

Equality Talks: Part 1

First Principles

Thursday, 3 December 2020

EMILY HOWIE: Good afternoon everyone and welcome to our first equality talks event for Human Rights Week 2020 presented by the Victorian Equal Opportunity and Human Rights Commission and RMIT social innovation hub.

I'm so pleased that so many people across Victoria and some from interstate are able to join us today. My name's Emily Howie, I'm the Head of the Legal and Dispute Resolution Branch at the Victorian Equal Opportunity and Human Rights Commission. To begin, I'd like to acknowledge the traditional owners of the land from which I'm joining you. That's the land of the Wurundjeri people of the Kulin nation. I'd like to pay my respects to their elders past, present and emerging and also pay my respects to any elders who might be joining us today from Aboriginal land around Australia. It always was and always will be Aboriginal land.

Today marks the beginning of Human Rights Week for 2020. A week of celebration of the role that human rights play in our everyday lives. And on the agenda today we have five very talented people reflecting on the year that was in terms of democracy and accountability, policing and justice, and community-led activism. We will reflect on what we've learned in the last nine months about how you protect rights, whilst also imposing restrictions that protect public health. It's been a year like no other and these have all been critical issues as Victoria has weathered the COVID-19 storm.

If human rights are about the relationship between government and the people it serves, then the pandemic has highlighted just how critical that relationship is in our day-to-day lives. Human rights have been at the heart of many of Victoria's conversations in the last nine months or so. There were weeks where you couldn't listen to the radio without hearing wide-ranging analysis and opinions on masks and curfews, and restrictions on social gatherings and other limits on our freedom of movement.

This heightened interest and awareness was evident also in the work of the Commission, where we saw it reflected in a sixfold increase in enquiries about the charter's operation. We also received 30 per cent more complaints under the Equal Opportunity Act in this financial year much of the increase attributable to COVID response measures. The heightened interest was in part because the COVID restrictions applied so broadly, but also because some of them were so severe. Given the restrictions that we saw on rights it's also extremely positive that the Charter of Human Rights and Responsibilities has continued to operate throughout the pandemic. It sets a welcome precedent for the protection of human rights even during crisis.

The charter has continued to guide lawmaking in this State and ensures that parliament considers whether impacts on human rights are necessary and justified when it's making laws. It also continued to apply to the actions and decisions of public authorities, and we will hear more about this impact today, on the Victoria Police. Another theme to emerge strongly in the last nine months was the essential role the Charter played in democratic accountability in maintaining

public trust, the declaration of the state of emergency in March and later in the year, a state of disaster gave the government extraordinary powers to not just implement public safety measures, but to re-direct government resources and override typical Parliamentary processes. Our speaker Tom Daly will explore some of these ideas.

Early on in the pandemic the Commission identified six principles that we thought should guide parliament and public authorities' response to the pandemic to ensure that they fulfilled their charter obligations. In short, those principles are that restrictions on human rights must be necessary and proportionate, they must be time bound, they must be lawful, and that means consistent with charter rights, government should be as transparent as possible, including providing information to people in an accessible form, and that's accessible for people with disabilities and for people who speak languages other than English. There should be appropriate oversight of the restrictions. And finally, that safeguards and support should be provided to people where their rights are limited.

The Commission has returned to these principles throughout the pandemic and they provided for us a really valuable framework. We applied these principles, for example, when we looked at the enforcement of public health measures by Victoria Police, the issuing of infringements and the review processes for those infringements and also the policing of protests.

This period has also seen extraordinary moments of community organising and solidarity. One very clear example is the full lockdown of the nine public housing towers in July where some 3,000 people experienced significant restrictions on their rights. We heard that many people struggled to access information about the lockdown, to access food that was sufficient and culturally appropriate, and to access medical care and other supports. There's no doubt that this was extraordinarily difficult period for many people but the examples of community collaboration and unity that emerged from this chapter put into really stark relief just the value and enormous potential of community-led responses. Reflecting on these experiences we can see how fundamental it is that people are able to participate in their human rights and this has to be a critical part of Victoria's recovery from the pandemic.

Looking back, the pandemic's effects were, in some respects, depressingly predictable. It has magnified and exacerbated existing inequality, for women, for people with disabilities, for people in casualised work or for people from multicultural communities. Yet the lockdown restrictions also highlighted the centrality of human rights in all of our lives. It may have also assisted those who experience a degree of privilege in their day-to-day life to imagine that protection of human rights is now something that's also relevant to them.

What lies before us is a period of change and opportunity, the opportunity not just to rebuild what we had, but to re-imagine something better, something more inclusive, something that prizes participation in government decision-making and that protects and upholds the rights that we're all entitled to.

So over the next 40 minutes or so we'll be hearing from five experts, and each speaker will deliver a short keynote address in the style of a Ted talk before we move into the Q&A session for the final portion of today's event. I encourage you to join the conversation online. If you'd like to share your reactions and reflections on Twitter or Facebook, you can use the hashtag #EqualityTalks 2020 and #RightsInRecovery.

On the screen now you can see the handles for our panellists in case you want to tag them in your posts. And if you have questions for our panellists, we'd love to hear them. You can submit your question using the Zoom Q&A function. So to do that you need to use the button at the bottom of the screen, and we'll work through as many questions as we can, when we get to the Q&A at the end. So for now, let's get started.

