



31 August 2023

To: Emeritus Professor Rosalind Croucher AM
President
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

CC: Ms Lorraine Finlay
Human Rights Commissioner

By Email Only: president@humanrights.gov.au;
humanrights.commissioner@humanrights.gov.au

Dear Emeritus Professor and Ms Finlay,

World Health Organisation Pandemic Treaties and their effect on Human Rights

1. We write as a group of concerned Australians who in the week of 7 August 2023 travelled to Canberra to meet with Senators and Members of Parliament for the purposes of discussing four treaties and accords of international significance (**Treaties**) that are currently being prepared and updated by the United Nations (**UN**) and the World Health Organisation (**WHO**) following the recent public health response to the Covid-19 pandemic.
2. What is proposed in these Treaties, if tacitly accepted by Australia, will mean we are bound without reservation to comply with and implement the significant obligations, responsibilities and costs including the requirement to significantly review, change and implement domestic legislation in accordance with the new documents.
3. The four Treaty documents are at various stages of completion, and one has already been adopted at the Seventy-fourth World Health Assembly (**WHA**) held May 2022. This requires express rejection by Australia no later than 27 November 2023

1

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otherwise acceptance is by acquiescence and the amendments become binding on Australia.

4. **The four Treaties are:**

- 4.1 **The UN's [Political Declaration on Pandemic Prevention, Preparedness and Response Manifesto- Zero Draft \(UN PPPR Manifesto\)](#) – for discussion at the UN High-Level Meeting scheduled [20 September 2023](#). This document identifies the requirement for US\$30 billion for pandemic preparedness. The WHO's current 2 yearly budget is US\$11 billion. The UN PPPR Manifesto also sets out the requirements for amendments to the 2005 International Health Regulations (**2005 IHRs**) and the creation of the WHO CA+.**

The WHO's proposed amendments to the 2005 International Health Regulations (IHRAs) - are in two parts (2 and 3):

- 4.2 **[Article 59 IHRAs](#) -** This Treaty proposes reducing the timing for rejection or implementation for any future proposed IHRAs (from 18 to 10 months, and 24 to 12 months respectively). The Article 59 IHRAs were adopted by the WHA on 27 May 2022 - there is 18 months to reject these and they must be expressly rejected by 27 November 2023 (1 December 2023 is noted regularly and could be the day the Director General notified the State Members) otherwise the timeframes will become much shorter for rejection and implementation of any further amendments.

We expand further on the status and effects of these proposed Article 59 IHRAs under their own heading below.

- 4.3 **[307 IHRAs](#)** are being worked on by the IHR Working Group at present. The 307 IHRAs propose significant changes to the 2005 IHRs including being legally binding in nature (Article 1) and requiring significant changes to our domestic legislation Articles 2 (potential impact to health), 3 (removal of individual human rights), 4 (establishment of National Competent Authority).

On 15 December 2023, the IHR Review Committee will be reconvening to review the package of amendments agreed by the IHR Working Group with final technical recommendations to be submitted to the Director General of the WHO by mid-

January 2024 for anticipated adoption at the Seventy-seventh WHA at the end of May 2024 as per the UN PPPR Manifesto.

- 4.4 The WHO's drafting of an entirely new [WHO CA+](#) is currently being worked on by the Intergovernmental Negotiating Body [at present](#). The WHO CA+ sets out significant new requirements under what is effectively a trade accord. New requirements include member states implement new legislation to indemnify pharmaceutical companies and limit their liability with respect to vaccine injuries as (Article 10). The WHO CA+ is also anticipated adoption at the Seventy-seventh WHA at the end of May 2024 as per the UN PPPR Manifesto.

5. **Current status of the Article 59 IHRAs:**

On 13 June 2023, the Article 59 IHRAs [were delivered to Joint Standing Committee on Treaties \(JSCT\)](#) by the International Strategies Branch Department of Health and Aged Care. [On 3 August 2023, JSCOT endorsed the Article 59 IHRAs](#) *“as a minor treaty action and that binding treaty action be taken”* that *“the amendments are expected to have negligible legal, financial, or practical impact on Australia”*. JSCT considered only the Article 59 IHRAs on their own, without reference to any of the other three Treaty documents.

