

Dear Sir/ Madam

As somebody who was stranded overseas for most of the pandemic, and directly experienced the impact of Australia's border policies, I'm writing in response to this inquiry to address what can only be described as genuine concern about Australia's pandemic handling. I know I'm not alone in that sentiment as I'll explain. Essential pillars of good governance such as 'fairness', 'rule of law', and 'proportionality' appeared to be absent at a time when they were needed most. There's a long list of matters I would like to include in this submission, but due to the page limit, I'll primarily focus on two areas; the National Cabinet agreement to charge quarantine fees and International policies affecting stranded Australians.


Out of all the issues impacting returnees or those moving interstate, the one I find the most disturbing is the introduction of a quarantine fee. It falls within the scope of this inquiry because this fee originated from a highly questionable agreement in the National Cabinet, and from the information in front of me, it's quiet apparent that allot more needs to be asked about its legality. Nevertheless, given the plethora of controversial decisions made throughout the pandemic, it's hardly surprising that it got through. I find it incredible what can be achieved when the budget is at stake, and I will add, we've seen something similar to this before. The mountain of unpaid invoices, at the very least, provide a clue that I'm not the only one who suspects there's something deeply wrong with this policy.

Unfortunately, this disturbing trend continued as evidenced by the Australian Governments contempt for the very people their own policies caused to be stranded overseas. I've heard the notion that Australia did so well during the pandemic, though I would beg to differ. When taxpayers are prevented from entering their own country, one has to wonder what that statement even means. Personally I spent 18 months in India, 16 months of which I was stranded, as I waited to exercise my right to return. I had left for a holiday months before Covid19 had even been heard of and in the end I was gone for more than 2 years thanks to caps being placed on incoming international flights. India barely has the means to support its own population, so I'm naturally curious about what it would have taken to trigger the Australian Governments interest in my welfare and that of others who were stranded? This predicament may have been driven by Covid-Zero policies unilaterally pursued by the states, but the Federal Government was in control of the borders and so had the power to deny the increasingly heedless requests for flight caps at any time they wished to do so. Evidently they chose to do nothing! How could this ever be prevented from happening again? Why aren't more questions being asked?

➤ Quarantine Fees

When the states introduced their own quarantine arrangements at the beginning of the pandemic, the entire scheme was considered a public health measure. Returnees were to be shuttled to hotels where they would undergo two weeks of detention. Expectedly, being a forced public health direction, the government covered the costs because this measure was for the public's benefit. Nobody would have expected to pay for this mandatory arrangement because we were forced into it. Within days of the inception of the quarantine scheme, most of the world was in lock-down. India entered lockdown on the 23rd of March 2020 and remained so for the months that followed. It wasn't until the world was beginning to exit hard lockdown, and some had the chance to come home, that National Cabinet suspiciously agreed that some 'arbitrary date' had passed and members would now introduce a quarantine fee along with flight caps.

As outlined in a National Cabinet Minute dated the **29th of May 2020¹**, under agenda item 8, it is indicated that: *'States and Territories wishing to do so will commence charging international arrivals for mandatory quarantine'*. However, **one month later, on the 28th of June 2020** a member of National Cabinet, the former Victorian Premier Daniel Andrews made the following statement to the media:

 If the Premier had received legal advice from National Cabinet indicating that he could charge a fee for quarantine, wouldn't his statement have been contrary to the one he made? Interestingly, as far back as the 27th of March 2020 National Cabinet agreed to determine any contributions required from travellers arriving within their jurisdictions³. Did they know as early as March 2020 that a fee was on the cards but didn't bother warning anyone? What's even more astonishing is that this early consideration seems to have preceded legal advice. Even after the May 2020 agreement¹, the charging system was kept quiet for at least one month. It's also worth mentioning that by December 2020 the Victorian Premier began charging a similar fee⁴, so the obvious question is, was the agreement in National Cabinet backed by legal advice?

Material obtained via freedom of information (FOI), where access was sought to the legal advice mentioned in the Victorian Premiers statement⁵, clearly indicates that the Victorian Government received a number of documents containing legal advice dated from the 21st to the 27th of May 2020. It's important to mention that the descriptions of some of these documents were redacted under Section

¹ **Attachment** National Cabinet Minute SM20_0266_NATCAB_16 - 29 May 2020.pdf-- Paragraph 8 - *States and Territories wishing to do so will commence charging for mandatory quarantine*. (FOI Material)

² https://www.youtube.com/live/m2xNaKF-SsI?si=iPGF-nbDiWDaO_Lv 28 June 2020 -[40:15 fwd] Premier Andrews states that he received legal advice indicating that he could not charge a fee for quarantine. (Full statement)

³ [Transcript 42761 | PM Transcripts \(pmc.gov.au\)](https://www.pmc.gov.au/transcripts/42761) PM Transcript, 'Update on coronavirus measures' 27 March 2020.

