

LOCKDOWN LAWS: LOCATION, REGULATORY CHANGE AND THE RULE OF LAW IN AUSTRALIA DURING THE COVID-19 PANDEMIC

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Lockdowns introduced in response to the COVID-19 pandemic impacted the lives of Australians during 2020 and 2021. In this article, we analyse the number and duration of lockdowns in Australian states and territories during this period, with the aim of developing a picture of the differing impact of lockdowns across the country. We begin by considering the importance of transparency for the rule of law. We explain our methodology and challenges for collecting the data on the lockdowns, and the implications of this complexity for the rule of law. We then analyse the lockdowns in terms of their number and duration, beginning with a national overview and then analysis by individual state and territory. We conclude with recommendations for the future of public health directions in Australia.

I INTRODUCTION

During 2020 and 2021, Australians spent significant periods of time in lockdown. Lockdowns were introduced in response to the COVID-19 pandemic which was declared a public health emergency of international concern in early 2020.¹ As a result, the lives of millions of Australians were adversely impacted.

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¹ The World Health Organization declared a public health emergency of international concern in late January 2020: 'Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-nCoV)', *World Health Organization* (Web Statement, 30 January 2020) <[https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))>. In Australia, a human biosecurity emergency was declared on 18 March 2020: *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (Cth).

Unemployment rates increased² and pandemic-related lockdowns led to increased psychological distress.³ For some, the lockdowns presented increased risks of domestic violence.⁴ While the lockdown restrictions varied between jurisdictions (and between lockdowns within the same jurisdiction), a common feature was that people were required to stay at home and were only permitted to leave home for specified authorised reasons. However, across Australia the experience of lockdowns was not even. Some jurisdictions such as Tasmania and South Australia experienced few lockdowns, but in Australia's most populous states, New South Wales ('NSW') and Victoria, the number and duration of lockdowns was much greater. In 2021, Melbourne earned the title of being the most locked-down capital city in the world.⁵

In this article, we chart the number and duration of lockdowns in each Australian state and territory during 2020 and 2021. In doing so we aim to develop a picture of the differing impact of lockdown laws on Australians, the complexity of the restrictions introduced, and the implications of this complexity for the rule of law. The lockdown laws were part of a suite of measures introduced around Australia in response to the pandemic.⁶ By 'lockdown laws', we refer to the directions and orders made under state and territory public health laws that imposed stay-at-home orders and related restrictions limiting freedom of movement. A review of these lockdowns is warranted given the scale and impact of the lockdowns on the lives and rights of Australians. In mid-2021, lockdowns in Sydney, Victoria and South Australia in response to the Delta variant meant that more than half of the Australian population was living in lockdown.⁷ Furthermore, the experience of the pandemic led to reform of public health laws, for example, with Victoria introducing new pandemic-specific public health laws.⁸

² 'Employment and Unemployment', *Australian Institute of Health and Welfare* (Web Article, 7 September 2023) <www.aihw.gov.au/reports/australias-welfare/employment-unemployment#covid>.

³ Daniel Griffiths et al, 'The Health Impacts of a 4-month Long Community-Wide COVID-19 Lockdown: Findings from a Prospective Longitudinal Study in the State of Victoria, Australia' (2022) 17(4) *Public Library of Science One* e0266650:1–13.

⁴ For discussion, see UN Women et al, *Justice for Women Amidst COVID-19* (Report, May 2020) 19–20.

⁵ Judd Boaz, 'Melbourne Passes Buenos Aires' World Record for Time Spent in COVID-19 Lockdown', *ABC News* (online, 3 October 2021) <<https://www.abc.net.au/news/2021-10-03/melbourne-longest-lockdown/100510710>>.

⁶ See Rebecca Storen and Nikki Corrigan, 'COVID-19: A Chronology of State and Territory Government Announcements (Up Until 30 June 2020)' (Research Paper Series 2020–21, Parliamentary Library, Parliament of Australia, 22 October 2020).

⁷ Renju Jose and Jonathan Barrett, 'More Than Half of Australia's Population Under COVID-19 Lockdowns', *Reuters* (online, 20 July 2021) <<https://www.reuters.com/business/healthcare-pharmaceuticals/australias-victoria-reports-13-local-covid-19-cases-lockdown-call-looms-2021-07-19/>>.

