

Adjunct Professor Jane Halton  
Second National Review of Quarantine Arrangements  
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20 September 2021

Dear Adjunct Professor Halton,

**Submission to the Second National Review of Quarantine Arrangements**

Thank you for the opportunity to contribute to your second review.

**About the Human Rights Law Centre**

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We are a national, not-for-profit organisation registered as a charity with offices in Melbourne and Sydney.

We have undertaken policy research, legal action and advocacy on a number of issues arising from the COVID-19 pandemic including on travel restrictions and quarantine. For example, we made a submission to the Australian National Audit Office's review of travel restrictions and our Executive Director made a submission and gave evidence to the Victorian COVID-19 Hotel Quarantine Inquiry.

**Summary**

Australian government responses to the COVID-19 pandemic, assisted by our geography, have saved thousands of lives and prevented widespread illness. The hotel quarantine program has played a critical role in protecting public health. To respond to the rates of transmission overseas compared with Australia, some form of quarantine program has not only been justified from a human rights perspective, it has been required given the obligations of governments to protect people's rights to life and health.

However, the hotel quarantine program has created significant welfare challenges for people who are detained. It has also contributed to the significant barriers to Australians coming home. Further, with limited exceptions such as the New Zealand bubble, governments have adopted a blunt, blanket approach to hotel quarantine detention despite:

- Varying transmission rates in the country of departure. People coming from countries with little or no COVID have been treated the same as people coming from countries with significant transmission.
- The positive impact of vaccinations and pre-departure testing.
- The chance of someone having COVID in quarantine dropping significantly across the 14 day period as further negative tests are returned.
- Transmission rates in the state or territory that people arrive in. People are still detained and for the same period even now there is significant transmission in Victoria and NSW.

Further, the approach to risk in hotel quarantine has been completely inconsistent with the approach to risk in the Australian community. Across Australia, people who test positive for COVID are allowed to isolate at home. Yet people who arrive from overseas, who are statistically extremely unlikely to have COVID particularly if they are vaccinated, are detained in a hotel for the full two weeks without fresh air or exercise and charged \$3000 for their detention.

The ongoing use of hotel quarantine detention for two weeks must be constantly assessed to ensure it is justified. We strongly believe the current approach to hotel quarantine cannot be justified, particularly in NSW and Victoria where there are outbreaks and governments have abandoned trying to eliminate COVID. Currently, there are over 14,000 active cases in NSW and over 5,000 in Victoria.

We welcome recent announcements of home quarantine pilots for people arriving from overseas in South Australia and NSW, and for people coming home from interstate to Victoria. More needs to be done and in a timely way.

Australian governments should adopt a risk-based approach to quarantine that moves beyond the current reliance on mandatory two week hotel quarantine detention as the primary quarantine response. At a minimum, adopting a risk-based approach would mean the making the following changes:

- Establishing a home quarantine program immediately for people arriving in NSW and Victoria who have suitable home accommodation to quarantine in.
- Establishing home quarantine programs in other Australian jurisdictions taking into account learnings from pilot programs. The timing of the establishment of these programs should consider the planned timing of opening up and abandoning current COVID-zero strategies in each jurisdiction once vaccination targets are reached.
- Reviewing the current two week period of quarantine to assess whether it can be safely reduced with ongoing testing, starting with NSW and Victoria.
- Calibrating the quarantine response to the level of transmission in the person's country of departure.
- Continuing to review the best available medical evidence around risk and adjusting quarantine programs to take into account any new risks, such as the emergence of new COVID-19 strains.

Finally, we understand that the South Australian home quarantine pilot is using facial recognition technology for compliance purposes. Facial recognition technology carries significant human rights and privacy risks. There needs to be proper safeguards and transparency around the use of facial recognition technology in home quarantine. There should be a clear ban on any of the data collected being used for any other purpose beyond public health compliance.