Our first speaker today is Associate Professor Tom Daly. Tom is the Deputy Director of the University of Melbourne School of Government, Director of the global research platform Democratic Decay and Renewal, and a member of the International Coalition for Democratic Renewal. Along with extensive experience in the university sector, Tom has worked across government and international organisations, including running the Office of the Chief Justice of Ireland for six years, managing a \$4.7 million Council of Europe Judicial Reform Project in Turkey and designing a pan continental African Judicial Network for the African Court on Human and People's Rights. Tom's current research project, *COVID Dem*, charts how the pandemic is affecting democracy in Australia and worldwide. So please welcome Tom Daly.

TOM DALY: Thank you so much Emily for that introduction and sincere thanks to the Commission for the invitation to kick off this really great series of events for human rights week. I'm going to speak about the role of democratic accountability during the COVID-19 crisis and how we can learn lessons from the crisis to maintain and strengthen accountability as we move hopefully into the recovery phase. And in doing this I should say that since the crisis hit here at the Melbourne School of Government we've been examining these issues especially during our Governing During Crisis project, especially a series of policy briefs produced since June.

So I just want to start with three quick points. The first is that Australia has been among world leaders when it comes to its COVID-19 response, the number of cases and the death rate is extremely low compared to many other countries, not only the extreme cases of the US, the UK, Brazil and so on, but also comparative countries like Canada and Ireland.

Second is that Victoria obviously stands out internationally for having one of the longest and strictest lockdowns related to COVID and there's nothing inherently undemocratic about a lockdown or other emergency measures as long as they're taken within the clear constraints of the law, as long as they're necessary and proportionate, they're based on evidence and they're subject to regular review, which has largely been the case here. But these measures do have a major impact on rights, of course, including rights to freedom of assembly, association, protests, religion and so on, and that means that accountability issues are acutely important in ensuring the legitimacy of the measures taken, that the different situations of diverse communities are taken into account and that the public can have confidence in the measures taken. And it's on this dimension that when judged against a lot of comparator countries, there's been a bit of a hole in Australia's pandemic response, and that's the sidelining of parliament across the country at all levels, and that's the main thing I want to quickly address before I talk about other accountability mechanisms.

So you get this rather stark difference in that by April, the UK Parliament had already put measures in place to have a hybrid parliament mixing, remote and in-person attendance. The Canadian parliament did that by the end of May, but similar measures were not put in place for

our federal parliament here until August. So we did have the Senate Select Committee on COVID-19, for example, the use of informal pairing systems to allow short sittings, but parliament was effectively functioning quite minimally for months on end.

And although that has left fourth branch institutions like the Commission here as well as media, human rights and other civil society organisations trying to fill the scrutiny gap but facing major challenges in doing so.

Now, at least going through the COVID process we have a process and model in place for keeping parliament functioning during times of crisis and we actually organised a discussion with the President of the Senate recently where he was of the view that this will be mainly a crisis model, the hybrid model. But others say that we need to use this as an opportunity to make better use of technology more widely, to change how we run parliament, to achieve better access for those in regional and remote areas, to make it easier for witnesses to appear before parliament and so on.

Interestingly, research from the UK shows that during hybrid sittings MPs spent more time debating the substance of issues, there was less heckling, that female MPs contributed more frequently, and that all speaks to important issues like - how does parliament act as a mechanism of accountability when the power of governments, of executives is growing? How representative is parliament? How representative should it be? Who speaks for the marginalised and the disempowered in parliament? How might an indigenous voice to parliament enhance how parliament works? And that's all to say, you know, who's in the room when the balance between rights and responsibilities is being struck? Who gets to be heard? Who gets to be part of that conversation? And these questions have been thrown into very sharp relief by the pandemic, you know, due to its disparate impact with women being hit even harder than men in many ways or the impacts on indigenous communities, on immigrant communities like international students, for example, and I think in the recovery we need to look more fully, more closely at these bigger questions, not just in future proofing parliament for possible future crisis scenarios.

Now, my final point in the two minutes I think I have, is about other mechanisms of accountability. So I start by saying it's important to highlight that courts have a very key role in here as well, but as an accountability mechanism, they clearly can't substitute for the parliamentary process. They act solely as a backstop, a highly important and necessary one, but still a backstop and the judicial process is a very different process to parliament in the way that it frames issues, in the time frame for decisions and who the decision makers are.

Second is that one of my biggest concerns regarding the impact of COVID is how it's accelerated the hollowing out of the media landscape especially at the local level, so by June, 200 media outlets had been merged or closed down and though we are seeing some green shoots now, the overall picture remains very troubling regarding the information system we need for debate and discussions essential for a healthy democracy and accountable government and that all makes the work of organisations like the Victorian Equal Opportunity and Human Rights Commission even more important.

But I just want to finish on a note of hope that is, one of the developments during COVID is the push for greater participation in the political process and decision-making, so we see citizen

assemblies, established in the UK for example, to provide a voice for a citizen-led economic recovery, rather than simply leaving it to committees of business leaders. We see local communities coming together to push for media initiatives, to plug the gap in the definition of local media. And that all tells us that democracy contains the seeds of its own recovery. If we can learn essential lessons from the crisis and achieve a mix of top-down and bottom-up action to ensure that we have the accountability that we need, we can ultimately have a democratic system that's healthier post-crisis than it was even before the pandemic hit to re-imagine something better as Emily said in her introduction. So I'm really looking forward to the discussion and thank you for the invitation again.

EMILY HOWIE: Thank you so much, Tom and I think that's a really wonderful way to shape the democratic accountability subject, by really thinking of democracy as something beyond the institutions and something that we all participate in, and that many different institutions participate in.