⁸ *Public Health and Wellbeing Amendment (Pandemic Management) Act 2021* (Vic). See also 'Victoria has Become the First State with Pandemic-Specific Laws After Controversial Bill Passes', *SBS News* (online, 2 December 2021) <<https://www.sbs.com.au/news/article/victoria-has-become-the-first-state-with-pandemic-specific-laws-after-controversial-bill-passes/8vasu3oha>>.

While the focus of this article is on periods of lockdown, it is also the case that border closures within Australia were a key feature of the COVID-19 pandemic response. As one Victorian report noted:

State and territory border closures have been a key part of Australia's COVID-19 management plan. At some point during 2020, Victorians were locked out of every state and territory (apart from the Northern Territory) and required special permission to cross those borders.

The Victorian Government has also used border closures to manage outbreaks in other states. Victoria closed the border, on various occasions, to Queensland, Western Australia, South Australia and New South Wales in 2020 and 2021.⁹

Increased vaccination rates played a key role in ending the cycle of lockdowns and border closures, with states and territories lifting restrictions once key levels of vaccination were reached.¹⁰

Now that Australia is several years removed from the use of lockdowns as a COVID-19 management strategy, it is appropriate to reflect on how the law was implemented to facilitate these lockdowns. These laws were necessarily created quickly, at a time when people were genuinely concerned about COVID-19 and its means and speed of transmission in an unvaccinated population. Strong and clear state government responses were required, but the context placed strain on the law-making process, the substance of those laws and the way they were communicated to the broader public. In short, genuine rule of law questions arose from the differing response of state governments to COVID-19 transmission and the need for lockdowns. For law-abiding citizens, there was difficulty in understanding what lockdowns required of them, in what areas, and for what duration.

The concept of the rule of law provides a useful yardstick by which to measure the legal response of Australian state governments to the COVID-19 pandemic. Despite its contested nature, there is broad agreement that the rule of law requires supremacy of the law. No individual or institution of government is above the law and the law applies equally to everyone.¹¹ According to Joseph Raz, the rule of law requires '(1) that people should be ruled by the law and obey it, and (2) that the law should be such that people will be able to be guided by it'.¹² Certain principles or practices must exist so that the rule of law can be realised within a legal system. The rule of law requires transparency and clarity of laws, so that people can locate and understand the laws to which they are subject. The complexity of the lockdown laws introduced in Australia, and the way they were communicated to the broader public,

⁹ Annie Wright, 'Chronology of Victorian Border Closures Due to COVID-19' (Research Note No 4, Parliamentary Library and Information Service, Parliament of Victoria, June 2021) 1.

¹⁰ For discussion of the roll-out of COVID-19 vaccines in Australia, see Department of the Prime Minister and Cabinet, *COVID-19 Response Inquiry Report* (Report, 29 October 2024) 61–3.

¹¹ AV Dicey, *An Introduction to the Study of the Law of the Constitution* (Macmillan, 8th ed, 1915) 183–9.

¹² Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 1979) 213.

raised important questions about transparency and clarity of laws that significantly impacted upon the lives of Australians.

In Part II of this article, we analyse the rule of law principle of transparency, arguing that Australia's COVID-19 public health directions often failed to meet this important principle because of the number of directions, the frequency with which they changed, and the difficulty in locating them. In this Part, we also outline the data collection methodology used to identify public health directions related to lockdowns in each jurisdiction. We outline our approach to defining a 'lockdown' for the purposes of this article. We also analyse the difficulties with collating the public health orders and directions in some jurisdictions, due to the lack of openness and naming clarity of these laws.

As we demonstrate in Part III, the frequency and duration of lockdowns varied across Australia, resulting in very different experiences of the pandemic for people, depending on where they lived. In Part IV, we provide an overview of the lockdown requirements in each jurisdiction to highlight the complex and ever-changing nature of the lockdown requirements. Finally, in Part V, we conclude by reflecting on the challenges of collecting data on the public health orders and directions that were made in Australian jurisdictions during the first two years of the COVID-19 pandemic and make recommendations for the future of public health directions.

II PUBLIC HEALTH DIRECTIONS AND THE RULE OF LAW

The ability of Australians to locate public health orders and directions was an important step in ensuring that law-abiding citizens could understand what they were not permitted to do during the initial years of the COVID-19 pandemic. As will become clear throughout this article, most Australian states failed to implement an effective, publicly available resource that allowed citizens to read the detail of public health directions relating to lockdowns. This situation detracted from the quality of rule of law that was present in Australia at the time.

