



**Australian Government**

**Department of Health**

**Chief Medical Officer**

The Hon Greg Hunt MP  
Minister for Health and Aged Care  
PO Box 6022  
Parliament House  
CANBERRA ACT 2600

Dear Minister Hunt

I am writing to provide advice to assist your considerations to make a determination under section 477 of the *Biosecurity Act 2015* (the Act) to make it an offence for a person, including Australian citizens and permanent residents, to enter Australia if they have been in India in the preceding 14 days. I note that such a determination, if made, would be the first time that such a determination has been used to prevent Australian citizens and permanent residents entering Australia.

Background

On 27 April 2021, the Prime Minister announced new measures in response to the worsening COVID-19 situation in India. The new measures include a temporary pause on all direct flights from India to Australia, which include Australian Government facilitated repatriation flights, until 15 May 2021.

I note that although Australia has already implemented a ban on direct flights from India, flights through transit hubs continue to provide an avenue for individuals who have recently been in India to enter Australia.

It is important in any measures we implement that we balance the burden on our quarantine and health systems and the protection of our community with the need to help Australians to get home, including those currently residing in high risk countries.

*Biosecurity Act 2015*

On 18 March 2020, the Governor-General declared a human biosecurity emergency in relation to the global outbreak of the listed human disease 'human coronavirus with pandemic potential' (COVID-19) under section 475 of the Act.

This declaration enlivens the power for you to determine emergency requirements and directions under the Act that are necessary to prevent or control the entry into, or the

emergence, establishment or spread of COVID-19 in Australian territory or part of Australian territory. The declaration was recently extended by the Governor General until 17 June 2021.

During a human biosecurity emergency period, in accordance with section 477 of the Act, you, as the Health Minister, may determine requirements that you consider are necessary to prevent or control the entry into, or the emergence, establishment or spread of COVID-19 in Australian territory or part of Australian territory.

The Act provides that before determining emergency requirements under subsection 477(1), you must be satisfied that any requirements are necessary to prevent or control the entry into, or the emergence, establishment or spread of COVID-19 in Australian territory or part of Australian territory. The Act also requires that you are satisfied that the requirements are:

- likely to be effective in, or contribute to, achieving its purpose;
- appropriate and adapted to the purpose;
- no more restrictive or intrusive than required in the circumstances;
- are applied in a manner that is no more restrictive or intrusive than required in the circumstances; and
- in place for only as long as necessary.

The penalty for breaching a section 477 determination is 5 years jail or 300 penalty units (\$66,600) or both.

#### Medical advice to support a s477 Determination

COVID-19 continues to represent a severe and immediate threat to human health in Australia. COVID-19 has the ability to cause high levels of morbidity and mortality, and disrupt the Australian community socially and economically. The number of new cases of COVID-19 recorded globally continues to rise at an alarming rate. There are over 149.1 million cases of COVID-19, with over 3.1 million deaths recorded (an approximate crude case fatality rate of 2.1 per cent).

India has been identified as a high-risk country due to the significant increase in COVID-19 positive case numbers in returned travellers from India. India has recorded over 18.3 million positive COVID-19 cases, and over 204,000 deaths, with daily case numbers reached global record levels this week (379,257 new infections and 3,645 deaths on 29 April 2021).

Following the introduction of pre-departure testing and changes to international arrival caps in late January 2021, overseas acquired cases among air arrivals fell from approximately 1.0% to approximately 0.5% in February 2021. This proportion has since increased, with approximately 1.8% of recent air arrivals being identified as cases (19-25 April 2021). Since late March 2021, there has been a sharp increase in the number and proportion of overseas acquired cases that were reported as acquiring their infection in India; over 50% of overseas acquired cases since mid-April 2021 were acquired in India.

There are a range of emerging risks associated with international arrivals, including particularly those who have been in India, arising in the following circumstances:

- The continuing rapid increase and likely under-reporting of the numbers of

COVID-19 cases in India through community transmission.

- Lack of verification mechanisms for negative COVID-19 test results obtained internationally.
- High rates of COVID-19 detected from arrivals from India, with a high proportion of overseas-acquired cases detected in Australia having acquired their infection in India.
- A high proportion of variants of concern and variants of interest amongst those cases and
- Community transmission within hotel quarantine, as seen recently in New South Wales and Western Australia.

Each new case identified in quarantine increases the risk of leakage into the Australian community through transmission to quarantine workers or other quarantined returnees and subsequently into the Australian community more broadly. This quarantine 'leakage' presents a significant risk to the Australian community. Of particular concern, New South Wales and Western Australia have recently seen COVID-19 transmitted in hotel quarantine facilities, as two sets of guests, in rooms opposite each other, had the same sequence of virus, despite arriving from different countries at different times.

Australia's quarantine and health resources needed to prevent and control COVID-19 introduced into Australia from international arrivals are limited. Due to the high proportion of positive cases arising from arrivals from India, I consider a pause until 15 May 2021 on arrivals from India to be an effective and proportionate measure to maintain the integrity of Australia's quarantine system. This measure will likely allow the system to recover capacity, which is a critical intervention in preventing and managing the spread of COVID-19 in Australia.

In line with the Prime Minister's announcement of a temporary pause on all direct flights from India to Australia until at least 15 May 2021, the determination, if made, will be in effect for a limited duration (15 May 2021). Given the proposed limited duration of the determination, I am satisfied this meets the criteria that such an emergency requirement is in place for only as long as necessary.

I wish to note the potential consequences for Australian citizens and permanent residents as a result of this pause on flights and entry into Australia. These include the risk of serious illness without access to health care, the potential for Australians to be stranded in a transit country, and in a worst-case scenario, deaths. I consider that these serious implications can be mitigated through having the restriction only temporarily in place, ie a pause, and by ensuring there are categories of exemptions.

I recommend the determination allows exemptions to the pause on travel for the following classes for persons:

- a member of the crew of an aircraft or vessel;
- a worker associated with the safety or maintenance of an aircraft or vessel;
- a person engaged in the day-to-day conduct of inbound and outbound freight;
- a person (including a member of the Australian Defence Force) who is travelling on official government business on an Australian official or diplomatic passport;

- a person who is an immediate family member of a person mentioned in paragraph above
- a diplomat accredited to Australia;
- a person:
  - who is an immediate family member of a diplomat accredited to Australia; and
  - who holds a subclass 995 (Diplomatic (Temporary)) visa;
- a person:
  - who is an immediate family member of a diplomat accredited to Australia; and
  - who holds a subclass of 995 (Diplomatic (Temporary)) visa;
- a member of an Australian Medical Assistance Team (AUSMAT).

The recommended exemptions above will ensure the determination is appropriate and adapted to the purpose, no more restrictive or intrusive than required in the circumstances, and is applied in a manner that is no more restrictive or intrusive than required in the circumstances.

I am satisfied that a determination made under section 477 of the Act to make it an offence for a person to enter Australia if they have been in India in the preceding 14 days is necessary to prevent and control the entry into, or the emergence, establishment or spread of COVID-19 in Australia. I recommend that you, in your capacity as Minister for Health and Aged Care, agree to make this determination.

Yours sincerely



Professor Paul Kelly  
Chief Medical Officer  
30 April 2021