

# **TRANSCRIPT**

## **PANDEMIC DECLARATION ACCOUNTABILITY AND OVERSIGHT COMMITTEE**

### **Review of Pandemic Orders**

Melbourne—Monday, 31 January 2022

#### **MEMBERS**

Ms Suzanna Sheed (Chair)

Mr Jeff Bourman (Deputy Chair)

Mr Anthony Carbines

Ms Georgie Crozier

Mr Enver Erdogan

Ms Emma Kealy

Ms Harriet Shing

Ms Vicki Ward

Mr Kim Wells









































**Prof. SUTTON:** I cannot make any future predictions around what my recommendations can be. As I have said right through this hearing, I need to look at the circumstances at the time in order to make a proportionate response to the threats. If we are in a situation where there is longstanding immunity from a booster dose, whether it is called the third dose or whether it is a fourth dose, and it is not required every year, I certainly would not be making a recommendation or a mandate for it to occur every year. If we see—

**Mr WELLS:** Okay, thanks. Thanks for that. Did Victoria Police contact you regarding the I Cook Foods investigation?

**Ms SHING:** Can I just raise a point of order? I am really, really—

**Mr WELLS:** Can we stop the clock, please?

**Ms SHING:** struggling—well, you raised a point earlier—to see how this is relevant to the orders.

**Mr WELLS:** Okay. Sorry, let me rephrase the question. During the pandemic orders that have been in place, have you been contacted by Victoria Police in regard to I Cook Foods?

**Ms SHING:** A further point of order: this has got no—

**Mr WELLS:** I used the words ‘pandemic orders’.

**The CHAIR:** Look, I think it is pretty clear what the role of this committee is, and it is to look at the pandemic orders and not to really try and pull in some red herring. We are here to talk about the pandemic orders and the section that we are tasked to look at.

**Mr WELLS:** I did use the term ‘pandemic orders’. I just wanted to know—

**The CHAIR:** There is a level—

**Mr WELLS:** during the pandemic orders, have you been contacted by Victoria Police?

**Ms SHING:** You know that does not cut it, Mr Wells.

**Mr WELLS:** Okay, I will move on. Just following up from Emma Kealy’s question, do you or do you not have the number of workers that have been stood down due to vaccine mandates?

**Prof. SUTTON:** I do not have them at hand. The relevant department—

**Mr WELLS:** Can we get them sent to the committee, please?

**Prof. SUTTON:** I can certainly inquire as to whether they are held with DJPR.

**Mr WELLS:** Okay. And then can we have a breakdown by workforce, because I think it is important for this committee to know—nurses, teachers, ambos, for example.

**Prof. SUTTON:** I believe for the healthcare workforce it is a tiny per cent. It is less than half of 1 per cent.

**Mr WELLS:** Yes, that is fine, but if we can get that information, that would be great.

Also, regarding the pandemic orders and the advice that you give the Premier and the Minister for Health, it is written or oral. Do you agree that when you give oral advice this advice is actually not freely available to the Victorian public—it is hidden or it is secret when you give oral advice?

**Prof. SUTTON:** I might ask Ms de Witts—

**Mr WELLS:** No, no, no. Well, I have only got 10 minutes, so we will have to keep going. But if you give your advice—your advice is what I am asking you—if it is written, we get to see it. If it is oral advice that you give, do we get to see that oral advice? Is it taped or written, or is there some way of doing it?

**Prof. SUTTON:** It is recorded. Ms Brady is here. She is often our transcriber, so I might get her to respond to that.

**Mr WELLS:** No, that is fine. If I could just ask, then, for the recordings to be provided to the committee. Can we have the recordings provided to the committee of that oral advice?

**Prof. SUTTON:** My understanding is that the legislation requires it.

**Ms BRADY:** I could confirm for you that it is published online in the pandemic order register, so whenever there has been oral advice provided as opposed to written Chief Health Officer advice, it is all there on the pandemic order register.

**Ms SHING:** Shown up for not doing your homework, Mr Wells.

**Mr WELLS:** Well, no. We can ask. We will go and double-check that; that is fine.

**Ms SHING:** Go and read some materials. Do your homework. Take it seriously.

**Mr WELLS:** I will move on. I just want to go back to a question that Georgie Crozier asked in regard to the tennis. Obviously it was a shambolic mess, the Djokovic situation. Are you saying that you had no role in the setting up of the medical exemption review panel?

**Prof. SUTTON:** Correct.

**Mr WELLS:** So you would have no idea who is on that committee?

**Prof. SUTTON:** No.

**Mr WELLS:** So when you came back from leave, you were not interested to find out—worldwide news—who was on the committee and who made the decision?