According to Raz, '[t]he rule of law is a political ideal which a legal system may lack or possess to a greater or lesser degree.'¹³ Judgements about the strength of the rule of law in Australia during the early pandemic can be made by examining governmental adherence to the principles which underpin the rule of law. Legal theorists such as AV Dicey,¹⁴ Lon Fuller,¹⁵ Raz¹⁶ and Lord Bingham¹⁷ have all acknowledged that the concept of the rule of law is guided by similar underlying principles. Governmental adherence to these principles dictates the

¹³ Ibid 211.

¹⁴ Dicey (n 11).

¹⁵ Lon Fuller, *The Morality of Law* (Yale University Press, 1969) 33–9.

¹⁶ Raz (n 12).

¹⁷ Tom Bingham, *The Rule of Law* (Penguin, 2011) 37–90.

extent to which the rule of law is realised in a legal system. As an example, Raz states the following rule of law principles:

1. All laws should be prospective, open, and clear.
2. Laws should be relatively stable.
3. The making of particular laws (orders) should be guided by open, stable, clear and general rules.
4. The independence of the judiciary must be guaranteed.
5. The principles of natural justice must be observed.
6. The courts should have review powers over the implementation of the other principles.
7. The courts should be easily accessible.
8. The discretion of the crime-preventing agencies should not be allowed to pervert the law.¹⁸

Raz's conception of the rule of law, with its underpinning principles, has been described as a 'thin' or formal conception of the rule of law, which focuses on the process through which laws are made and applied without considering their substantive content.¹⁹ In contrast, a similar list of principles (or requirements) that support the rule of law was self-labelled as a 'thick' definition of the rule of law by Lord Bingham, who argued that the substantive content of laws must contribute to any assessment of the rule of law. To make his point, Lord Bingham stated:

a state which savagely represses or persecutes sections of its people cannot in my view be regarded as observing the rule of law, even if the transport of the persecuted minority to the concentration camp or the compulsory exposure of female children on the mountainside is the subject of detailed laws duly enacted and scrupulously observed.²⁰

This article highlights procedural issues related to the rule of law, concerning matters of legal certainty. In this Part II, it will be demonstrated that public health directions or orders rarely satisfied the rule of law principle of openness. If such directions were to guide human behaviour, then members of the public must be able to find them and read them. Instead, people were reliant upon news updates, or other media releases to guide them on what the public health directions actually stated.

¹⁸ Raz (n 12) 214–18.

¹⁹ Jeremy Waldron, 'The Concept and the Rule of Law' (2008) 43(1) *Georgia Law Review* 1, 6–7; Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004) 91.

²⁰ Bingham (n 17) 67.

III THE NATURE AND LOCATION OF LOCKDOWN LAWS

The primary research objective for this article was to collect quantitative, empirical, and comparative data to consider the different jurisdictions' legislative responses to COVID-19 lockdowns in Australia. The aim was to make statements about the number of lockdowns experienced by each state and territory, but most importantly, to cross-reference these with the public health directions that were the legal genesis of each lockdown. As a result, it would become possible to conclusively determine the number of days that each jurisdiction spent in lockdown. This article is also the first of its kind to provide data on the number and duration of lockdowns experienced in each Australian state during 2020–21 supported by the public health directions that created, extended and concluded each lockdown, thus providing an important contribution to understandings of Australia's legal history during the lockdown years of the COVID-19 pandemic.

Despite the seemingly straightforward nature of this task, there were two major challenges. First, we needed to define a lockdown for the purposes of identifying the relevant legal provisions. Second, there were significant difficulties in locating the primary legal materials in some jurisdictions.

A Defining Lockdowns

Issues relating to classification and measurement of lockdowns required definition and, in some cases, the exercise of subjective judgement. For the purpose of this article, a lockdown is defined to occur when a 'stay at home order' restricting a person to their place of residence is given through a public health direction. These lockdown orders could usually (but not always) be found in the Government Gazette for each jurisdiction.

One challenge with counting the number of lockdowns in each jurisdiction, was that there were often lockdowns occurring in different areas of a state/territory for overlapping periods of time. Rather than treating each lockdown in each geographical area as a separate lockdown, we treated a lockdown period (considered for the state as a whole) as a period of non-interrupted time when there was a lockdown happening somewhere in the state/territory.

