

FRONTLINE WORKERS AS HUMAN RIGHTS DEFENDERS: PROTECTING THE HUMAN RIGHTS OF FRONTLINE WORKERS IN AUSTRALIA DURING THE COVID-19 PANDEMIC

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During the first months of the COVID-19 pandemic, as state and territory governments in Australia attempted to curb the spread of the coronavirus, attention was focused on a group that came, globally, to be known as ‘frontline workers’, which included health workers. In this article, we interrogate the construction of health workers as ‘frontline workers’ during the COVID-19 pandemic. We argue that this framing supported the narrative that the dangers to which health workers were exposed, which included threats to their lives and wellbeing, was an unfortunate but inevitable part of the war against the common enemy (COVID-19). The effect was to divert attention from what should have been the primary focus: ensuring that health workers had the equipment and conditions to carry out their jobs safely and effectively. We argue that an alternative and more appropriate understanding of the role of health workers during a pandemic – and the COVID-19 pandemic in particular – is that health workers are human rights defenders.

I INTRODUCTION

Human rights defenders are ‘any person or group of persons working to promote human rights’.¹ The rights protected can include ‘civil and political rights as well as ...

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1 Office of the United Nations High Commissioner for Human Rights, *Human Rights Defenders: Protecting the Right to Defend Human Rights* (Fact Sheet No 29, April 2004) 6.

economic, social and cultural rights² such as the right to life³ or health.⁴ There are many contexts in which health workers are recognised as human rights defenders. In circumstances of war and civil conflict, for example, the obligation to provide healthcare to victims of human rights violations leaves health workers exposed to violence and recrimination.⁵ Recognising the vulnerability of health workers in situations of social and political instability, the United Nations *Declaration on Human Rights Defenders* provides that States ‘shall take all necessary measures to ensure the protection by the competent authorities of everyone’, including human rights defenders.⁶

During the COVID-19 pandemic ‘frontline workers’ has been the term used to describe labourers who are engaged in work that must continue despite shutdowns, including and in particular health workers. The term evokes the idea of honourable sacrifice. Inherent in the concept of frontline workers is that they are engaged in the battle with a common enemy – the COVID-19 virus – and as a result may suffer the loss of their health and even lives. We contend that the correct classification of health workers as human rights defenders performs a more effective normative function than labelling them as ‘frontline workers’. Rather than being conceived of as the foot soldiers in a campaign directed by the state, acknowledging health workers as human rights defenders would reinforce their agency, professional knowledge and, critically, the human rights of frontline workers themselves. Part II of this article outlines the early development of the pandemic in Australia, contextualising the classification of health workers. Part III analyses the implications of failing to define health workers as human rights defenders. Part IV argues that, had health workers been defined as human rights defenders, their rights during the crisis would have been better protected, enabling them in turn to better defend the rights of people in the community.

2 Ibid 2.

3 The right to life can be found in article 3 of the *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) (*‘Universal Declaration of Human Rights’*) and has been made binding under article 6 of the *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (*‘ICCPR’*).

4 The right to health can be found in article 12 of the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (*‘ICESCR’*). See also *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 12; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 24; *Convention on the Rights of Persons with Disabilities*, opened for signature on 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 25.

5 See Alice M Nah, *Protecting Human Rights Defenders at Risk* (Routledge, forthcoming).

6 *United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, GA Res 53/144, UN Doc A/RES/53/144 (9 December 1998, adopted 8 March 1999) art 12 (*‘Declaration on Human Rights Defenders’*). It should be noted that, while not legally binding, this declaration contains principles and rights that have been enshrined in other international law instruments and it was adopted by the UN General Assembly.

