



REVIEW:

GRANT OF ENTRY TO SA

AFL Footballer Families

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Background

11 family members of AFL footballers' ("footballer families") were granted permission to travel to South Australia, from Victoria, for the purpose of attending an AFL football match.

The Chief Public Health Officer, on becoming aware of the decision, announced that permission for footballer families to enter the state should not have been granted.

Six of the relevant family members had already entered the state (in hotel quarantine) and were allowed to remain. The other five family members had their permission to travel to South Australia "revoked", and were not able to enter the state.

Purpose

The purpose of this review is to examine the circumstances surrounding the decision to grant permission for footballer families to enter the state, noting the Chief Public Health Officer has said permission should not have been granted. The review also considers learnings to aid in future decision making.

Emergency Management

Emergency management arrangements in South Australia are governed by the *Emergency Management Act 2004* (the Act). I will not repeat the full framework of emergency management arrangements (which are explained in more detail at <https://www.dpc.sa.gov.au/responsibilities/security-and-emergency-management/state-emergency-management-plan>), except to highlight the position and role of the State Co-ordinator.

The State Co-ordinator is the Commissioner of Police or person for the time being holding or acting in the position of Commissioner of Police (see section 14 of the Act).

During a declared major incident, a major emergency or a disaster (and while that declaration remains in force) the State Co-ordinator must take any necessary action to implement the State Emergency Plan and cause such response and recovery operations to be carried out as he or she thinks appropriate.

The State Co-ordinator and authorised officers¹ have significant powers set out in s25(2) of the Act. Among other things they may direct or prohibit the movement of persons, animals or vehicles.

As a temporary measure, in response to the COVID-19 pandemic, Parliament has extended those powers to allow the State Co-ordinator (or a delegate of the State Co-ordinator) to give a direction or make a requirement that applies to persons generally throughout the State.²

¹ Authorised officers for the purposes of the Emergency Management Act, means a police officer or a person appointed as an authorised officer by the State Coordinator (s17 EMA).

² Schedule 2 Part 1 of the Covid-19 Emergency Response Act 2020

Cross Border Travel

To assist in reducing the spread of COVID-19, and with the benefit of the best available clinical and across-government advice, the State Co-ordinator has exercised the powers described above to issue a series of directions (each revoking the previous) that restrict cross border travel.

The evolving directions on cross border travel reflect our growing understanding of COVID-19, as well as the constantly changing level of risk, both in South Australia and interstate.

In very broad terms, the travel directions provide a framework for the Police to record all people coming into the state and help put safety measures in place (such as quarantine and testing where appropriate), or prevent entry to the state altogether in some circumstances.

On 15 September 2020, (when the decision to allow footballer families to enter the state was made), directions were in place prohibiting people from Victoria entering into South Australia other than “essential travellers” and people escaping domestic violence as defined in the travel direction.³

Approval Role – Essential Travellers

Essential travellers include:

- national and state governance and security personnel;
- persons working or operating in health services;
- specialist workers employed in an essential sector (including mining, oil, gas, energy, water, agriculture and other primary industries);
- seasonal workers (including shearers, fruit pickers and forestry workers);
- persons travelling for urgent medical, dental or health treatment;
- persons visiting SA on compassionate grounds; and
- consular employees.

In the case of people wishing to enter the state for compassionate reasons, urgent medical treatment, or to provide health services, the travel direction requires people to obtain approval from:

- Chief Executive of the Department for Health and Wellbeing, Dr Chris McGowan; or
- South Australian Chief Public Health Officer, Dr Nicola Spurrier; or
- Deputy Chief Public Health Officers; Dr Evan Everest, Dr Chris Lease, or Dr Michael Cusack.

The policy intent is to place decisions about whether a person’s medical needs are urgent, or whether the death of a family member is truly imminent, in the hands of Health Officials.

The relevant senior health officials have the role of “approving” a person’s status as an essential traveller under the direction.

³ Cross Border direction No. 13 applied at the time.

For other categories of essential traveller, there is no requirement for people to seek the approval of Health Officials. It is Police who need to be satisfied that a person is an essential traveller and permit entry into the State.

Exemption Role – Other Travellers

The travel direction (including the concept of an essential traveller) is an attempt to define in advance, on a balanced assessment of need and risk, who should be allowed to enter the state during the COVID-19 pandemic.

Inevitably there are circumstances that cannot be contemplated in advance, where it is reasonable and appropriate for there to be some level of discretion to allow people into the state.

Temporary powers granted by Parliament, under the *COVID-19 Emergency Response Act 2020*, provide a level of discretion to allow people into the state in circumstances not contemplated by the travel direction.

The State Co-ordinator, or an authorised officer⁴, may exempt (conditionally or unconditionally) any person or class of persons from the cross-border travel direction.

SAPOL has confirmed that 178 people from SA Health have been appointed as authorised officers. However only six have been appointed with unrestricted powers that allow them to exempt people from cross border travel restrictions. They are:

- State Controller, Dr Nicola Spurrier
- Deputy State Controller, Dr Evan Everest
- Deputy State Controller, Ms Lyn Dean
- Deputy State Controller, Ms Hendrika Meyer
- Deputy State Controller, Dr Michael Cusack
- Deputy State Controller, Ms Cindy Molloy

The power to exempt people from cross-border travel restrictions therefore rests with the six named health officials, any Police officer, and the State Co-ordinator.