An example might help to explain this approach. Assume a lockdown in Greater Melbourne from 8 July to 28 October 2020 (111 days). During this period, regional Victoria was also placed in lockdown from 5 August to 16 September 2020 (42 days). Rather than treat these as two separate lockdowns, our approach was to classify this scenario as one lockdown that was experienced in different areas of the State at the same time. Given that the purpose of this article was to make statements about the number of lockdowns experienced *at the state and territory level*, we believe this approach to classification strikes a ready balance between accuracy and parsimony

in data collection and presentation. For completeness, we have captured all declared lockdowns, sorted by jurisdiction, in the tables below.

B Locating Lockdown Laws

Research for this article also highlighted the challenges involved in collecting information about the public health orders and directions relating to lockdowns in the various jurisdictions in Australia. Others have also noted the difficulties with accessing revoked public health directions.²¹ Below we provide an overview of the approaches taken by different Australian jurisdictions regarding the accessibility of their public health orders and directions — essential for the principle of open and clear laws — and the challenges this presented for accessing the primary legal materials needed to draw comparisons and analysis for this article.

1 New South Wales

NSW catalogued their public health orders in a database of COVID-related legislation available through the government's website.²² These were catalogued by in-force directions and those no longer in force, with a subsequent breakdown by category of direction. This made directions relating to gathering and movement easy to locate.²³ The public health orders were sorted according to the effective date and provided a summary of the title and any relevant amendments with a link to the order itself. The NSW catalogue also provided directions specific to certain areas for those lockdowns which specified a geographic region for the stay-at-home order.²⁴

2 Victoria

At the time of data collection, locating Victorian directions was challenging as only current directions were published on the Victorian Health Department webpage. However, since 15 December 2021, the Victorian government has recorded and maintained access to pandemic orders through their 'Pandemic Order Register'.²⁵ This provides a vast improvement in accessibility of information for Victoria for any order post-15 December 2021. Some directions

²¹ Julie Falck, Jessica Kerr and Marco Rizzi, 'I Sought the Law and the Law is Gone: Revoked COVID-19 Directions in Western Australia', *Australian Public Law* (Blog Post, 12 May 2023) <www.auspublaw.org/blog/2023/5/i-sought-the-law-and-the-law-is-gone-revoked-covid-19-directions-in-western-australia>.

²² New South Wales Government, 'Public Health Orders', *NSW Legislation* (Web Page, last updated 23 February 2024) <<https://legislation.nsw.gov.au/information/covid19-legislation>>.

²³ See *ibid*.

²⁴ See, eg, *Public Health (COVID-19 Northern Beaches) Order 2020* (NSW) cl 8(1), as at 19 December 2020.

²⁵ Victorian Government, 'Pandemic Order Register', *Department of Health* (Web Page, last updated 28 November 2023) <<https://www.health.vic.gov.au/covid-19/pandemic-order-register>>.

were also available on the Australasian Legal Information Institute.²⁶ Initially, a Victorian parliamentary research paper was used, which provided a chronology of directions with links to each direction from 16 March 2020 to 3 August 2020.²⁷

Post-August-2020, approximate lockdown dates were ascertained through media publications and then cross-referenced with the Department of Health and Human Services daily media updates.²⁸ This enabled the daily updates to be narrowed down to locate relevant media releases. Lockdown dates were scrutinised and then utilised to locate lockdown directions through the government Gazette.²⁹ The report of a Victorian parliamentary review of pandemic orders published in 2022 also provided information about lockdown periods and public health directions.³⁰

3 Queensland

Queensland catalogued their Chief Health Officer's directions in a simple and easy-to-navigate database which was able to be sorted by the title of the order or by date.³¹ The database provided the effective date, the title of the direction and a link to the direction itself. This database was transparent, easy to locate and provided both current and superseded directions.

4 Tasmania

Tasmania provided current restrictions published on a 'Coronavirus' section of the government webpage but did not catalogue historical restrictions.³² These restrictions provided a simplified summary of requirements for public access but did not provide links or references to the legislative framework. However, they did

²⁶ 'Victorian COVID-19 Public Health Directions', *Australasian Legal Information Institute* (Web Page) <https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/covid-19_dir/>.

²⁷ Holly Mclean and Ben Huf, 'Emergency Powers, Public Health and COVID-19' (Research Paper No 2, Parliamentary Library and Information Service, Parliament of Victoria, August 2020).

