

Libertarian Party Australia Submission Covid-19 Inquiry.

Government responses to the pandemic that spread throughout the world in early 2020 represented the most significant suppression of individual liberty that many of us have ever known. It was an exercise in panic, bureaucratic inflexibility and an abandonment of respect for human rights, due process, transparency and medical ethics. Nothing short of a comprehensive Royal Commission will do justice to the depth of reflection and consideration required to understand the mistakes that were made and provide a sense of justice to the many victims of Government oppression.

This is a view shared by one of Australia's Human Rights Commissioners [REDACTED] who described the structure of this inquiry as a "missed opportunity", noting that the terms of reference failed to mention human rights and is not adequate to understand "the full human cost of the pandemic".¹ For years the human beings residing in Australia were treated as "potential vectors", rather than people, and without adequately understanding their stories, "the lessons learned" will be limited in scope and the stated purpose of this inquiry cannot be fulfilled.

While this inquiry is too narrow in its scope and too brief in its timeline to adequately address all the issues, this submission will seek to address the terms of reference and provide insights and recommendations in key areas that we feel may go some way to restoring balance for future pandemics and emergency responses more broadly. However, the Libertarian Party of Australia believes that the needs, desires and aspirations of all Australians matter and urge the Panel to remember the real humans impacted by Government restrictions while they consider improvements to "systems".

The Australian response to Covid-19 is described well in the title of a book co-authored by Professor of economics [REDACTED] "The Great Covid Panic". Our initial response was to abandon all previous considerations and planning, throw our pandemic plans in the bin and embark on a radical experiment in suppressing the movement and activity to an unprecedented degree. This was all done without due consideration of risks, costs and benefits. Australia panicked and implemented policies that undoubtedly created more harm than they prevented. The population is fatter, sicker and burdened with astronomical debt that represents an opportunity cost alone that would render lockdowns a poor choice. Two data points seemed to drive all other policy responses: the number of infections and the number of Covid-19 fatalities. Reducing policy considerations to such a simple metric could justify any expenditure or restrictive burden in anything from swimming to horse riding.

It was a common refrain throughout the pandemic to hear pronouncements such as, "the economy doesn't matter, this is about saving lives", or "you can't place a value on a human life". This kind of messaging was reckless, naïve and indicative of a policy response that ignored the fact that this is not only done every day but done in a way that encompasses a broader assessment of human wellbeing than simple "survival". This is the approach taken in considering medications suitable for inclusion in the Pharmaceutical Benefits Scheme and Professor [REDACTED] incorporated their information into an economic analysis to assess the broad cost-benefit approach of lockdowns and other restrictive measures.² Her analysis throughout the pandemic suggests that lockdowns were a catastrophic policy decision that has produced far more harm than good for Australians.³

If the Independent Panel fails to consider the fundamental question, "were lockdowns a mistake" it will fail to address the most important aspects of reviewing our response to Covid-19.

Recommendation:

1. The Independent Panel should commission economic analysis that incorporates data from overseas jurisdictions, including countries like Sweden that never had a hard lockdown, that looks at changes in net-debt to GDP, covid fatalities, overall excess deaths and where available additional data on life satisfaction.

National Cabinet

The establishment of a national entity to coordinate a response and ensure prompt communication and a focus on critical needs was a necessary feature. The Libertarian Party of Australia agrees with former Senator Rex Patrick's criticisms of the secrecy around the National Cabinet process and commends him in his diligence in ensuring that the minutes of these meetings were made public.⁴ While it is unsurprising, it is nevertheless disappointing that the secrecy initiated by the Morrison Government has continued this by not releasing all minutes of National Cabinet meetings to the public.⁵

Providing this level of transparency should be done simply as a matter of course as we are supposed to be living in a liberal democracy. But even for those who don't adhere to this principle, it is still worth doing to try and maintain trust and so that adequate scrutiny can be provided to both the decision-making process and the outcome of deliberations. This should not be something that Governments and decision makers fear. It is simply hubris to assume that any small group of people, no matter how knowledgeable or experienced could get everything right.

While this inquiry states in the terms of reference that they are taking a "whole of Government" approach, from the documents publicly available (thanks to [REDACTED], this doesn't seem to have been the approach by National Cabinet. Key advice and guidance were mostly provided by relevant chief health officers, with briefings from treasury officials. While there was consideration of some critical concerns, such as family violence, childhood education and mental health impacts, there was likely a lot of relevant advice and considerations not presented to the meeting.