Next to the stage, to the virtual stage, please welcome Roj Amedi, a community organiser, strategist and writer. Roj's life's work focuses on LGBTI+ issues, with an inter-disciplinary background in public policy, media and strategy. This expertise and perspective are underpinned by her intersecting lived experiences as a queer person and a former refugee from Iraqi Kurdistan. Roj's advocacy work has helped communities across the country to pursue economic justice and a non-discriminatory migratory system, improve representation across public institutions, combat the rise of white supremacist groups and stamp out structural racism and discrimination. Roj is currently the Manager of Engagement and Communications at Justice Connect. She also sits on the board of the Human Rights Art and Film Festival and Overland Literary Journal. Please welcome Roj Amedi.

ROJ AMEDI: Thanks so much Emily. I want to acknowledge the peoples of the Jagera and Terrigal people of the land from which I'm calling from. I've been lucky enjoying and appreciating their sovereign lands. I want to acknowledge elders past and present and also acknowledge that their land has not been ceded. As Emily has explained, my life's work is economic and racial justice and I've done this through many, many capacities, whether formal or informal and I consider this as part of me existing and connecting and investing in the communities around me, and what I want is a purpose, a life's purpose of lifting everyone out of the kind of material inequities that we see across the board.

What I want to ask today is what does human rights look like when people have the resources to engage with one another and the capacity to determine and define their lives. COVID-19 has completely exposed the inequities and the gaps across the board, whether you're a disabled person, a person of colour, a First Nations person, a migrant, you essentially could be denied access to our democratic processes and also denied the material capacity to be able to engage with and comply with the way that we've restricted human rights.

The way I will explain this is by telling you a tale of two COVID-19 responses that are community led. On one hand I supported a large community, thousands of people on an online Facebook closed community of northside based mostly white affluent people. Throughout the pandemic we

supported people to reach out to their neighbours, to check on the people who may be sleeping rough in their neighbourhood, to reach out to their neighbourhood houses and other small community organisations, and even fundraise for a range of initiatives to support people who may not have access to resources. Within a couple of months people were taking each other's dog for a walk, figuring out how to keep their kids occupied, dropping off recipes - it was a great experience of social cohesion. I heard from various members of the group that they had multiple letters from their neighbours, they finally met people over the fence. They found out who had delicious lemons they could swap. It was a great and fortuitous experience.

In contrast, I also supported as a person who grew up in public housing, who is also a refugee and, you know, was supported by a strong social net. I also work in solidarity with First Nations communities and communities of colour and a lot of my friends and comrades lived in the public housing estates, all had family or were very, very deeply involved in the communities across the public housing estates. This was a community that had been running the alarm on the infrastructure in their housing, the lack of air ventilation, lack of support in terms of basic, basic needs such as hand sanitiser etcetera and also no kind of understanding that their landlord - the Victorian Government - was going to provide the kind of infrastructure and structural supports to support the community to withstand this pandemic.

A lot of people were raising the alarm and no response. A lot of people were feeling very, very uncomfortable, and knowing that a lot of the people who were living in public housing were already facing a lot of inequities, based on the fact that most were working in casualised workforces, dealing with bosses bullying them about turning up to work and they had no leave provisions.

And so when the public housing detention orders were introduced, you saw an immediate response of 500 plus police descend onto people's doorways without any clear command and direction, and then no kind of communication to the people who were residing in these houses. This is an amazing and incredible story because not only were people facing very clear denial of their human rights, they were also able to enact a whole community and take action as a whole community, based on years and years of work. And so I supported a range of young people and small community organisations that were not necessarily institutionalised and we started to enact all the relationships, all the depth, all the solidarity in supporting our various communities, in building these relationships and able to enact those things into such an incredible response to support the community. Getting medication in, translating resources, making sure that people were okay. They were doing mental health and wellbeing checks. This was in contrast to about a week and a half of disarray from institutions and government forces that were completely disengaged and not connected to these communities.

One of the biggest lessons of COVID-19 is that if you haven't built these relationships with communities, if you haven't centred the people who would be the biggest beneficiaries of any program or project, these kinds of crisis will either encompass and really represent all that hard work and investment in relationships or it will show that you have complete disconnection from these communities and that you haven't empowered them but also haven't acknowledged their methods of working and methods of self-determination.

I always talk about the incredible work of the First Nations community led health response to COVID-19 and how incredible these community led and owned associations, health

organisations were able to respond to the needs of their community on very little resources and somehow be able to be, you know, at the forefront of public health orders and recommendations. You saw that in the Black Lives Matter protests earlier in the year where people were wearing masks supporting each other with hand sanitiser, really applying a public health order that was way more advanced than what was being expressed. And so I guess what I'm saying is that in order for us to really be able to allow people to live and enact human rights and be beneficiaries of human rights, they need to have the material tools and resources to be able to do so, otherwise they become intangible policies, something for paper shuffling. We need to think about people's housing, ventilation, accessibility, education, and ability to read and speak and translate in interpreted languages and also an interconnection, an affirmation of a multitude of ways of working, because in order for us to be a truly multicultural community and also a community that affirms human rights, we need to understand how those human rights are enacted by different cultures and identities of people. Thank you.

EMILY HOWIE: Thanks so much Roj, it's so great to have the perspective from the community action that you've been doing over the last nine months, and to really see such great examples of how communities come together. I'm sure we'll have plenty of questions about those at Q&A.

Our next speaker will be familiar to many of you. Assistant Commissioner Luke Cornelius is Victoria's longest serving assistant commissioner. He joined in 2003 following 14 years of service as a federal agent with the Australian Federal Police. He currently leads the north-west metro region. A qualified barrister and solicitor, Luke has worked in legal services and ethical standards roles of the Victoria Police. He also headed up the Victoria Police's engagement with the Commission's five-year review into sexual discrimination and harassment in Victoria Police.

