

SUBMISSION

I thank you for the opportunity to make this submission concerning the roles and responsibilities of the Federal Government in relation to the Covid-19 pandemic. I make this submission as a private citizen but it is relevant to my submission that my academic and professional qualifications are in law. I have had a 28 year career as a teacher and researcher in law and have held academic positions at various universities, notably the University of Queensland and the Australian National University. In making this submission, I draw on the knowledge I have acquired as a legal scholar but I do not represent any institution and the opinions expressed herein are my own.

The government response to the Covid-19 pandemic has been, in my opinion, the most significant failure in Australian public policy and public administration in my lifetime. The most serious failures were those of state and territory governments, namely the unilateral, arbitrary and inconsistent imposition of a range of 'restrictions', including border closures, stay at home orders (known as 'lockdowns'), face mask requirements and vaccination requirements. More often than not, these restrictions were imposed without any apparent evidence of their efficacy in controlling the transmission of the Sars-Cov-2 virus and without making any scientific advice publicly available. These restrictions were destructive of civil liberties, livelihoods, education and the general well-being of large sections of the Australian population. The public welfare is about much more than the number of people who are infected with a particular virus at any particular time. Many of the measures were disproportionate to the threat to public health. The Sars-Cov-2 virus, while highly transmissible, had an infection fatality rate of significantly less than 1% and the majority of fatalities were among elderly people with significant co-morbidities.¹ While the core failure was that of state and territory governments, there are ways in which the Federal Government could have exercised its powers to curb the worst actions of state and territory governments. That is the focus of my submission.

The Federal Parliament has, under section 51(i) of the *Constitution* (Cth), power to legislate in respect of 'trade and commerce with other countries, and among the States'. The Federal Parliament could have legislated, had there been the political will to do so, to impose a uniform approach to closure of state and territory borders across the country based on transparent criteria. The failure of the Federal Parliament to do so left the way open for panicked state and territory governments to impose their own rules based on their perceived political interests. This resulted in disruption to commerce and the separation of families at very short notice and in ways that were not readily predictable. The free movement of goods and persons across state and territory borders is one of the foundational principles of Australian federalism. It should not have been as easily compromised as it was.

Vaccination 'mandates' were perhaps the most egregious and disproportionate of all of the measures imposed by state and territory governments. No consistent evidence has been presented that the vaccines had a significant impact on transmission of Sars-Cov-2. Nevertheless, young and healthy people who were not at risk of serious illness from Sars-Cov-2 infection were effectively coerced into being vaccinated in the fear that they would lose their employment or social life if they refused vaccination. Australia is a party to the *International Covenant on Civil and Political Rights*. Article 7 of the Convention states as follows:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

¹ Australian Bureau of Statistics, *Covid-19 Mortality in Australia, Deaths registered to 31 January 2022* COVID-19 Mortality in Australia, Deaths registered to 31 January 2022 | Australian Bureau of Statistics (abs.gov.au)

The DNA and mRNA products marketed as Covid-19 vaccinations were examples of novel vaccine technologies that had not previously been used at such a large scale. The measures taken were effectively a medical experiment in which many people were effectively coerced to participate. Under section 51(xxix) of the *Constitution* (Cth), the Federal Parliament has legislative power with respect to 'external affairs', which includes legislating to implement the terms of treaties and international conventions to which Australia is a party. Such legislation was, in fact, presented in the Senate but failed to pass because of an apparent lack of political will on the part of the major political parties to override the state and territory imposed vaccination mandates. This was a serious failure on the part of the Federal Parliament to consider and act upon its human rights obligations.

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