# Tinpot! Emergency achieved

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## Summary

Tinpot is a series of articles about the Commonwealth Government’s quest for emergency powers.

The Government’s latest pursuit began in earnest in January 2020. Then the Prime Minister said he wished to be able to declare national emergencies, to give him emergency powers such as to deploy the military for domestic, civilian tasks. Set by him. The commentary on that was as extraordinary as the Prime Minister’s wish. It concerned climate change rather than what he said.

What he said involved a wish that would establish conditions with potential to destabilise the system of government. Such a potential – for autocracy - has been notoriously demonstrated elsewhere, with conditions created for the best intentions later exploited for malign purposes.

A Royal Commission was established to consider that wish and other things. It duly reported, without any real cautions, that the wish should be granted via Commonwealth legislation.

In the interim, a pandemic in 2020 suggested present generations of Australians welcome the use - and abuse - of emergency powers by State government officials.

In 2020 some concerns were raised about Governments operating beyond proper control. Yet these remained in small academic circles until a few were taken up by a Senate Committee. In early December, the Committee made its first report – in 88 years – condemning practices of Ministers and officials making laws, during emergencies, which could not be considered by Parliaments.

The following day, the Government presented Parliament with draft legislation in which the Government, via Governor General, could declare a national emergency. The draft set no real limit as to what might trigger an emergency, and proposed that Parliament be precluded from considering any declaration, the very idea abhorred by the Senate Committee.

The House of Representatives ‘debated’ the draft for less than an hour. It accepted the proposal for fatuous reasons including it: didn’t do anything; would be reviewed once legislated; was needed because the bushfire season was nearing. On the same day, 9 December, the Senate heard of the relevance of the Committee’s report to the proposed legislation. A day later, it accepted the proposal without any comment.

It is said countries get the Governments they deserve. What befits a small country that:

* has many people arguing the Constitutional role of the military should be overlooked and the army should fix power outages, fight fires, and undertake State law enforcement;
* had the world’s greatest toilet paper panics;
* electorally rewarded capricious Government illegality;
* applauded the closure of a State by a police chief because of a rumour about a pizza box; and
* has most State Governments, officials, loud ‘experts’ and many people screeching the only way to deal with low levels of infection in a global pandemic is to lock everybody – else – up or out?

## 1. Introduction

‘Tinpot’ is the heading of a series of articles at the jadebeagle about quests for emergency powers.[[1]](#endnote-1)

Tinpot was a location in NSW hit by bushfires on a day some Australians, via climate change alarm, ‘jumped the shark’. The name befits behaviour in Australia since.

This latest instalment is about a Bill put to Parliament on 3 December 2020, passed on 10 December, ‘enabling’ the Commonwealth Government to declare a ‘national emergency’.

The new legislation is rather different to a March 2020 climate emergency declaration Bill, the explanation for which referred to a ‘war cabinet’. That Bill was dropped on 1 December. But political fixation with the military – and military terminology – continued.

The recent events surrounding the legislation were a predictable result of myopic hysteria. That is the topic of this article. An appendix identifies some other related topical matters. As ever, comments and corrections are welcome.

## 2. Setting the scene

Circumstances leading up to the Bill – draft legislation - for a national emergency declaration have been largely covered in previous editions of Tinpot.

To recap: the start was a January 2020 interview on the ABC in which the Prime Minister said he wanted to have unilateral power to call in the army etc. to deal with domestic, civil, emergencies. That is, to rule by decree, including use of the military, without the encumbrance of Parliament or other democratic institutions whenever he thinks there is a national emergency. This was reported as the Prime Minister saying something about climate change.

A Royal Commission was established to consider the Prime Minister’s wish. It was presented, at first, as being into bushfires, later natural disasters, later still into matters as wide as cyber security. It allowed a type of catharsis following the 2019-20 bushfires, and covered many related topics in great detail. The one of greatest significance was the Prime Minister’s wish.

Early in its proceedings, the Commission’s acknowledged climate change. That was treated as a triumph, and a slap-down of views supposedly held by the Prime Minister. From then on, the Commission attracted little public comment, at least compared with ‘coverage’ of the bushfires.

Led by a former Defence Chief, the Commission nonetheless ploughed on with its assignment. It duly reported at end October, sans analysis, that the Prime Minister’s wish had considerable merit. So much so, his wish should be enshrined in legislation. This was generally reported in positive terms as a bigger federal role in emergencies. Some said that would lead the way for something they thought even better – an increased local presence of defence forces during emergencies.[[2]](#endnote-2)

Calls for ‘boots on the ground’ had been loud during the 2019-20 bushfires. Defence personnel were deployed in 2020 for the pandemic. In most respects, the latter deployments were to assist States conduct Commonwealth responsibilities – quarantine. However, the Commonwealth also deployed defence personnel to assist States maintain border closures – even though the legality of the closures was unknown, and the Government had a policy of opposing such closures.[[3]](#endnote-3)

## 3. The Senate speaks

Meanwhile, in 2020, a Senate Committee was considering an arcane topic – delegated legislation.[[4]](#endnote-4)

The topic is arcane except to those who realise delegated legislation is a type of rule by decree. The type of rule the Prime Minister expressly wished for, at least during times of emergency. Which, according to him, should be up to him to identify.

This type of rule-by-decree arises by legislation, made by Parliament, enabling a Government Minister, or official, to make laws. The decrees are commonly known as regulations.

Those knowing the irony of the Prime Minister announcing a Royal Commission supposedly into fires near the anniversary of *that* fire, would also know the latter became a national emergency which morphed into a dictatorship and then world war. The catastrophe was facilitated by the ability of the national leader to issue decrees without oversight by Parliament during national emergencies. One decree effectively abolished Parliament because of ongoing emergencies. That decree was followed by many other, infamous, ones.[[5]](#endnote-5)

Back to the present; there were many submissions to the Senate Committee’s inquiry. The more expert doubted the wisdom of allowing regulations that are not reversible by Parliament.[[6]](#endnote-6)

The Covid pandemic highlighted a problem: if Parliament was not sitting, say because of a Government’s ‘fear’ Parliamentarians may become disease vectors, it would be difficult for it to examine and reverse regulations even if it had the legal power to do so. This problem was demonstrated in each Australian State, and for the Commonwealth, in 2020.[[7]](#endnote-7)

A possible consequence of a Parliament being unable to reverse a regulation is abuse of regulations, and regulation making power, by Governments and their officials. Potential examples of such abuse include arbitrary, capricious, probably illegal and possibly corrupt regulations restricting normal democratic freedoms. And, at times, abhorrent behaviour by officials. Such potential became actuality in some Australian States in 2020.[[8]](#endnote-8)

This newly revealed problem – of Parliament not sitting because of Government ‘fears’ -compounded another that was becoming more frequent. That latter problem is denial, by legislative mechanisms and artifices, of Parliamentary rights to review regulations. Among these are ‘non-disallowance’ clauses in legislation.