In 2010 he was awarded the Australian police medal for Contribution of Police Reform, Promotion in Ethics and Integrity in Policing. A member of Victoria Police command, Assistant Commissioner Cornelius also sits on the Victoria Institute of Forensic Medicine Council, and he is the Chief Commissioner's representative on the Blue Ribbon Foundation board.

Please welcome Luke Cornelius.

LUKE CORNELIUS: Thank you Emily, and good afternoon everyone. Great to see so many people participating in this forum. Can I too acknowledge the custodians of the land on which we meet, and from where I sit that is land which has been in the custodianship of the peoples of the Kulin nation and in particular the Wurundjeri, and acknowledge their custodianship of the land and the waters and acknowledge their elders, past, present and emerging. And also as someone who's had the privilege of Welcomed to Country, I call in mind our promise in being welcomed to country that we will care for the land, waters and people that we find here.

So there's much to cover in seven minutes, and I'm sure that many of you would be keen to understand what does it look like from a policing perspective within the context of policing and supporting a community within the context of a global pandemic, the likes of which we've not seen for nigh on 100 years. So I might begin with a human rights perspective, of course, on this.

Many of you who may have heard police speak about their role in community will hear us refer back to Sir Robert Peel, a male white colonialist from 200 years ago. I would probably refer to a more contemporary white male colonialist, Chris Patton, the last governor of Hong Kong. After he quit Hong Kong, he was given the role of conducting a review into policing in Northern Ireland. And that was a key piece of the abolition of the Royal Ulster constabulary. And a service that was owned by the community. And he summed up on his work with these words 'Policing means protecting human rights' and that piece of thinking is reflected in the Victoria Police Act, that is our role is to serve the Victorian community and uphold the law so as to promote a safe, secure and orderly society, and our functions are very reflective of longstanding human rights. Preserving the police, protecting life and property, preventing crime, protecting and apprehending offenders and helping those in need of assistance.

So acknowledging all of that, I'd have to say to you if someone had said to me six months ago, Luke, you're going to find yourself in charge of and directing operations within the context of the legal program work that prohibits people from leaving home to protest, that will require you

to deploy large numbers of police to lock down communities, I would have looked at you aghast. I could not have contemplated those sorts of actions as being any further removed from what people have long accepted to be the role of police and the nature of our relationship with community. And I can say to you, as I have worked through, how this has evolved, and let's remember that our role, Victoria Police's role in this context, is as a support agency, not as the control agency. So this is a crisis which is under the control ultimately of DHHS (Department of Health and Human Services) as the control agency, and within that context, the Chief Health Officer's directions are very much shaped what the rules are that apply to a community and the rules which Victoria Police have been required by the chief health officer to enforce.

Now, the only way that we've been able to get through this to this point has been by continuing to have regard for and a focus on the human rights charter. It's very important to recognise and acknowledge that the human rights charter has not been put to one side, it was not over-ridden. It's absolutely continued to operate and it's certainly assisted us from a policing perspective to strike or find the right balance. Now, some of you might find that to be a surprising or hard thing to believe, but I might just explain to you a little bit, if I can focus on protest, explain to you a little bit what that has looked like. Our approach to policing protest has shifted as the Chief Health Officer directions have shifted. So for a time, and this was the case during the Black Lives Matter protest, it was not unlawful to leave home to protest, although there were restrictions on the size of outdoor gatherings and other requirements. So our policing approach to the Black Lives Matter protest was very much tailored in response to the rules system that applied at that time.

That, of course, again shifted when we moved into the full on stage 4 lockdown, where in actual fact there were only four reasons you could leave home and it was made very clear to us by the chief health officer that leaving home to protest wasn't included in those four reasons, and so bizarrely we found ourselves in the situation of policing in a context where public protest, that is leaving home to protest, was, in fact, unlawful. And then, of course, thankfully more recently, with the easing of those restrictions post stage 4, we're back into, if you like, a much more normal situation, and that is when the social interaction reason was introduced, leaving home to protest was again permissible.

So the key point that I'd make is that we've been careful to try and adapt our policing response in support of the public health imperatives that are reflected in the Chief Health Officer directions every step of the way. And this is a key point that I'd make. One of the challenges in policing, of course, is that often we find ourselves in situations where we need to weigh up, if you like, competing rights. Some people obviously seek to exercise their right to protest. While others have very particular rights around protection of property, freedom of movement and the like and when those rights exercised by individuals come into conflict, oftentimes it's down to the police to work out how to mediate both potential conflicts.

Now, in a normal context, our approach to policing protest is that we will support and facilitate lawful and peaceful protest. That is, we'll work with protest organisers, negotiate arrangements, and do everything to make sure that the protest can occur peacefully, without adversely

affecting the rights of others, but also, of course, supporting the right to protest within the context of a liberal democracy. Of course, when we're policing in a context where the Chief Health Officer has issued directions preventing people from leaving home to protest because of the public health risks and the right to life, held by everyone in the community, and against a backdrop where we were starting to see hundreds of deaths and very significant community transmission, the policing approach had to shift and that was reflected in how we sought to police protest at the height of the restrictions. And this saw us engaging in a whole range of activities which were remarkable from a policing perspective.