⁴ Authorised officer, means a police officer or a person appointed as an authorised officer by the State Coordinator (s17 EMA).

Processing of Applications

Receipt of applications

SA Health receives applications for essential traveller approval, as well as applications for exemption from the cross-border travel direction, online, by email and via referrals.

In many cases applicants are referred to SA Health, by SAPOL, who identify through their online travel registration process that travellers are not otherwise entitled to enter the state.

Applications are manually logged on an internal excel spreadsheet.

Low complexity applications for exemption & applications for approval to be an essential traveller

Applications (to be exempt from the cross-border travel restrictions) that are deemed to be of low complexity by the exemptions team, and applications for approval to be an essential traveller, are considered in the first instance by the exemptions team.

A preliminary assessment is often discussed with Dr Everest, who might then confirm the recommendation of the exemptions team, disagree or refer the application to the exemptions committee for further discussion before making a decision.

Once Dr Everest has made a decision, the exemptions team prepares a letter for Dr Everest's electronic signature.

Complex applications for exemption

Applications deemed 'complex' by front-line support staff are referred to an exemptions committee for discussion and advice.

At the time of the matter that is the subject of this review, the exemptions committee was comprised of:

- Deputy Chief Public Health Officer, Dr Evan Everest
- Deputy Commander, State Control Centre
- Deputy Chief Public Health Officer, Dr Chris Lease
- Deputy Chief Public Health Officer, Dr Emily Kirkpatrick
- Deputy Chief Executive System Leadership and Design, Mr Don Frater
- Chief Medical Officer & Deputy Chief Public Health Officer, Dr Mike Cusack

The committee is aided by an agreed set of "guiding principles" to be considered when assessing applications for exemption from the cross border travel direction. A record of all committee discussions is made after each meeting.

With the benefit of advice from the exemptions committee, Dr Everest makes a decision on whether or not to grant the exemption and (if granted) any conditions of exemption.

SA Health staff (in what is known as the exemptions team) prepare a letter to the applicant, for Dr Everest's signature. The exemptions team applies the electronic signature of Dr Everest and arranges for the letters to be sent.

Management of "appeals"

Whilst decisions about whether or not to grant an exemption are generally considered final, SA Health has established an Appeals Panel to assess "appeals" arising from a decision. At the time of the matter that is the subject of this review, the Appeals Panel comprised of:

- Chief Executive of the Department for Health and Wellbeing, Dr Chris McGowan
- South Australian Chief Public Health Officer, Dr Nicola Spurrier

In practice, consideration of such matters is essentially a review of the original application by individuals that were not part of the original determination.

SA Health's dual role

Certain officers within SA Health have the power to approve a person's status as an essential traveller under the travel direction. There are also Officers within SA Health who are authorised officers with the power to exempt a person from the operation of the travel direction. This distinction is not clearly understood by all staff in SA Health involved in the processing of applications.

SA Health & Police Roles

The authority to exempt people from the cross border travel direction rests in several hands including the State Co-ordinator, any Police Officer, and six people within SA Health.

There is a verbal agreement for six health officials, in their capacity as Authorised Officers under the Act, to consider all exemption applications (other than those requiring immediate front-line operational decisions by Police).

Footballer Families Applications

Agreed timeline of events:

- Hitaf Rasheed, Executive Director Events SA, emailed Deputy Chief Public Health Officer Dr Chris Lease about family members of AFL players seeking to travel to South Australia.
- On 14 September 2020, Dr Chris Lease forwarded the email to the head of the “exemptions team” within SA Health and to the general exemptions email box within SA Health.
- On 15 September 2020, the Head of SA Health’s exemptions team forwarded the email to Deputy Chief Public Health Officer Dr Evan Everest.
- On 15 September 2020, SA Health granted an exemption for footballer families to enter the state. The exemption was granted by letter, signed with the electronic signature of Deputy Chief Public Health Officer Dr Evan Everest.
- There are no documents to confirm Dr Everest approved use of his electronic signature to grant the exemptions, or that otherwise set out the basis for the decision to grant the exemptions.

Issues in question:

- Dr Everest indicates that on or about 14 September 2020, the committee were aware that a request had been received from the footballer families, however it was not formally discussed.
- The head of SA Health’s exemptions team recalls a conversation with Dr Everest on 15 September 2020, during which she understood Dr Everest approved the footballer family exemptions and authorised use of his electronic signature.
- Dr Everest does not recall any specific conversation about the footballer family applications, but believes it would have been out of character for him to grant an exemption noting recent decisions to refuse exemption applications from other high-profile sports people.
- Dr Everest notes that while he cannot recall any specific conversation with the exemptions team about the footballer families, it is possible that he approved referring the applications to the exemptions committee (which would be the ordinary approach for an application of this type) and that was mistakenly interpreted to mean he had approved the applications.

