

From the desk of Morgan Begg, Director of Research

9 January 2024

Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

Dear Committee Secretary,

IPA Submission to the Inquiry into the appropriate terms of reference for a COVID-19 Royal Commission

Since it was founded in 1943, the Institute of Public Affairs (IPA) has been at the forefront of the policy debate through its commitment to further the individual, political, and economic freedom of the Australian people, and to maintain and enhance the Australian way of life.

The IPA's research has consistently highlighted the dramatic curtailment of the rights and liberties of Australians due to the state and federal governmental response to the Covid-19 pandemic, and why this demonstrates the need for a wide-ranging Royal Commission to give every Australian a full and complete account of what happened during the pandemic. In September 2022, the IPA published *Draft Terms of Reference for a Royal Commission into the Covid-19 Response*. The draft terms of reference capture the key issues that a Royal Commission must investigate to ensure that the questions Australians have about the policy decisions made by government during the Covid-19 pandemic are answered. These include:

- The actions of all levels of government as part of the Covid-19 pandemic response, including actions taken unilaterally by state and federal governments;
- The mental health, economic, and other wellbeing consequences arising from unprecedented government policies as part of the Covid-19 response; and
- The failure of key institutions, such as parliament, the judiciary, and human rights bodies to provide a check and balance on the exercise of emergency powers by state and federal governments.

The IPA's *Draft Terms of Reference for a Royal Commission into the Covid-19 Response* is included in this submission. The IPA would welcome the opportunity to speak to this submission or to discuss its research further with the committee.

Yours sincerely,

Morgan Begg
Director of Research

IPA Board of Directors: Geoff Hone – Chairman, Scott Hargreaves – Executive Director
Dr Michael Folie, Dr Tim Duncan, Michael Hickinbotham, Simon Fenwick, Maurice O'Shannassy, Rebecca Clough, Lesley Gillespie OAM
IPA Honorary Life Members: Mrs Gina Rinehart AO, The Hon. Rod Kemp AM, Dr Bryant Macfie,



DRAFT TERMS OF REFERENCE FOR A ROYAL COMMISSION INTO THE COVID-19 RESPONSE

Letters Patent are a legal instrument issued by the King granting an office, title, or status to a person. The Institute of Public Affairs has drafted this Letters Patent that should be used to appoint a person to conduct a Royal Commission into the causes and consequences of the Australian governmental Covid-19 response. The Letters Patent include the terms of reference that such a Royal Commission must consider.

CHARLES THE THIRD, by the Grace of God King of Australia and His other Realms and Territories, Head of the Commonwealth

TO whomever is appointed as a commissioner.

GREETING

RECOGNISING that Australia is a liberal democracy, where the rule of the law and equality before the law are foundational to the Australian way of life.

AND that all Australians are born with the same inherent dignity which must, at all times, be respected and upheld.

AND that freedom of speech, assembly, and conscience are inalienable rights possessed by all Australians, which cannot be legitimately extinguished or diminished by government.

AND that the freedom to practice and live out one's religious values is central to human dignity.

AND Australia has made international commitments to take appropriate action to uphold the civil and political rights of Australian citizens and to give effect to these commitments.

AND that the scrutiny of decisions taken by governments, and for decision-makers to be held to account, is critical to building trust and confidence in Australia's democratic institutions.

AND acknowledging Australia's rich heritage as a proud custodian of the ancient rights and liberties bequeathed to us through generations of legal and political tradition, dating to at least the sealing of *Magna Carta* in 1215 AD.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you to inquire into the following matters:

- (a) the circumstances that contributed to the outbreak of Covid-19 in Australia;
- (b) the circumstances that led to decision makers discarding pre-existing pandemic management plans at the state and federal levels;
- (c) the adequacy of the measures that were implemented to reduce the spread and mortality arising from Covid-19, *including the impact that these measures had on non-Covid-19 health-related matters, mental health, education, human rights, personal and family relationships, employment and the economy;*
- (d) the role of the media in communicating, or failing to communicate, to the public an accurate representation of the public health risk of Covid-19, and the consequences and costs of the measures adopted by governments, including lockdowns;
- (e) the role of the media, including traditional and digital media organisations, in censoring what was described at the time as 'disinformation' or 'misinformation';
- (f) an analysis of pandemic management approaches taken by other jurisdictions, with specific reference to the United Kingdom, Sweden, and the United States;
- (g) any matter reasonably incidental to a matter referred to in paragraphs (a) to (f) that you believe is reasonably relevant to the inquiry.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative, or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- (h) the interaction of state and federal governments in responding to Covid-19, including but not limited to the following:
 - (i) the appropriateness and the efficacy of the National Cabinet;
 - (ii) the design of federal policy, including but not limited to JobKeeper payments;
- (i) the efficacy of institutions, such as parliament, the judiciary, and human rights bodies, in providing a check and balance on the exercise of emergency powers by state and federal governments;
- (j) the appropriateness, moral or otherwise, of:
 - (iii) decisions to make medical treatments mandatory;
 - (iv) decisions to make public health orders enforced as criminal laws, rather than civil or administrative rules;
 - (v) decisions to use police to monitor and enforce Covid-19 related public health orders, including consideration of its impact on the relationship between police and the citizenry;
- (k) the findings and recommendations of previous relevant reports and inquiries into public health and pandemics.

AND We appoint you to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are a Royal Commission to which item 5 of the table in subsection 355-70(1) in Schedule 1 to the *Taxation Administration Act 1953* applies.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We:

- (m) require you to begin your inquiry as soon as practicable; and
- (n) require you to make your inquiry as expeditiously as possible; and
- (o) require you to submit to Our Governor-General an interim report that you consider appropriate not later than 31 March 2023; and
- (p) require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 29 September 2023

IN WITNESS, We have caused these Our Letters to be made Patent.



WITNESS General the Honourable David Hurley AC (Ret'd)
Governor-General of the Commonwealth of Australia.

26 September 2022

His Excellency's Command