II A RAPIDLY DEVELOPING SITUATION

At the end of 2019, a respiratory illness of unknown cause, leading to a dry cough, fever, body aches and malaise, was detected in the city of Wuhan in Hubei province, China. On 10 January 2020, the World Health Organisation issued its first guidance on the novel coronavirus COVID-19.⁷ On 12 February 2020, the World Health Organisation declared COVID-19 to be a pandemic. On 18 March 2020, the Commonwealth of Australia declared a human biosecurity emergency and began to close its borders.⁸ On 23 March 2020, state governments agreed to close bars, clubs, restaurants, cinemas, places of worship, casinos and gyms.⁹ In the months that followed, states devised different plans to respond to the variable severity of COVID-19 within their borders. Schools and businesses, which were closed in the early months of the pandemic, were permitted to reopen across Australia. However, Victoria suffered a second wave of the virus and in August 2020 went into Stage 4 lockdown. Restrictions imposed by the Victorian government included a curfew between 8:00 pm and 5:00 am, and severe restrictions on freedom of movement.

The literature that has emerged so far concerning COVID-19 and human rights focusses on children,¹⁰ older persons,¹¹ and sex and reproductive health rights.¹² There is also emerging work concerning whether the restrictions placed on the community

7 This was an assessment tool to plan means of controlling the virus at the national level.

8 Howard Maclean and Karen Elphick, 'COVID-19 Legislative response – Human Biosecurity Emergency Declaration Explainer', *FlagPost* (Blog Post, 19 March 2020) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/March/COVID-19_Biosecurity_Emergency_Declaration>.

9 For example, on 30 March 2020, the New South Wales Minister for Health and Medical Research made the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW), directing people to remain in their places of residence and not to gather in groups of more than two people, excluding work; people of the same household; 10 or fewer people attending a funeral service; and gathering to provide care or assistance to a vulnerable person: cl 6.

10 See, eg, Polina Martinkevich et al, 'Physical Child Abuse Demands Increased Awareness during Health and Socioeconomic Crises like COVID-19' (2020) *Acta Orthopaedica* (advance).

11 See, eg, Monique J Brown and Sharon B Weissman, 'The Impact of COVID-19 on Older Adults Living with HIV: HIV Care and Psychosocial Effects' (2020) *Journal of Gerontological Social Work* (advance); Carmelle Peisah et al, 'Advocacy for the Human Rights of Older People in the COVID Pandemic and Beyond: A Call to Mental Health Professionals' (2020) *International Psychogeriatrics* 1; Federica Previtali, Laura D Allen and Maria Varlamova, 'Not Only Virus Spread: The Diffusion of Ageism during the Outbreak of COVID-19' (2020) 32(4–5) *Journal of Aging & Social Policy* 506.

12 See, eg, Jessica MacKinnon and Alexane Bremshey, 'Perspectives from a Webinar: COVID-19 and Sexual and Reproductive Health and Rights' (2020) 28(1) *Sexual and Reproductive Health Matters* 1; Joshua Kimani et al, 'The Effects of COVID-19 on the Health and Socio-Economic Security of Sex Workers in Nairobi, Kenya: Emerging Intersections with HIV' (2020) 15(7) *Global Public Health* 1073.

by government were justified under international human rights law.¹³ However, there has been relatively little attention given to the role and rights of health workers in this pandemic period.¹⁴

From a human rights perspective, the response to COVID-19 can be understood in terms of the law relating to emergencies.¹⁵ The pandemic was akin to a natural disaster. Extreme measures were necessary to protect the human rights to life¹⁶ and health.¹⁷ The aim of these measures was to return society to a situation of normalcy.¹⁸ Governments argued that the exigencies of the situation justified the outright suspension of certain rights (such as the right to freedom of movement¹⁹ and freedom of assembly²⁰), and the imposition of measures that necessarily diminished freedom to enjoy some rights (such as the right to work²¹ and the right to education²²). Under international human rights law, such measures are legitimate in ‘an exceptional situation of crisis or emergency which affects the whole population and constitutes a

13 Alessandra Spadaro, ‘COVID-19: Testing the Limits of Human Rights’ (2020) 11(2) *European Journal of Risk Regulation* 317; Audrey Lebret, ‘COVID-19 Pandemic and Derogation to Human Rights’ (2020) 7(1) *Journal of Law and the Biosciences* (advance).

14 See, eg, Alicia Dennis and Jane L Whitelaw, ‘PPE Unmasked: Why Health-care Workers in Australia are Inadequately Protected against Coronavirus’, *The Conversation* (online, 4 August 2020) <<https://theconversation.com/ppe-unmasked-why-health-care-workers-in-australia-are-inadequately-protected-against-coronavirus-143751>>.

