# TP2

This note considers aspects of NSW and Queensland Government responses to Covid-19 in the period end March to mid May 2020.

Covid-19 presented challenges to communities and Governments not seen for generations. It might yet present further difficulties if it returns in successive waves like the Spanish Flu of a century ago.

Public discussion about responses to Covid focused on a trade-off between economic activity/jobs and risks to public health. Something which need not be traded - which underpins the effectiveness of economic and public health policies – is the law.

In a democracy, a law should instruct the community how to behave. The community will have difficulty conforming with vague or ambiguous laws. The community may be reluctant to obey laws that extend beyond the authority of the lawmaker, are unconnected with ostensible purpose, are arbitrary, or admit partisan exemptions. Heavy handed ‘enforcement’ can paper-over defective laws by coercing or bluffing - rather than instructing - the community. However, a community bluffed once might be harder to bluff again.

Neither NSW nor Queensland lacked the legal framework for optimal responses to Covid. Yet their responses – made by Executive Governments without direct involvement of Parliaments - included ambiguous and seemingly arbitrary elements.

The NSW Government’s ‘stay home’ *Order* was debased by exemptions seemingly unrelated to public health. One exemption - ‘exercise’ – was arbitrarily interpreted as only available if undertaken ‘near’ home and included some forms of recreation but not others. Another exemption which allowed people to travel among their several residences conflicted with an extraordinary prohibition on ‘holidaying’ in regional areas. The clear message of ‘stay home’ mutated into ‘visitors stay away’ - a dog whistle to parochialism, taken up by some local communities.

When the Government was tested on this issue - by possible infractions of two Cabinet Ministers - some of its reported explanations were wrong, irrelevant and misleading. It did not appear to understand – and certainly could not explain - the law it had made. Of even greater concern were its: reluctance to then clarify intentions by amending the *Order;* in the absence of amendment, its appearance of populism, and allowing police to issue fines some suspected to be invalid.

Queensland’s Government discriminated against non-residents by a land border closure despite the State having infections orders of magnitude higher than NSW within an easy drive of the border. The closure appeared unnecessary given other restrictions imposed on the public. Advertising of the closure, like the broadcasting of (supposed) ‘visitor stay away’ orders in NSW, is likely to have been viewed as populism.

It is possible the Queensland border closure breached the Constitution. It was an unfortunate throwback to the last closure of the Queensland border – by the Commonwealth in response to ‘Spanish Flu’ - century ago.

NSW and Queensland could likely have achieved better public health results – and more quickly – with approaches more consonant with public policy, rule of law and Parliamentary supremacy over their Executives. It is possible the same holds for other Governments that imposed radical and at times strange restrictions on people without Parliamentary oversight.

Some commentators argue incongruities and inconsistencies in States’ responses to Covid were so great people could not understand all they were expected to (not) do. They point to uncertainty about - and question the wisdom of - relaxing ‘social distance’ restrictions, a result of confusion created by State Governments allowing all their Covid responses to be called ‘social distancing’. Failure to publish expert advice on which they claim to have acted compounded problems.

Others foresee further unprecedented challenges – global warming, loss of natural resources etc. They suggest recent experiences – bushfires, epidemic – may be a ‘new normal’. Yet the effectiveness of severely curtailing public freedom to fight an emergency is likely to come under more scrutiny in the future – if not formally, then informally by community scepticism.

The ‘go it alone’ radical actions of various Australian Governments in response to Covid, the opaque reasons, the absence of direct oversight by Parliaments and the eschewing of a national approach in spite of a National Cabinet should not be accepted as any part of a ‘new normal’.[[1]](#endnote-1)

J Austen

14 May 2020

## Postscript:

By 18 May a ‘brawl’ had broken out among Premiers regarding continuation of border closures. The NSW Premier argued State borders, including Queensland’s, should re-open to facilitate interstate travel and stimulate the economy. This was rebuffed by other Premiers including Queenslands.

This public spectacle exposes further problems of different State – rather than regional - responses to Covid. State Premiers are forfeiting their ability to argue for responses in the national interest.

Queensland’s border had been closed by its health officer – a matter of legislation. Its Premier’s purported involvement in debates about easing restrictions raises governance questions. The questions are underlined by the health official’s support for the Premier’s views.

A senior Commonwealth official said the border controls were not made on advice from peak medical experts to the National Cabinet. Against that, the fact at least two State health chiefs claim to have given different advice to their Governments is problematic.

Another Commonwealth official said the border closures are State matters. That is wrong. State border closures are national matters of such great consequence they are specifically prohibited by the Constitution - except for the most grave reasons.

The closures and States undermining each other’s ‘messages’ point to failures of National Cabinet.[[2]](#endnote-2)

21 May

1. <https://johnmenadue.com/lessons-to-be-learned-from-the-spanish-flu-pandemic-of-1919-part-2/#more-42605> [↑](#endnote-ref-1)
2. <https://johnmenadue.com/andrew-farran-state-border-closures-and-section-92/> [↑](#endnote-ref-2)