While the number of changes in the Article 59 IHRAs are negligible, their practical impacts are not – when referenced against the UN PPPR Manifesto, the 307 IHRAs and the WHO CA+, which are to be read together in accordance with the UN PPPR Manifesto, the significant limitations on timeframes will make any timeframe to consider, reject and implement future IHRAs not only ambitious but effectively impossible.

6. **The Treaties and the HRC**

We seek from you confirmation that you are aware of the Treaties and are considering their impact on the laws and constitution of Australia as well as, most importantly, on human rights.

The proposed Treaties seek to undermine the Australian Government's long-established commitment to protect, promote and preserve traditional rights and

freedoms, including but not limited to, freedoms pertaining to speech, opinion, association, and movement. For example, the Treaties seek to:

- a) routinise a globally interoperable system for digital ‘health certificates’ as a pre-condition for any cross border travel (307 IHRAs, Articles 18, 23, 31, 35, 36), which is likely to lead to interferences with numerous human rights, among them the right to health (Article 12 of the ICESCR);
- b) the principle of informed consent and the right to access safe and effective medical products, as well as the right not to be subjected without free consent to medical or scientific experimentation (Article 7 of the ICCPR);
- c) entrenching the WHO’s infodemic management activities (WHO CA+ Articles 1 and 18) interferes with, among other things, the right to freedom of expression and to receive and impart information (Article 19, ICCPR; Article 10, ECHR) and the rights to health and science (Article 15(1)(b) ICESCR);¹
- d) the right to privacy and data protection concerns (Article 17 ICCPR; Article 8 ECHR) are given only scant consideration in the proposals, even though those proposals contemplate the digital sharing and surveillance of health data, including genomic data (WHO CA+ Articles 5, 6 and 12).

Of course, the AHRC’s statutory duty is to “ensure that the functions of the Commission... are performed with regard for the indivisibility and universality of human rights”.² Of those functions,³ several are relevant here, including “inquir[ing] into any act or practice that may be inconsistent with or contrary to any human right”, “to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination”, “to examine enactments... for the purpose of ascertaining whether the enactments or proposed enactments... are, or would be, inconsistent with or contrary to any human right, and to report to the

¹ We note your commendable submission advising that the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* risked impeding on the freedom of expression of Australians. In that regard, these amendments seek a similar outcome, and may impact upon current iterations of that Bill, and on the freedom of expression of Australians generally.

² *Australian Human Rights Commission Act 1986 (Cth) S10A.*

³ *Australian Human Rights Commission Act 1986 (Cth) S11.*

Minister the results of any such examination”, “to report to the Minister as to the... action that should be taken by the Commonwealth, on matters relating to human rights”.⁴

It is imperative that the Commission considers the Treaties in light of its statutory functions noted above, and that it takes action accordingly to ensure the human rights of Australian citizens are protected and preserved.

This letter has also been provided to the Attorney-General alongside a similar letter addressed to that office (**attached**). That letter should also be read with this letter.

We are more than happy to make time to meet with your office to discuss further.

31 August 2023

Sincerely,

Prof. Wendy Hoy FAA OA (QLD), Professor of Medicine
A./Prof. Chris Neil (Victoria), Cardiologist
Dr. Russell Price (QLD), Vascular Surgeon
Dr. Niro Sivathasan (NSW), Cosmetic Surgeon
Dr. Duncan Syme (VIC), General Practitioner
Prof. Ramesh Thakur (NSW), former Assistant Secretary-General of the United Nations
Katie Ashby-Koppens (NSW), Litigation and Human Rights Lawyer
Peter Fam (NSW), Human Rights Lawyer
Bernadette Ryan (ACT), Social Worker / Researcher
Karen Fox (NSW), Researcher