To explain, a normal practice is for a regulation made by a Minister or official to be tabled in Parliament, and a House of Parliament being able to declare it invalid - to ‘disallow’ it. A ‘non-disallowance’ clause in the legislation that creates a power for a Minister or official to make regulations would prevent such a declaration. In such case, Parliament could only reverse regulations by passing new legislation. Yet new legislation is unlikely, because it would need to be passed in the Lower House where the Government – for whom the regulation maker works – enjoys a majority.

The Senate Committee issued an interim report focussing on regulation-making during emergencies. The report was announced as being of great importance, with the Committee’s media statement saying it was its first report in 88 years of existence.[[9]](#endnote-9)

It was a bipartisan report. It condemned many practices that had grown around Commonwealth regulation-making with sentiments such as:

*‘A core tenet of Australia's system of representative democracy is that our laws are made by parliamentarians whom the Australian people have elected to represent them. However, in practice, Parliament delegates many of its law-making powers to the executive branch of government…… The significant volume of delegated legislation made by the executive, and the frequent exemption of this delegated legislation from parliamentary oversight, pose serious challenges to Parliament's constitutionally recognised law-making role.’*

Its first recommendation followed-up with:

*‘The committee recommends that parliamentarians give adequate consideration to the appropriateness of exempting delegated legislation from parliamentary oversight mechanisms, such as disallowance, at the time the enabling provision is being considered by the Parliament, including by actively considering any comments made by the Senate Standing Committee for the Scrutiny of Bills in relation to such provisions, even in times of emergency’.*

That report was released 2 December 2020.

## 4. Prelude

Also, on 2 December, a story in the Sydney Morning Herald claimed Federal Government backbenchers had forced the Attorney General to back-down on certain provisions of Bills – draft legislation – soon to be presented to Parliament, on national emergencies.[[10]](#endnote-10)

The story had one provision at issue being a non-disallowance clause. The clause in the draft legislation was to the effect Parliament would not be able to review or revoke a Government declaration of a national emergency. Exactly the thing the Senate Committee report railed against that same day.

The story had backbenchers requiring that provision to be deleted from the Bill. Hence, the national emergency Bills, if passed, would not preclude Parliament from reviewing this singular most critical decree by the Government. So went the story.

Presumably, the Senate Committee’s report, and publicity, was timed to have this effect.

But that was not to be.

## 5. National emergency legislation

### 5.1 A risk

Late on 3 December, the Government introduced to the Parliament the Bills referred to in section 4 (above) - seeking legislation for the Government to declare national emergencies. Declarations would be by the Governor General, on the advice of the Prime Minister. The Governor General would, therefore, be acting in his capacity as part of the Executive Government.

Contrary to the report in the Sydney Morning Herald, and the Senate Committee’s sentiments, the draft legislation included a non-disallowance clause, preventing Parliament from reviewing a national emergency declaration. More on that later. First to the other content of the draft.

Prior to the new legislation, the Commonwealth Government already had extensive powers to declare a national emergency. It had done so previously, and had dealt with emergencies – as pointed out by Parliamentarians welcoming the draft legislation.

The draft legislation specified it was not intended to constrain pre-existing Government powers. If not, what did the draft seek?

In my view, in-principle, legislation should be presumed to have some effect – it cannot be merely symbolic. It should be presumed to alter the existing law. In the present case, the draft should have been presumed to create new powers for the Commonwealth Government. Even if that is not the case at law, in my view it is the case in practice.

The fact of legislation on national emergencies does create an expectation within the community, and the Government, of greater powers for the Government. In the circumstances of this legislation - including a Royal Commission, Government announcements, the creation and growth of relevant Government agencies, and other legislation providing the Government with powers triggered by an emergency declaration - it should be expected such powers, legal and practical, will grow over time.

To the extent any proposal to declare a ‘national emergency’ is substantive, with some new consequence of such a declaration, it seeks potential to alter Australia’s system of government. That potential may eventuate via legal, and illegal, means. It increases the legal - and more importantly, effective - power of the Commonwealth Government and downgrades Parliament and the States.

Legislation, which effects such a proposal without direct authority from the people, exposes Australian democracy to unnecessary risk. A valid declaration of an emergency would grant a Government the power to behave autocratically in at least some respects for the duration of the declaration, without review by Parliament. That is the point of the declaration.

As the Commonwealth Government already had powers to declare and respond to a national emergency, the effect of the legislation is to invite the Government to do what it ‘allows’ - as if its powers are unlimited. Implicit in this is the creation of a community belief that Commonwealth legislative powers are unlimited.

That is, Commonwealth legislation about emergencies risks inviting the Commonwealth to feel unconstrained by the Constitution and for its Government to behave autocratically – without control by Parliament - in areas and ways it has no legal authority to do so.

The risk is far more significant in a national Government than in a State Government. The national Government has control over the military. It has control over national security and intelligence establishments. The Commonwealth has already gone on a legislative frenzy to equip the Government with powers to deal with such issues – more so than say the United Kingdom or United States. Products to date include detention without trial, and secret trials.[[11]](#endnote-11)

The new emergency declaration legislation is said to be based on findings and recommendations of a Royal Commission into natural disasters. In my view, that basis is gravely flawed and not just for the above reasons. The Commission’s report is seriously deficient. And its relevant recommendation was not followed.[[12]](#endnote-12)

### 5.2 Deficient Commission report

Some deficiencies in the Royal Commission’s report are outlined elsewhere.[[13]](#endnote-13)

For here, the most important is its failure to recognise the potential for a Government to behave illegitimately under cover of legislation. Particularly emergency legislation.

The Commission should have been very aware of that potential, not least because it is greatest for military deployments.

The Commission’s report commented on a Bill to make easier Government deployment of Defence and Defence reserve forces. Yet, it did not refer to the key submission on that Bill - which noted the practice of Governments ‘relying’ on legislation, the Defence Act, to illegally circumvent Constitutional requirements for military deployments. That is, to illegally go to war.[[14]](#endnote-14)

The Commission exacerbated the potential for illegal behaviour via failing to explain why emergency declaration legislation was necessary. Left unexplained, it must lead the Government to think the legislation adds more and / or removes at least some existing constraints on the use of its power.

The Commission neglected to deal with Parliamentary oversight of an emergency declaration and Government activities during an emergency period. It should have been aware of pre-existing problems in this respect given the experience of the pandemic and submissions to the Senate Committee. The Senate Committee was certainly aware of the concurrent Commission.