## **Recommendations**

1. Australian governments should adopt a risk-based approach to quarantine. At a minimum, adopting a risk-based approach would mean the making the following changes:
  - Establishing a home quarantine program immediately for people arriving in NSW and Victoria who have suitable accommodation to quarantine in.
  - Establishing home quarantine programs in other Australian jurisdictions taking into account learnings from pilot programs. The timing of the establishment of these programs should consider the planned timing of opening up and abandoning current COVID-zero strategies in each jurisdiction once vaccination targets are reached.
  - Reviewing the current two week period of quarantine to assess whether it can be safely reduced with ongoing testing, starting with NSW and Victoria.
  - Calibrating the quarantine response to the level of transmission in the person's country of departure.
  - Continuing to review the best available medical evidence around risk and adjusting quarantine programs to take into account any new risks, such as the emergence of new COVID-19 strains.
2. If facial recognition technology is used in quarantine programs, Australian governments must ensure there are proper safeguards and transparency around its use. There should be a clear ban on any of the data collected being used for any other purpose beyond public health compliance.

## Focus of this submission

Your review, amongst other things, is examining the implementation of the recommendations made in your first review report published on 23 October 2020. Our submission focuses on the failure to properly implement the following two recommendations made by the first review:

- Options for new models of quarantine should be developed for consideration by the National Cabinet including a risk assessment of these options and an analysis of traveller suitability.
- The National Cabinet should consider exempting low risk cohorts, such as travellers from New Zealand, from mandatory quarantine.

These recommendations broadly relate to replacing a blanket approach to quarantine that treats all people the same, with a risk-based approach that seeks to protect public health while minimising the negative impact of quarantine on people and improving the overall quarantine system.

## Quarantine limits contribute to the harm caused by international travel restrictions

Since March 2020, decisions by the Australian Government and state and territory governments have severely restricted the ability of Australian citizens and permanent residents to return home from overseas. Caps on international arrivals, travel bans and other policy decisions have restricted the number and types of people who can enter Australia. The current arrival cap on people coming to Australia from overseas appear to be the harshest since the pandemic started 18 months ago.<sup>1</sup>

Mandating detention for two weeks in hotel quarantine has been a key part of these restrictions. Limits on the number of hotel quarantine places, and pressure on the hotel quarantine systems, are connected to international arrival caps. State premiers have repeatedly asked for harsher arrival limits due to the pressure on hotel quarantine systems. Mandatory quarantine detention is also a significant disincentive to people travelling, both from a welfare and cost perspective.

These restrictions have caused significant hardship and distress and have kept thousands of people apart from loved ones. Australians are connected globally. Almost half of all Australians have at least one parent born overseas. We understand that there are tens of thousands of Australians who are trying to get home, many in vulnerable situations. Few requests for inwards compassionate exemptions have been approved.<sup>2</sup> Regular media stories show people in distressing personal circumstances who have been refused permission to travel, including those who appear to meet the guidelines.<sup>3</sup>

Further, the Australian Government has largely suspended its humanitarian visa program which provides critical safety for people fleeing persecution and harm. Thousands of people, including people overseas who hold humanitarian visas and who have been approved for resettlement, have been unable to travel to Australia to rebuild their lives in freedom and safety.<sup>4</sup>

Our submission to the Australian National Audit Office's review of travel restrictions made on 30 June 2021 recommended ways to reduce the impact of travel restrictions on families and others.<sup>5</sup> This submission focusses on

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<sup>1</sup> See eg Nick Evershed, "Data reveals Australia's new international arrivals cap is harshest yet", The Guardian (7 July 2021) <https://www.theguardian.com/news/datablog/2021/jul/07/australias-travel-restrictions-how-the-cap-on-international-arrivals-has-changed> Arrival limits have been reduced further since this article was published.

<sup>2</sup> Between October 2020 and January 2021, 3,630 requests for inwards travel exemptions were granted on compelling and compassionate grounds while 36,303 were refused. Department of Home Affairs, Response to FOI Request FA21/02/00413, Number of inward and outward travel exemption requests received, approved and refused between October 2020 and January 2021 by category (1 March 2021), <https://www.homeaffairs.gov.au/access-andaccountability/freedom-of-information/disclosure-logs/2021>

<sup>3</sup> See eg Hannah Sinclair, "Dual citizens call for more compassionate approach to Australia's international border closure", ABC 7.30 and ABC News (24 June 2021), <https://www.abc.net.au/news/2021-06-23/dual-citizens-australiaurge-compassionate-covid-border-rules/100238760>

<sup>4</sup> Henry Swartz, "Thousands of vulnerable refugees granted protection in Australia remain stuck overseas", SBS News (23 June 2021), <https://www.sbs.com.au/news/thousands-of-vulnerable-refugees-granted-protection-in-australiaremain-stuck-overseas>

<sup>5</sup> A copy is available here: <https://www.hrlc.org.au/submissions/2021/6/30/families-left-behind>

the impact of quarantine arrangements on these travel restrictions. Allowing safe home quarantine will reduce barriers to return and should enable governments to lift arrival limits so that more Australians can return to home and other people, such as refugees with humanitarian visas, can enter Australia.