15 There is significant scholarship on the issue of international human rights law during an emergency. See, eg, Joan Fitzpatrick, *Human Rights in Crisis: The International System for Protecting Rights during States of Emergency* (University of Pennsylvania Press, 1994); Emilie M Hafner-Burton, Laurence R Helfer and Christopher J Fariss, ‘Emergency and Escape: Explaining Derogations from Human Rights Treaties’ (2011) 65(4) *International Organization* 673; Bardo Fassbender and Knut Traisbach, *The Limits of Human Rights* (Oxford University Press, 2019).

16 *ICCPR* (n 3) art 6.

17 *ICESCR* (n 4) art 12.

18 ‘Normal’ was a word often used by the Prime Minister, Scott Morrison. See, eg, Paul Karp and Daniel Hurst, ‘Morrison Says “Early Mark” of Eased Restrictions Depends on Uptake of Covidsafe Tracing App’, *The Guardian* (online, 1 May 2020) <<https://www.theguardian.com/world/2020/may/01/morrison-says-early-mark-of-eased-restrictions-depends-on-uptake-of-covidsafe-tracing-app>>.

19 ‘Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his [or her] residence’: *ICCPR* (n 3) art 12.

20 ‘Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his [or her] interests’: *ibid* art 22.

21 ‘The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his [or her] living by work which he [or she] freely chooses or accepts, and will take appropriate steps to safeguard this right’: *ICESCR* (n 4) art 6. See also *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) art 5e(i); *Convention on the Elimination of All Forms of Discrimination against Women* (n 4) art 11; *Convention on the Rights of the Child* (n 4) art 32; *Convention on the Rights of Persons with Disabilities* (n 4) art 27; *Convention (No 111) Concerning Discrimination in Respect of Employment and Occupation*, opened for signature 25 June 1958, 362 UNTS 31 (entered into force 15 June 1960).

22 *ICESCR* (n 4) art 13; *Convention on the Elimination of All Forms of Discrimination against Women* (n 4) art 10; *Convention on the Rights of the Child* (n 4) arts 28 and 29; *Convention on the Rights of Persons with Disabilities* (n 4) art 24.

threat to the organised life of the community’,²³ where the purpose of the measures is to return the country as quickly as possible to a situation of normalcy in which all rights are once again enjoyed. Such a situation is contemplated by article 4 of the *International Covenant on Civil and Political Rights* which provides that:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation ...

It is also worth emphasising the qualification that accompanies this power:

... provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.²⁴

At the core of the human rights calculation underpinning the Australian government’s response to the virus was an important affirmation of equality. The pandemic did not threaten the population in a uniform way. A certain part of the population – the elderly and those with underlying health conditions – was far more susceptible to negative health outcomes from the virus. Protective measures, impacting the whole population, were designed primarily to preserve the lives and health of a minority. The Australian government’s decision to respond in a way that best protected the lives of the elderly and vulnerable, at an economic and social cost to the whole population, was underpinned by the equal right of all Australians to life²⁵ and to the highest attainable standard of physical and mental health.²⁶

The right to health is protected under article 12 of the *International Covenant on Economic, Social and Cultural Rights* (‘ICESCR’), which includes a provision requiring states to take steps to realise the right to health by preventing, treating and controlling epidemics.²⁷ In Australia, there was little attention paid to suggestions that the virus should be allowed to sweep through the community in order for ‘herd immunity’ to develop.²⁸ In a speech to the British Policy Exchange think tank in September 2020, former Prime Minister Tony Abbott suggested that the cost of protecting the lives of the elderly during the pandemic was disproportionate to the societal benefit and he urged politicians to think ‘like health economists’.²⁹ Abbott’s

23 *A v Secretary of State for the Home Department* [2004] 2 AC 68, 135 [111] quoting *Lawless v Ireland (No 3)* (1961) 1 EHRR 15, [28] (Lord Hope).

24 The federal government did not invoke the emergency provisions of the ICCPR.

25 *Universal Declaration of Human Rights* (n 3) art 3; *ICCPR* (n 3) art 6(1).

26 *ICESCR* (n 4) art 12.

