

## **LACK OF TRANSPARENT COVID-19 TRIAGE PROTOCOLS POSES RISKS FOR CLINICIANS**

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AUSTRALIA'S lack of clear triage protocols over one year into the COVID-19 pandemic elevates risks for clinicians if COVID-19 cases were to overwhelm the health system.

Writing in the *Medical Journal of Australia*, Queensland authors led by Dr Eliana Close, a Postdoctoral Research Fellow at the Australian Centre for Health Law Research at the Queensland University of Technology, said that governments' "reluctance to develop and/or release triage protocols until a crisis has arrived is politically understandable".

However, they wrote, that came with significant risks for clinicians.

"Clinicians, ethicists and lawyers have long debated the parameters of triage in response to the inevitable disasters that sporadically overwhelm the health care system," Close and colleagues wrote.

"Almost universally, they have advocated for open, transparent and consultative triage protocols, guidelines and legislation to combat biases and to support clinicians making unavoidable decisions in the interests of the community as a whole.

"Although every Australian state and territory has disaster management plans, publicly available COVID-19 triage protocols are lacking. New South Wales is the only state to mention a triage guideline, but its COVID-19 framework does not link to it. Queensland Health released an extensive ethical framework for COVID-19 in April 2020, which has since been removed. Western Australia has a four-page ethical framework but no publicly accessible protocol.

"The Commonwealth Government's COVID-19 strategy indicates the Commonwealth will work with state and territory governments to 'agree on novel coronavirus triage criteria (if required)', but there are no such criteria to date.

"Given constitutional arrangements, there is no expectation that the Commonwealth Government would provide these. The National Health and Medical Research Council has conducted consultation on an ethics framework for pandemics, but this is limited to ethical guidance," Close and colleagues wrote.

The authors detailed four significant implications for clinicians:

- Absent a COVID-19 triage policy, not providing beneficial life-sustaining treatment is potentially risky because it may be harder to establish the professional practice defence in a negligence action. An institution's failure to promulgate a policy could

also result in claims. Additionally, a triage protocol (with its greater degree of specificity) would generally provide more legal protection than ethical guidelines;

- While it is lawful for governments and professional bodies to issue COVID-19 triage policies, these policies should rely on appropriate evidence and must comply with specific jurisdictional laws, such as guardianship and human rights legislation;
- Triage policies promote quality and consistency in decision making and guide clinicians to consider appropriate factors. However, clinicians must still exercise judgment which is reasonable and responsive to individual circumstances; and,
- Policies should provide guidance for when an individual is denied life-sustaining treatment, since the duty to exercise reasonable care remains. Where reasonably possible, this may include communicating to the patient (or family) the reasons for the decision, providing appropriate palliative care, and information about complaints or dispute resolution processes.

Close and colleagues concluded that:

"Public confidence is enhanced when governments have the political courage to embark on these difficult public debates in advance of need.

"Prioritising some individuals over others when the demand for resources exceeds supply is confronting for clinicians and the community alike, and challenges us to reflect on our deeply held values as a society.

"When clinicians are allocating scarce resources, they need standards to support their decisions which have been subject to public consultation and rigorous legal review. Australia's successful management of the COVID-19 pandemic is offering us the luxury of time to consult and reflect."

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