CC

The Prime Minister (by hand)
Hon Mark Dreyfus KC MP, Attorney-General
and Hon Matt Thistlethwaite MP, Assistant Minister for the Republic.
Hon Mark Butler, Member of Parliament Minister.Butler@health.gov.au
Michaelia Cash, Senator
Peter Dutton, Opposition Leader
Stephen Donaghue, Solicitor General
Simon Newnham, Deputy Secretary, Integrity and International Group

⁴ *Australian Human Rights Commission Act 1986 (Cth) S11.*

Delegation to Canberra

The UN and WHO Pandemic Treaties

invite2thewho@gmail.com

31 August 2023

Attorney-General
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

By email

Attention: Hon Mark Dreyfus KC MP, Attorney-General
and Hon Matt Thistlethwaite MP, Assistant Minister for the Republic

Dear Messrs

UN and WHO new and amended Pandemic Treaties

1. We write as a group of concerned Australians who in the week of 7 August 2023 travelled to Canberra to meet with Senators and Members of Parliament for the purposes of discussing four treaties and accords of international significance (**Treaties**) that are currently being prepared and updated by the United Nations (**UN**) and the World Health Organisation (**WHO**) following the recent public health response to the Covid-19 pandemic.
2. What is proposed in these Treaties, if tacitly accepted by Australia, will mean:
 - 2.1 we are bound without reservation to significant obligations,
 - 2.2 forfeit the right to make decisions as a country with respect to health emergencies;
 - 2.3 be required to amend and implement domestic legislation in accordance with the new Treaties.
3. We seek from your office confirmation that you and your office are aware of the four Treaties and are considering them as to how they will impact on the laws and Constitution of Australia as well as the international human rights instruments we are a party to.
4. The four Treaties are at various stages of completion, and one has already been adopted at the Seventy-fourth World Health Assembly (**WHA**) held May 2022, the Article 59 IHRAs. The Article 59 IHRAs require express rejection by Australia no later than **27 November 2023** otherwise acceptance is by acquiescence and the amendments become binding on Australia. We expand on the status of the Article 59 IHRAs under section 6 below.

5. **The four Treaties are:**

- 5.1 **The UN's [Political Declaration on Pandemic Prevention, Preparedness and Response Manifesto- Zero Draft \(UN PPPR Manifesto\)](#)** – for discussion at the UN High-Level Meeting scheduled [20 September 2023](#). This document identifies the requirement for US\$30 billion for pandemic preparedness. The WHO's current 2 yearly budget is US\$11 billion. The UN PPPR Manifesto also sets out the requirements for amendments to the 2005 International Health Regulations (**2005 IHRs**) and the creation of the Pandemic Treaty or WHO CA+ (**WHO CA+**) for adoption at the Seventy-seventh WHA end of **May 2024** (OP44).

The WHO's proposed amendments to the 2005 International Health Regulations (IHRAs) - are in two parts (5.2 and 5.3):

- 5.2 **[Article 59 IHRAs](#)** - This Treaty proposes reducing the timing for rejection or implementation of any future proposed IHRAs (from 18 to 10 months, and 24 to 12 months respectively). The Article 59 IHRAs were adopted by the WHA on 27 May 2022 - there is 18 months to reject these and they must be expressly rejected by **27 November 2023** (1 December 2023 is noted regularly and could be the day the Director General notified the State Members) otherwise the timeframes will become much shorter for rejection and implementation of any further amendments. We expand further under section 6 below.
- 5.3 **[307 IHRAs](#)** are being worked on by the [IHR Working Group at present](#) but are well advanced and proposed significant and substantive, binding recommendations on the Member State parties. On 15 December 2023, the separate IHR Review Committee will reconvene to review the package of amendments agreed by the Working Group, with final technical recommendations to be submitted to the Director General of the WHO by mid-January 2024, for adoption end of May 2024 as per the UNPPPR Manifesto.
- 5.4 The WHO's drafting of an entirely new Pandemic Treaty, the **[WHO CA+](#)**, is currently being worked on by the [Intergovernmental Negotiating Body at present](#) but is well advanced, for adoption end of May 2024 as per the UNPPPR Manifesto. This new Treaty proposes significant obligations on parties to it and is more akin to a trade agreement as it sets up an international supply networks which will be overseen by the WHO, outlines funding and sets up a new governing body and at least three new committees (re compliance, pandemic-related products and benefit-sharing).

