## Introduction

It seems to me the Commonwealth Government is abdicating its responsibilities – notably quarantine and of defending their laws and the Constitution - allowing State Governments and their officials to do as they please. Albeit with some side commentary which distracts from that failure. Perhaps this is in expectation unchecked State arrogance will cause such visible problems there will be calls for Commonwealth override. If so, they are not being disappointed.

Commonwealth Ministers and officials may eventually use benchmarks of behaviour now being set and defended by States. Benchmarks like a metropolitan curfew making policing easier, or laying charges against people in regional towns who allegedly try to incite minor civil liberties protests. Commonwealth representatives might replicate such benchmarks, but in fields beyond health, with vastly greater capability and for much longer than States. As was done for several decades after the 1920s pandemic.

There is plenty being said about low benchmarks set by Queensland and Victoria. This note doesn’t add to that except to explore one detail overlooked in commentary so far.

## 28 days

On September 2, for the first time I can recall, objective criterion for Queensland’s border closure was implied: any Covid community transmission in the other State within the preceding 28 days. The criterion was set by the Chief Health Officer who set the border closure.

That was subsequent to, and the same as, a Federal Court determination of a few days earlier - Palmer’s case against Western Australia’s border closure. The Court also determined: a border restriction has some Covid value to a State with a relatively low rate of transmission - based on ‘logic’ of risk being a function of probability and consequence. The Court found that at end July:

a. the probability of importation of Covid into Western Australia from Victoria, NSW and Queensland was high, moderate and uncertain respectively;

b. the probability of importation etc. from South Australia, Northern Territory, ACT was low, and from Tasmania very low.

c. the Western Australia border should remain closed to the States in (a).

It did not find the border should remain closed to those in (b).

The detail - background  
The detail relates to a story of Queensland denying the request of an ACT based, Queensland trained, nurse to attend the 10 September funeral of her parent.

The story was: the nurse applied to the Queensland Government to see her dying parent in Queensland. It took 20 days for the request to be granted during which - or soon after - the parent died. The nurse travelled to Queensland and was placed in quarantine. While in quarantine she asked to attend the funeral, refusal to which included a remark that she should not be in Queensland because she was (only) allowed in to visit a dying parent. She then wrote to the Prime Minister who telephoned the Premier. After that, the nurse was ‘granted’ a viewing of the deceased parent, but only if she wore full protective equipment. She did so and was not among the 100 people at the funeral. Such is the story– if it is to be believed.

And there are other, similar, stories as incidentally pointed out in the confusing postscript of a complaint to the Prime Minister.[[1]](#endnote-1)

In the lead up to the funeral Queensland had been recording cases of community transmitted Covid. The ACT had not recorded any Covid case for over 60 consecutive days.

## The detail

The detail is Queensland’s Chief Health Officer explanation of the refusal:

*‘I have always been very careful in making sure that anyone at a higher risk of having Covid-19 does not attend a funeral’.*

The comment appears to conflict with previous reports such as of an 80-person service in Mackay at a time the State was under stay-home orders made by the Officer.

If the Court’s findings were applied to the case in point, each attendee at the funeral would present a substantially higher public health risk than the nurse. The probability of the nurse infecting anyone at the funeral was substantially less than 1% of the probability of her becoming infected. Whatever the probabilities, there would have been negligible change in risk to public health (probability \* consequence) anywhere in Australia of her attending the funeral. Not only would it have been significantly less than an additional 1% to the risk posed by the funeral, but even that would have been further reduced by return to quarantine.

If the reported facts are accurate, Queensland’s treatment of the nurse and funeral was inconsistent with the Officer’s criterion and explanation and flew in the face of the implication of the Court’s findings - (a), (b) and (c) above. That there has been discrimination against ACT residents was basically admitted by Queensland ‘opening the border’ to the ACT from 25 September – according to the Minister *‘timed to coincide with the school holidays in the ACT’* a comment significantly omitting any consideration of public health. Attempted ex-post rationalisations for discrimination - like ACT people sometimes visit Batemans Bay where there were a few infections quickly resolved, a month or more prior - are as pathetic as excluding Queanbeyan residents from the re-opening.

## Conclusion

The beagle’s interest is in public policy, not suits. It does not pretend to give legal advice. Nor is it interested in bashing brick walls of obduracy.

However, public policy questions have been raised - e.g. about whether there can be better co-operation among States on border closure. For example, to move the Queensland border control point into NSW to reduce the inconvenience caused to Gold Coast residents by traffic jams etc. From a public policy perspective my answer is: no. There should not be any action that could be seen as endorsement of a process that gives rise to the outcomes outlined above.

My answer, ‘no’, leads to the same policy result as other basic considerations such as: a border closure affects more than one State. If closure of a State border is a legal possibility, if it has merit, and if it is necessary, any action – including the closure and determination of exemptions - should be undertaken by a Commonwealth Minister under specific legislation. Such decisions and options should not be left to State officials no matter how well regarded by the local AMA.

It seems inevitable the Commonwealth will – eventually – take on such functions. It should do so now, to prevent the type of circumstances outlined above becoming normalised.

None of that is excuses ‘trolling’ or threats to individuals especially officials and Ministers – as happened in a disgraceful sequel to this case. Bullying and personal abuse should have no place in Australia, least of all in serious policy debates. And neither does this type of situation.

J Austen

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1. The complaint was supposedly about his use of the nurse’s story in a ‘*politics and media campaign against the Premier*’. This was in a public letter from a step-sister of the nurse, based in Queensland since before the border closure, reported at p.8 - replicated at p.11! - Sydney Morning Herald 14 September under the headline ‘Family hits out at PM for “‘politicising” dad’s death’. It added: ‘*you owe my family and all the other families who have suffered an injustice at your hand for not expediting their exemption applications a personal apology’* – which seems to assume the Prime Minister is in charge of exemptions or should have started the politics etc campaign earlier. The report concluded with a spokesman saying the Prime Minister’s ‘intervention’ was intended for the Premier only. It did not mention the ‘intervention’ had been made public by the Premier in response to a question in Parliament – the Premier’s response denying responsibility and alleging intimidation – after which the Prime Minister raised the issue on radio. [↑](#endnote-ref-1)