

26 November 2023

Ms Susan Templeman MP
Chair
Standing Committee on Petitions

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The Hon Mark Butler MP
Minister for Health and Aged Care

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Senator the Hon Anne Ruston
Shadow Minister for Health and Aged Care

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Dear Members of Parliament

Re: Response to the reply received to Petition EN5048

1. We refer to the letter dated 6 October 2023 (**attached** as schedule 1 to this letter) (**Your Letter**), received by us on 13 November 2023.
2. Your Letter refers to other petitions EN4203, EN4255, EN4266, EN4236, EN5009, EN5028, EN5029. We are unaware of these petitions.
3. We express our concerns regarding the inaccuracies and dismissive response given by your office to Petition EN5048, signed by 55,697 Australians concerned with the:
 - a. the amendments to Article 59 of the International Health Regulations (**Article 59 IHRAs**);
 - b. the 307 amendments to the International Health Regulations¹ (**307 IHRAs**);
 - c. Pandemic Agreement² (most recent version 30 October 2023),(together the **Treaties**).

¹ https://apps.who.int/gb/wgihr/pdf_files/wgihr1/WGIHR_Compilation-en.pdf

² https://apps.who.int/gb/inb/pdf_files/inb7/A_INB7_3-en.pdf

4. Your Letter is neither current nor accurate and it is clear that you as our Minister of Health are not fully apprised about the extent or status of the World Health Organization's Treaties. We elaborate under separate heading below.

Joint Standing Committee on Treaties' (JSCT) process with respect to the Article 59 IHRAs

5. The Article 59 IHRAs significantly reduce time frames for Australia to consider and implement future amendments. The Article 59 were adopted by the World Health Assembly May 2022 per decision WHA75.12.³

6. Your Letter states:

This includes Article 59 of the IHR, which was agreed by WHO Member States at the World Health Assembly in 2022. As part of its process in scrutinising proposed treaties, JSCOT undertakes further consultation by inviting submissions from stakeholders and members of the public.

7. This is not correct. JSCT held no consultation, invited no submissions from stakeholders or members of the public. In fact, the four members on JSCT we have conferred with, were not even aware of the Article 59 IHR amendments, or that they had reported on them.
8. JSCT's review of the Article 59 IHRA amendments are buried in JSCT's [Report 210](#) headed *Timor-Leste Cooperation in the Field of Defence and the Status of Visiting Forces* and table 3 August 2023 - a title which, on the face of it, fails to identify the International Health Regulations. Further, neither the Senate⁴ nor the House of Representatives⁵ engaged with the International Health Regulations aspect of Report 210. Such that neither House appears to have considered the Article 59 IHR amendments, albeit Report 210 appears to have been [voted upon](#).
9. JSCT provided no opportunity for public consultation or submissions from stakeholders, suggesting either JSCT has not correctly scrutinised the proposed treaty, or you misunderstand JSCT's process with respect to the Article 59 IHRAs. Clarification from your office on this is sought.
10. A further explanation may be that there was insufficient time for JSCT to seek public consultation and stakeholder submissions given the International Strategies Branch

³ https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_R12-en.pdf

⁴ Hansard, Senate, 3 August 2023, see page 74:
https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/27117/toc_pdf/Senate_2023_08_03.pdf;fileType=application%2Fpdf

⁵ Hansard, House of Representatives, 3 August 2023, see page 10:
https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/27157/toc_pdf/House%20of%20Representatives_2023_08_03.pdf;fileType=application%2Fpdf

Submitted of your department sat on the Article 59 IHR amendments for 13 months before finally supplying them to JSCT in [June 2023 under Explanatory Statement 5](#).⁶

11. You too are no doubt surprised at the lack of due process conducted by JSCT before it reported to both houses. We therefore look forward to hearing from your office as to the reasons for the absence of any public consultation on this amendment.
12. Also relevant to the Article 59 IHRAs, New Zealand has rejected these timeframes⁷ which we urge Australia to do before 1 December 2023.

Member State-led organisation

13. In Your Letter you state:

The World Health Organization (WHO) is, and remains, a Member State-led organisation.