### 5.3 Commission’s report not followed

There also was the problem that the Commission’s relevant recommendation did not match the findings in its report. The recommendation was significantly less constrained.[[15]](#endnote-15)

And even those findings were ill-considered. For example, the finding that a declaration would provide a signal about an emergency is asinine. Is it to be believed, as the Commission effectively suggested, that communities affected by the fires in 2019-20 would have been unaware of their severity because the Prime Minister did not make an emergency declaration?

Yet the draft legislation offered even fewer constraints to the Government than the loose recommendation from the Commission.

The draft legislation for declarations of national emergencies did not define the term ‘emergency’. It was open ended. It extended to lengths including to a ‘nationally significant’ impact arising from harm to the mental health of an individual. That is a ludicrous extension.

The draft legislation did seem to present a restrictive modification to the Commission’s recommendations. It had the Governor General, rather than the Prime Minister, making emergency declarations. Yet declarations are to be made on the advice of the Prime Minister. Hence the modification is a distinction without a difference. It is of no consequence. It might even increase threats to the system of government - as those with memories of November 1975 will attest – via the use of power by viceroys.

The legislation had some other surprises to those who thought the Commission was concerned with natural disasters.

For example, emergencies were to include things like cyber security incidents. And an emergency could be declared, without consent of a State, if the Prime Minister did not think it *‘practicable’* to seek consent – a far less constrained view than that taken by the Commission. Except in its recommendations.[[16]](#endnote-16)

### 5.4 Rule by decree

The failure of the Commission to deal with the matter of such concern to the Senate – Parliamentary supervision of the Government – was exploited by the Government to include in the draft legislation a non-disallowance clause as if it was a minor, or normal, matter.

The Government’s stated reason for inclusion confirmed how little regard it had for the Commission’s report – a suspicion first arising when it introduced into Parliament draft legislation to ‘call out the troops in an emergency’ a month before report.

The non-disallowance clause escaped mention in the Government’s second reading speech and member speeches in the House of Representative. Only the explanatory memorandum gave a reason:

*‘If a declaration were disallowed, it would destabilise the framework under which emergency response agencies are operating, leading to uncertainty and potential delays in the response and recovery effort where time is of the essence’*

And even a potential question by Parliament would have the same evil effect

*‘the prospect…… is likely to call into question the status of the emergency event’* [[17]](#endnote-17)

That is, the legislation is based on the idea that only the Prime Minister, and not the Parliament – nor as noted earlier the community – knows what a national emergency might be. It is that Parliamentarians are unable to be trusted to be able to distinguish a national emergency from other events.[[18]](#endnote-18)

Among the implications is the Government believes its only constraints should be via the courts. Yet some in the courts, long ago, had something to say about that. As Justice Dixon put it:

*‘History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power. Forms of government may need protection from dangers likely to arise from within the institutions to be protected’.*[[19]](#endnote-19)

The concern is not just with the Government of the day. It is about the establishment of latent defects in democratic governance that may be exploited by those whose intentions are less honourable than the current generation.

The Weimer Republic provides the lead example where opportunity for rule by decree – without Parliamentary supervision of the Government - lay dormant. It was unused for over a decade before being exploited after a series of states of emergency declared by successive Government leaders.

In that light the Royal Commission’s warning of an ‘alarming’ outlook for disasters in Australia, and of compounding and serial disasters, ought to be sobering. As might economic difficulties in the next decades arising from the present pandemic and changes in international relations.

With that background, the only reasonable expectation would be for Parliamentarians to take strong issue with the draft legislation presented by the Government.

### 5.5 The debate – Representatives

The ‘debate’ in Representatives, as reported in Hansard, didn’t meet those expectations. Its duration of around 50 minutes saw just five speeches. None of the Government members who supposedly opposed the draft in the Liberal party room spoke. [[20]](#endnote-20)

The Shadow Attorney General, Mr Dreyfus, was the sole Opposition member to speak. After presenting only arguments for the legislation to not proceed, he indicated the Opposition would support it. This was on condition there was Senate Committee review of the legislation once passed. His conclusion trivialised the matter.[[21]](#endnote-21)

The (Independent) member for Indi, Ms Haines, spoke in support of the legislation. Her support appeared to derive from misunderstandings between: responsibilities and activities; Commonwealth and State functions; the role of the military; to some extent, national and local matters.[[22]](#endnote-22)

Three Government members spoke to the legislation - the members for Higgins, Wentworth and Brisbane.

The member for Higgins, Dr Allen, offered an excuse for the Government’s haste: legislation should be in place for the ‘*rapidly approaching*’ bushfire season. Yet the bushfire season had arrived some months earlier. Reports had consistently pointed to higher risks of flooding, and lower risks of bushfires. in 2020-21. Further, her other remarks were to the effect the legislation covered much more than bushfires – ‘*all hazards… whether they are natural or man made*’.

The member for Wentworth, Mr Sharma, started with a caution:

*‘….obviously legislation of this sort has been ripely abused by jurisdictions across the world in different circumstances and at different times. The declaration of a national emergency does obviously provide the Commonwealth government with enhanced powers over those that might exist in peacetime or in regular periods. It's important that we make sure that the exercise of those powers is justified, open to scrutiny and transparent and accountable, and that there are checks and balances upon them.’*

Despite those comments, it is not at all obvious that a declaration provides the Commonwealth with enhanced powers. At least it was not obvious to Mr Dreyfus who basically denied that claim.[[23]](#endnote-23)

The remainder of Mr Sharma’s speech demonstrated a lack of understanding about checks and balances. Indeed, it failed to mention the non-disallowance clause – the antithesis of checks and balances. It culminated with a claim implying an absence of any check or balance - the legislation allowed an emergency declaration in response to:

*‘any number of things which are not yet necessarily envisaged….’.* [[24]](#endnote-24)

The member for Brisbane, Mr Evans, added further fatuous comments. One was there would be a review of the legislation ‘*immediately following its commencement’.* Another was that each national emergency declaration would be reviewed within 12 months of being made. He reiterated the idiotic reasoning of the Royal Commission that a declaration by the Prime Minister:

*‘will ensure that the Australian community is aware of the significance, gravity and nature of a declared emergency event.’*

As if the community wouldn’t know – which was the point of the speech by the member for Indi.

The draft legislation passed the House without division. That implies it was widely supported by members.