**Prof. SUTTON:** No.

**Mr WELLS:** Would Ms Brady know?

**Prof. SUTTON:** She may.

**Ms BRADY:** No, I do not.

**Mr WELLS:** So no-one knows. Is that—

**Prof. SUTTON:** It is of no relevance to me whatsoever in my role as Chief Health Officer or in the making of pandemic orders as to how that panel is constituted.

**Mr WELLS:** So you offered no advice whatsoever, or your acting CHO offered no advice whatsoever, in regard to that medical exemption for Novak Djokovic?

**Prof. SUTTON:** Correct.

**Mr WELLS:** Okay. It just seems very odd that when the Premier said on 27 October that Victoria would not seek exemptions for unvaccinated players the Victorian government would then approve a border permit for Novak Djokovic. You do not think that is odd?

**Prof. SUTTON:** That is not a question for me, Mr Wells.

**Mr WELLS:** Okay. Thank you. I will just go to some of the questions. In regard to mandates, on page 7 the acting CHO details the continuing increase in hospitalisation and ICU admissions with no indication that Victoria had peaked for either metric. What is the actual number of hospital and ICU admissions that the department would consider a peak if we are going to have another peak over the next couple of months?

**Prof. SUTTON:** Do you mean an acceptable or an unacceptable peak?

**Mr WELLS:** Well, a working peak. What would be the plan put in place that the hospital system could cope with in regard to another outbreak?

**Prof. SUTTON:** Look, I think that is probably for the state controller as well. This relates to the mobilisation of additional ventilators, ICU beds, ward bed capacity, workforce et cetera. They are not considerations for me specifically as to how we can meet them. I would obviously receive the state controller's advice on whether or not the trajectory of another wave or epidemic spike was going to challenge that and what we might need to do in order to stay under that number.

**Mr WELLS:** So would we be able to get that advice, or do we need to ask the state controller directly?

**Prof. SUTTON:** I guess you would have to ask the state controller directly, but I am not entirely sure what the question is. If it relates to what the absolute limit is that can be tolerated within the health system, perhaps that is answerable, but I am not sure that that would necessarily inform my advice as to where restrictions should be.

**Mr WELLS:** So in regard to what the hospital capacity would be if there was another outbreak over the next month, what would it be?

**Prof. SUTTON:** I would direct you to the state controller.

**Mr WELLS:** Okay. Ms Brady would not know that answer?

**Prof. SUTTON:** No.

**Mr WELLS:** I refer to modelling on the impact of omicron following the Australia-wide Doherty Institute modelling released in December. Did Victoria do any state-specific modelling as New South Wales and South Australia conducted?

**Prof. SUTTON:** Yes, we did. We did some modelling with the Burnet Institute.

**Mr WELLS:** Can that be released to the committee?

**Prof. SUTTON:** I believe it has been released.

**Mr WELLS:** Thanks. Page 8 details 591 cases in hospital—this is on page 8 of the table—representing an estimated 29.9 per cent of currently available ward beds statewide for COVID-19 patients. Does that mean there were only 1977 ward beds statewide for COVID-19 patients?

**Prof. SUTTON:** Again a question for the state controller. I presume that means those that are currently mobilised, not potentially mobilised.

**Mr WELLS:** Regarding paragraph 27 of the acting health chief's advice to the Premier, as of 5 January there were 53 patients with COVID-19 in intensive care units, representing an estimated 12.9 per cent of staffed private and public ICUs. Does that mean there were only 411 staffed private and public ICU beds in Victoria? Is that correct?

**Prof. SUTTON:** Again not a question for me, I am afraid, Mr Wells.

**Mr WELLS:** In regard to the tennis—I want to just loop this in—with the government medical panel that was established or constituted, under what legislation was that constituted?

**Prof. SUTTON:** I do not know that it was constituted under legislation. I do not know about the panel and its constitution.

**Mr WELLS:** Maybe Ms de Witts could answer that. We just want to know how it was constituted. Under what legislation or under what regulation was it set up?

**Ms de WITTS:** It was not set up under legislation. The panel was a review panel, and the exemption is actually granted by the doctor attending the individual. This was a supplementary panel that reviewed materials put through from Tennis Australia.

