

Ministerial responses — Report 8 of 2021¹

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The Hon Greg Hunt MP
Minister for Health and Aged Care

Ref No: MC21-016598

Dr Anne Webster MP
Chair
Parliamentary Joint Committee on Human Rights
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Dear Chair

I refer to your correspondence of 13 May 2021 concerning the request for information about the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—High Risk Country Travel Pause) Determination 2021 (Determination)*.

The Determination was made on 30 April 2021 and required passengers on a relevant international flight to not enter Australian territory at a landing place if the person had been in India within 14 days of the day the flight was scheduled to commence. The Determination commenced on 3 May 2021, and remained in force until it repealed itself at the start of 15 May 2021.

The Determination was made under the emergency requirement powers in the *Biosecurity Act 2015* (Biosecurity Act). I note that these powers can only be used if the Governor-General has first made a declaration under section 475 of the Biosecurity Act that a human biosecurity emergency exists for the period necessary to prevent or control the listed human disease.

Before making any such determination I, as Health Minister, must be satisfied of all of the following:

- (a) that the requirement is likely to be effective in, or to contribute to, achieving the purpose for which it is to be determined
- (b) that the requirement is appropriate and adapted to achieve the purpose for which it is to be determined
- (c) that the requirement is no more restrictive or intrusive than is required in the circumstances
- (d) that the manner in which the requirement is to be applied is no more restrictive or intrusive than is required in the circumstances
- (e) that the period during which the requirement is to apply is only as long as is necessary.

In making such a determination I also take into account any public health advice that is provided to me from Chief Medical Officer and the Australian Health Protection Principal Committee.

In the case of this particular determination, the medical advice noted that COVID-19, and variants of COVID-19, continues to represent a severe and immediate threat to human health in Australia and has the ability to cause high levels of morbidity and mortality. It also noted that India had been identified as a high-risk country due to the significant increase in volume and proportion of COVID-19 cases in returned travellers from India, and that each new case identified in quarantine increases the risk of leakage into the Australian community through transmission to quarantine workers or other quarantine returnees and subsequently into the Australian community more broadly. This advice was tabled in Parliament on 3 May 2021.

In relation to your discussion of alternative measures, I would note that I did assess whether the requirement would be no more restrictive or intrusive than is required in the circumstances, and further note that existing mitigations, including a requirement for a negative pre-departure COVID-19 test, had already been implemented. This included an assessment of other options such as hotel quarantine, and in this respect the stress that travellers from India were placing on the quarantine system was something that I was acutely conscious of in making the Determination.

Last, I note that the validity of the Determination was upheld by the Federal Court in the matter of *Newman v Minister for Health and Aged Care* [2021] FCA 517 on 10 May 2021. That challenge considered a number of grounds but in particular, whether I had properly considered each of the requirements under the Biosecurity Act in making the Determination.

I trust that this information is useful to the committee in its consideration of this matter.

Thank you for writing on this matter.

Yours sincerely



 Greg Hunt