### 5.6 The debate – Senate

The Senate ‘considered’ the proposed legislation on 10 December.[[25]](#endnote-25)

The previous day, the Chair of the Committee that made the damning report about Parliament being precluded from overseeing laws noted the relevance of that report, implying serious concerns:

*‘Senator FIERRAVANTI-WELLS (New South Wales) (18:29):*

*I wish to draw the Senate's attention to the relevance of the committee's recent interim report on parliamentary oversight of delegated legislation made in times of emergency to the National Emergency Declaration (Consequential Amendments) Bill 2020…. Many of the features of the national emergency declaration bill are similar to the delegated legislation-making powers in the Biosecurity Act 2015. In its report, the committee details its serious concerns about the lack of parliamentary oversight of the delegated legislation-making powers in the Biosecurity Act and makes a number of recommendations to address these concerns. I would urge senators to heed the recommendations of the committee's report …. as they consider the terms of the national emergency declaration bill 2020.’* [[26]](#endnote-26)

On the morning of the Senate’s consideration of the draft legislation, an Independent Senator complained of deliberations being rushed as a result of ‘flippant’ decisions:

*‘Senator PATRICK: Thank you very much. Here we have, on the last day of sitting, a motion to extend hours to deal with a number of bills which are likely to be subject to a gag at the end of the day. I have no problems with extending hours. I don't mind working the long hours, but there's a process problem here….. Flippant decisions were made to cancel the sitting of parliament, and that's led us to a situation where there is a backlog of bills. But I also point out that we're seeing bills come on and off in a willy-nilly fashion. It's quite disorganised, and it is symptomatic of a government that hasn't got its act together.’*

Hansard does not show any Senate debate on the proposed legislation. Nor does it show any objection, or even comment, that the legislation was rushed.

Neither Hansard nor the Senate Journals show cognisance – even suggestion - of the supposed deal between Government and Opposition for a Senate Committee to review the legislation once passed. Let alone what that ‘deal’ might mean for the authority of a declaration of a national emergency.[[27]](#endnote-27)

Rather, Senate Hansard merely records a note passed to the Acting Deputy President that appeared to be a political stunt – to have a condemnation of the Prime Minister read into Hansard.[[28]](#endnote-28)

The Senate passed the legislation on 10 December. Again, as there was no Division, it appears the legislation had widespread support. The legislation included the non-disallowance clause.

## 6. Tinpot

### 6.1 The legislative result

The result is legislation allowing the Prime Minister to effectively determine a national emergency.

The passage of this legislation shows a willingness to introduce autocratic rule. In that it accords with other Commonwealth and State legislation creating the potential for Australia’s system of government to be undermined from within. It ignores the lessons from history: that such potential is likely, eventually, to be used.

### 6.2 The Parliament

The ‘debate’ in the House or Representatives on the national emergency declaration legislation was a national embarrassment. Government and Opposition members voiced conflicting views about the most fundamental matter – the effect of the legislation – yet seemed unaware of that fact.

A conclusion difficult to avoid is: important democratic principles were sacrificed because of the imminent start of a season – their summer holiday season.

If anything, the Senate’s performance was even more lamentable, being also open to a charge of gross hypocrisy. Its Committee’s point of fundamental principle, some 88 years in the making – insisting on Parliamentary oversight of the Government - was abandoned, in silence, on the first day there was an opportunity to put it into practice.

Parliament eschewed its role of overseeing the Government. Worse, is its pretence at relevance in remarkable propositions like: consideration of legislative proposals should occur after they become law, when members of Parliament come back from holidays. Because of some clandestine deal between Government and Opposition.

Oversight is now a matter for the courts. However, that potential is severely limited as courts only become involved in the resolution of disputes, with large financial costs borne by the disputants.

### 6.3 Preaching about democracy

Some Parliamentarians – from either side - promote their stances on social media.

For example, the member for Perth, Mr Patrick Gorman, posted the following on 10 December, after the Senate’s vote. Somehow, uninvited, it made it to the jadebeagle’s in-tray:

*‘BREAKING: Liberals reveal dark plan for Australian democracy.*

*A Liberal controlled Parliamentary committee has released an authoritarian vision for Australian democracy[[29]](#endnote-29)*

His headline could, should, have led to a discussion about the national emergency declaration legislation. Instead, it referred to second order electoral procedures, such as voter identification, and a report that is unlikely to progress.

A day later, the jadebeagle replied, drawing attention to the passage of the national emergency declaration legislation, including its non-disallowance clause, a few days after a Senate report condemned such clauses as anti-democratic. It asked Mr Gorman how he voted in the House.

Mr Gorman is yet to reply. Until he does, can we presume he did not vote against the national emergency legislation? Allowing the Prime Minister to effectively declare an emergency in undefined circumstances - a declaration that cannot be challenged by Parliament?

If there is to be any ‘dark plan’ to undermine democracy, it is more likely to be based on that rather than on ensuring the eligibility of voters etc.

His post concluded:

*‘I never thought I would have fight for democracy here in Australia.’*

In the light of the above, that is a strange comment.

### 6.4 Tinpot

Thus our little Tinpot series - with the Commonwealth’s further assembly of the apparatus of an autocratic, police, state - ends. Almost.

Almost every relevant point - from the announcement of the Royal Commission into fires and natural disasters near the anniversary of the most notorious fire in modern history - was missed by commentators.

Rather, commentary was infected by fear-induced myopic fixations, first on climate change then on a disease which hardly touched Australia.

The year 2020 started with a wish associated with tinpot countries. It ended with that wish being granted. Along the way the national broadcaster spread distortions and lies, a Royal Commission failed, the Opposition became a ‘me too’ movement and Parliamentarians abdicated their tasks of supervising Governments.

It is said countries get the Governments they deserve. What befits a small country that:

* has many people arguing the Constitutional role of the military should be overlooked and the army should fix power outages, fight fires, and even undertake State law enforcement;
* had the world’s greatest toilet paper panics;
* electorally rewards capricious Government illegality;
* applauded the closure of a State by a police chief because of a rumour about a pizza box; and
* has most State Governments, officials, loud ‘experts’ and many people screeching the only way to deal with low levels of infection in a global pandemic is to lock everybody – else – up or out.

Whatever it might be, perhaps 2020 started to deliver it. Summed up on media becoming more reliable than national broadcasters, 9 Gag:



J Austen

24 December 2020

## Appendix: Postscript

Postdating the article were two events with aspects along tinpot lines. One was the report of an inquiry into the failure of hotel quarantine in Melbourne. The other was a Covid outbreak in Sydney. The beagle has asked for a more considered review of these in the new year. For now:

### A.1 Melbourne hotel quarantine report

The report of the Victorian inquiry into the Melbourne hotel quarantine failure was released on 21 December.[[30]](#endnote-30)

The failure resulted from the Victorian Government’s inadequate contracting-out the quarantine function. The inquiry said it was unable to ascertain who was responsible for that.