⁴ <https://www.youtube.com/watch?v=tskjlZiin8&t=497s> [5:55 fwd.] December 2020 - Victoria introduces quarantine fees.

⁵ **Attachment** - Legal Advice Received_FOI_Vic Premier's Office.pdf -Table containing correspondence and legal advice with regards to charging a quarantine fee (Vic). 1 | Page

29(1)(a) of the Freedom Of Information Act 1982 (Vic)⁶ (potential damage to Commonwealth-State relations) and that these same documents are labelled CiC (Cabinet in Confidence) noted to be National Cabinet documents⁵.

This connection to National Cabinet is reinforced by a table of legal advice obtained from a comparable FOI request made to the Department of Prime Minister and Cabinet (PM&C), where access was sought to legal advice provided to National Cabinet members in relation to charging quarantine fees⁷. The items listed in this table, dated between the 21st and the 26th of May 2020, were deemed exempt from release on the basis of legal professional privilege⁸. These dates appear to align with the dates of those documents received from the Victorian Premiers Office (labelled CiC), which would imply that those National Cabinet documents received by the Victorian Government contained legal advice. With all of this in mind, it appears likely that when the Victorian Premier made his statement on the 28th of June 2020, he had not received legal advice indicating that it was legal to charge somebody a fee for their own detention, and evidently National Cabinet members received the same advice but they somehow agreed to charge a fee anyway. Maybe that's why on the 10th of July 2020 the former Prime Minister Scott Morrison made the seemingly hesitant announcement that there was a *"view across National Cabinet that they are all effectively moving to a charging system"*⁹. A 'view' may have been all it was. But even without this apparent link between the Victorian and National Cabinet documents, it's unlikely that independent legal advice provided to the Victorian Government, corresponding to Mr Andrews statement, would differ from legal advice provided to any other member of National Cabinet in any other State. No matter how one looks at this, there appears to have been a sway from the standards of good governance, such as 'rule of law', and 'fairness' as a consequence of legal advice being ignored, or not being sought at all in relation to charging this fee! Understandably, it's particularly harsh to force a detention fee on returnees when they had already lost enough and flights were being charged at exorbitant levels as it was. Article 40 (1)(c) of the International Health Regulations¹⁰, of which Australia has ratified, clearly agrees that the government should cover the costs. Fees don't stop the spread of a listed human disease when there were flight caps in place, so emergency powers hardly justified the fee.

The last time I heard of legal advice, or the requirement for legal advice, being ignored in this way was during the Robodebt scheme. Existing advice was left in draft form, ignored, and a policy decision contrary to that legal advice was implemented!¹¹ The timing of Victorian Premier's statement alone suggests that this may have happened once again, even at the National Cabinet level. The real motive isn't totally clear, but It's interesting to note that in NSW it wasn't the Minister for Health who announced the inception of the charging scheme, it was the then Minister for Tourism Stuart Ayres¹². I'm sure the hotel industry was very happy with this arrangement!

It's telling enough that we don't even have similar arrangements in jails (a fee for detention). And if people were continually being placed in those facilities after 18 months, when a number of National Cabinet members openly eluded to the fact that Hotels were not 'fit for purpose'¹³, why didn't National Cabinet implement a safer and healthier system, since they were the ones who agreed to the scheme? For some, this lack of fairness, and essential care for detainees under this program clearly came at a great cost¹⁴. It's also highly unlikely that two weeks without fresh air or exercise aligns with basic health principles either. Even the worst convicted criminals receive that right. Charging for a forced public health measure sets a dangerous precedent so it's in the public's interest to know who should be covering the costs of a scheme that should rightly be paid for with public health funds. When I compare the crackdown on quarantine fees to the conveniently fabricated perception of alleged welfare cheats during the Robodebt scheme, I struggle to see the difference. Sadly, the contemptuous attitude driving this kind of behaviour became ever more prevalent as the pandemic progressed.

➤ International Policies, Flight Caps, and support for Stranded Australians

From India, as I watched the Fijian rugby team sing from the balconies of their quarantine hotel to mark the end of their 14-day stint,

⁶ Freedom Of Information Act 1982 (Victoria) – FOI Act Vic- Section 29(1)(a) : '(1) A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure— (a) would prejudice relations between the State and the Commonwealth or any other State or Territory

⁷ Attachment - 'National Cabinet Table of Legal Advice received: Table listing legal advice sought by National Cabinet with regards to charging a fee for quarantine. (FOI Material)

⁸ Freedom Of Information Act 1982 (Cth) Section 42 (1) : A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

⁹ <https://youtu.be/df6qYv-a5Mc> [4:10 fwd] 10 July 2020 PM Scott Morrison announcement : *"There is also a view across the National Cabinet that they are all effectively moving to a charging system"*

¹⁰ <https://www.who.int/publications/i/item/9789241580496> - International Health Regulations (2005) – Third edition

¹¹ <https://www.youtube.com/watch?v=3820cJXnKdM> 03 November 2022 – During the Robodebt scheme, 'unhelpful' legal advice was left in 'draft form and not finalized into a formal report.