Our key thing was to prevent significant public gatherings. So instead of just waiting for people to turn up and regulate what happened there, we deployed very significant resources to go forward and engage with people who were encouraging or contemplating leaving home to protest, to persuade them not to do so. Our public messaging reflected the imperative around preventing large gatherings and some of you will know, of course, that I had a few things to say about that. The key piece for us was to prevent thousands of people turning up to a protest and instead through early engagement and what we called 'depth in defence', prevent and minimise the harm that would flow from a mass spreading event.

So the key point that I would make about our approach to policing and human rights is we have remained committed throughout our approach to policing protests to having regard to policing protests within the context of the provisions of the charter.

There's one final piece that I will share with you before I conclude - we apply in every policing operation what we call a PLAN approach. That is, we focus and assess whether or not the impact of our policing approach is Proportionate, whether it's Lawful, whether it's Accountable and whether what we're doing is Necessary. And I can certainly say to you, as the police commander who was responsible for policing protest in our city, that has absolutely been a key part of our focus in terms of ops planning but also in terms of our ongoing engagement with VEOHRC (Victorian Equal Opportunity and Human Rights Commission) over the course of this emergency because we've also sought to work with the Commission in relation to how do we get that mix right and pay close attention to the protest explainer that VEOHRC has updated over the course of these very trying times. In the interests of time I'll leave it there and I look forward to the discussion, presentation of other presenters and your questions. Thank you.

EMILY HOWIE: Thanks so much, Luke. You certainly were at the pointy end of some of the COVID-19 human rights issues in the last nine months. I was particularly pleased to see your comment - your public comments stating that protest is a human right during that time, and really imbuing some of the human rights framework into the way that you manage the protest issues. So thank you for that.

Our next speaker is Nerita Waight, the Chief Executive Officer of the Victorian Aboriginal legal service. Nerita began her career in the public service before commencing work at Victorian Aboriginal Legal Services in 2014. As CEO, Nerita focuses on developing innovative solutions to ensure that the service provides community and legal justice support at the earliest point and in a culturally safe and caring way. Alongside her work at VALS, Nerita is co-chair of the Aboriginal and Torres Strait Islander legal services. I'm very pleased to welcome Nerita Waight.

NERITA WAIGHT: Thank you Emily for that warm introduction and I would just like to acknowledge the country that I am on today, which is my own country, the land of the Yorta Yorta people. But also just the ongoing mental drag that I'm sure we're all going through, towards the end of the year. It's critical to recognise that the lessons to be learned from this pandemic are not something to be applied in the distant future. These lessons need to be incorporated immediately. We should take this opportunity to address the shortcomings of the legal system that have contributed to disproportionate impact of the pandemic on Aboriginal people.

Prior to the pandemic VALS was seeing increases of between 18.75% and 20% for our criminal, civil and family law files. In the case of family law and child protection matters, during the COVID-19 pandemic, increased by 450 per cent. And we now have our criminal lawyers carrying 150 files or more at any one time. And our civil team being inundated with tenancy and employment matters, but also heartbreakingly, coronial inquests.

In our view, a government that is truly committed to Aboriginal self-determination to ending the systemic racism that characterise our criminal, civil and family law systems and creating a just and equitable society would take Aboriginal people and organisations' lead in implementing reforms. In a year that has been characterised by COVID there has been an incredible show of solidarity across Victoria, Australia as well as internationally, as the Black Lives Matter movement brought national attention to the longstanding injustices faced by Aboriginal and Torres Strait Islander people, acknowledging how this country is created and shaped by structures and institutions characterised by racism which so often fail to deliver true justice, is critical. We can't go back to the status quo, to simply rebuild the broken and ineffective systems we had pre-COVID, we need to have more ambitious aspirations, to build better, fairer more culturally appropriate justice systems. We are all inextricably interconnected.

We can't as a society, as a community continue to ignore those who are most disadvantaged and marginalised and there were some instances when the government did acknowledge this, such as when people who were homeless were put up in hotels. Unfortunately, there were examples where governments fail to acknowledge our interconnectedness and strike the right balance between restrictions aimed at protecting health and upholding people's rights. The government and police did not prioritise public health messaging and supporting people to

comply with COVID restrictions. Police powers were expanded significantly and the end result was Aboriginal people received a disproportionate number of COVID-19 fines.

During the pandemic VALS (Victorian Aboriginal Legal Service) has been advocating for the rights of people detained in prison and in detention. People in detention are incredibly vulnerable, unable to take protective steps such as physically distancing - which we're also used to now - living in overcrowded and unsanitary conditions and are not provided with medical care equivalent to that in the community. Aboriginal people in custody are particularly vulnerable to becoming seriously ill or dying during the COVID-19 with many people having underlying medical conditions such as heart disease, diabetes and chronic illnesses such as cancer or the like.

In the year the Sentencing Advisory Council released (INAUDIBLE) to show that the Victoria Aboriginal imprisonment rate more than doubled between 2009 and 2019. My people continued to be the most incarcerated people in the world. VALS' advocacy highlighted that the incarceration must form part of the comprehensive and responsible public health response with staff and detained people moving in and out of detention on a daily basis. An outbreak in detention would have an amplifying effect on COVID in the community. Despite international experts urging government to release people from detention and curb admissions, the government instead relied on harmful lockdowns and protective and transfer quarantine.

