1. I am Arjay Martin and hold various qualifications including, relevantly, a Juris Doctorate law degree from Bond University.
2. I only found out about this inquiry, so am doing a rushed submission.
3. I was also Australia's first Covid Restriction Protester (starting 6 April 2020), protesting the draconian and illegal measures, & had probably Australia's first Covid Related Court Case (which concerned the protests, and lost on a technicality that Protest related court cases cannot be appealed, no matter how egregious; I tired getting Covid Restriction fines to challenge the law and police would look me up and then refuse to fine me).
4. The measures were illegal, not only on Commonwealth Constitutional Grounds, particularly:
   (a) s 51(ix) combined with ss 69 & 84, as States had the power of Quarantine removed from them.[1]
   (b) S 51(xxiiiA) as no Government in Australia has power of 'Civil Conscription', this includes also forcing medical staff to do, or not do, certain treatments (e.g. ivermectin, hydroxychloroquine, vaccines, vaccines to be able to work generally-even in non clinical settings, etc.); please see for instance, the High Court's interpretation in *BMA v Cth.*, & "Devaluation of a Constitutional Guarantee: The History of Section 51(xxiiiA) of the Commonwealth Constitution".[2]
   (c) That there is no power granted to Government to allow for 'Civil Conscription' of people outside of the provision of "medical and dental services".
   (d) Breaches to s 92 with the free movement(intercourse) of people and trade, e.g.:[3]
      i. in Qld there was a 50km movement limit applied to people who were not specifically named in quarantine orders, and 500km for those in the 'outback', &
      ii. The internal (State and Territory) border closures, that also effected 'boarder town' residents and workers even more.
      iii. Please see in particular the "Tasmanian Lobsters" High Court case:[4]

23. The two elements in s.92 which provide an arguable foundation for giving the section a wider operation with respect to trade and commerce than that foreshadowed by its history are the reference to "intercourse" and the emphatic words "absolutely free". A constitutional guarantee of freedom of inter-State intercourse, if it is to have substantial content, extends to a guarantee of personal freedom "to pass to and fro among the States without burden, hindrance or restriction". (Gratwick v. Johnson (1945) 70 CLR 1, at p 17.) If s.92 were to be viewed in isolation from its history, the attachment of the guarantee to trade and commerce along with intercourse might suggest that inter-State trade and commerce must also be left without any restriction or even regulatory burden or hindrance. That is not to suggest that every form of intercourse must be left without any restriction or regulation in order to satisfy the guarantee of freedom. For example, although personal movement across a border cannot, generally speaking, be impeded, it is legitimate to restrict a pedestrian's use of a highway for the purpose of his crossing or to authorize the arrest of a fugitive offender from one State at the moment of his departure into another State. It is not necessary now to

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1 A) Part V.—Powers of the Parliament. s 51. Legislative powers of the Parliament.
The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:...
(ix.) Quarantine.
B) s 69. Transfer of certain departments.
On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth:—
Posts, telegraphs, and telephones:
Naval and military defence:
Lighthouses, lightships, beacons, and buoys:
Quarantine.
But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.
C) s 84. Transfer of officers.
Transfer of officers.
When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth. ...

2
A) Part V.—Powers of the Parliament. s 51. Legislative powers of the Parliament.
The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:...
(xxiiiA.) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances.
B) *British Medical Association v The Commonwealth [1949] HCA 44; 79 CLR 201* https://jade.io/article/64624.
C) *Mendelson, Danuta* --- "Devaluation of a Constitutional Guarantee: The History of Section 51(xxiiiA) of the Commonwealth Constitution" [1999] MelbULawRw 14; (1999) 23(2) Melbourne University Law Review 308.
http://www5.austlii.edu.au/au/journals/MelbULawRw/1999/14.html.

3 s 92. Trade within the Commonwealth to be free.
On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. …

4 *Cole v Whitfield* (1988) 165 CLR 360 https://jade.io/article/67418.

consider the content of the guarantee of freedom of various forms of inter-State intercourse. Much will depend on the form and circumstance of the intercourse involved. But it is clear that some forms of intercourse are so immune from legislative or executive interference that, if a like immunity were accorded to trade and commerce, anarchy would result. However, it has always been accepted that s.92 does not guarantee freedom in this sense, that is, in the sense of anarchy. (See, e.g., Duncan v. Queensland (1916) 22 CLR 556, at p 573; Freightlines &Construction Holding Ltd v. New South Wales (1967) 116 CLR 1, at pp 4-5; (1968) AC 625, at p 667.) Once this is accepted, as it must be, there is no reason in logic or commonsense for insisting on a strict correspondence between the freedom guaranteed to inter-State trade and commerce and that guaranteed to inter-State intercourse.