¹ <https://humanrights.gov.au/about/news/opinions/covid-19-inquiry-missed-opportunity>

² <https://docs.iza.org/dp15294.pdf>

³ <https://ipa.org.au/ipa-review-articles/more-harm-than-good>

⁴ <https://michaelwest.com.au/scott-morrison-secretary-fetish-exposed-by-release-of-national-cabinet-papers/>

⁵ <https://michaelwest.com.au/nothing-to-see-here-albos-vows-of-transparency-vanish-in-a-veil-of-secretary/>

The whole process was functionally led by public health bureaucrats and concerns of epidemiology. It is evident in both the available public documents and through the actions taken by Governments that alternative approaches were never really considered. Once the path was set, everyone followed and further actions were simply those deemed necessary to ameliorate the impacts caused by following the chief course. Future crisis cabinets should be broader, more transparent and facilitate pathways for submissions, particularly from industry groups and peak bodies. Without bridging the gaps between senior politicians, bureaucrats, and the realities on the ground there will always be unnecessary collateral damage and a tendency for rigid bureaucracies to attempt to enforce strict compliance where adaptive innovation may form a better response.

Further to this, the arrest and conviction of ██████████ the Chair of the National COVID-19 Commission Advisory Board for breaching covid restrictions would indicate that some of the restrictions were considered unnecessarily burdensome, even by those tasked with helping to guide them, and that an elite cabal believed that the rules were only for others and not themselves.

Recommendations:

2. In any future emergency, if a centralised decision-making body is established or empowered, the minutes of any proceedings should be published promptly.
3. Any future crisis cabinet should have broad participation and facilitate streamlined pathways for submissions, particularly from industry groups, peak bodies and civil society organisations.
4. Any future crisis cabinet should receive advice from independent experts in human rights to ensure decision making adequately addresses human rights considerations.

Stranded Australians

This section is referring both to the tens of thousands of Australians that were stranded overseas for an extended period over the course of the pandemic and to the unknown number of Australian's who were prevented from leaving the country. Preventing citizens from leaving the country was an abhorrent restriction that should never have occurred. The justification was likely that they may be sacrificing an ability to return and potentially adding to the burden of a struggling quarantine regime. This is an insufficient justification. It would likely have been necessary and appropriate to ensure that residents exiting the country signed a statement that they understood they might not be able to return for some time and support from the federal Government might be limited, they should have been allowed the choice.

Many Australians have dual citizenship, or extended families abroad. Their reasons for wanting to leave might be many and varied, from business reasons to sick family members, or simply wanting to weather the pandemic in an environment where they had more support. Whatever the reason, they were essentially detained in their country without suitable justification.

The fact that tens of thousands of Australians were stranded overseas for an extended period should be a national shame. It was indicative of a failed approach to the pandemic and a quarantine system that was not fit for purpose. Communication with these people was poor and they had to establish their own digital systems of support and communication. The response from the federal Government gave all appearances that these people were just not regarded as a high priority.

Recommendation:

5. Create a process for indemnifying the Government from any risk or obligation for people that choose to leave Australia during a declared crisis.

Communication and health messaging

The general tone of communication throughout the pandemic from all levels of Government seemed intentionally directed to create a climate of fear. This is consistent with theme of *The Great Covid Panic* that permeated policy and politics, not just domestically, but throughout much of the world. Further to this, the most notable people leading the communication about the pandemic and the Government response to it were senior politicians. These people have spent their careers training in political spin, dodging questions and reframing challenging questions to pivot to their key talking points. Filtering messaging through a political lens would not represent best practice in public health communication.

Politicians are also trained to express confidence and certainty about a policy or approach. This led to a situation where things that were certain last week or last month, turned out to be wrong. This inconsistency has damaged the public trust in Government. The complexity of the various ever-changing rules and regulations was unfathomable, even to those tasked with implementing or advising on them. We heard many examples of people reaching out to call centres which provided incorrect or confusing information.

The Government, through the Home Affairs Department, were also active in suppressing online information. While the media companies have their own terms of service, the Federal Government were active in their attempts to suppress information. Open dialogue and an ability to criticise the Government is even more critical when they are essentially ruling through emergency decree. It is likely that some of the information that they were trying to suppress, was subsequently found to be true, or at least contested. One example would be the official messaging, "the vaccines prevent you catching and spreading Covid". Which was proven to be false.