There are COVID specific lessons to be learned here but the lessons should also inform our approach to justice more broadly. When you talk about those lockdowns, what we were seeing from the welfare checks that we conducted were that they were feeling extreme mental stress. And that wasn't just in a couple of days. That wasn't 14 days down the road. Those conditions were worsening day by day, hour by hour. Which then places more stress on our community and their family outside as we all try and work desperately to prevent another death in custody, particularly when they've become so frequent here in Victoria. If the government is to achieve the stated objectives on the agreement - which I'm doubtful - and meet its commitments under Closing the Gap - again, doubtful - it must implement reforms such as raising the age of criminal responsibility, reversing the fair bail reforms and end police impunity. A it's obviously crucial that our service which was chronically underfunded before the pandemic, be properly funded as we move forward. The systemic entrenched barrier impedes our ability to properly assist some of the most vulnerable Victorians and effectively silence their voices.

Just a few months ago the Victoria Government made a commitment under the Closing the Gap agreement that Aboriginal people be supported to recover as quickly as the rest of the community from the pandemic's social and economic impacts. The legal sector anticipates increasing legal needs during the recovery phase and earlier I talked about what we faced in terms of service demand, given we're at the first step of recovery if we look at the overall plan we expect that to grow exponentially day by day, week by week, month by month.

Yet it is clear from the recently released budget that the government continues to rely on a law and order approach that has been proven to not only fail to deliver community safety but further entrenches existing disadvantages and perpetuates Aboriginal people's gross overrepresentation in the justice system. We are more comfortable imprisoning my people than supporting them.

The budget delivered 103.6 million dollars for Corrections' new justice COVID-19 response. 38.9 million for Victoria Police's COVID-19 response but only 2 million dollars for VALS after begging. The government's decision ignores the evidence that has time and time again been demonstrated, particularly during the pandemic, that the Aboriginal self-determinant approach is the most effective one. It ignores the evidence that failing to address legal needs as early as possible is economically unsound and will lead to greater social economic costs in the short, medium and long term.

Not addressing these legal needs in reality would mean that as we've seen over generations, my people would continue to be the most incarcerated on earth, continue to lose their children, those children will continue to lose their connection to culture, kinship and country. These decisions also ignore the recent findings and recommendations of the Royal Commission into Natural Disaster arrangements that once an immediate crisis passes recovery support must include legal assistance and that non-government sectors involved in the response and recovery should establish their own strategies and plans to address the recovery needs that follow natural disasters, which, of course, requires adequate funding.

Not properly funding Aboriginal organisations (INAUDIBLE) Aboriginal peoples' self-determination and very clearly signals to the government, a future of perpetual disadvantage and marginalisation is acceptable, that the current rate of Aboriginal incarcerations is palatable. As the UN Special Rapporteur on Rights of Indigenous People highlighted government should provide sufficient funding to people to enable them to define and implement COVID, economic and social recovery plans and the State must set, protect and promote indigenous people's right to self-determination, including autonomy and self-governance, a genuine commitment to Aboriginal self-determination and achieving this objective and the AJA (Aboriginal Justice Agreement) and the justice targets under Closing the Gap agreement must be demonstrated by properly funding not only just Aboriginal legal services like mine, like Djirra's but investing in self-determined programs that our communities run and not continually going down the path of investing in pilots, evaluating them and not committing to a long-term approach. This means there is no consistent service response. This means that there is a focus on mitigation, rather than prevention.

And also I just want to raise it once again, we need to ensure that our government is committing to ensuring that those services for Aboriginal Victorians aren't just for those living in metropolitan regions or living in high density areas like Shepparton or Bendigo but in other smaller regional areas such as Swan Hill and other little places because every Aboriginal Victorian deserves to have equal access to culturally safe legal advice and representation. Thank you for your time.

EMILY HOWIE: Thank you Nerita. I think you made such a strong case there, not only for Aboriginal self-determination and community led responses, but how futile they are without the appropriate resources for those communities to lead those responses. Again, I'm sure we'll have more questions about that when we come to Q&A.

But now to our final speaker today who is Stan Winford. Stan is the Associate Director of Research Innovation and Reform at RMIT Centre for Innovative Justice. Stan is an expert in innovation and reform in legal and justice systems using user centred design and use of

restorative and therapeutic justice in both criminal and civil law. Stan's work has examined the needs of victims of crime, justice responses to mental health and disability and more effective approaches to reduce future offending. Stan is a practicing lawyer who's held a number of senior roles in government and community legal services, in both legal practice and policy. Between 2007 and 2010 Stan was a Senior Legal Adviser to the Honourable Rob Hull MP, then the Deputy Premier of Victoria, and also worked as a principal lawyer and legal projects officer at Fitzroy Legal Service. Stan has published on justice issue and appeared in national and international media as a legal commentator. Over to you, Stan.

STAN WINFORD: Thanks very much Emily and it's been interesting to listen to everyone's comments and some of what I'm saying has perhaps already been mentioned. So I hope to build on that. And before I start, I'd like to acknowledge the traditional owners of the lands where I'm speaking from, the Wurundjeri people of the Kulin nation, and pay my respects to their Elders, past present and emerging.

I'd like to talk about people's understanding of rights and what means for the future of our justice system. The language of human rights can feel disconnected, more suited to conversations between nations at the UN and The Hague than the local hardware store. And yet it has never been more obvious to ordinary people when we're talking about human rights to paraphrase Eleanor Roosevelt, we're talking about their rights. When you're compelled to stay closer to home, the idea of human rights takes on a new urgency. Some rights have become a catch cry for absolute freedom to continue to live life uninterrupted. For this group though, it's been harder to grasp the notion that rights are not absolute, that there's a balance to be struck. Yet, without a cent being paid to an expensive advertising agency, COVID has created conditions for a substantial communication campaign carrying this message. When we're told we're all in this together and there are sacrifices we need to make, we're told about the continual balancing act that's an essentially feature of our system rights protection. The point of our rights discourse and the function of our charter in Victoria is not to prevent government from doing what's necessary for public health and safety but to make it clear which rights are limited and why, enabling the community to see precisely where the balance is struck.