¹² <https://www.facebook.com/watch/?v=1398427130347960> – NSW Minister for Tourism Stuart Ayres announces introduction of quarantine fees.

¹³ https://m.youtube.com/watch?v=HAHM4_ZZ6ec&feature=youtu.be [00:34 fwd] 08 June 2021 Acting Victorian Premier James Merlino states that hotels weren't built to tackle infectious disease. ; <https://www.skynews.com.au/australia-news/coronavirus/mcgowan-calls-on-federal-government-to-step-up-and-help-with-quarantine/video/b4113ce53b07366feebe3830e7dd8985> [1:40 fwd] 24 April 2021 - WA Premier Mark McGowan states that *"CBD hotels are not fit for purpose quarantine facilities"*

¹⁴ <https://www.abc.net.au/news/2022-12-11/qld-hotel-quarantine-suicide-coroner-annastacia-palaszczuk/101758708> 12 Dec 2020 : *Queensland's 'unsophisticated' hotel quarantine system left man without proper medical care, coroner finds.* ; <https://www.abc.net.au/news/2023-11-24/investigation-into-legality-of-covid-mandatory-quarantine/103146634> 24 Nov 2023 - NT coroner to investigate deaths of three people held at Howard Springs COVID facility ; <https://www.youtube.com/watch?v=8Fk20dUOK4A> rape in hotel quarantine S.A. ; <https://www.theguardian.com/australia-news/2021/jun/11/one-fifth-of-patients-attending-hospital-from-hotel-quarantine-suffered-mental-health-emergencies> 10 June 2021 - *'One-fifth of patients attending hospital from hotel quarantine suffered mental health emergencies'* ; <https://www.dailymail.co.uk/news/article-8718699/Shocking-details-emerge-returned-traveller-killed-Melbourne-hotel-quarantine.html> 11 Sep 2020 - Five unanswered phone calls: Shocking details emerge about returned traveller who killed himself in hotel quarantine

it was clear that what I was seeing had become the pandemic's 'new normal'. The idea of citizens stranded overseas was now acceptable, and as planned, we were forgotten¹⁵. The double standards were blinding! Watching the procession of celebrities¹⁶, sportspeople¹⁷, seasonal workers¹⁸, and wealthy business people¹⁹ enter the country, when so many were still stranded, only reinforced the fact that Australian citizenship or permanent residency meant absolutely nothing anymore. It didn't seem to matter that there were periods in which states, such as Victoria, had zero cases,²⁰ and that it was totally unreasonable to justify existing border policies. Federal Government approvals of forever tightening flight caps heedlessly continued whilst a population in fear of another lockdown tacitly supported those decisions. This was the finest example of overstep reinforcing overstep and there's no other way to put it!

Another notable milestone was reached when the Federal Government's response to a United Nations submission²¹, urging the return of three Australians stranded overseas, resulted in absolutely no change in border policies whatsoever. Standards of good governance, such as 'fairness' and 'proportionality', were evidently absent but supposedly justified by elusive medical advice, we the public, are not allowed to see. As the only western democracy without a Bill of Rights in our Constitution, decisions like these could be made without apprehension, so arguably, if we were taught anything by Australia's pandemic response, it's that we need a Bill of Rights in our Constitution as a matter of urgency! It was patently obvious that basic human rights were given no consideration at all!

The flagrant disregard for the ratified provisions of the International Covenant on Civil and Political Rights, such as Article 12(4), which states that 'no one shall be arbitrarily deprived of the right to enter his own country', will likely impact Australia's human rights standing internationally for years to come! When we were threatened with criminal sanctions for returning to our own country during the India flight ban, our government gained notoriety for their unparalleled cruelty world-wide. This was not only disproportionate, but life threatening to stranded citizens as at least one study suggests²². How can Australia condemn the actions of other states human rights abuses when our own government has completely ignored these provisions themselves? It was totally unnecessary. Cruelty had become the new political drawcard and nothing was going to get in its way! No thought was given to how these border restrictions would have long term psychological impacts on the victims, or that it left people in severe financial stress²³. Never mind that children were separated from their families²⁴, or that so many could not attend the funerals of loved ones²⁵. Moreover, those stranded Australians who had spent their life paying into the country's medical infrastructure were denied access to it at their greatest time of need. This was at a time when financial support for citizens, such as jobseeker, job keeper, and test isolation payments were available to the domestic population in abundance, while many stranded taxpayers could not even earn a wage. Not a moment of thought was given to any of this!

