# **Covid update**

## 1. Introduction

Erosion of democratic principles, in the name of Government ‘responses to emergencies’, is a troubling trend. Recent articles on bushfires and Covid have been motivated by that.

This article updates the May note on Covid for the period to early August 2020. Like that, it does not consider the health v. economy debate. Rather, it is interested in national goals, how they are pursued and how they should be pursued. A longer referenced version will be at the jadebeagle.com.

##

## 2. Background

### Covid

The understanding of the nature of Covid has not significantly changed since May. The key to public health responses is ‘tracing’ infection chains within the community. If this can be done, and if those suspected of infection can be isolated, the need for wider measures such as lock-downs is reduced.

###

### Infection cases

Reported Australian cases increased from 7,081 in mid-May (100 deaths) to 16,000 (196 deaths) at end July. Relatively few new daily cases were reported during much of the period – the minimum of five was reported on 7 June – a contrast to a deteriorating international situation. Towards the end of July, however, Australia cases increased markedly due to a major outbreak in Victoria.

At end July, reported cases were a minute fractions of populations – 0.2% globally, 0.1% in Australia.

###

### Australian performance

Australian Governments still have no stated objective for responses to Covid. Health sector modelling in late March posited a goal of ‘sector continuity’ and expectations: infection of 12% of the population; peak in December 2020; restrictions until mid-2021.

In the event, case numbers dropped much faster. Self-congratulation emerged in May - Australia joined an ‘exclusive’ club of ‘successful countries’. However, national smugness was removed by late June outbreaks – the experience also of other club members except, then, New Zealand.

###

### New Zealand comparator

New Zealand was widely promoted as an example of good management of Covid – introducing restrictions ‘faster and harder’ than other countries. Australia arguably achieved similar Covid results as New Zealand but with less restrictions. New Zealand may have over-reacted due to inadequacies in its health system with, in hind-sight, needless economic damage. The difference in the two countries Covid results may be down to luck.

###

### The aged

While it was known Covid infections affect the old more than the young, less appreciated was some of the aged can be at high risk of infection because they are in aged care facilities. While relevant issues are under review, important aspects appear to include: contact with families; staffing levels, skills and equipment; in situ treatment/risks of moving the elderly to hospitals

The May article suggested the zeal of imposing restrictions distracted attention from the need for individuals to avoid infection – ‘everyone stays home so I can go out’. Arguably this led to a false expectation: community wide measures could adequately reduce risk to the aged and vulnerable.

### Decision making

Governments continued to act without direct Parliamentary supervision. Some Parliaments established inquiries into Government responses to Covid.

The Table indicates those formally responsible for restrictions on the public.

|  |  |  |  |
| --- | --- | --- | --- |
| **Jurisdiction** | **Emergency declaration** | **State border closure/personal restriction** | **Government level (a)** |
| Commonwealth | Minister | Minister  | 1 |
| NSW | Minister | Minister | 1 |
| Victoria | Minister | Chief Health Officer/Public Health Commander (b) | 4/5 |
| Queensland | Minister | Chief Health Officer | 3 |
| Western Australia | Minister | Emergency Service (Police Commissioner) | 2 |
| South Australia | Governor | State Coordinator (Police Commissioner)  | 2 |
| Tasmania | Premier | Commissioner of Police. Director Public Health (b)  | 2. 4 |

a. Level of seniority, rather than legislative delegation: Minister = 1, Departmental Secretary = 2, Deputy Secretary = 3, ‘Reports’ to Deputy Secretary = 4, Deputy to 4 = 5.

b. Has not made decision to close State border.

The reason for legislative delegation - to allow fast responses – no longer applies to counter-Covid measures. Covid problems can no longer be called ‘unexpected’. In most cases immediate action has neither been necessary nor undertaken, demonstrated by the frequent practice of a Premier announcing a measure to take effect in several days-time.

Many directions and orders entail severe restrictions on freedom, analogous to actions requiring explicit Parliamentary authorisation. There is no good reason for delegation of such decisions to Officials. Where there are such delegations, prior announcements of measures by Premiers are problematic. In any event, some delegations are inappropriate: to people with law enforcement responsibilities; to positions which may lack perceived authority within the bureaucracy.

###

### National Cabinet

National Cabinet has States making most restrictions on the community. The Commonwealth is focusing on mitigating economic damage of restrictions. It also is providing on-the-ground support for States experiencing difficulties resourcing their restrictions. On May 8, National Cabinet agreed for restrictions to be gradually removed at different paces in different States. Nonetheless, differences in opinions of National Cabinet members about restrictions were publicly aired.