**Mr WELLS:** Okay. So who is on that panel?

**Ms de WITTS:** I do not know.

**Mr WELLS:** So you know how it was constituted but you are not sure who is on it?

**Ms de WITTS:** That is correct.

**Mr WELLS:** So who would have appointed those people? Is that the state controller?

**Ms de WITTS:** I do not know.

**Mr WELLS:** Thank you.

**The CHAIR:** Thank you. We will now move to our final 10 minutes. Mr Erdogan.

**Mr ERDOGAN:** Thank you, Professor Sutton, for your appearance today. I just want to clarify some confusion about your role that seems to have come out in the committee today, and in particular your role in rapid antigen testing, in the approval of tests and in their rollout. What is the Chief Health Officer's role with rapid tests?

**Prof. SUTTON:** My statutory role is to protect the public health and wellbeing of Victorians. That is largely done through communications and guidance, but in extraordinary circumstances—obviously, now—I have powers exercised in making recommendations to the minister on pandemic orders. There were no specific pandemic orders about the procurement of RATs, but I think the acting chief health officer, Ben Cowie, certainly provided advice to the minister that we would be facing a challenge through January of very significant numbers of people seeking testing and a reduced ability to get individual positive results back in a timely way, because the batch-testing availability was not there anymore. So Ben Cowie and I both provided verbal advice to the state controller and to the minister that we would face testing challenges and would need a significant uplift in our rapid antigen testing capability, the ability to capture those positive tests and the ability to use those positive tests to isolate and quarantine people in response to the omicron wave. He and I both provided that advice, and Phuong Pham, the deputy secretary for testing, instituted a really rapid and large-scale request, procurement and supply response.

**Mr ERDOGAN:** Thank you for clarifying that, Professor Sutton. Earlier today we talked about certain disadvantages faced by certain groups throughout the pandemic, and also you have clarified that there is a substantial place in our testing system for rapid antigen testing now. In light of that, what is your opinion about the free market determining the distribution and costs of these rapid antigen tests?

**Prof. SUTTON:** I think, you know, from the public health perspective, you want all feasible barriers to be minimised to the extent possible. They may relate to misinformation, so you want to provide accurate and timely information, especially in a confusing social media environment where misinformation and disinformation are really provided all too floridly. You want the financial barriers to be minimised for those people who most require access to testing, but there is a genuine public health benefit from reducing those barriers across populations, because the control of numbers has that pillar of isolation of cases and quarantine of their close contacts. You do not know that you have got a case that needs to isolate until they can get a test result, and those close contacts need the opportunity to be able to test during their quarantine period in case they become cases. So having a really free availability across the population of rapid antigen tests is really critical, and the extent to which you can minimise those barriers—whether they be geographic, barriers in understanding, barriers in cultural appropriateness of how you engage about the use of those tests and the instructions on how to use them—will provide several-fold benefits back to you by making sure that that availability and accessibility is really broad.

**Mr ERDOGAN:** Thank you. I did have a supplementary question to that, and part of it was answered. As we are all aware, the Victorian government is now providing free tests—well, millions of free tests have already been provided, in particular to a lot of schoolchildren, their parents and educators. Obviously it is the first day of school today. In light of that, how does that impact your decision-making and other health policy settings going forward if those free tests continue to be provided to other essential sectors?

**Prof. SUTTON:** Yes, look, they are a real bedrock. That advice to procure millions of tests was thinking about both those sensitive settings but also the broad population. It has been a useful tool for asymptomatic

surveillance—for example, before gatherings, in schools, in health care and other sensitive settings. And obviously we were the first to provide the free test kits, initially to school and workplace contacts back in November, but then the first to order en masse and to have a digital recording system up in place to be able to have those results in our database.

When the PCR system could not handle them, they were absolutely essential to be able to make sure that people could isolate and quarantine appropriately. And so we now have choice. We have got two viable and accessible options for symptomatic people to turn to: PCRs and RATs. Both systems still have some strain, but it is the second option that has cleared the way to get rid of the PCR backlog that really occurred across the country and restored our turnaround times, so the time to get your test result to 90 per cent by the next day. So that technology also means that we can use it in a surveillance program. That is what is happening in schools, and we are strongly recommending the RATs for every single school student in Victoria. You cannot do that with PCRs. It means that there is stronger community surveillance, more people getting tested and a more timely isolation for those cases that turn up. The close contacts that happen in households can now access those RATs. It means people can self-monitor their own infection status, do it quickly, easily and safely. If you are a household contact and you get symptoms and you test positive on a RAT, you are very, very likely to have the virus. So our settings reflect that: you need to isolate with that positive RAT result, you do not need the confirmatory PCR. So you can trust the result. You can then be linked in with our COVID-positive care pathway and get the certainty of help should you develop a significant illness.

**Mr ERDOGAN:** On that point, I guess Victoria was the first mainland state to create a system to record rapid antigen test results online. How has this new platform affected your COVID-19 response and your pandemic order recommendations?