6. **Article 59 IHRAs – future timeframes drastically reduced unless the Article 59 IHRAs expressly rejected**

Current status of the Article 59 IHRAs:

On 13 June 2023, the Article 59 IHRAs were delivered to Joint Standing Committee on Treaties (JSCT) by the International Strategies Branch Department of Health and Aged Care.

On [3 August 2023](#), JSCT endorsed the [Article 59 IHRAs](#) “as a minor treaty action and that binding treaty action be taken” that “the amendments are expected to have negligible legal, financial, or practical impact on Australia”.

JSCT considered only the Article 59 IHRAs on their own, without reference to any of the other three Treaty documents (which we appreciate are currently being worked on, but are all at stages of significant advancement so as to be informative for JSCT).

Why we are concerned with JSCT’s endorsement of the Article 59 IHRAs:

While the number of changes in the Article 59 IHRAs are small in number, their practical impacts are not as they will be significantly reduced new timeframes Australia will have to consider, reject and/or implement future IHRAs, for example the 307 IHRAs (where 307 is the number of substantive amendments to the 2005 IHRs).

When referenced against the UN PPPR Manifesto (OP44), it is not wrong when it states that the WHO CA+ is “an ambitious legally binding convention” to be adopted “under [Article 19 of the Constitution](#) of the World Health Organization” (or other provisions); and the 307 IHRAs is one of the “other initiatives to support the central endeavour”.

The Treaties are a culmination of the UN PPPR Manifesto, the significant limitations on timeframes under the Article 59 IHRAs will make any timeframe to consider, reject and/or implement (at least) future IHRAs not just ambitious but will not provide sufficient time for fulsome consideration of the impact and breadth of the IHRAs by Australia. The question has to be – what is the rush, and also how and why does this benefit Australia?

These timeframes in the Article 59 IHRAs need to be expressly rejected as the proposed reductions in time means that Australia will only have 10 months to consider the significant legal ramifications on our domestic legislation that the WHO CA+ and the 307 IHRAs will require.

7. The legally binding aspects of the WHO’s 307 IHRAs and the WHO CA+

There is a clear implication in the Treaties that if not actively responded to, Australia will have to amend vast arrays of its domestic legislation, and likely its Constitution, to comply with very significant amendments to the 2005 IHRs and the new WHO CA+, such as the:

- 7.1 legally binding nature as per Article 1 of the 307 IHRAs; and OP44 of the WHO CA+;
- 7.2 express amendment to laws as per Articles new 13A(3), 43, 44, and 45 307 IHRAs;
- 7.3 implied amendment to laws as per Articles 2 (potential impact to health), 3 (removal of individual human rights), 4 (establishment of National Competent Authority) of the 307 IHRAs;
- 7.4 implement new legislation to indemnify pharmaceutical companies and limit their liability with respect to vaccine injuries as per Article 10 WHO CA+, which appears wholly at odds

with the recent referral of the *Public Governance, Performance and Accountability Amendment (Vaccine Indemnity) Bill 2023* to a committee of inquiry.

These are by no means a complete list of the Articles that or amendments that could impact on Australian domestic laws and our Constitution as set out in the UN PPPR Manifesto, 307 IHRAs and the WHO CA+.

8. **The very real consequences of the legally binding aspects of the WHO's 307 IHRAs and the WHO CA+**

When these issues are raised, we are regularly reassured that:

“Any changes to Australian law to implement the new instrument or IHR amendments would also have to be considered and passed by Parliament. Similarly, the Australian Constitution can only be changed by referendum, which requires a public vote by the people of Australia in accordance with the requirements of section 128 of the Constitution.”

