

13 November 2020

To: Minister for International Development and the Pacific the Hon Alex Hawke MP
CC: Minister for Trade, Tourism and Investment Senator the Hon Simon Birmingham
CC: Attorney-General the Hon Christian Porter MP
CC: Minister for Foreign Affairs Senator the Hon Marise Payne

Re: Proposal from India and South Africa for a waiver of certain provisions of the TRIPS Agreement for the duration of the COVID-19 pandemic

Dear Ministers,

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia, and seeks to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

PHAA urges the Australian Government to support the proposal from India and South Africa for a waiver of certain provisions of the **Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement** for the duration of the COVID-19 pandemic when it is discussed at the TRIPS Council on 20th November 2020.

Many developing countries are facing delays and cost barriers in accessing vaccines, medicines and diagnostics to control the pandemic. Such delays and cost barriers are likely to cause avoidable deaths. They could also increase the risk of international transmission and threaten Australia's pandemic control.

Rapidly scaling up local production could improve pandemic control in developing countries. Scaling up local production would be greatly facilitated by waiving compliance with Sections 1, 4, 5, and 7 of Part II of the TRIPS Agreement (dealing with copyright, industrial designs, patents, and the protection of undisclosed information) in relation to COVID-19 and for the duration of the pandemic.

Three main arguments were brought forward by countries opposing the waiver when it was first considered by the TRIPS Council:

1. that intellectual property protection is not a barrier to wider access to COVID-19 health products
2. that the flexibilities already provided for in the TRIPS Agreement are adequate
3. that intellectual protection property is necessary to fund innovation.

In fact, the protection of intellectual property is a very real barrier to scaling up local production, albeit not the only challenge.

The flexibilities already provided for in the TRIPS Agreement are not suited to the task of scaling up across a range of health products and involving collaborating groups of countries. For instance, compulsory licensing offers a "product by product", and "country by country" approach with variations in national laws, whereas

the pandemic requires collective global action to tackle intellectual property barriers associated with various platform technologies as well as specific products.

The proposed waiver would only apply to COVID-19 products and would only apply for the duration of the pandemic. In view of the significant funding mobilised internationally to support research and development for COVID-19 health products, it is very unlikely that the waiver would reduce commercial incentives to invest in innovation for these products.

The proposed waiver would only apply to countries who choose to make use of it. However, countries whose access to COVID-19 products is secure should not stand in the way of those countries who need to scale up local production due to delays and cost barriers.

It would be an act of international solidarity for Australia to actively participate in an organised approach to capacity building and technology transfer in our region. Such technology transfer could be greatly facilitated by the proposed waiver.

For these reasons, PHAA strongly urges the Australian Government to support the proposed waiver in the TRIPS Council.

Yours sincerely,



Terry Slevin
Chief Executive Officer
Public Health Association of Australia