Importantly this framework enables us to see how the exercise of power is affecting certain vulnerable communities more so than others. During the lockdown, for example, Victoria Police issued a higher number of fines in disadvantaged local government areas, local government areas with the highest levels of advantage received less than 10 per cent of fines, Aboriginal people and people born in the Horn of Africa were fined, disproportionate to their population levels. COVID has reveals some inequalities but it's also taught us a few lessons about how to avoid entrenching in the future. The hard lockdown of several public housing towers almost without warning seemed to fracture the egalitarian nature of the COVID response of that time, certainly felt a lot like discrimination to the tower residents. The sudden overwhelming police presence seemed to reflect a response to a public health challenge.

Complaints to the (Victorian) Ombudsman showed that many thought they were singled out and many are still contending with feelings of trauma, anger and confusion. The episode reminded us that legitimacy comes from perceptions of fairness, treating people with dignity and respect and meaningfully involving them in the decisions that affect them. And that when people closest

to the problem are involved in decisions that affect them, they're often able to come up with the right solutions. COVID has also shown us even within the slow-moving justice system, change is possible. While many other countries moved quickly to address the heightened risk of COVID in prisons, the Victoria Government policy, summarised by the Attorney-General in a parliamentary inquiry into government response into COVID was to "keep prisoners imprisoned and keep COVID out of prison." Despite this courts have played a role. In a few months during COVID, the prison population fell by about 13 per cent. We now know that it's possible to arrest what had seemed to be inexorable growth in our prison population and it's also prompted us to ask several important questions. Should we be locking up so many unsentenced people in prison while they wait for courts to deal with backlogs? Should we hold vulnerable prisoners to manage the risk of infection or access to human contact? Are prisons really the only places to house people experiencing homelessness? Are they the right places to treat mental health issues? Are they the right place for women who have been traumatised by family violence and sexual assault? Why are Aboriginal people so massively over-represented, despite deaths in custody? And why are so few community controlled noncustodial alternatives available? Should we be locking school age children up at all?

Meanwhile, courts have been forced to adapt by using technology to hold remote hearings, a change that might not have occurred for another 60 years if at all, took place in less than six months as well as showing us there is a great capacity for innovation, this experience has reminded us courts are a service system, and they should be accessible and user centred.

As well as the challenge of the courts there have been unexpected benefits. Vulnerable clients have told their lawyers that the fear associated with physically attending courts, feeling exposed on the street, going through heavy duty security, being unable to find the right court room or understand hidden protocols has diminished. Remote hearings have also been a great leveller enabling intimate and often motivation conversations with magistrates. No longer behind an elevated distant bench. In many ways this has reinforced the value of therapeutic approaches already taken in specialist courts, where conversation happens around the table.

While the backlogs facing our courts will be substantial, since before COVID around 5,000 cases were dealt with in our Magistrates Court and now about 200 a day, the backlog will be challenging to overcome but it also offers further opportunities for involuntary invasion. How can the courts affect the overlying issues, while ensuring that the administration of justice is not subordinated to efficiency? Identifying what to keep from this period of great change and what to let go will be an important piece of work. Focussing on the people at the centre of our justice system will be a critical guiding principle if we are to ensure that our justice system can function to protect and promote human rights and to work as a positive intervention in people's lives. Thanks.

EMILY HOWIE: Thanks, Stan. It's so interesting to think about the changes to the court system that have happened in the last nine months. Including, you know, the opportunity that it provides for innovation there. So we've now come to the end of our Ted talks and we're going to be moving into the Q&A portion of today's event so we'll be welcoming back our speakers who should all hopefully appear on the screen shortly.

Thank you in advance to those of you who have submitted questions for the panel. If you have a question you'd like to ask them, please submit it via the Q&A function that's on our screen and we'll try to get through as many as we can. Great. Now, I've got to speaker view, so I can see all your faces. We have a question around human rights and that framework something that I can ask of all of you, I think.

I'm interested to know the extent to which you use a human rights framework and see that as useful in the work you do, whether it's in academia or in the police, and we've also got another question that's really asking about if you have perspectives on human rights as an imported white framework. So would anybody like to go first? We can just do a hands up. Roj?

ROJ AMEDI: On the matter of rights, I think that as a former refugee, potentially the kind of concepts of like human rights seemed quite central to the sense of hope that we had when we were running from displacement and persecution. And so there was this broader... there's a historical reference for human rights and the international perception and understanding of human rights was developed by the Global South. So there is an investment in that and that kind of sort of answers the second question.

But my problem is that rights are often given within the kind of socio political and nation state structure, that if it is formed from colonial dispossession and colonisation, will always arbitrarily create inequities based on like racial, economic hierarchies. So even though we say there is human rights, there are kinds of unjust frameworks and deeply embedded systemic way that is people are denied those rights and that essentially when we do think about them or when they're practically applied, they're usually applied for a very specific empowered elite group of people that have dominance, whether they're white, able bodies, cisgender, straight, those kinds of different demographics.

So I sort of try and translate human rights to a kind of material existence and kind of translating them back into a justice framework because if you're just talking about rights, that kind of assumes that the State is already formed for you, but if you're from a marginalised community, the state is not formed for you, so accessing those rights that oppresses you is not really possible. So we want to step that back and kind of look into our rights through a justice framework, about what are those kind of barriers, institutional things that are denying you your kind of material equality and equity.