27 *Ibid* art 12(2)(c).

28 Cf Peter Stubley, ‘Coronavirus: Hundreds of Scientists Warn UK Government’s Response to Outbreak “Risking Lives”’, *Independent*, (online, 15 March 2020) <<https://www.independent.co.uk/news/health/coronavirus-uk-scientists-letter-government-plan-herd-immunity-a9402661.html>>.

29 Patrick Wintour, ‘Tony Abbott: Some Elderly Covid Patients Could Be Left to Die Naturally’, *The Guardian* (online, 2 September 2020) <<https://www.theguardian.com/australia-news/2020/sep/01/tony-abbott-some-elderly-covid-patients-could-be-left-to-die-naturally>> .

suggestion was not seriously entertained or countenanced. The consensus at all levels of Australian government was that (1) the virus must not be permitted to take its natural course through the community to the increased detriment of a minority; and (2) it is necessary to avoid a situation in which decisions need to be made about who to prioritise for treatment because the number of people needing treatment exceed the amount of medical equipment available.³⁰ Efforts were directed to protecting the most basic human rights – equality and the equal right to life and health – of all Australians. The level of consensus on this fundamental principle was critical to the shape of Australia’s successful initial response to the virus.

III A FAILURE TO DEFINE HEALTH WORKERS AS HUMAN RIGHTS DEFENDERS

There is no settled definition of frontline workers in the context of this pandemic. Generally, the term refers to workers who are required to work outside their homes during the pandemic. It includes health workers, police officers, border officials, schoolteachers, supermarket workers and retailers. Some of these roles were already considered ‘frontline’ roles prior to the COVID-19 pandemic, while others became ‘frontline’ in the context of the rapidly evolving and worldwide health crisis caused by the COVID-19 virus. During the early months of the pandemic, there was slippage and a fair degree of confusion in the use of the terms ‘frontline’ and ‘essential’ workers. In March 2020, the Prime Minister said that an ‘essential worker’ included anyone who had a job, as earning money to support one’s family was ‘essential’.³¹ The position changed as the virus strengthened its presence and states imposed restrictions on what they deemed to be ‘non-essential businesses’ which included libraries, gyms, casinos, play centres, museums and cinemas. These were distinguished from ‘essential businesses’ such as pharmacies, schools, medical centres, banks, bottle shops and convenience stores. ‘Essential workers’ were no longer categorised as anyone who had a job: essential workers were the workers attached to essential businesses.

However, the categorisation of essential workers as those whose labour was associated with essential businesses did not resolve all confusion. There was significant inconsistency around the categories of work that were deemed ‘essential’.³²

30 See for example Australian Government Department of Health, ‘Government Response to the COVID-19 Outbreak’ <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/government-response-to-the-covid-19-outbreak>> (28 August 2020). Cf Jason Horowitz, ‘Italy’s Health Care System Groans under Coronavirus: A Warning to the World’, *The New York Times* (online, 12 March 2020) <<https://www.nytimes.com/2020/03/12/world/europe/12italy-coronavirus-health-care.html>>.

31 ‘Read Scott Morrison’s Full Statement on the New National Coronavirus Restrictions’, *ABC News* (online, 25 March 2020) <<https://www.abc.net.au/news/2020-03-25/scott-morrison-all-restrictions/12087112>>.

32 See Amelia Dunn, ‘Who is Deemed an “Essential” Worker under Australia’s COVID-19 Rules?’, *SBS News* (online, 26 March 2020) <<https://www.sbs.com.au/news/who-is-deemed-an-essential-worker-under-australia-s-covid-19-rules>>. It is also of note that laws were introduced to penalise threatening to infect essential