However, that contracting-out was not the only direct contributor to Victoria’s second Covid wave – there also was a failure of the contact tracing system. Thorough readers may recall earlier Victorian views about contact tracing, which together with knee-jerk responses and grandstanding, probably reflected insecurities about the competence of their institutions and Government.[[31]](#endnote-31)

The inquiry report indicated the quarantine failure went beyond incompetence and into a lack of respect by Government and officials for democratic procedure. It said of the maker of the key decision, and the reason for that decision, remaining unknown:

*‘On its face, this was at odds with any normal application of the principles of the Westminster system of responsible government. That a decision of such significance for a government program, which ultimately involved the expenditure of tens of millions of dollars and the employment of thousands of people, had neither a responsible Minister nor a transparent rationale for why that course was adopted, plainly does not seem to accord with those principles.’*

In that it is consistent with some views of the Victorian Supreme Court in a case about the Melbourne curfew suggesting a breakdown of processes necessary in a democracy.[[32]](#endnote-32)

Several parts of the inquiry’s findings are of immediate interest.

The first is its claim of being unable to ascertain who made the contracting-out decision.

While the inquiry seemed to rule out Government Ministers that looks premature. Unless the inquiry determined who made or influenced the decision it is difficult to see how it could rule out anyone in Government. This is especially so given evidence in the case of Loielo v. Giles of pressure on a decision maker - the person who made the decision to continue the Melbourne curfew - from higher-up:

*“she had been told that if she had not signed the Directions, the matter ‘would be escalated to the Secretary and discussed with Strategy and Policy’…….*

*‘I have considered whether Giles had any real choice to sign the Directions when she was informed that, if she did not, the decision about them would be elevated to higher authority. The defendant said that this gave her a choice, but it might also be considered as not much of a choice for an officer of six weeks tenure”.*[[33]](#endnote-33)

The inquiry report did not refer to that case. In any event, the claim of being unable to determine the decision maker is difficult to accept.

It appears the inquiry’s efforts on the question of responsibility were spurred on by voices challenging claims of the Victorian Government. Even after that spur, the inquiry did not draw the logical conclusion – that if nobody else could be identified as making the decision, the person who signed the relevant contract on behalf of Victoria was the decision maker.[[34]](#endnote-34)

A second matter of immediate interest is: the inquiry did not draw obvious conclusions from the fact that the Commonwealth – not Victoria - is Constitutionally responsible for quarantine. It referred to Commonwealth and State planning, but excused its non-review of Commonwealth actions/inaction as outside the inquiry’s remit.

Those obvious conclusions include: the Commonwealth is unable to shed that responsibility; if the Commonwealth seeks to discharge that responsibility by relying on others – like the States - to conduct certain functions, it needs to satisfy itself about the competence and diligence of those others. There is very little evidence of such satisfaction.

Given that, it is difficult to understand the view that (Commonwealth) responsibility for quarantine was outside the inquiry’s terms of reference.

### A.2 Sydney outbreak

On 18 December, several Covid cases were identified in Sydney, primarily on the northern beaches. Within a few days total numbers of reported infections had risen to near one hundred of within-community transmission. The origins of the infection appear to be inbound travel from the United States.[[35]](#endnote-35)

While the outbreak is still underway, and could worsen, it would be an understatement to say States other than NSW panicked. Their Premiers – most of whom are not relevant decision makers and whose involvement in decision making is probably illegal and possibly corrupt – seemed to compete to seal their States off from NSW.[[36]](#endnote-36)

They were not the only ones. Some ‘experts’ joined in, giving the appearance of a State-of-origin game. One ‘expert’ from Queensland was reported as saying Australia had wasted the opportunity to effectively eliminate Covid in November when Victoria and

*‘nearly every other state and territory had virtually eliminated the virus by keeping case numbers close to zero. Except for NSW.’*

Which was false. NSW cases had been zero for 25 consecutive days and, after a few cases, for a further consecutive 13 days. The report propounded further falsehoods - for example the possibility of ‘elimination’ of a virus during an international and growing pandemic – apparently as justification for imposing restrictions on at least State-wide populations. [[37]](#endnote-37)

‘Experts’ whose arguments involve a predisposition to ‘close-down-society’ and exclusionary policies seldom mention such policies seek a transfer of power from the electorate to themselves. Such arguments frequently ignore that important matters, even emergencies, arise outside the proponent’s areas of expertise. The opinions appear to involve a view that democratic institutions and procedures should be disregarded while-ever some likeminded ‘expert’ or Premier considers there to be an emergency.[[38]](#endnote-38)

It is possible ‘close-down-society’ prescriptions by Covid ‘experts’ and State Premiers relate to major problems close to their homes. Victoria’s ‘performance’ is consistent with that. For that reason, the background, professional relationships and track record of ‘experts’ cited by the media warrant attention by audiences.

Not all Covid experts – or Governments – agree that such close-down measures are always, and at first instance, necessary. The ‘at-first-close-down’ calls conflict with NSW’s anti-Covid policy. That policy is to first track, trace and isolate individuals presenting a risk of infecting others. If that is unable to control the spread of infection, community restrictions are applied locally then, if necessary, State and even nation-wide.

As explained in a previous article, a person who closes a State border on anti-Covid grounds demonstrates their lack of confidence in the ability of *their own* State authorities to control - via e.g. tracking, tracing and isolation – infection that may be imported.

That lack of confidence is latent until activated by a potential of importation, which may also reflect their lack of confidence in the ability of authorities of other States to prevent export of disease.

The latter – their lack of confidence in other authorities preventing export - might be justified or it might be borne of ignorance. It will reflect less certainty than about the capability of their own authorities to deal with import. It will be based on less information than available to the other authorities and States.

Advice/decision not agreed among the potential exporter and importer - a border closure not agreed by State authorities - therefore comprises apparent paradoxical elements. The authority closing the border is behaving as if it would perform worse than the authority in the other State, but meanwhile claiming to know better than the other authority – especially about the other authority.

As previously noted, border closure against an area is tantamount to a recommendation that people from that area be prevented from travelling to any place where track, trace etc. is inadequate to control spread of infection. The fact of States other than NSW unilaterally imposing restrictions on communities as a first resort implies they lack confidence in the track, trace etc. capacities of their own public health authorities. Nine months into a pandemic that is a disgrace.