EMILY HOWIE: Thanks, Roj. I think that's a great comment about how you make the experience of human rights real in the world as well. And I think Tom, you've been nodding, and you've put your hand up.

TOM DALY: Yeah, I just wanted to say I completely agree with Roj on this. I would just add to that by saying, rights frameworks is extremely useful to start to pinpoint issues and the kinds of goods we want from governance but we also need to think about structures, and part of the kinds of structures we need, existing structures, political institutions and so on need to change.

And do we need to add new structures - I think that's one of the biggest issues we need to really think long and hard about, in the hopefully more post-COVID era.

I just want to say I'm mindful of the fact that I'm the only speaker who didn't acknowledge the traditional owners of the land where I'm specifically located and for me that's the Bunurong, Boonwurrung, Wurunjderi and Woi Wurrung peoples of the eastern Kulin nation, so I want to pay respects to the elders past, present and emerging.

EMILY HOWIE: Thanks, Tom. Nerita, did you have anything you wanted to say on the use of the human rights framework? Framework as a sort of a white one that's been imported?

NERITA WAIGHT: No, I think the comments that have been made have covered it and it would be merely repetitive.

EMILY HOWIE: Okay. Thanks, Nerita. I think, just going to some of the ideas that Tom raised in his short speech, I wonder if you could talk - and this is something I think you can all talk to - democracy is about more than formal institutions, it's about the way that we all participate. What do you think that everyday Australians can do to strengthen and promote our democracy, given what we've learned over the last nine months?

TOM DALY: Well, I suppose when I saw that question, it's actually a question I get asked a lot. And the positive sort of response is there are so many different ways you can sort of have an individual connect with, sort of help to enhance, renew our democracy and that includes everything from joining an association, if that covers an issue that you care about, getting more involved with your community. The more we give to our communities, the more we sit in the public space and we're not... I think one of the biggest questions about COVID is not only what we want from our governments but how do we see ourselves both as rights holders but also as active citizens and what does that look like. So there are so many different ways to do that, but I think this tracks back again to what Roj was saying that you need the material resources to be able to be a full citizen, to be a full participant in the sort of democratic community and that includes things like education, that includes things like internet access, so those are really important questions.

EMILY HOWIE: Thanks, Tom. Did anyone else want to comment on the role outside of institutions? If not, we'll move on. We've got questions coming in and one for the assistant Commissioner Luke Cornelius. People are really interested in understanding more about the considerations of human rights within Victoria Police. Luke, you talked about balancing your role in policing against the human rights of Victorians, particularly around protest and somebody has commented that they're not sure it tracks well with the Good Friday car convoy protest or the more recent Melbourne Cup Day protest. Do you have a response to that comment?

LUKE CORNELIUS: I guess the observation I'd make is that the rules that apply on Good Friday are very different to the recent Melbourne Cup day protest. There were several so I'm not sure which one you're referring to, and the one back in April, certainly there was a focus on preventing protests that would breach the CHO (Chief Health Officer) directions and so the discretion that we exercised in relation to each of those protests certainly took account of that rules based framework.

Perhaps what might assist you in understanding what it looks like... I mean, I came in this morning to have a look at my summary of protest activity that is to occur over this weekend. There are six different protests occurring across the city in relation to a very diverse range of interests. So there's a climate change one, there's a refugee action one, and then there are some activations planned in relation to what's variously described as the freedom protests.

Now, we will be policing those protest events, a very different set of rules than what applied Melbourne Cup day let alone back in Good Friday. So at the moment gatherings up to 50 people with no restrictions on the number of households are authorised and, in fact, so long as gatherings of multiple groups which are socially distanced and otherwise compliant with the directions, we're very happy to work with organisers of those protests and facilitate the lawful and peaceful conduct of those protests and that's what we'll be doing this weekend. As we did last weekend again with multiple protests. You know, I might say, for example, the refugee protests that have occurred outside the Mantra Hotel down in Preston throughout the entire course of the show restrictions, they were suspended only during the highest level of lockdown, but those protests have continued and we've worked with those protest organisers throughout the last six months.

I might also make that observation about discretion. Yes, our Chief Commissioner did say that the window was closing. The window for discretion never closed and in actual fact I can say to you when I looked at the data yesterday, when I look at the total number of CHO related enforcement activity, 23 per cent of identified breaches resulted in a warning as opposed to a fine being issued. So discretion has been exercised by our members right throughout the course of the lockdowns.

Certainly we've been issuing fines and in relation to flagrant breaches, which is another term that our chief commissioner has used, and the flagrant breaches are those ones really where there's absolutely clear evidence of wilful noncompliance. And so the principles around exercise of discretion in that context have continued to apply.

EMILY HOWIE: Thanks, Luke. I think it's really useful to hear from you just how those considerations are dealt with inside Victoria Police. We talked a lot today about the limitations and difficulties we've experienced through COVID and I wondered if our panellists have some thoughts about some of the good that's come out of it? What have we seen that emerged that we want to take into the recovery, the post-COVID era? I think some of you touched on those things. I'd love to hear a bit more, Roj.

ROJ AMEDI: One of the most amazing things is that over the last 10 or so years of my work doing community organising in campaigning is that we've been slowly building in-depth relationships between, you know, a broad range of communities, refugee communities, undocumented migrants, international students, communities of colour, First Nations Communities, slowly building those relationships of integrity, really supporting one another to build our political literacy and understand the kind of ways that, you know, our existence is very intertwined, our liberations are very intertwined and interconnected.

(End of transcript)