Quarantine and border closures

The Quarantine system, from start to finish, represents one of the most significant policy failures of the pandemic. One of the more bizarre aspects of this was the construction of dedicated quarantine facilities, after the vaccine rollout had begun and the Government should have been shifting their focus to the post-pandemic recovery phase and the budget position. While the speed of approval and construction was impressive, particularly for a Government project, it should have either commenced early in 2020, or have been cancelled entirely to reduce the debt burden post-pandemic. A photo that appeared in some official photos where a worker had shaped some towels into the shape of a white elephant for the Victorian facility probably gives an indication of the

public sentiment.

The use of hotels for extended quarantine arrangements was subject to an inquiry in Victoria. The Coate inquiry noted that financial considerations to support the industry was a factor, in addition to expediency over suitability.⁶ As the key point of vulnerability in the Government response, hotel quarantine was of critical importance. Despite this, there was confusion about responsibilities between departments and delegated responsibility to private contractors with no experience in infection control, poor guidance from Government and a lack of appropriate oversight. During the inquiry Premier Andrews conceded that this was not appropriate. It is plausible that effective control at the border could allow society to function with less disruption to society and the economy than other options.

The Federal Government also delegated authority to the States and Territories to manage their own border restrictions. The Victorian Ombudsman's *Investigation into decision making under the Victorian Border Crossing Permit Directions* was undertaken in 2021 after receiving more than 80 complaints. The Ombudsman found that, "*While acknowledging the challenging circumstances faced by the department, and that not all its decisions were unfair, the Ombudsman found the narrow exercise of discretion under the Victorian Border Crossing Permit Directions resulted in unjust outcomes.*"⁷ The report details a clunky, bureaucratic process that was difficult to understand or comply with and where human rights and individual circumstances were not given due weight. While not stated in her report, it is likely that the issues people experienced were reflected broadly throughout the public service in Australia.

Recommendation:

6. Consideration should be given to planning for both options recommended in the Coate inquiry:
 - A well-planned specialist facility quarantine centre
 - A pathway for home-based quarantine

Vaccine mandates and patient autonomy

While it was primarily state and territory Governments that imposed vaccine mandates and the vaccine passport system, this was only possible through the Federal Government allowing the use of information contained in the Australian Immunisation Registry. The Federal Government is also responsible for ATAGI and the management of the Australian Immunisation Handbook. Messaging, policies, and procedures were significant factors in the vaccine roll out. We believe that the Australian approach to vaccination undermined key principles of medical ethics and contributed to a systemic violation of the principles of consent and medical ethics.

The Australian Immunisation handbook states:

"For consent to be legally valid, the following elements must be present:

[...]

2. *It must be given voluntarily in the absence of undue pressure, coercion or manipulation.*"⁸

It is hard to imagine that a vaccine taken under threat of losing employment, or visitation rights to a sick loved one, or the ability to travel would meet the definition of legally valid consent. The Libertarian Party Australia is aware of many instances where a person stated that they were taking the vaccine under pressure and coercion and still received a vaccine, suggesting that legally valid consent was not obtained, and a violation of medical ethics occurred.

This should be juxtaposed against jurisdictions such as Japan which provided this official advice:

The risk profile for covid vs the vaccines was also not communicated clearly. Data from Israel in mid-2021 was already reporting on the link between the Pfizer vaccine and myocarditis, prior to the vaccine being widely available to this demographic in Australia. Despite this, Australia persisted with mandates in this age group, who were at higher risk of an adverse event and with a comparatively lower risk from a Covid-19 infection.

Recommendation:

7. The Independent Panel should examine occurrences where legally valid consent may not have been obtained and examine jurisdictions where mandates were not in force to understand the effectiveness of their vaccination program and public attitudes to immunisation.

⁶ https://content.royalcommission.vic.gov.au/sites/default/files/2020-12/0387_RC_Covid-19%20Final%20Report_Volume%202_Chapter%207_Digital.pdf (page 216)

⁷ <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-decision-making-under-the-victorian-border-crossing-permit-directions/#full-report>

⁸ <https://immunisationhandbook.health.gov.au/contents/vaccination-procedures/preparing-for-vaccination>

⁹ <https://japan.kantei.go.jp/ongoingtopics/vaccine.html>