Premiers pretending to protect their States from outside, or by excessive local restrictions, could be protecting their States from their own incompetence and failure to equip public health with the skills and resources adequate to the tasks expected of them. Well into a pandemic, when such failures should have been long addressed by State Governments – without help from the military - such tinpot behaviour is to be condemned.[[39]](#endnote-39)

1. <https://www.urbandictionary.com/define.php?term=jump-the-shark>

   <https://www.thejadebeagle.com/tinpot.html>

   <https://www.thejadebeagle.com/its-all-about-climate-change.html>

   <https://www.thejadebeagle.com/tinpot-update.html>

   <https://www.thejadebeagle.com/tinpot-2020.html> [↑](#endnote-ref-1)
2. Calling on defence personnel to help deal with civilian, domestic ‘emergencies’ see: <https://www.thejadebeagle.com/tinpot.html> [↑](#endnote-ref-2)
3. Calls on defence personnel to help with civilian, domestic matters extended through 2020 from emergencies to matters such as electricity blackouts and assistance to police forces for State border closures, notwithstanding the Commonwealth’s unease, and unresolved questions about the legality of the border closures. See for example <https://www.thejadebeagle.com/covid---july-2020.html> [↑](#endnote-ref-3)
4. <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation> [↑](#endnote-ref-4)
5. See, for example: <https://www.washingtonpost.com/outlook/2019/02/19/emergency-powers-helped-hitlers-rise-germany-has-avoided-them-ever-since/> [↑](#endnote-ref-5)
6. See, for example: submission 310Centre for Comparative Constitutional Studies at <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Submissions> [↑](#endnote-ref-6)
7. See note vi (above) and <https://www.thejadebeagle.com/covid---july-2020.html> [↑](#endnote-ref-7)
8. <https://www.thejadebeagle.com/covid---may.html> [↑](#endnote-ref-8)
9. <https://www.thejadebeagle.com/covid---july-2020.html>

   See note iv (above). [↑](#endnote-ref-9)
10. <https://www.smh.com.au/politics/federal/porter-narrows-national-emergency-powers-in-peace-deal-with-backbench-20201202-p56k1c.html> [↑](#endnote-ref-10)
11. See, for example <https://www.thejadebeagle.com/tinpot.html> [↑](#endnote-ref-11)
12. <https://www.thejadebeagle.com/tinpot-2020.html> [↑](#endnote-ref-12)
13. <https://www.thejadebeagle.com/tinpot-2020.html> [↑](#endnote-ref-13)
14. <https://johnmenadue.com/paul-barratt-defence-legislation-re-call-out-of-reserves-should-not-proceed/#disqus_thread> [↑](#endnote-ref-14)
15. Discussed in <https://www.thejadebeagle.com/tinpot-2020.html> [↑](#endnote-ref-15)
16. <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr6647_ems_0ee75277-7108-4aac-8071-144fba8be733%22> [↑](#endnote-ref-16)
17. <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6647> paras 48 and 49 [↑](#endnote-ref-17)
18. <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr6647_ems_0ee75277-7108-4aac-8071-144fba8be733%22> [↑](#endnote-ref-18)
19. <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1951/5.html> [↑](#endnote-ref-19)
20. <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/8d35ad3a-06a6-4b15-b4bc-d5f91eeb30c9/&sid=0000> [↑](#endnote-ref-20)
21. Mr Dreyfus recapped the 2019-20 bushfires, the Prime Ministers holiday etc and referred to ‘‘a long history’ of Commonwealth government responses to natural disasters, adding:

    *‘these bills add very little of substance to the existing large array of powers that are already available to the Commonwealth in response to a national emergency.’*

    He noted the Opposition’s proposed amendment to have a declaration of a national emergency disallowable by Parliament was rejected by the Government even though it:

    *‘would act as important safeguards to prevent the declaration of a national emergency in clearly inappropriate circumstances, such as for reasons of political self-interest.’*

    Despite the legislation being unnecessary, and the Government not accepting Parliamentary review of an emergency declaration, the Opposition supported ‘*the swift passage*’ of the legislation. This was on the basis of the Government agreeing to an:

    *‘unusual process ….. the bills will be reviewed by a Senate committee immediately upon passage of these bills through the parliament.’*

    The implication for the validity of the legislation is not clear. His conclusion trivialised the matter:

    *‘Last, I come to a more significant matter, which is the failure to prepare for the upcoming bushfire season‘*

    The reasons for that being trivial is the same as the reasons for the member for Higgins comment being stupid:

    . the bushfire season had commenced some months earlier. In NSW – the State which had the most severe fires in the 2019-20 season which ultimately led to the legislation, the statutory season starts 1 October. Because of a dry winter, it commenced in some areas of NSW in August;

    . the Bureau of Meteorology had warned of a La Nina event for Spring and Summer – the ‘bushfire season’ in most of Australia. For NSW, this is associated with higher than usual rainfall and greater threat of flooding and less risk of large bushfires

    . in the days prior to Mr Dreyfus’ comments, the Bureau had warned of a risk of flooding in northern NSW and southern Queensland. This risk eventuated.

    [↑](#endnote-ref-21)
22. In her view the Bill would address

    *‘an inadequate response from the Commonwealth to the bushfire crisis.’*

    Of the previous year. Self- evidently it could not. She claimed the

    *‘Commonwealth failed to understand what its role was in responding to the national bushfires and what support it would provide to frontline communities.’*

    That claim appeared to partly reflect her confusion about responsibilities, as distinct from activities. She said:

    *‘…primary responsibility for immediate disaster management response rests with the states, but the Commonwealth plays a significant role in disaster response and has access to many tools to which the states do not. Funding aerial firefighting, telecommunications infrastructure, running ABC broadcasts, electricity grids, military assistance— these are all in the hands of the Commonwealth. Many of the key challenges that our community faced were linked to these Commonwealth responsibilities. Towns like Walwa and Corryong lost power for days…..’*

    The States are not merely responsible for immediate disaster management response, but also for all disaster management response – with several unusual exceptions – and mitigation of the risks of disasters. ‘Access to tools’ is of no relevance to responsibility. There is no such thing as a funding responsibility. The Commonwealth Government does not run the ABC, rather the ABC is an independent statutory authority. The Commonwealth has no responsibility for, or power over, electricity grids. The function of the military is to defend the system of Government from external threat, it is not to provide undefined ‘assistance. The loss of power by several small towns for several days does not create a Commonwealth responsibility.

    Further, it is highly probable the 2019-20 bushfires did not of themselves trigger any Commonwealth responsibility or power other than to protect its own assets and matters relevant to treaties. Calling the events ‘national bushfires’ is inaccurate, but even if true does not create a Commonwealth responsibility.

