



**CHALLENGE
INJUSTICE.**

4 December 2023

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Amnesty International Australia Submission to the Department of Prime Minister and Cabinet Commonwealth Government COVID-19 Response Inquiry

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Amnesty International Australia (AIA) welcomes the opportunity to make a submission to the Department of Prime Minister and Cabinet regarding the Commonwealth Government's COVID-19 Response Inquiry.

As an organisation, Amnesty International has worked extensively over the past four years campaigning for the equitable distribution of pandemic related products around the world, with a particular focus on the role that international trade rules played in slowing the speed on the global response to COVID-19, and therefore Australia and other countries' access to these products. Beyond this, AIA has primarily focused on the human rights implications of international border closures on Australian citizens along with the impact of 'blanket' vaccine mandates across Australian jurisdictions.

In this respect, this submission will have three areas of focus:

1. Intellectual property rights and access the pandemic related products;
2. Human rights impacts of border closures on Australian citizens; and
3. Human rights impacts of vaccine mandates.

Intellectual property rights and access the pandemic related products

In June 2022, the World Trade Organization (WTO) announced the adoption of a 'partial' waiver of the WTO's Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. However, rather than waive intellectual property protections as the original drafters of the TRIPS waiver had intended, it merely provided some clarifications to current "flexibilities" and a narrow exception to an export restriction on COVID-19 vaccines for the duration of five years.¹

As Amnesty stated at the time, this decision was unlikely to make a significant difference in global access to COVID-19 vaccines, and the fact that the WTO decided to postpone by six months the

¹ Amnesty International, 'Covid-19: WTO ministerial decision on TRIPS Agreement fails to set rules that could save lives,' June 17 2022, available at <https://www.amnesty.org/en/latest/news/2022/06/covid-19-wto-ministerial-decision-on-trips-agreement-fails-to-set-rules-that-could-save-lives/>

decision around extending the agreement to cover diagnostics and therapeutics - a decision that has still not been made - highlights how ineffective the WTO has been regarding this issue.²

These decisions and delays are not only a hollow response to COVID-19, but sends the message that intellectual property rights outweigh the rights to health and life, setting a worrying precedent for international cooperation in future public health emergencies.

AIA welcomed the bipartisan support in Australia for the original TRIPS waiver,³ but remains disappointed in the failure of this support to materialise in active promotion of the TRIPS waiver and its key provisions in international forums, including the current negotiations underway concerning the Pandemic Treaty.⁴

Governments have an obligation to ensure that health facilities, goods, and services, including medicines, are available, accessible, acceptable and of good quality – to everyone, without discrimination, irrespective of where they live or their income. Access to COVID-19 vaccines that are safe and effective is therefore an essential element of the right of everyone to the highest attainable standard of physical and mental health, including in Australia.

It is no secret that Australia's vaccine rollout faced serious delays, and that was in part due to a global shortage of vaccines. In this respect, vaccine producing companies played a decisive role in restricting fair access to a life-saving health product by monopolising intellectual property and blocking technology transfers.⁵

There is still time - particularly concerning diagnostics and therapeutics - to right the wrongs of this pandemic when it comes to intellectual property rights, and AIA would urge this Inquiry not to overlook the importance of this matter when it comes to policies that support Australians.

Human rights impacts of border closures on Australian citizens

During the pandemic, there were thousands of Australians stranded overseas, unable to come home due to travel restrictions related to COVID-19.⁶ This included many families that were separated, and others unable to be with sick and dying relatives.

Leaving people stranded overseas is a breach of their human rights. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights states that everyone has the right to return home to their country, and shall never be deprived of the right to enter their own country.

