global-and-womens-health/living-with-covid-19-restrictions-in-australia