It may have been thought participation of State Premiers from both major political parties in National Cabinet would mitigate charges of ‘politicisation’. However, that is not the case. Public suspicions about political motives have been fed by refusal of Governments to seek counsel from Oppositions and failure to publish any advice on which they allege their decisions are based.

###

### Media campaigns

As was the case with the 2019-20 bushfires, media coverage of Covid has been generally hyperbolic and consistently saturating. Some media extended beyond reporting and factual analysis and into appearing to attempt to shape public opinion along ultra-libertarian or crypto-fascist lines.

Rival media organisations offered consistent but generally opposing views. One ran commentary downplaying direct health threats, doubting ‘the science’ of some counter-measures and pointing to economic costs. The other ran several campaigns for harsher restrictions a characteristic of which was a type of pretence such measures offer a silver bullet.

## 3. Update of earlier article

### Harwin’s case

The May article’s illustrations of NSW’s policies included the case of the fine issues to Cabinet Minister Harwin. Mr Harwin challenged the fine. The fine was withdrawn just before the matter was to be heard in court – on 3 July - some twelve weeks after it was issued. That day, the Premier announced his reinstatement claiming resignation and reinstatement were ‘appropriate’.

In the Sydney Morning Herald, a criminal barrister said it was difficult not to conclude the episode was ‘mob justice’. Potential inferences extend beyond quelling media attacks and warrant judicial investigation. Reports the police did not know the relevant laws should also be investigated.

### Ruby Princess inquiry and black lives matter

In mid-April NSW established a Special Commission of Inquiry into the Ruby Princess outbreak.

The Commission is yet to report. It is possible failures to communicate and assign responsibilities among and within State and Commonwealth agencies contributed to the debacle.

The Commission’s questioning had a salutary effect in NSW. Officials later appeared to be more taciturn and focussed than colleagues in some other States. Treatment of proposals for demonstrations – mass rallies – in CBDs is evidence of such an effect.

‘Black lives matters’ protests – mass demonstrations - were scheduled to take place in the CBDs of Sydney, Melbourne and Brisbane at various times.

The attitude of NSW to these – and other - demonstrations was more formal and rigorous than other States. Decisions were made at a far more senior level, reinforced through all available legal means including injunctions and - apart from initial confusion created by the Premier - ‘messages’ to potential protestors were unified and consistent.

### Closure of NSW border with Victoria - initiation

On 6 July, the NSW Premier announced the NSW border with Victoria would be closed – contrary to criticisms of previous closures in other States. The given reason: a spike in cases in Melbourne. Later that day, the Victorian Premier said he supported the closure and said all Melbourne would be locked-down, for at least six weeks.

In the days leading to this, the Victorian Premier announced a judicial inquiry into breaches of hotel quarantine thought to have initiated the Melbourne outbreak, and locked-down several suburbs. NSW introduced severe penalties for people who travelled from those suburbs to NSW.

Reflecting that, and her previous opposition to border closures, charges of panic and hypocrisy were levelled against the NSW Premier for the closure. However, the decision was sympathetically portrayed in a Sydney Morning Herald as being under consideration for some time.

The closure affected over fifty border crossing points, most prominently at Albury-Wodonga. Disruption led to suggestions of an Albury ‘bubble’ with a border control point either north of Albury or south of Wodonga. However, this did not eventuate.

The closure did not eliminate risks of NSW importing Covid - illustrated by an outbreak at the CrossRoads Hotel, Casula, traced to an employee of a freight company who would have been exempt from the border rules. From there it spread more widely and at end-July NSW health Officials said all then ex-quarantine infections in NSW may have originated in Victoria.

### Some developments in Victoria

The Victoria Premier said the rapid rise in cases – e.g. 627 on 31 July - was due to people not following orders. A later suggested reason was: infected people working because of job insecurity.

It appeared some media turned against the Victorian Premier, in contrast to their treatment of the NSW Premier for the Ruby Princess and Harwin debacles. Reasons for different treatment might include media party political biases or dislike of what could be seen as arrogance in Victoria.

Given the Victorian Government’s public displays of confidence in itself, recurrence of Covid must have been shock to Victorians. Reports talked of anger in the community. The signal of real trouble came from reports that 130 out of 500 - 26% - infected people had not complied with isolation rules. That problem could only be patched-over by more stringent measures such as compulsory wearing of masks, curfews, and tighter lock-downs – all of which eventuated.