14. While Member States have a representative at the WHO, that is in name only. Leadership is called into question when considered against the WHO's funding.
15. You might not be aware that less than 20%⁸ of the WHO's funding comes from assessed contributions from Member States. The remainder of the WHO's funding comes from voluntary contributions, through private public partnerships, with some of the largest amounts coming from private companies and organisations.
16. The effect of such large voluntary contributions being made by private companies and organisations has the consequence that 90% of that earmarked to specific programs and areas and are invariably tied to the preference and direction of the donors.
17. The largest private donors are primarily the Bill & Melinda Gates Foundation and the Gates-funded GAVI Alliance.⁹ For example, the Bill & Melinda Gates Foundation is alone responsible for over 88 per cent of the total amount donated by private donors.
18. Many people are unaware of the sway this foundation holds over the WHO by virtue of its donations. Bill Gates' biennial contributions of \$4.84 billion dollars through the Bill & Melinda Gates Foundation exceeded that of any member state.¹⁰
19. We are sure you can appreciate the persuasion such financial contributions have on an organisation.

⁶https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSCT/2023/Minor_Treaty_Actions/MTA_-_5-2023_-_Amendments_to_International_Health_Regulations.pdf?la=en&hash=130623E949B3A4C568665D5C035014E305495F5C

⁷<https://www.nzfirst.nz/coalition-agreement>, see page 10 second bullet point

⁸<https://www.who.int/about/funding/assessed-contributions>

⁹<https://open.who.int/2020-21/contributors/overview/vct>

¹⁰<https://open.who.int/2020-21/contributors/overview/vcs>

Recommendations will be binding unless rejected

20. This may be the case under the 2005 International Health Regulations, to which Australia is bound without reservation.
21. However, the current version of the [307 Proposed Amendments](#) to the 2005 International Health Regulations seek to grant the WHO binding authority regarding standing recommendations. See Article 1 where the word non-binding has been deleted from standing recommendations.

In Your Letter you state:

The WHO has no legal authority to force countries to accept any of its recommendations and can only provide aid and assistance at Member States' requests.

22. This may be the case under the 2005 International Health Regulations, to which Australia is bound without reservation.
23. However, the current version of the [307 Proposed Amendments](#) to the 2005 International Health Regulations seek to grant the WHO binding authority regarding standing recommendations. See Article 1 where the word non-binding has been deleted from standing recommendations.

“standing recommendation” means ~~non-binding~~ advice issued by WHO for specific ongoing public health risks pursuant to Article 16 regarding appropriate health measures for routine or periodic application needed to prevent or reduce the international spread of disease and minimize interference with international traffic;

“temporary recommendation” means ~~non-binding~~ advice issued by WHO pursuant to Article 15 for application on a time-limited, risk-specific basis, in response to a public health emergency of international concern, so as to prevent or reduce the international spread of disease and minimize interference with international traffic;

24. This stripping away of Member State’s rights to make decisions, and the empowerment of the WHO can be seen throughout proposed amendments in the 307 IHRAs. For example, Article 12 provides that the WHO’s Director-General may determine whether an event is a public health emergency of international concern. Currently under the 2005 International Health Regulations, a State Party, in whose territory such a health emergency arises, is involved in the determination. Now however, what is proposed is that a state member will have no say in the Director General’s determination of whether a health emergency is of international concern. Furthermore, that health emergency need only be one of potential concern to the Director General, not of actual concern.

*Article 12 Determination of a public health emergency of international concern **public health emergency of regional concern, or intermediate health alert***

1. The Director-General shall determine, on the basis of the information received, in particular from the State Party within whose territory an event is occurring, whether an event constitutes a public health emergency of international concern in accordance with the criteria and the procedure set out in these Regulations.
 2. If the Director-General considers, based on an assessment under these Regulations, that a **potential or actual** public health emergency of international concern is occurring, the Director-General shall **notify all States Parties and seek to** consult with the State Party in whose territory the event arises regarding this preliminary determination **and may, in accordance with the procedure set forth in Article 49, seek the views of the Committee established under Article 48 (hereinafter the “Emergency Committee”)** . If the Director-General **determines that the event constitutes a public health emergency of international concern, and the State Party are in agreement regarding this determination**, the Director-General shall **notify all the States Parties**, in accordance with the procedure set forth in Article 49, seek the views of the ~~Committee established under Article 48 (hereinafter the “Emergency Committee”)~~ on appropriate temporary recommendations.
25. Should the proposed amendments to the IHR be adopted at the 77th World Health Assembly (scheduled May 2024) and Australia not reject them, now within 10 months as a consequence of the Article 59 IHRAs being tacitly accepted following a failing in due process outlined above, the WHO will have legally binding authority to impose medical treatments and pandemic response measures on member states ([Article 18](#)).