**Prof. SUTTON:** It has certainly given a much clearer picture of the full burden of illness in the state, even though there are probably thousands of people who just have not tested. They have got no symptoms, they are not close contacts, so they are not getting tested through any approach. But we have moved to a point where half, a little more than half some days, of all positive results that come through are RAT-positive results. That means that we understand a truer and clearer idea of the burden of illness in the community—how many true cases there are out there—and it gives me greater certainty about those peaks that we think we are past. So we think we are past our case peak, and it makes me more confident, having seen that peak in cases close to two weeks ago, that we are now at a hospital plateau, if not peak, and therefore can make the appropriate adjustments to our settings to be proportionate, knowing that there is still significant strain on our hospital system—still over 2500 healthcare workers under furlough—but that we are over the real pinch point and that maybe we can make some proportionate changes as we drive cases down further.

**Mr ERDOGAN:** Just a final question, because you touched on an important point about the importance of people having trust in our public health orders and the risks of misinformation. That is why I guess we have these new pandemic orders and that is the reason for this committee. I guess this committee and the independent pandemic management advisory committee are also new aspects of the pandemic management process in Victoria. Can you tell us how you think these new committees could assist in improving transparency? Or do you agree that they do improve transparency?

**Prof. SUTTON:** Yes. Look, the proof is in the pudding. I think the structures are positive. Obviously it has been a matter for Parliament to design and agree on these elements. I do think the independent pandemic measures group has that broad church of inputs from those with public health expertise, infectious disease expertise, but also on human rights and charter considerations and the issues of social licence. So that breadth and diversity of voices that help inform the minister's choices around pandemic orders I think is a strength. Clearly if there is a view to question some of the pandemic orders that are in place and to make variations or to revoke some of those orders or to make a recommendation to revoke some of those orders, getting that broad representative view from that independent panel I think is also a strength. It provides for that variety of input and for those various disciplines to be able to provide perspectives that go beyond a purist public health perspective.

**Mr ERDOGAN:** Thank you very much for that, Professor Sutton.

**The CHAIR:** Thank you, Professor Sutton. That is all the questions. I would like to thank you and—

**Ms KEALY:** On a point of order, please. Sorry for interrupting. Chair, I would like to refer back to a comment that was made to Mr Wells during the presentation by Professor Sutton and Ms Brady regarding the recordings being published on the pandemic orders website. I have reviewed that now—fortunately I have got my iPad in front of me—and there are simply no audio recordings of discussions that have taken place between Professor Sutton and the minister or the Premier. Now, given that is available, I am asking that that be—

**A member** interjected.

**Ms KEALY:** I am being quite straight around this. We were told that there were verbal recordings and that they had been published. They have not been published. All I seek is that if the recordings are available—there are assumptions that they have already been published. They are not available. Can they please be published as soon as possible? Provided to the committee at the very least.

**The CHAIR:** Ms Kealy, any points of order now will be dealt with after the closing of this. We have got an opportunity to put questions on notice, and I am satisfied with that. So at this point—

**Ms CROZIER:** A point of order, please, Chair. I understand it is the end of the hearing and Professor Sutton, Ms Brady and Ms de Witts have been very helpful with the information they have provided, but it goes to the point that that is not what the committee has been told about the recordings being undertaken. That is not what has been actually published, and so what we are asking for is for those recordings to be provided to the committee so that they actually do match up with what is in the public domain. I think that is important for transparency.

**Prof. SUTTON:** Ms Crozier, they are transcribed, written—

**Mr WELLS:** No, you said recordings.

**Prof. SUTTON:** Publication—

*Members interjecting.*

**Mr WELLS:** Professor Sutton said recordings. I specifically asked. Now he is saying they are transcripts.

**Prof. SUTTON:** Verbal—

**Mr WELLS:** That is completely different to what he said. He said recordings and they were going to be up on the pandemic, and now all of a sudden it is transcripts.

**Ms Shing** interjected.

**Mr WELLS:** No, no. It is transcripts. It is a big difference to the recordings.

*Members interjecting.*

**Mr WELLS:** No, no. You are grandstanding now, I am sorry, Harriet.

**Ms Shing** interjected.

**The CHAIR:** On that note, Professor Sutton, the hearing is now over. I would like to thank you, Ms Brady and Ms de Witts, for your attendance today. The committee will follow up with some written questions, including perhaps some of those that have been raised, and they will be sent on to you. Again, I declare the meeting closed and thank you very much.

**Prof. SUTTON:** Thank you, Chair. Thank you, members.

**Committee adjourned.**