Some of Victoria’s apparent arrogance could be seen, in hindsight, as bravado. In this light, the NSW border closure may not have been a reactive panic. Rather it may reflect loss of faith in Victoria’s ability to manage the outbreak by other than extraordinary means. That the Victorian Premier supported the closure suggests he had come to the same view.

### Queensland reaction

A week before NSW announced closure of its border with Victoria, Queensland’s Premier announced an intention to ‘open’ that State’s borders except to people from Victoria. That was quickly modified. Queensland responded to the infection at the NSW CrossRoads Hotel by re-closing its border to residents of the Liverpool and Campbelltown local government areas in NSW. However, this overlooked the likelihood of more significant risk in other areas – a risk which soon eventuated.

While clusters linked to the outbreak emerged in several places in Sydney, NSW authorities appeared able to trace nearly all affected people. Nonetheless, Queensland progressively closed its border to: areas in Sydney; all Sydney; all NSW and the ACT. This was said to reflect ‘concern’ people from ‘hotspots’ would travel to Queensland via other areas – triggered by two residents returning from Melbourne. Less prominent on the list of Queensland concerns were 210 people who had locally breached requirements to self-isolate since April.

Following the reports of the proposed Albury ‘bubble’, Queensland made a similar proposal for the Gold Coast-Tweed area. Reports did not have a more obvious proposal – to move the control point to somewhere in Queensland. Nor did reports indicate the idea understood legal or practical issues.

### Border closures – more general

Debate about State border closures fermented. Most debaters assumed issues are limited to ‘necessity’ and popularity – implying localism trumps legality and good public policy. However, the most fundamental policy matter has been ignored: duality of border closures and isolation. A border closure implies the target people should be isolated, wherever they may be.

Border closures raise grave matters, even if legal. When made against people not subject to isolation orders they are an expression of ‘no confidence’ by one Government in another. If there are significant public health failures in a State, they can usefully signal the need for a lock-down in a target State, leading to lower economic activity and work there. There is a compelling case for greater and immediate financial assistance to people and communities targeted by border closures.

Constitution s.61 gives only the Commonwealth the power for preservation of the system of government - which an illegal border closure would threaten. The Government, however, has urged the cessation of the only current test of the legality of a border closure.

## 4. Conclusion

In the absence of vaccine or antidote, anti-Covid measures turn on the reliability of test- trace- isolate. Unless this is reliable, it can be necessary to isolate all those suspected of infection - which may be everybody in a large geographic area. The key to limiting the number of people needlessly isolated – a proxy for economic, social and institutional damage – is to ensure the greatest reliability of detection, via testing and tracing, and of isolation.

After six months Australia does not have a national strategy for dealing with Covid. Most astonishing is no Government or expert has considered the necessity for any national strategy to be built on duality of border closures and isolation. The result: ongoing shambles.

The many indications of incoherence include: border closures to people who are not isolated; vastly different decision-making processes; military deployments to cover resource failures; disincentives for testing and isolation. Other severe problems include: lack of Parliamentary authority or appropriate support for decisions; inexplicable and possibly illegal restrictions; antagonism among Governments played out via the mass media; personalities running ‘silver bullet’ campaigns. All of which makes the Treasurer’s comment that 8 April was the ‘ultimate Team Australia moment’ unfortunately true.

Covid health results are said to depend on responses of the public e.g. willingness to participate in testing and isolation. While some experts expect such responses to weaken over time, the national mess is likely to accelerate any decay. Given the pandemic may last for years, that may have very serious consequences.

A start to resolving the mess would be to focus on the duality of border closures and isolation. A decision by any State on its borders needs corresponding decisions of other States on isolation – and vice versa – quickly followed by significant Commonwealth financial assistance to affected people. Of course, none of those decisions should be made by Officials – unlike most cases at present.

Given States’ apparent inability to make complementary decisions on border closures and isolation, and the aversion of Governments to provide any public assurance on the legality of their actions, it is necessary for the Commonwealth to step in.

Only the Parliament has the authority to do so. It is the only body able to initiate action to limit the extent and duration of Governments’ activities to what is reasonably necessary. It should legislate processes to ensure the sound governance necessary for the sustainability of responses to Covid. It should act because the issues are too important to leave in the hands of the Governments Australia currently suffers.

J Austen

14 August 2020

Postscript:

Between completion and posting four major developments were:

* emergence of community transmission in New Zealand, with speculation its origins might be cargo – i.e. a non-human initiation;
* debate in a Royal Commission about Governments’ aged-care Covid policies;
* further restrictions in Victoria;
* as yet untested claims of a vaccine and ‘cure’