### **A human-rights based approach to quarantine: minimising restrictions on rights while protecting public health**

When deciding on quarantine arrangements, governments must balance the rights of individual people who are subjected to quarantine, with the rights of the broader community to be protected from COVID-19. Human rights principles help governments to make the right decisions when balancing different rights.

The Australian Government has committed under international law to respect human rights set out in key international treaties including:

- The right to life.
- The right to health.
- The right to liberty and security of person.
- The right to humane treatment while detained.
- The right to privacy.
- Freedom of movement.
- The right to leave your country.
- The right not to be arbitrarily deprived of the ability to enter your country.

While there is no national Charter of Human Rights in Australia that protects these rights in Australian domestic law, three Australian jurisdictions, Victoria, Queensland and the ACT, have adopted a Charter or Human Rights Act that requires government agencies to comply with certain human rights.

Human rights principles allow governments to restrict people's rights only if it is genuinely necessary to achieve a legitimate purpose. The restriction must be reasonable and must be no more restrictive than necessary to achieve the purpose. In other words, any restriction on rights must be the lowest level needed to get the job done.

A human rights approach to quarantine would:

- Adopt the least restrictive form of detention which will be effective to protect life and health.
- Detain people for the shortest period necessary to protect life and health.
- Protect all other human rights that do not need to be restricted (for example, allowing people detained to communicate freely, to remain in detention as a family unit etc).
- Adopt a tailored approach that allows flexibility where detention may have specific impacts on certain people or groups (such as children, older people, people with mental illness or people who require specialist medical treatment).
- Adopt a tailored approach to respond to different levels of risk.
- Involve regular reviews to adapt the program to respond to the best available medical evidence on transmission risks and the current circumstances around community transmission in both the departure country and the Australian jurisdiction where the person arrives.

### **Relevant context to inform the current assessment of quarantine**

*People arriving from overseas into quarantine are very unlikely to have COVID-19*

People arriving in Australia from overseas are statistically very unlikely to have COVID-19. We understand that the rate of people testing positive has been less than 1%. Your inquiry should have access to the latest data on this and can take into account variations between country of departure, the impact of the Delta variant, the use of pre-departure testing and the impact of vaccination.

Options such as rapid-antigen testing and arrival testing (for example as used in Hong Kong), provide ways of further reducing the risk of positive cases from overseas.

*The vast majority of people who test positive in quarantine are identified in the first few days*

The vast majority of people who have test positive in hotel quarantine are identified in tests conducted in the first few days. For example, the Victorian Hotel Quarantine Inquiry noted that in May 2020, the Victorian Government

“observed a pattern that indicated all but 0.3 per cent of positive cases were identified by the day three test (or, in other words, 99.7 per cent of positive cases had been identified in this timeframe)”.<sup>6</sup> Again, your inquiry should have access to the latest data on this.

This means that the already very low risk of people arriving from overseas having COVID, becomes extraordinarily low after a negative day 3 or day 4 test (and even more so if they are fully vaccinated).

#### *Hotel quarantine detention creates significant welfare challenges, particularly for vulnerable groups*

There are well documented welfare challenges involved in hotel quarantine detention, particularly for groups such as people with mental and physical health conditions, older people, children, survivors of family violence and people with disability.

When a government detains someone, it assumes responsibility for most aspects of their welfare including food, accommodation, health and safety. Detention of any form involves risks around safety, mental health and mistreatment. These risks are exacerbated by the fact that people detained in hotel quarantine are detained in a room not designed for detention for two weeks without access to fresh air and outdoor exercise. Detention in a quarantine facility carries additional risks of virus transmission to otherwise healthy people who are being detained, and to staff.