Following a National Cabinet meeting on 27 March 2020, state governments listed businesses that must cease operation.³³ However there was a great deal of discretion for other business owners as to whether they should remain open.³⁴ Some major retailers shut down their storefronts in order to protect their staff and financial interests. Yet many remained open, exposing their staff to potential harm. JB Hi-Fi, for example, an electronics retailer with 201 stores across Australia, continued to operate.³⁵ JB Hi-Fi workers reported being exposed to people who should have been in isolation and to coughing customers who touched goods in the store, increasing the risk of staff contracting the illness.³⁶ JB Hi-Fi employees calling for the shutdown of their stores argued that the task they perform is not essential as these consumer goods could be purchased online.³⁷ Calls for broader shutdowns to protect staff were not limited to JB Hi-Fi, with calls across the community for the closure of non-essential retail businesses and service providers such as hairdressers.³⁸ Retail employees reported an increase in the ‘instances of inappropriate and potentially aggressive

frontline workers, signalling that there would be no tolerance for such (already criminal) behaviour towards essential frontline workers: see the Queensland Cabinet and Ministerial Directory, ‘Queensland Introduces Big Fines for Coughing on Essential Workers’ (Media Statement, Queensland Government, 27 April 2020) <<http://statements.qld.gov.au/Statement/2020/4/27/queensland-introduces-big-fines-for-coughing-on-essential-workers>>; Queensland Government, *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction (No 3)*, 15 May 2020; Government of Western Australia, ‘Tough Penalties to Protect Essential Frontline Workers during Pandemic’ (Media Statement, 1 April 2020) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/04/Tough-penalties-to-protect-essential-frontline-workers-during-pandemic.aspx>>; Criminal Code Amendment (COVID-19 Response) Bill 2020 (WA); *The Criminal Code 1913* (WA) ss 318, 338B.

- 33 These included pubs and registered clubs; food and drink premises (except for the provision of take away or delivery); entertainment facilities; amusement centres; casinos; indoor recreation facilities; spas, nail salons, beauty salons, waxing salons, tanning salons, tattoo parlours or massage parlours; auction houses and betting agencies; information and education facilities; markets that do not predominantly sell food; and sex services. See, eg, *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW) cl 7, as at 30 March 2020.
- 34 Heather McIlvaine, ‘State Directives Cause Confusion around Store Reopenings’, *Inside Retail* (online, 17 April 2020) <<https://insideretail.com.au/news/state-directives-cause-confusion-around-store-reopenings-202004>>.
- 35 ‘Coronavirus Australia: JB HI FI Retail Workers Push for Store Closures over COVID-19 Safety Fears’, *7NEWS.com.au* (online, 14 April 2020) <<https://7news.com.au/lifestyle/health-wellbeing/coronavirus-australia-jb-hi-fi-retail-workers-push-for-store-closures-over-covid-19-safety-fears-c-976085>> (‘JB HI FI Retail Workers Push for Store Closures’).
- 36 Sahar Mourad, ‘JB Hi-Fi’s Coronavirus Crisis: Staff Claim Customers Are Deliberately Coughing on Them and Are Rubbing their Hands on Goods’, *Daily Mail Australia* (online, 10 April 2020) <<https://www.dailymail.co.uk/news/article-8206571/JB-Hi-Fis-staff-slam-company-remaining-open-coronavirus-restrictions.html>>.
- 37 ‘JB HI FI Retail Workers Push for Store Closures’ (n 35). Cf ‘Myer Shuts Stores in Wake of COVID-19’, *SBS News* (online, 27 March 2020) <<https://www.sbs.com.au/news/myer-shuts-stores-in-wake-of-covid-19>>.
- 38 Victoria Crow, ‘“Shut Us Down”: Confusion over PM’s Plan’, *Daily Mercury* (online, 23 March 2020) <<https://www.dailymercury.com.au/news/shut-us-down-confusion-over-pms-plan/3978673/>>; Heather McIlvaine, ‘CEOs Call for Shutdown as More Stores Close’, *Inside Retail* (online, 27 March 2020) <<https://insideretail.com.au/news/ceos-call-for-shutdown-as-more-stores-close-202003>>.

behaviour from customers' towards retail staff³⁹ as the broader population experienced stress and uncertainty.