    Among the many problems arising from the member’s thoughts are the Commonwealth, and the military, are seen as fall-backs for inadequate resourcing by State Governments. This is compounded by the appeal to populism – one of the triggers for autocracy. The member referred to a letter written during the 2019-20 fires illustrating this:

    *'Prime Minister, I call on you to declare a national emergency. In doing that, the federal government can support a fully coordinated approach that….. provides military support to logistics, deceased animal burial, fuel supplies, traffic management and relief centres, and put in place a long-term recovery plan. It can consider backup support for our heavily burdened rural emergency, local government and health workforce.*  [↑](#endnote-ref-22)
23. It is likely the fact of an emergency, rather than a declaration, equips the Government with legal powers additional to those it has in regular peacetime. Apart from the protection of Commonwealth property and laws, the origins of those powers likely lie in those of the Executive arising from the Constitution e.g., to defend the system of government. If so, Parliament is legally unable to expand those powers by legislation. [↑](#endnote-ref-23)
24. Mr Sharma said

    *‘a national emergency cannot be declared on the whim of the government of the day but needs to meet an important public threshold test, of being nationally significant. It needs to be nationally significant harm to the life or health of an individual or a group of individuals or to animal or plant life, or alternatively to the environment or to property, including infrastructure, or cause disruptions to essential services. The sorts of things being envisaged here, of course, are bushfires of the scale and severity of those that we experienced over the last summer, but it could also be potentially a pandemic such as COVID-19 that we're experiencing now….. It could be any number of things which are not yet necessarily envisaged but which could be covered by this legislation.’…*

    *‘Ministers who have emergency powers available to them under this legislation once a declaration is made must report to parliament on the exercise of powers under national emergency laws, which I think provides an important safeguard and scrutiny for what is being done. Importantly as well, declaration of a national emergency is limited to a maximum period of three months, with extensions possible. But of course any extension would require scrutiny and justification. Equally importantly, the entire package of legislation will be reviewed after five years, by a relevant parliamentary committee, to see if it's working as intended.’*

    As a statement of ‘checks and balances’ it is complete rubbish. It implies the only check on the decision maker is the decision maker’s opinion. Instead, checks and balances require someone independent of the decision maker to verify the decision. It is about diffusing power. [↑](#endnote-ref-24)
25. <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansards/d334e937-2d40-4347-901e-4275822f0cfc/&sid=0000> [↑](#endnote-ref-25)
26. In full:

    *‘Senator FIERRAVANTI-WELLS (New South Wales) (18:29): I present Delegated Legislation Monitor 14 of 2020 of the Standing Committee for the Scrutiny of Delegated Legislation, and I move: That the Senate take note of the report. I rise to speak to the tabling of the Scrutiny of Delegated Legislation Committee's Delegated Legislation Monitor 14 of 2020. I would like to take this opportunity to highlight some of the key issues arising in the monitor. In particular, I draw the chamber's attention to the committee's concluding comments regarding two legislative instruments which raise significant technical scrutiny issues.*

    *Finally, I wish to draw the Senate's attention to the relevance of the committee's recent interim report on parliamentary oversight of delegated legislation made in times of emergency to the National Emergency Declaration (Consequential Amendments) Bill 2020, which was introduced in the other place last week. Many of the features of the national emergency declaration bill are similar to the delegated legislation-making powers in the Biosecurity Act 2015. In its report, the committee details its serious concerns about the lack of parliamentary oversight of the delegated legislation-making powers in the Biosecurity Act and makes a number of recommendations to address these concerns. I would urge senators to heed the recommendations of the committee's report and the comments of the Scrutiny of Bills Committee about the bill in its forthcoming Scrutiny Digest as they consider the terms of the national emergency declaration bill 2020. With these comments, I commend the committee's Delegated Legislation Monitor 14 of 2020 to the Senate.’* [↑](#endnote-ref-26)
27. <https://parlinfo.aph.gov.au/parlInfo/download/chamber/journals/29eaca38-38ec-48a6-925f-94ca1dba764c/toc_pdf/sen-jn.pdf;fileType=application/pdf> [↑](#endnote-ref-27)
28. In full:

    *‘The ACTING DEPUTY PRESIDENT (Senator Askew) (13:16): I have a note here saying that there's a second reading amendment. Opposition circulated amendment— At the end of the motion, add: ", but the Senate: (a) notes: (i) the Prime Minister's failure to prepare adequately for the last bushfire season, (ii) the Prime Minister's catastrophic failure of leadership during the last bushfire season, which Australians have come to know as the Black Summer, and (iii) the bill largely re-states existing emergency powers of the Commonwealth Government; and (b) calls on the Prime Minister and the Government to: (i) learn from their catastrophic failure to prepare for, or respond to, the Black Summer, (ii) urgently prepare for this disaster season, including by releasing funding for mitigation works from their $4 billion Emergency Response Fund, and (iii) accept, and implement, the Royal Comm’* [↑](#endnote-ref-28)
29. ### In full:

    ### [****Patrick Gorman MP****](https://www.facebook.com/PatrickGormanMP/?__cft__%5b0%5d=AZXRwuQ1MVwSsPOG_3vRvHF5ZYB03pBCHNM8yZBaThcsw_8VcL6bsBCOjc2mVOZd1ogPzpIARtX4XVamGLY0se_HcMywdBoJgLvUhIUY4xwBPHAV44MCZmmTrHR2kvoHwxPepL2aJAZdqplaMtKe2gWreiIQLyZvKy6lJiRwMfx0BzZuPu-mCNA-hojIhSmZ4OI&__tn__=-UC%2CP-R) 10 December at 19:23

    BREAKING: Liberals reveal dark plan for Australian democracy.

    A Liberal controlled Parliamentary committee has released an authoritarian vision for Australian democracy, including:

    ❌Abolishing compulsory preferential voting and replace it with optional preferential voting, undermining our compulsory voting system;

    ❌Introducing voter ID laws, disenfranchising our most vulnerable citizens, including people experiencing homelessness and domestic violence, and many First Nations Australians;

    ❌Abolishing by-elections and allow the retiring member’s party to choose their replacement, eroding the democratic right of Australians to elect their lower house representatives; and

    ❌Stopping workers and third parties from speaking to voters as they go to cast their ballot.

    I never thought I would have fight for democracy here in Australia.