²⁸ Joseph Dunstan, 'Melbourne Marks 200 days of COVID-19 lockdowns since the pandemic began', *ABC News* (online, 19 August 2021) <<https://www.abc.net.au/news/2021-08-19/melbourne-200-days-of-covid-lockdowns-victoria/100386078>>; Victorian Government, 'Updates Archive', *Department of Health and Human Services* (Web Page) <<https://www.dhhs.vic.gov.au/coronavirus/updates/>> (no longer available)

²⁹ See, eg, Deputy Public Health Commander (Vic), 'Stay at Home Directions (Restricted Areas) (No. 3)' in Victoria, *Victorian Government Gazette*, No S 361, 20 July 2020, 1, 5.

³⁰ Pandemic Declaration Accountability and Oversight Committee, Parliament of Victoria, *Review of the Pandemic (Quarantine, Isolation and Testing) Orders* (Report, July 2022) ('Pandemic Declaration Accountability and Oversight Committee').

³¹ Queensland Government, 'Chief Health Officer Public Health Directions', *Queensland Health* (Web Page, last updated 10 November 2023) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers>>.

³² Tasmanian Government, 'Current Restrictions', *Coronavirus disease (COVID-19)* (Web Page) <<https://www.coronavirus.tas.gov.au/families-community/current-restrictions>> (not currently available).

link to frameworks for meeting the requirements of the restrictions published on the 'Business Tasmania' webpage.³³ To draw data for Tasmanian lockdown directions, media releases published on the government webpage were used.³⁴ The media releases provided information limited to the duration of lockdown, impacted geographical regions and restrictions associated with the lockdown.³⁵ Details of lockdown periods and relevant public health directions were then confirmed with reference to relevant reports³⁶ and the Tasmanian Government Gazette.

5 Western Australia

Western Australia published current, in-force directions on their government webpage but not historical data.³⁷ To ascertain data for Western Australia, media releases and Public Health Emergency Operations Centre Bulletins were used.³⁸ Media announcements provided by the Department of the Premier and Cabinet provided the duration of lockdown, the impacted geographical area and the restrictions to be implemented as part of the lockdown.³⁹

³³ See, eg, Department of State Growth (Tas), 'COVID-19 Safety at Events', *Business Tasmania* (Web Page) <https://www.business.tas.gov.au/coronavirus_information/event_framework>.

³⁴ Tasmanian Government, 'Media Releases', *Coronavirus disease (COVID-19)* (Web Page) <<https://www.coronavirus.tas.gov.au/media-releases>>.

³⁵ See, eg, Department of Premier and Cabinet (Tas), '3-day Lockdown in Southern Tasmania', *Tasmanian Government: Coronavirus Disease (COVID-19)* (Community Update, 1 November 2021) <<https://www.coronavirus.tas.gov.au/important-community-updates/3-day-lockdown-in-southern-tasmania>>, archived at <<https://web.archive.org/web/20211101174341/https://www.coronavirus.tas.gov.au/important-community-updates/3-day-lockdown-in-southern-tasmania>>.

³⁶ Greg Melick, *Response to the North-West Tasmania COVID-19 Outbreak* (Independent Review, 30 November 2020); Parliamentary Standing Committee of Public Accounts, Parliament of Tasmania, *Inquiry into the Government's Economic Response to the COVID-19 Pandemic* (Final Report, 13 August 2021) ('Tasmanian Parliamentary Standing Committee of Public Accounts'). The report contains a 'COVID-19 Chronology' in Appendix 1 and a 'List of Directions and Notices Related to COVID-19 in Tasmania' in Appendix 1A.

³⁷ The COVID-19 declarations made in Western Australia are now available on the Western Australian Legislation website <www.legislation.wa.gov.au>. For discussion of accessing historical data in Western Australia, see Falck, Kerr and Rizzi (n 21).

³⁸ Government of Western Australia, *Announcements* (Web Page) <<https://www.wa.gov.au/government/announcements>>. See for example, PHEOC Bulletin #4 available at <<https://www.healthywa.wa.gov.au/~media/Files/Corporate/general-documents/Infectious-diseases/PDF/Coronavirus/COVID19-PHEOC-Bulletin-4.pdf>>.

³⁹ See, eg, Department of the Premier and Cabinet (WA), 'Perth Metro, Peel and South West to Enter Hard Lockdown', *Government of Western Australia* (News Story, 27 June 2023) <<https://www.wa.gov.au/government/announcements/perth-metro-peel-and-south-west-enter-hard-lockdown>>.