The rhetoric of war, invoked by all levels of government during the pandemic, helped to sharpen the public's understanding of who was an essential worker. Within the wartime narrative, essential workers were 'frontline workers' – those whose job it was to defend the population from the virus. The media supported the framing of these workers as soldiers in the war against coronavirus. *The Daily Telegraph* in Sydney, for example, celebrated frontline workers as 'our last line of defence in the war on coronavirus' in its 'Frontline Heroes' campaign, and asked the public to send messages of support to frontline workers.⁴⁰ Health workers were clearly 'frontline heroes': so too were the bus drivers who transported them to work, the supermarket staff who stacked the shelves with goods that frontline workers needed and the petrol station attendants who provided frontline workers with fuel. Some schools were required to remain open to care for vulnerable children and the children of 'frontline workers', thus schoolteachers within these schools were also considered to be on the frontline.⁴¹

IV THE DIFFERENCE THE DEFINITION MIGHT MAKE

International human rights law recognises that there are circumstances in which healthcare workers can and should be recognised as human rights defenders.⁴² For example, where 'healthcare providers continue to provide medical services despite being targeted, harassed, and faced with threats of physical violence because of their work, they are recognized and protected as [human rights defenders]'.⁴³ The point of recognition is to mobilise governments and civil society to keep defenders secure so that they can continue their work. The responsibility of governments in protecting human rights defenders includes enabling human rights defenders to carry out their work safely.

39 'Managing Occupational Violence and Customer Aggression', *NSW Government* (Web Page, 22 May 2020) <<https://www.nsw.gov.au/covid-19/safe-workplaces/employers/managing-violence-and-aggression>>.

40 Matthew Benns and Adella Beaini, 'Coronavirus: Sydney Residents Send Messages to Thank Frontline Healthcare Workers', *The Daily Telegraph* (online, 1 April 2020) <<https://www.dailytelegraph.com.au/coronavirus/coronavirus-sydney-residents-send-messages-to-thank-frontline-healthcare-workers/news-story/bcea5af0ba75ab4fbaba7abb397d232d>>.

41 See, eg. Ashleigh Raper, 'NSW Government offers frontline public sector workers \$1,000 amid coronavirus wage freeze' *ABC News* (online, 1 June 2020) <<https://www.abc.net.au/news/2020-06-01/nsw-public-workers-facing-coronavirus-wage-freeze-offered-bonus/12305704>>. See also Robert Bolton, 'Teachers Reject Report Claiming COVID-19 Infection Risk is Low', *Financial Review* (online, 27 April 2020) <<https://www.afr.com/work-and-careers/education/teachers-reject-report-claiming-covid-19-infection-risk-is-low-20200426-p54n8y>>.

42 Cynthia Soohoo and Diana Hortsch, 'Who is a Human Rights Defender? An Essay on Sexual and Reproductive Rights Defenders' (2011) 65 *University of Miami Law Review* 981, 989.

43 *Ibid* 991. See also, Margaret Sekaggya, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, UN GAOR, UN Doc A/HRC/16/44 (20 December 2010) 9–10 [45].

The pandemic created a situation where the population at large was exposed to serious health risks, employment was precarious, social support structures were weakened and there was widespread uncertainty about the nation's capacity to respond to the crisis. This context meant that workers who might not previously have identified themselves as human rights defenders became vulnerable to new dangers and acts of discrimination. In these circumstances, it was important for governments to recognise their responsibility to protect these workers, as well as provide a safe and enabling environment for them to carry out their work.

The responsibility to human rights defenders does not rest solely with government. Civil society and the general public also contribute to the effective protection of human rights defenders. The first step in protecting and empowering human rights defenders is fostering awareness that the work being undertaken is human rights work; and that a specific and holistic conception of security, which includes physical security and psychological wellbeing, is involved in the protection and enabling of these workers.

A Determining who constituted an 'frontline' worker

One of the problems, we suggest, is that there was a failure to explicitly state that the human rights to life and health were at stake at the height of the COVID-19 crisis in Australia. Had that been made explicit, a distinction could have been drawn between those who were directly engaged in protecting these rights (health workers and those providing vital ancillary services such as food, fuel, public security and transport), on the one hand, and others whose exposure to the virus was not essential, on the other. An extension of this understanding would be to recognise that health workers and other vital workers were human rights defenders.