24. What we have just said is likewise an answer to the objection that the words "absolutely free" are inconsistent with any interpretation of the section that concedes to inter-State trade no more than a freedom from burdens of a limited kind, whether discriminatory or otherwise. Implicit in the rejection of the notion that the words "absolutely free" are to be read in the abstract as a guarantee of anarchy is recognition of the need to identify the kinds or classes of legal burdens, restrictions, controls or standards from which the section guarantees the absolute freedom of inter-State trade and commerce. As we have seen, the failure of the section to define expressly what inter-State trade and commerce was to be immune from is to be explained by reference to the dictates of political expediency, not by reference to a purpose of prohibiting all legal burdens, restrictions, controls or standards. In that context, to construe s.92 as requiring that inter-State trade and commerce be immune only from discriminatory burdens of a protectionist kind does not involve inconsistency with the words "absolutely free": it is simply to identify the kinds or classes of burdens, restrictions, controls and standards from which the section guarantees absolute freedom.

33. The concept of discrimination in its application to inter-State trade and commerce necessarily embraces factual discrimination as well as legal operation. A law will discriminate against inter-State trade or commerce if the law on its face subjects that trade or commerce to a disability or disadvantage or if the factual operation of the law produces such a result. A majority of the Court (Barwick C.J., Stephen, Mason and Jacobs JJ.) so held in North Eastern Dairy, at pp 588-589, 602, 606-607, 622-623. And the more recent decisions proceed upon that footing. The Court looks to the practical operation of the law in order to determine its validity. Once this is recognized, it is difficult, indeed impossible, to deny that a Commonwealth law dealing with inter-State trade could operate in such a way as to work an impermissible discrimination against inter-State trade, in particular the trade across State borders originating in a particular State. For reasons already given, we should not venture into this topic in any depth. However, we would add two comments. The first is that the possibility of factual discrimination by a s.51(i) law applying only in respect of inter-State trade or commerce may well be eliminated in the context of a national scheme constituted by complementary Commonwealth and State law applying, by virtue of their combined operation, to all trade or commerce of the relevant kind. The second is that s.92 will obviously operate to preclude discriminatory burdens being imposed upon inter-State trade or commerce by Commonwealth laws enacted pursuant to other general heads of legislative power (e.g., trading corporations).

46. In conformity with the general principle that the legislative powers conferred by s.51 are subject to the constitutional guarantee contained in s.92, the Court has held that s.92 secured the citizen's freedom of movement across State borders even in wartime. (Gratwick v. Johnson.) Although that case did not deny power to meet the exigencies of war by regulating the transport of men and materials (see the discussion in Miller v. TCN Channel Nine, at p 603), there is no doubt that the Constitution makes the defence power subject to s.92. That consideration is itself some indication that the freedom guaranteed by the section prevails in a confined area only. If it were not so, the section would create a substantial lacuna in the legislative powers available to the national Parliament in times of war or national crisis arising from actual or threatened international aggression. It would, for example, be a formidable obstacle to legislation authorizing acquisition and organization of essential commodities and materials in times of war or such a crisis. The criterion of operation test did nothing to alleviate this problem. Indeed, of the various interpretations of s.92 which have attracted any support over the years only the fiscal charges theory and the anti-discrimination interpretation which (for the reasons given) we favour reduce the problem to manageable proportions. Similar comments could be made in relation to the competence of the national Parliament to legislate in discharge of international obligations (Constitution, s.51(xxix)).

iv. Please see in particular "the Communists" High Court case on governments operating in excess of power:[5] *That under the defence power a law may, at least in time of war, be made to operate upon the opinion of a designated person, and that that opinion may supply the only link between the defence power and the legal*

5 *Australian Communist Party v The Commonwealth* [1951] HCA 5 https://jade.io/article/64758.