We appreciate and understand the position being advanced. However, the reassurances are, with respect, disingenuous. By acquiescing to the 307 IHRAs and/or becoming a party to the WHO CA+, Australia will be promising to implement what it has agreed to in those international instruments. It is important to acknowledge that in giving those promises Australia is pledging to the UN and the WHO, as well as the international community, its intention to ratify and enshrine those instruments in our domestic law. It is also important to ask the question; what would be the consequences of our failure to do so?

Further, when making new laws, or amending existing ones, Parliament (both current and future) have a positive onus to take into account all international covenants, treaties and instruments Australia is a party to. If Australia is a party to the 307 IHRAs and the WHO CA+, how could Parliament selectively choose to legislate what international instruments it has agreed to?

This is why these Treaties cause concern, and why these concerns cannot be ignored.

The 2005 IHRs, to which Australia is already a party and which are legally binding, at Article 59, sub 3 makes clear, that

“If a State is not able to adjust its domestic legislative and administrative arrangements fully with these Regulations within the period set out in paragraph 2 of this Article, that State shall submit within the period specified in paragraph 1 of this Article a declaration to the Director-General regarding the outstanding adjustments and achieve them no later than 12 months after the entry into force of these Regulations for that State Party.”
(emphasis added)

The words could not be more clear. If this is the case, then 10 months to consider any future IHRAs such as the 307 IHRAs, and a further 12 months to implement them, will be impossible and consequently could result in legitimate consequences such as geopolitical sanctions and other international pressures for failure to comply and/or implement.

9. **Australia's human rights**

These Treaties shall also impact Australia's human rights policy agenda. Examples of those impacts have been outlined in Maat's Method's letter (of today's date and provided with this letter) addressed to the Human Rights Commissioner and cc'd to your office with this letter.

10. **Our questions for the Attorney-General's office are as follows:**

- 10.1 Is your office aware of the four Treaties (listed and linked in section 6 above), which have the potential to adversely impact on the human rights of Australians?
- 10.2 If Australia were to acquiesce to the Treaties, what will be the effect on the operation of our Constitution, our sovereignty, our domestic laws, our international obligations and our human rights obligations?
- 10.3 As JSCT's review of the Article 59 IHRAs appears to have been conducted in a vacuum without reference to the other significantly advanced Treaties. We propose your office issue a direction to JSCT (if possible) to reconsider their endorsement of the Article 59 IHRAs and conduct an inquiry to examine Article 59 IHRAs as against the 307 IHRAs, WHO CA+ and the UN PPPR Manifesto, which while still being prepared, are well advanced for JSCT to understand their intended meaning. The timeframe for this is short, as the date for express rejection of the Article 59 IHRAs is as soon as **27 November 2023**.
- 10.4 If, as noted above, Australia's ability to manage its own responses and domestic policy in relation to any future health emergency will be mitigated, we ask that your office sends letters of deferment to the Prime Minister.

We would be more than willing to meet with your office, otherwise and in the meantime we look forward to hearing from you as soon as possible.

Sincerely,

The Delegation:

Prof. Wendy Hoy FAA OA (QLD), Professor of Medicine
A./Prof. Chris Neil (Victoria), Cardiologist
Dr. Russell Price (QLD), Vascular Surgeon
Dr. Niro Sivathasan (NSW), Cosmetic Surgeon
Dr. Duncan Syme (VIC), General Practitioner
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Katie Ashby-Koppens (NSW), Litigation and Human Rights Lawyer
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Bernadette Ryan (ACT), Social Worker / Researcher
Karen Fox (NSW), Researcher

CC – by email unless specified:

| | |
|-------------------------------------|---|
| <i>The Prime Minister (by hand)</i> | <i>Stephen Donaghue, Solicitor General</i> |
| <i>Hon Mark Butler, MP</i> | <i>Simon Newnham, Deputy Secretary, Integrity and International Group</i> |
| <i>Michaelia Cash, Senator</i> | <i>Emeritus Professor Rosalind Croucher AM, President, Australian Human Rights Commission</i> |
| <i>Peter Dutton</i> | <i>Ms Lorraine Finlay Human Rights Commissioner</i> |