For example, JB Hi-Fi can be differentiated from retailers providing essential goods such as food and medicine including supermarkets and pharmacies. Unlike supermarkets and pharmacies, the consumer goods sector was not instrumental in the preservation of the human right to life or health of the population. Australia's piecemeal approach to restricting trade differed from the broader shutdowns across other jurisdictions affected by COVID-19. For example, in Italy, which in March 2020 was the country hit hardest by the virus outside of China, all retail stores except for supermarkets and pharmacies were closed.⁴⁴ Wider closure of the retail sector in Australia during the early months of the pandemic would have assisted in ensuring the highest standards of health for those affected and further preventing the spread of COVID-19 as required under article 12(c) of the *ICESCR*.

44 Rachel Sandler, 'Italy Shuts Down All Stores Except Supermarkets and Pharmacies, Escalating Coronavirus Lockdown', *Forbes* (online, 11 March 2020) <<https://www.forbes.com/sites/rachelsandler/2020/03/11/italy-closes-all-stores-escalating-coronavirus-lockdown/>>.

B Security

A controversial issue in Australia during the first months of the pandemic was the level at which health workers needed to be protected. Unlike much of the population, many health workers were unable to isolate themselves. This risk to their health was exacerbated by their direct interaction with the population at large.

One aspect of protecting the safety of human rights defenders involves the adequacy of protective equipment. During the early months of the pandemic, there was significant concern in Australia about the lack of protective equipment for frontline workers, particularly for medical staff. Current research suggests that the COVID-19 virus is transmitted between people through close contact and droplets.⁴⁵ The World Health Organisation has identified the following protective equipment as an effective measure against the transmission of COVID-19 for those working closely with infected individuals: ‘gloves, medical masks, goggles or a face shield, and gowns, as well as ... respirators (ie N95 or FFP2 standard or equivalent) and aprons’.⁴⁶ In March 2020, the World Health Organisation reported that the global stockpile of personal protective equipment was insufficient.⁴⁷

Shortages of protective equipment were reported across Australia. A survey of 245 frontline medical workers in April 2020 found that 86% reported anxiety about the level of protective equipment provided to them during the COVID-19 pandemic.⁴⁸ According to the survey, 75% of the doctors surveyed said they re-used the same masks between patients, a practice advised against by health guidelines.⁴⁹ Healthcare workers also reported using household equipment or skipping breaks to avoid contaminating protective gear.⁵⁰

There were reports that personal protective equipment was in ‘very, very short supply’ in NSW, with health workers forced to break guidelines and reuse supplies.⁵¹ Concerns around the shortages in NSW led Jenny Aitchison, member for Maitland, to

45 World Health Organization, *Rational Use of Personal Protective Equipment (PPE) for Coronavirus Disease (COVID-19)* (Interim Guidance, 19 March 2020) 1

<https://apps.who.int/iris/bitstream/handle/10665/331498/WHO-2019-nCoV-IPCPE_use-2020.2-eng.pdf>.

46 Ibid.

47 World Health Organisation, ‘Shortage of Personal Protective Equipment Endangering Health Workers Worldwide’ (News Release, 3 March 2020) <<https://www.who.int/news-room/detail/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide>>.

48 Brooke Wylie, Penny Timms and Sophie Scott, ‘Coronavirus Treatment Doctors Report Trauma, Threats Over Lack of PPE in Hospitals’, *ABC News* (online, 9 April 2020) <<https://www.abc.net.au/news/2020-04-09/coronavirus-doctors-trauma-as-ppe-equipment-sharing-re-use/12136692>>.

49 Ibid.

50 Aisha Dow and Melissa Cunningham, ‘In “\$2 Raincoats” on Virus Front Line, Medics Call for Action on PPE’, *The Sydney Morning Herald* (online, 8 April 2020) <<https://www.smh.com.au/national/forced-to-wear-2-raincoats-nurses-doctors-demand-action-on-ppe-20200408-p54i8q.html>>.