effect of the opinion is well established. It is sufficient to refer to Lloyd v. Wallach 2 (cf Liversidge v Anderson 3 Ex parte Walsh 4 ; Little v. The Commoninealth 5 ; and Reid v. Sinderberry 6). It may be thought that herein lies an exception to an elementary rule of constitutional law which has been expressed metaphorically by saying that a stream cannot rise higher than its source. It was stated in Shrimpton v. The Commonwealth 7 in these terms: Finality, in the sense of complete freedom from legal control, is a quality which cannot be given under our Constitution to a discretion, if capable of being exercised for purposes, or given an operation, which would or might go outside the power from which the law or regulation conferring the discretion derives its force." Cf. Dawson v. The Commonwealth 8 . The "discretion" may, of course, be the discretion of the legislature itself exercised by the very fact of the enactment of a law. Or it may be the discretion of the Governor-General or a Minister, intended to be legally effective by the operation of an enacted law upon it. The validity of a law or of an administrative act done under a law cannot be made to depend on the opinion of the law-maker, or the person who is to do the act, that the law or the consequence of the act is within the constitutional power upon which the law in question itself depends for its validity. A power to make laws with respect to lighthouses does not authorize the making of a law with respect to anything which is, in the opinion of the law-maker, a lighthouse.

A power to make a proclamation carrying legal consequences with respect to a lighthouse is one thing: a power to make a similar proclamation with respect to anything which in the opinion of the Governor-General is a lighthouse is another thing. Whether the rule exemplified by Lloyd v. Wallach 9 constitutes a real or only an apparent exception to the general rule is a matter which need not be considered here. It is enough to say that, on the one hand, it is established beyond all doubt, while, on the other hand, it has never yet been invoked except in connection with that H. secondary aspect of the defence power which has SO far been regarded as depending upon a basic fact of emergency and ceasing when conditions created by the emergency have passed (R. V. Foster: Ex parte Rural Bank of New South Wales Wagner V. Gall; Collins v. Hunter.

v. Please see in particular "the First uniform Tax Case" High Court case on governments operating in excess of power:[6]
Common expressions, such as: "The courts have declared a statute invalid," sometimes lead to misunderstanding. A pretended law made in excess of power is not and never has been a law at all. Anybody in the country is entitled to disregard it. Naturally he will feel safer if he has a decision of a court in his favour-but such a decision is not an element which produces invalidity in any law. The law is not valid until a court pronounces against it-and there- after invalid. If it is beyond power it is invalid ab initio.

(e) There are also s 109 inconsistencies with Federal Legislation, such as State and Federal Biosecurity Acts, including that the requirement for individual Biosecurity Orders to be made against individuals to be valid, etc.

(f) Also, State based (and Federal) inconsistencies with inherited Constitutional Law2, such as Magna Carta, Habaes Corpus, the Bill of Rights 1688/1689 (Yes, Australia has 'the Bill of Rights', it just isn't popular with some people due to some provisions – with the Australia Acts it cannot be removed either), which are indeed law throughout Australia.[7]

(g) Inconsistenancy with other 'human rights laws', e.g. *Human Rights Act 2019* (Qld), *Australian Human Rights Commission Act 1986* (Cth) which nationalized / locally implemented certain 'international law', such as:
SCHEDULE 1 *Convention concerning Discrimination in respect of Employment and Occupation*
SCHEDULE 2 *International Covenant on Civil and Political Rights*
SCHEDULE 3 *Declaration of the Rights of the Child*
SCHEDULE 4 *Declaration on the Rights of Mentally Retarded Persons*
SCHEDULE 5 *Declaration on the Rights of Disabled Persons*

(h) Also invalidity within various jurisdictions. For instance in Queensland and Victoria, Covid Restrictions were not made by Parliament, nor the Parliamentary Counsel, therefore legally require to be Gazetted and tabling in Parliament (e.g. ss 47 and 49 of the *Statutory Instruments Act 1992* (Qld) for Queensland). This was not done, and is even without the above issues needing to be considered. Hundreds of millions of dollars of fines and damage to people's businesses, suicides from loneliness, etc.

(i) It was known at the time of the lock downs continuing, that the lock downs had no effect on transmission or deaths, e.g. the work of Epidemiologist Professor Isaac Ben-Israel.

5. I would put more if I had time and more than a 3 page limit.
6. I am happy to be contacted. [redacted] and for this to be published, including my email address.
7. Thank you.

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6 South Australia v The Commonwealth (1942) 65 CLR 373, 408. https://jade.io/article/64227.

7 On colonisation, so called 'inherited laws', and confirmed many times, e.g. *Australian Courts Act 1828* (Imp); *Colonial Laws Validity Act 1865* (Imp); *Commonwealth Constitution 1900 (Imp),* s 10 "*Application of State laws: Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous IIouse of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State*"; Imperial Acts Application Act 1984 (Qld); *Imperial Acts Application Act 1969* (NSW); *Imperial Acts Application Act 1980* (SA); *Imperial Acts Application Act 1980* (Vic); etc.