When I look back on Australia's pandemic response, I see a proud farmer standing in front of a burning field holding a dead mouse! The carnage that fire caused was barely a consideration. Myopia had already set in! The disproportionate response to the pandemic displayed complete disregard for the standards of good governance and I expect will do lasting damage to the public's trust in government integrity and their processes for years to come. One could hardly blame the domestic public for not wanting stranded Australians to return. When a few cases can spark a lockdown it's not surprising they wanted the borders to stay closed. That was in the hands of the Federal Government, who as I've stated, did nothing to stop this from happening, and it's unlikely that will be forgotten.²⁶ Public interest disclosure alone demands transparency behind all pandemic policies, including how they are funded. The double standards in border policies appear to indicate that these decisions weren't all health related, despite our government's claims²⁷ so it's hardly surprising why a Royal Commission is off the cards. I can only surmise one might have edged a little too close to the truth!

¹⁵ <https://www.youtube.com/watch?v=33SBEt4fsTI> – 25 Feb 2021 – 'Fijian Rugby team sings from the balconies of Sydney hotel to mark the end of 14-day quarantine'.

¹⁶ https://www.dailymail.co.uk/tvshowbiz/article-9354855/Julia-Roberts-family-sneak-Australia-private-jet.html?fbclid=IwAR0NcNgVsLuwI-50B3oW0F5cUdyt5_6ztbzKr3W0W9K_ttTfrjWaWdwT6c – March 2020 – Julia Roberts Arrives in Sydney ; <https://www.dailymail.co.uk/tvshowbiz/article-9165513/Inside-Matt-Damons-privately-funded-Australian-quarantine-family.html> – 20 January 2021 – 'Matt Damon's privately funded Australian quarantine with his wife and daughters'

¹⁷ <https://www.abc.net.au/news/2021-01-12/how-victoria-covid-quarantine-australian-open-tennis-will-work/13051188> – 12 Jan 2021 Australian Open tennis players enter Australia.

¹⁸ <https://www.theguardian.com/environment/2021/mar/14/south-australia-prepares-to-welcome-1200-south-pacific-fruit-pickers?fbclid=IwAR3TL0im2nRwlwMpyGDWRoUsXgwfSUcWN6id5yp2Vw8UqAVzFXqjLQEU3c> 14-March 2021 – 'South Australia welcomes 1,200 South Pacific fruit pickers' ; <https://www.youtube.com/watch?v=u34s3BQQCjc> – 28 Oct 2002 – [7:47 fwd] – International Mango fruit pickers take up Howard Springs quarantine spaces.

¹⁹ <https://www.theguardian.com/australia-news/2020/oct/01/morrison-government-allowing-rich-foreigners-in-ahead-of-28000-stranded-australians> 01 October 2020 – 'Morrison government allowing rich foreigners in ahead of 28,000 stranded Australians'

²⁰ <https://www.youtube.com/watch?v=tskjlZiin8&t=497s> – [1.25 fwd] 09 December 2020 – Victoria passes 39 days with zero cases.

²¹ <https://www.canberratimes.com.au/story/7212066/un-ruling-gives-hope-to-abandoned-stranded-australians/> 16 April 2021 'UN ruling gives hope to 'abandoned' stranded Australians'

²² <https://griffithlawjournal.org/index.php/gjlhd/article/view/1224> 26 March 2022 – 'Australia, Covid-19, and the India Travel Ban'

²³ https://journals.plos.org/plosone/article?id=10.1371%2Fjournal.pone.0271894&fbclid=IwAR1BgUmqAKVNLvpdPAg47ejCnnB9bcwrjKTZjkjDEAT1uFz_J6zUwHbXRA 05 Aug 2022 – 'Psychological and financial impacts of COVID-19-related travel measures: An international cross-sectional study' ; <https://www.sbs.com.au/news/article/abandoned-overseas-the-mental-health-toll-of-australias-closed-borders-on-its-citizens/sarfnptzk> 19 Sep 2021 – 'Abandoned overseas: The mental health toll of Australia's closed borders on its citizens'

²⁴ <https://www.aljazeera.com/news/2020/11/9/australians-locked-out-of-their-own-country-thanks-to-covid-19> 09 Nov 2020 – 'Locked out: Stranded Australians call foul over COVID-19 cap' ;

²⁵ <https://www.abc.net.au/news/2020-08-20/australians-missing-loved-ones-funerals-amid-coronavirus/12575238> 20 Aug 2020 – 'Australians lament missed funerals amid coronavirus border restrictions'

²⁶ <https://www.dianeleee.com.au/never-forget-what-they-did-podcast/> – Dianne Lee Podcast 'Never forget what they did'

²⁷ <https://www.sydneycriminallawyers.com.au/blog/queensland-premiers-trip-to-tokyo-justified-or-irresponsible/> QLD Premier flies to Tokyo amid state border closures. 3 | Page