51 Kylar Loussikian and Kate Aubusson, ‘“Be Very, Very Careful”: Internal Messages Reveal Difficult State of Sydney Hospitals’, *The Sydney Morning Herald* (online, 2 April 2020) <<https://www.smh.com.au/politics/nsw/be-very-very-careful-internal-messages-reveal-difficult-state-of-sydney-hospitals-20200401-p54g12.html>>.

ask the NSW Minister for Health and Medical Research the following questions on 24 March 2020:

1. What action has the Government taken to ensure that all medical staff have access to appropriate personal protective equipment in both public and private medical services?
2. Does the Government have any capacity to penalise medical institutions who have not provided appropriate personal protective equipment to their staff?⁵²

NSW Health responded by reporting that NSW is ‘implementing a state-wide strategy to ensure all staff have the personal protective equipment needed to protect them at work’.⁵³

Whilst a study of the discrepancies between frontline workers and the impact of intersectionality is beyond the scope of this article, it is important to recognise that health workers are not a homogenous group and are not equally affected by the pandemic. Economically disadvantaged populations are left more vulnerable in times of crisis.⁵⁴ Economically vulnerable health workers during the COVID-19 pandemic are no exception. Health workers who are elderly, immune compromised, disabled or from a racial minority that face exacerbated targeting during the pandemic are also more likely to suffer harm as compared to frontline workers without pre-existing vulnerabilities. The type of work can also affect vulnerability. For example, nurses working in COVID-19 wards are at greater risk of contracting the illness than transport workers. Although men dominate in leadership roles across all industries,⁵⁵ it should be noted that a number of key industries continuing to operate during the pandemic are dominated by women. This includes health care and social assistance (79% female in 2018) and education and training (73.2% female in 2018).⁵⁶ Migrant women, who are particularly vulnerable to exploitation and harm, are also overrepresented in the cleaning industry.⁵⁷

52 NSW Legislative Assembly, *Questions and Answers Paper* (Paper No 54, 24 March 2020) 1942 <<https://www.parliament.nsw.gov.au/la/papers/Documents/2020/24-march-2020-questions-and-answers/054-Qanda-P.pdf>>.

53 See NSW Legislative Assembly, *Questions and Answers Paper* (Paper No 55, 29 April 2020) 2070 <<https://www.parliament.nsw.gov.au/la/papers/Documents/2020/29-april-2020-questions-and-answers/055-Qanda-P.pdf>>. See ‘Personal Protective Equipment (PPE)’, NSW Health (Web Page, 6 April 2020) <<https://www.health.nsw.gov.au/Infectious/covid-19/Pages/ppe.aspx>>.

54 Faheem Ahmed et al, ‘Why Inequality Could Spread COVID-19’ (2020) 5(5) *The Lancet Public Health* 240, 240.

55 Australian Government, Workplace Gender Equality Agency, ‘Gender Segregation in Australia’s Workforce’ (Fact Sheet, 17 April 2019) <<https://www.wgea.gov.au/data/fact-sheets/gender-segregation-in-australias-workforce>>.

56 Ibid.

57 Catherine Hemingway, *Not Just Work: Ending the Exploitation of Refugee and Migrant Workers* (Policy Report, WEstjustice, 2016) 218.

V CONCLUSION

In this paper we suggest that there is utility in considering the role of frontline workers who protect the right to life and health from a human rights perspective. This perspective affirms the importance of frontline workers in the protection of human rights and directs attention to the threats and risks that these defenders might face, such as inadequate protective equipment, stigmatisation and harassment. This framework centres the security of human rights defenders in terms of the freedom (or protection) they need to carry out their work, which includes ‘freedom from constant threats, economic security, political security, environmental security and health security’.⁵⁸ Importantly, there is growing awareness of the need to emphasise the self-care and personal wellbeing of human rights defenders as a necessary part of the physical and psychological protection that sustains their work to further advance the realisation of human rights. Recognising frontline workers during a health crisis as human rights defenders would expose the challenges they face so that appropriate steps can be taken to ensure they can carry out their work.

58 Karen Bennett at al ‘Critical Perspectives on the Security and Protection of Human Rights Defenders’ (2015) 19(7) *The International Journal of Human Rights* 883, 884. See also Jane Barry and Vahida Nainar, *Women Human Rights Defenders Security Strategies: Insiste, Resiste, Persisite, Existe* (Report, Urgent Action Fund for Women’s Human Rights, Front Line – The International Foundation for the Protection of Human Rights Defenders, The Kvinna till Kvinna Foundation, 2008) 87.