Your first review report correctly noted “The pressures on mental health and wellbeing during hotel quarantine is arguably one of most important considerations in the hotel quarantine system”. The Victorian inquiry heard evidence of at least one suicide in hotel quarantine and other evidence of people contemplating suicide or self-harm.<sup>7</sup> People detained in hotel quarantine have made hundreds of complaints about quarantine to human rights commission and ombudsman agencies.

#### *People are being charged significant amounts for being detained in hotel quarantine*

People who are detained in hotel quarantine are being charged significant amounts for their detention. For example in Victoria, the charges are \$3,000 for an adult, \$1,000 for an additional adult and \$500 for each child aged between three and 18. These charges come on top of the extremely high flight costs most people will have incurred as a result of incoming arrival limits.

We have previously argued that it is inconsistent with human rights principles to charge people for their own detention. The decision to continue charging fees also underscores the need for strong justification for hotel quarantine detention compared with available alternatives.

#### *There is now significant community transmission of COVID-19 in NSW and Victoria*

While many Australian jurisdictions remain COVID-free, there is significant transmission in Victoria and NSW and both governments no longer are pursuing a zero-COVID strategy. Currently, there are over 14,000 active cases in NSW and over 5,000 in Victoria. Further, there are tens of thousands of active close contacts in NSW and Victoria.

#### *People who have COVID in NSW and Victoria are allowed to isolate at home*

People who test positive to COVID in Victoria and NSW (and elsewhere in Australia) are allowed to isolate at home. People who are close contacts are also allowed to quarantine at home.

### **Adopting a risk-based approach to quarantine**

Given all of the above, we firmly believe that Australian governments should adopt a risk-based approach to quarantine that moves beyond the current reliance on mandatory two week hotel quarantine detention as the

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<sup>6</sup> Interim Report COVID-19 Hotel Quarantine Inquiry, (6 November 2020), page 70  
<https://www.quarantineinquiry.vic.gov.au/reports-0>

<sup>7</sup> See eg: Bridget Rollason, Melbourne’s hotel quarantine inquiry hears Brett Sutton wanted state controller role, ABC News, (10 September 2020) <https://www.abc.net.au/news/2020-09-10/melbourne-coronavirus-hotel-quarantine-inquiry-mental-health/12649816>

primary quarantine response. We note both your October 2020 report and the Victorian Hotel Quarantine Inquiry report recommended exploring different quarantine options taking relevant risks into account. The Victorian Inquiry specifically recommended introducing a home quarantine program.<sup>8</sup>

The most compelling argument in favour of home quarantine arises currently in NSW and Victoria. It simply makes no sense to detain low-risk vaccinated people for two weeks in a hotel without fresh air and exercise while charging them \$3000, when thousands of people with COVID and tens of thousands of close contacts are allowed to isolate and quarantine at home across Victoria and NSW.

It also makes no sense to treat people coming from countries with little or no COVID the same as people coming from countries with significant outbreaks. The risk calibration will further shift in favour of allowing home quarantine as vaccination rates continue to improve.

At a minimum, adopting a risk-based approach would mean the making of the following changes:

- Establishing a home quarantine program immediately for people arriving in NSW and Victoria who have suitable accommodation to quarantine in.
- Establishing home quarantine programs in other Australian jurisdictions taking into account learnings from pilot programs. The timing of the establishment of these programs should consider the planned timing of opening up and abandoning current COVID-zero strategies in each jurisdiction once vaccination targets are reached.
- Reviewing the current two week period of quarantine to assess whether it can be safely reduced with ongoing testing, starting with NSW and Victoria.
- Calibrating the quarantine response to the level of transmission in the person's country of departure.
- Continuing to review the best available medical evidence around risk and adjusting quarantine programs to take into account any new risks, such as the emergence of new COVID-19 strains.

### **Safeguards around facial recognition technology**

Finally, we understand that the South Australian home quarantine pilot is using facial recognition technology for compliance purposes. Facial recognition technology carries significant human rights and privacy risks. There needs to be proper safeguards and transparency around the use of facial recognition technology in home quarantine. There should be a clear ban on any of the data collected being used for any other purpose beyond public health compliance.

Sincerely,



**Hugh de Kretser**

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<sup>8</sup> Final Report COVID-19 Hotel Quarantine Inquiry, (21 December 2020), recommendation 58  
<https://www.quarantineinquiry.vic.gov.au/reports-0>