Conclusion

26. Many other aspects of this late response to an issue where time is of the essence, do not assist with removing the concerns of the 55,697 Australians summarily dismissed by this response.

Yours faithfully,

Debra Yuille
Karen Fox
Mianne Bagger
Luke Hart
Craig Ricketts
Shari Ware

Schedule 1 - Your Letter



The Hon Mark Butler MP
Minister for Health and Aged Care

Ref No: MC23-012500

Ms Susan Templeman MP
Chair
Standing Committee on Petitions
petitions.committee.reps@aph.gov.au

Dear Chair

Thank you for your correspondence regarding Ministerial Petitions EN4203, EN4255, EN4266, EN4236, EN5009, EN5028, EN5029, EN5048.

The World Health Organization (WHO) is, and remains, a Member State-led organisation. Let me assure you that under international law, Member States such as Australia retain sovereignty regarding their public health policies. The WHO has no legal authority to force countries to accept any of its recommendations and can only provide aid and assistance at Member States' requests. Australian law can only be changed by an act of the Parliament, not by any international treaty or other legal instrument.

The Australian Government is dedicated to strengthening national and global pandemic prevention, preparedness and response, and is committed to working with the Australian public and the international community to be better prepared for the next pandemic. As referred to in the Ministerial Petitions referenced above, two major reforms through the WHO are being considered: the development of a new international instrument on pandemic preparedness, prevention and response, such as a treaty; and targeted amendments to strengthen the implementation of the International Health Regulations (2005) (IHR). These processes will work to close gaps identified through independent reviews of the global response to the COVID-19 pandemic.

The intent of the new instrument is to strengthen the international community's efforts in preventing, preparing for and responding to future pandemics. The new instrument provides an opportunity to reduce the risk and impact of health threats, such as that posed by COVID-19 by strengthening global health systems and disease surveillance, while enhancing equity and future pandemic response. Australia is actively engaged in the Intergovernmental Negotiating Body (INB), which is drafting and negotiating the new instrument. For further information about the work of the INB please visit <https://apps.who.int/gb/inb>.

This new instrument is distinct from the IHR. The IHR is an existing legal framework that defines countries' rights and obligations in handling infectious disease outbreaks, public events and emergencies that have the potential to cross borders. In May 2022, Member States, including Australia, agreed at the World Health Assembly to establish a working group to consider targeted amendments to the IHR - the Working Group on Amendments to the IHR (WGIHR).

These amendments will enable the IHR to remain responsive to evolving public health threats and strengthen the ability of countries to co-operate internationally to prepare for and respond to infectious disease outbreaks. Australia is actively participating in negotiations through the WGIHR. Further information about the work of the WGIHR is available at www.who.int/health-topics/international-health-regulations.

We are working across both negotiation processes to ensure that reforms align with Government priorities and the national interest. The Government will consult widely across government, with Australian stakeholders and the community throughout negotiations to ensure Australia's and our region's interests are preserved and our priorities advanced.

Any new instrument or amendments to the IHR will be subject to parliamentary scrutiny and consideration by the Joint Standing Committee on Treaties (JSCOT). This includes Article 59 of the IHR, which was agreed by WHO Member States at the World Health Assembly in 2022. As part of its process in scrutinising proposed treaties, JSCOT undertakes further consultation by inviting submissions from stakeholders and members of the public. Any changes to Australian law to implement the new instrument or IHR amendments would also have to be considered and passed by Parliament.

It is important to note that 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. The Government is not considering a referendum be held on this matter at this time.

Further information about the above global health reform processes is available at www.health.gov.au/our-work/strengthening-global-health-and-international-pandemic-response.

Thank you for writing on this matter.

Yours sincerely

Mark Butler

6 / 10/ 2023