    **Author**

    [**Patrick Gorman MP**](https://www.facebook.com/PatrickGormanMP/?comment_id=Y29tbWVudDoxNTE1NzAyNDQ1Mjg4Mjg2XzE1MTU3MDQxNDUyODgxMTY%3D&__cft__%5b0%5d=AZXRwuQ1MVwSsPOG_3vRvHF5ZYB03pBCHNM8yZBaThcsw_8VcL6bsBCOjc2mVOZd1ogPzpIARtX4XVamGLY0se_HcMywdBoJgLvUhIUY4xwBPHAV44MCZmmTrHR2kvoHwxPepL2aJAZdqplaMtKe2gWreiIQLyZvKy6lJiRwMfx0BzZuPu-mCNA-hojIhSmZ4OI&__tn__=R%5d-R)

    You can read the full report here [https://www.aph.gov.au/.../Ele.../2019Federalelection/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2019Federalelection/Report?fbclid=IwAR2-aSwYu36qHwkWqyGYhZ7SGt8Rekxihg-EXh70o_3gPHrv6Ajg5xl8luQ)

    [**Petal B Austen**](https://www.facebook.com/petal.austen?comment_id=Y29tbWVudDoxNTE1NzAyNDQ1Mjg4Mjg2XzE1MTYyMTc4MDg1NzAwODM%3D&__cft__%5b0%5d=AZXRwuQ1MVwSsPOG_3vRvHF5ZYB03pBCHNM8yZBaThcsw_8VcL6bsBCOjc2mVOZd1ogPzpIARtX4XVamGLY0se_HcMywdBoJgLvUhIUY4xwBPHAV44MCZmmTrHR2kvoHwxPepL2aJAZdqplaMtKe2gWreiIQLyZvKy6lJiRwMfx0BzZuPu-mCNA-hojIhSmZ4OI&__tn__=R%5d-R)

    Perhaps. But much more relevant to the issue of democracy in operation is the Senate Committee report on delegated legislation which raised the far more concerning issue of Parliament not being able to oversee the Government - by virtue of 'non-disallowance' clauses in primary legislation. it was issued 1 day before a 'national emergency' Bill, containing such a clause, was presented to Parliament. The Bill passed yesterday. I cant yet determine how individuals voted. Perhaps you can help. Mr Gorman, how did you vote? [↑](#endnote-ref-29)
30. <https://www.quarantineinquiry.vic.gov.au/covid-19-hotel-quarantine-inquiry-final-report-0> [↑](#endnote-ref-30)
31. <https://www.thejadebeagle.com/covid---july-2020.html> [↑](#endnote-ref-31)
32. <https://www.thejadebeagle.com/acrpa.html> [↑](#endnote-ref-32)
33. <https://www.thejadebeagle.com/acrpa.html> [↑](#endnote-ref-33)
34. For example: <https://au.news.yahoo.com/coronavirus-victoria-daniel-andrews-interrogated-peta-credlin-061148445.html> [↑](#endnote-ref-34)
35. <https://www.abc.net.au/news/2020-12-22/sydney-nsw-northern-beaches-coronavirus-cluster-grows-to-90/13006258> [↑](#endnote-ref-35)
36. For example: <https://www.abc.net.au/news/2020-12-22/victoria-nsw-coronavirus-border-permit-rules-create-confusion/13005364>

    <https://www.9news.com.au/national/queensland-coronavirus-premier-annastacia-palaszczuk-announces-hard-border-to-return-between-queensland-and-nsw-from-tomorrow-morning/27c56eb8-f2c1-4912-9ce2-f8fa37f38c4e>

    <https://www.9news.com.au/national/coronavirus-border-restrictions-state-by-state-nsw-northern-beaches-covid19-cluster-update/106f7c98-b77e-4796-bf9c-64350c33c214> [↑](#endnote-ref-36)
37. The reference to ‘more’ includes apparent belief that States form some type of team – which contrasts to their actual behaviour. The report had the ‘expert’ adding:

    *“We have one particular member of the team that does not want to be quite that stringent in eliminating it,”*

    *“But any state that is living with the virus is putting the rest of the country at risk.”*

    *He said NSW owed it to the rest of Australia to “do everything it can to keep everyone else safe”.*

    *That includes making face masks compulsory, and sealing its state borders to stop the virus from escaping, he said.’*

    <https://thenewdaily.com.au/news/coronavirus/2020/12/22/sydney-coronavirus-christmas-nye/>

    Which is wrong in fact, interpretation and inference.

    Regarding facts: by 2 December, NSW had not had a case of local transmission for 25 days: <https://7news.com.au/entertainment/sunrise/new-south-wales-records-first-covid-case-in-25-days--c-1696262>. There were several cases on 2-3 December and then a further 13 days of zero community transmission to 16 December. Each other State was satisfied that the ‘condition’ of 28 days of zero community transmission had in effect been achieved, and for that (supposed) reason borders were opened.

    Regarding interpretation: the sealing of State borders has not been done to prevent escape of virus. This was most clearly shown in the case of Queensland closing its border to NSW residents while there was a higher probability it would be exporting virus to – rather than importing virus from – NSW. Further, the times of differential Queensland entry restrictions for NSW and Queensland (returning) residents travelling from the same places indicated considerations unrelated to, and possibly opposed to, anti-Covid measures: see <https://www.thejadebeagle.com/covid---may.html>.

    Prevention of escape of virus, via ‘sealing’, has been via closure of certain activities and stay-home orders in limited areas within States, for example Melbourne and, more recently, Sydney’s northern beaches.

    The comment regarding face masks is incomplete to the point of accuracy – masks have been recommended, at times mandated, but only in certain situations. The biological effectiveness – utility - of masks in all situations, notably outdoors, is dubious. One expert described some aspects of mask wearing as “like wearing a hat to protect you from the sun at night” <https://www.theguardian.com/australia-news/2020/nov/15/face-value-are-masks-still-needed-to-combat-coronavirus-in-nsw-and-victoria>. Most areas of NSW, having not recorded a recent community transmitted Covid case, are in the same situation as most places in other States. The utility of mask wearing in, or sealing State borders to those places, would be the same.

    The claimed implication of NSW authorities not doing sufficient, being unsupported by facts, appears to have strayed beyond expertise and into partisanship. [↑](#endnote-ref-37)
38. On experts: <https://www.theguardian.com/news/2018/may/01/why-replacing-politicians-with-experts-is-a-reckless-idea> [↑](#endnote-ref-38)
39. Last note: On 22 December 2020, The Age carried an article in which Victorian police were reportedly ‘in the dark’ about why the military is not assisting to enforce a border closure. The border closure is domestic policy that was made unilaterally, without consultation, by the Victorian Government and is opposed by at least one other Government. The report provides one of several possible polite answers to the question supposedly asked by the police: *‘The ADF announced in September it would no longer be assisting with the manning of state borders, with Defence believing it is not its role to be participating in a law enforcement activity’.* The fact – and content - of such an article supports the ‘tinpot’ thesis. <https://www.theage.com.au/national/victoria/senior-police-in-the-dark-over-adf-s-refusal-to-support-border-closure-20201222-p56pj2.html> [↑](#endnote-ref-39)