Record keeping – basis of decisions and authority

There are no documented reasons as to why the footballer family applications were approved. Nor is there any record of approval by the Deputy Chief Public Health Officer (only his electronic signature applied by others).

Role of Executive Director, Events SA

There is nothing in any documents provided or discussions had that would suggest Hitaf Rasheed did anything more than direct applications to SA Health, for them to seek to be exempt from cross border travel restrictions. The head of the SA Health’s exemptions team confirmed that she felt no pressure or outside influence in relation to the applications.

Footballer Families exemptions

The power to exempt people from cross-border travel restrictions is broad and capable of being exercised in a wide-ranging circumstances.

SA Health has put in place “guiding principles” to help guide the exercise of that power by authorised SA Health officers, but those principles are (by necessity) also broad and do not expressly prevent exemptions being granted to sports people and their families.

The key focus for SA Health in the exercise of its power has been ‘risk’. In relation to the footballer families, it appears to be the view of SA Health that the desire to attend a sporting event involving family members does not justify an increase in overall risk of COVID-19 entering the South Australian community.

It is for that reason the Chief Public Health Officer publicly announced that the power to grant an exemption from cross border travel restrictions should not have been exercised to allow footballer families entry into the state.

Recommendations

It is clear from the interviews conducted with SA Health and SAPOL that both organisations have made an extraordinary effort to protect the community from the risks of the COVID-19 pandemic, with examples of people working many hours since the start of the pandemic.

They have created and established new systems for never before seen border restrictions in urgent circumstances – and are driving to continually improve and refine those systems. It is a remarkable effort that should be acknowledged – with recognition that it is simply not possible or realistic to expect there will not be areas for improvement as we learn and build on what has been put in place to respond to the immediate threat posed by COVID-19.

The following recommendations are intended to support SA Health in future decision making and ensure a robust and accountable approach.

Recommendation 1: source of decision-making power

SA Health processes and guidance documents should clearly differentiate between approvals made under the cross border travel direction (by the Chief Executive of the Department for Health and Wellbeing, the South Australian Chief Public Health Officer or a Deputy Chief Public Health Officer) and exemptions from the cross border travel direction granted by SA Health Officers in their capacity as authorised officers under the Emergency Management Act 2004.

Recommendation 2: Authorised Officer training

SA Police should undertake additional training for authorised officers in SA Health to provide information and guidance on the exercise of authorised officer powers.

Recommendation 3: reasons for decisions

SA Health should document reasons for all approval and exemption decisions related to cross border travel. This might include a pre-drafted list of possible reasons, to be circled or which provide for “other” comments to be clearly documented.

Recommendation 4: clear exercise of authority

In instances where an electronic signature is used on letters to applicants, there should be documented confirmation that the authorised decision maker has made the decision and approved use of his/her signature.

Recommendation 5: exemptions committee to consider all exemption applications

All applications to be exempt from cross-border travel restrictions should (where reasonably possible) be referred the SA Health’s exemptions committee for discussion and advice, prior to a decision being made by an Authorised Officer.

Recommendation 6: exemptions committee membership (legal representative)

SA Health should consider whether there is benefit in adding a committee member who has a legal background, to contribute to procedural fairness and interpretation of the evolving cross-border travel directions and supporting legislative framework.

Recommendation 7: common exemption categories

SA Health should consider whether there are “common” types of exemption, with marked similarities, that could form new categories of essential traveller –to reduce the number of exemption applications.

Recommendation 8: exemption conditions

The grant of an exemption to enter the state will often be subject to “conditions”. SA Health should consider a policy and process for ensuring consistent and appropriate conditions, including a list of common conditions to help decision makers.

Recommendation 9: internal review v appeal

For exemption applications that are not approved, the applicant may apply to SA Health for internal review of the decision. SA Health documents should refer to this as an internal review process, rather than an appeal. The individuals considering the internal review should not have been part of the exemption panel consideration of the original decision.

Recommendation 10: agreement between SA Health & SAPOL

Consideration should be given to whether it would be helpful to document the administrative agreement for Health to be the primary decision maker for applications to be exempt from cross border travel restrictions - including how applicants are referred, the information Police provide, and cross-checking between SAPOL and SA Health systems.

Recommendation 11: SAPOL representation on exemptions committee

Consideration should be given to whether a SAPOL representative should participate in exemption committee meetings and discussions – noting Police have the statutory power to grant exemptions and may also have a role in providing relevant advice (eg police might have views on conditions to be attached to an exemption and the enforceability of conditions in practice and/or advising on a person’s criminal history and likelihood of complying with conditions).

Recommendation 12: more seamless public facing approach

Consideration should be given to whether the process of applying to enter South Australia can be made clearer. A person seeking permission to enter the state from a COVID-19 restricted state or territory, for urgent medical treatment for example, might apply to a single point rather than having to apply to SA Health then also apply through SAPOL.

Recommendation 13: essential traveller vs exemption decision makers

Senior health official positions named in the cross border travel direction (as having a role in approving essential travellers) are not the same as the senior health official positions named as Authorised Officers capable of granting cross border travel exemptions. Thought should be given to whether these should align and how this could be achieved – or whether consistency is being achieved through administrative mechanisms.