

## ATTACHMENT 2 - Human Rights Considerations

Here we advocate for the human rights of workers and their families,<sup>24</sup> and why they must be considered by the Department when reviewing the Directions, including relevant human rights law which we advocate below that, although the Department may dispute our interpretation, we put the position strongly on behalf of those most affected:

1. The Directions make mandatory coercive medical treatment in order to participate in public life or work in a manner that was unjustifiably limiting of human rights and proper consideration must be given to these pursuant to s 38 *Charter of Human Rights and Responsibilities Act 2006* (Vic) (“CHRR Act”).
2. Proper consideration of human rights will make clear that, if not already given the medical literature, the Determinations are no longer justified. These human rights must be read in the context that overwhelmingly the Direction, and their historical counterparts, require either non-consensual medical treatment of a worker or otherwise the restriction of a person’s ability to work in their area of expertise / education and in many cases provide for their family.

### Charter rights

3. Please consider the following when considering revocation of the Direction:
  - a. sub-s 8(2) CHRR Act - **Right to enjoy human rights without discrimination** because the affected workers may be discriminated against on account of Protected Attributes and Characteristics in areas of employment, as outlined above, should the Direction continue.
  - b. s 9 CHRR Act - **Right to not be arbitrarily deprived of life because**
    - i. the affected workers believe they were at risk of adverse event injuries which may result in death;
    - ii. the Directions may result in some depression and anxiety which in a small number of cases may result in health issues including health deterioration, loss of self-care, suicidal ideation, and loss of life; and
    - iii. loss of security of employment can result in reduced security of a person or their family (e.g. homelessness) which may expose them to fatal hazards.
  - c. s 10 CHRR Act - **Freedom from torture and cruel, inhumane or degrading treatment** because
    - i. the ultimatum forced upon the affected workers to either submit to a medical treatment where the affected workers were unable to give Valid Consent was a limitation of sub-s 10(c) CHRR Act,<sup>25</sup> and additionally

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<sup>24</sup> Please note that any revocation of the Directions would not be interpreted as admission of previous breaches of human rights, but would be welcomed as a bridge to rebuild trust for those who believe their human rights have been contravened.

<sup>25</sup> See *PBU & NJE v Mental Health Tribunal* [2018] VSC 564; 56 VR 141 at [137]; see also *Johnston & Ors v Carroll* (Commissioner of the Queensland Police Service) & Anor; *Witthahn & Ors v Wakefield*

- ii. the requirement of non-consensual medical treatment under
  1. the threat of being unavoidably ostracised from workplace, peers, and society
  2. in a culture of disgrace and vilification for incomplete receipt of medical treatment,
  3. while being denied reasonable adjustments, consultation, or mitigating support from the mandated workplaces,
  4. having valid and evidence-based concerns dismissed and associated with derogatory terms such as “anti-vax”,
  5. all-the-while facing financial penalty and destitution,

is cruel and degrading.
- d. sub-s 11(2) CHRR Act - **Freedom from forced work or compulsory labour** because
  - i. the Directions make compulsory on the affected workers - work and labour - which includes organising, informing themselves of, and undergoing medical treatment, without remuneration or compensation;
  - ii. the requirement is beyond normal civil obligations; and
  - iii. the Directions are not in response to an ongoing emergency.
- e. s 13 CHRR Act - **Right to privacy and reputation.**
- f. s 14 CHRR Act - **Freedom of thought, conscience, religion and belief.**
- g. s 15 CHRR Act - **Freedom of expression.**
- h. s 17 CHRR Act - **Protection of families and children** because
  - i. healthcare workers may be prevented from their area of education or forced to move which may increase stress, anxiety, and financial losses faced by familial households; and
  - ii. children of such affected workers deserve protection, which is best achieved by allowing their parent(s) to provide for them and maintain reliable and gainful-meaningful employment.
- i. s 18(2)(b) CHRR Act - **Equal access to the Victorian public service** because the Directions mean that affected workers were, and continue to, not be granted equal access to professions within the Victorian public service.

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(Chief Executive of Hospital and Health Services and Director General of Queensland Health); Sutton & Ors v Carroll (Commissioner of the Queensland Police Service) [2024] QSC 2 at [333].

- j. s 19 CHRR Act - **Cultural rights** because those affected workers, whose culture may be inconsistent with compliance with the Directions, had their ability to enjoy the practice of their culture limited, for example:
  - i. organic-only consumers,
  - ii. descendants of stolen-generations,
  - iii. anti-GMO communities,
  - iv. anti-vaccination groups,
  - v. medical sceptics groups,
  - vi. iatrogenic support groups,
  - vii. advocates for human rights (such as art 7 ICCPR absolutists),
  - viii. conspiracy theorist groups (such as those who believe the COVID vaccines are experimental), and
  - ix. some religious groups.
- k. s 20 CHRR Act - **Property rights** due to unemployment or underemployment.
- l. s 21 CHRR Act - **Right to liberty and security of person** because of unemployment or underemployment.

### **Unlawfulness and unreasonableness of Directions**

- 4. Continued limitation of affected workers' Human Rights are unlikely to be demonstrably justified in a free and democratic society based on human dignity, equality and freedom and taking into account all the relevant factors of s 7(2) CHRR Act.

### **International Law**

- 5. Affected workers complain that contraventions of inalienable human rights pursuant to sections 5 CHRR Act as improperly and unjustly limited should the Directions continue, as it would be contrary to the authority of international conventions the General Assemblies of the United Nations ('UN') and guiding declarations from UN agencies:
  - a. The following articles from the *International Covenant on Civil and Political Rights 1976* (UN) with the Commonwealth of Australia as signatory:
    - i. Article 7 - Freedom from experimentation;
    - ii. Article 17 - Right to privacy;
    - iii. Article 18 - Freedom of thought, conscience / religion;
    - iv. Article 19 - Freedom of expression;

- v. Article 21 - Right to peaceful assembly; and
  - vi. Article 22 - Freedom of association.
- b. The following articles from the *Universal Declaration on Bioethics and Human Rights 2005* (UN) with the Commonwealth of Australia as signatory:
- i. Article 3 - Human dignity and human rights;
  - ii. Article 5 - Autonomy and individual responsibility;
  - iii. Articles 6 & 7 - Consent;
  - iv. Article 8 - Respect for human vulnerability and personal integrity;
  - v. Article 11 - Non-discrimination and non-stigmatization;
  - vi. Article 16 - Protecting future generations including their genetic constitution;
  - vii. Article 18 - Decision-making and addressing bioethical issues including conflicts of interest; and
  - viii. Article 28 - Denial of acts contrary to human rights, fundamental freedoms and human dignity.
- c. The following articles from the *International Covenant on Economic, Social and Cultural Rights 1976* (UN) with the Commonwealth of Australia as signatory:
- i. Article 2.2 - Freedom from discrimination;
  - ii. Article 5 - Rights should not be used to derogate other rights;
  - iii. Article 6 & 7 - Right to, and just conditions of, work;
  - iv. Article 9 - Right to social insurance; and
  - v. Article 13 - Right to education.

As previously outlined, proper considerations of human rights would not be interpreted as an admission that they weren't previously considered but instead would go a long way to rebuilding trust in constituents and Victorian workers and their families, who would be affected by a continuation of the Directions or any policies of such a nature.