This situation was further exacerbated in 2021 when the then Australian government introduced an Amendment Determination to the *Biosecurity Act 2015* that removed the automatic exemption for

² Amnesty International, 'Proposed Delay on TRIPS Extension Slammed,' 15 December 2022, available at <https://www.amnesty.org.au/proposed-delay-on-trips-extension-to-include-covid-19-treatments-and-tests-slammed-by-alliance-of-health-human-rights-and-fair-trade-organisations/>

³ Amnesty International, 'Amnesty Welcomes Australia's Support for the TRIPS Waiver to End Vaccine Monopolies,' 9 September 2021, available at <https://www.amnesty.org.au/amnesty-welcomes-australias-support-for-the-trips-waiver-to-end-vaccine-monopolies/>

⁴ Amnesty International, 'Joint Public Statement: The Pandemic Treaty Zero Draft Misses the Mark on Human Rights,' 24 February 2023, available at <https://www.amnesty.org/en/wp-content/uploads/2023/02/IOR4064782023ENGLISH.pdf>

⁵ Amnesty International, 'A Double Dose of Inequality: Pharma Companies and the COVID-19 Vaccine Crises,' 2021, available at <https://www.amnesty.org.au/how-we-could-have-avoided-the-omicron-variant-with-fair-and-equal-access-to-vaccines-around-the-world/>. See also, Amnesty International, 'Money Calls the Shots: Pharma's Response to the COVID-19 Vaccine Crises,' 2022, available at <https://www.amnesty.org/en/documents/pol40/5140/2022/en/>

⁶ Amnesty International, 'Stories of the Stranded Aussies: A Case to Bring Them Home,' 2020, available at <https://www.amnesty.org.au/wp-content/uploads/2020/11/Stories-of-the-Stranded-Aussies.pdf>

Australian citizens and permanent residents ordinarily resident in a country other than Australia, to leave Australia without exemption upon return.⁷

While AIA well understands the need of the Australian government to protect the right to health of the Australian community, this objective can and could have been achieved through a more balanced approach. Human rights are not mutually exclusive.

Human rights impacts of vaccine mandates

While there are legitimate public health reasons to aim for as many people as possible to be vaccinated, governments must not impose blanket vaccination mandates and should seek to ensure that vaccination is with full consent. Not doing so has the potential to infringe upon human rights for two key reasons:

1. All individuals have the right to prior, free and informed consent for any medical procedure including vaccination. This means people have the right to choose whether or not they wish to be vaccinated; and
2. Blanket mandates do not take into account specific contexts and the circumstances faced by particular populations. As a result, blanket mandates can have a discriminatory and disproportionate impact upon some groups, such as Indigenous communities who may not trust health authorities due to historical marginalisation and abuses in clinical studies.

For these reasons, governments should always focus on increasing voluntary uptake, rather than imposing mandates on COVID-19 vaccines. To achieve this, governments should provide accurate and evidence-based information, in formats that are accessible to everyone, about the availability, necessity and effectiveness of vaccinations.

International human rights law allows for certain rights to be limited under specific circumstances where it is provided by law, and it is necessary and proportionate to a legitimate aim, such as the protection of public health. This means that there are some limited exceptions that may allow governments to impose targeted vaccine mandates under particular circumstances. These requirements include situations where people are not forced to be vaccinated, but their employment, freedom of movement or entry to certain venues may be contingent upon an immunisation requirement. In these cases, additional human rights, such as the right to decent work, also are at stake and need to be taken into account accordingly. The Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR provide specific guidance on when and how restrictions to human rights may be implemented.⁸

In the case of Australia and across states and territories, AIA raised specific concerns with relevant Ministers across these jurisdictions regarding the possibility of using less restrictive measures as well as a lack of timelines with no scope for periodic review where mandates were in place. It is with great disappointment that AIA notes a lack of engagement on these issues from the Ministers in question.

⁷ Amnesty International, 'Stranded Aussies: Travel Ban Determination,' 21 August 2021, available at <https://www.amnesty.org.au/stranded-aussies-overseas-travel-ban-determination/>

⁸ UN Commission on Human Rights, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights,' 28 September 1984, available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