6 Northern Territory

The Northern Territory catalogued their Chief Health Officer directions in a database available through the government's website.⁴⁰ The catalogue separated current directions from historical directions which are classified according to calendar year. All directions are presented according to the effective date and time and provide the name and number of the direction with direct links to the direction itself. This database was transparent and easy to locate.

7 South Australia

South Australia catalogued their Chief Health Officer directions in a database on the government's website.⁴¹ The database provides in-force declarations and directions in addition to those which have ceased or been superseded. In-force directions were presented according to the effective date and provided the title and a link to the document itself. Historical directions are catalogued by subject area which included a specific database for 'Stay at Home' directions. This provided easy-to-locate and clear information on the lockdown directions for South Australia.

8 Australian Capital Territory

The Australian Capital Territory ('ACT') updated their website to publish only in-force or current directions and not historical data.⁴² To draw data from the ACT, media releases were used.⁴³ As the media releases were catalogued according to the Minister issuing the release, releases issued by the Premier and then subsequently the health minister were investigated for releases relating to COVID-19 lockdown.⁴⁴ Where no release was able to be located, government news articles were used.⁴⁵ Both

⁴⁰ Northern Territory Government, 'Chief Health Officer Directions', *NT Health* (Web Page, last updated 11 November 2022) <<https://coronavirus.nt.gov.au/chief-health-officer-directions>>.

⁴¹ Government of South Australia, 'COVID-19 Directions', *South Australian Legislation* (Web Page, last updated 23 November 2022) <<https://www.legislation.sa.gov.au/legislation/CV19>>.

⁴² Australian Capital Territory Government, 'ACT Public Health Directions', *COVID-19* (Web Page, 17 January 2022) <<https://www.covid19.act.gov.au/restrictions/act-public-health-directions>>, archived at <<https://web.archive.org/web/20220120171008/https://www.covid19.act.gov.au/restrictions/act-public-health-directions>>

⁴³ Australian Capital Territory Government, *ACT Government Media Releases* (Web Page) <https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases>.

⁴⁴ See, eg, Andrew Barr and Rachel Stephen-Smith, 'ACT Lockdown Arrangements' (Joint Media Release, Australian Capital Territory Government, 17 August 2021) <https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/barr/2021/act-lockdown-arrangements>.

⁴⁵ See, eg, Australian Capital Territory Government, 'Seven-Day Lockdown for the ACT', *COVID-19* (Web Page, 12 August 2021) <https://www.covid19.act.gov.au/news-articles/seven-day-lockdown-for-the-act>, archived at <<https://web.archive.org/web/20250314090753/https://www.covid19.act.gov.au/news-articles/seven-day-lockdown-for-the-act>>.

the media releases and government news articles provided basic information regarding the duration of lockdown, the impacted geographic region and the restrictions imposed. Details of lockdown periods and public health directions were also confirmed with reference to the report of the Select Committee on the COVID-19 2021 Pandemic Response.⁴⁶ Copies of the public health directions were then accessed via AustLII⁴⁷ or the ACT Legislation Register.⁴⁸

9 Limitations

Where some jurisdictions did not publish historical legislative instruments, media releases were used. This resulted in less detailed information as the direction itself was unable to be located. This means for those jurisdictions where media releases were used, the picture gained is limited to the brief snapshot shared with the community. This contrasts with the databases provided by some jurisdictions which give a far more detailed picture of the restrictions imposed as part of the lockdown.

Jurisdictions issued lockdown directions for specific regions where it was appropriate to do so. As our purpose is to make comparisons about the number and duration of lockdowns *at a state or territory level*, as explained above, we have regarded overlapping periods of lockdown as one lockdown. Consequently, in studying total number of days locked down, these instances of overlap must be considered.

IV NUMBER AND DURATION OF LOCKDOWNS: A NATIONAL OVERVIEW

In this Part, we analyse the number and duration of lockdowns in 2020 and 2021. We recognise that some restrictions were introduced in accordance with decisions of the National Cabinet which were then reflected in state and territory public health orders. For example, during late March 2020, the National Cabinet agreed to restrictions on non-essential indoor gatherings of more than 100 people, mitigation measures for indoor gatherings of less than 100 people, and restrictions on the opening of pubs, clubs, gyms and businesses.⁴⁹ Following its meeting on 29 March 2020, National Cabinet advised Australians to stay at home unless shopping for food and necessary supplies, medical or health care, exercise in accordance with

⁴⁶ Select Committee on the COVID-19 2021 Pandemic Response, Legislative Assembly for the Australian Capital Territory, *Inquiry into the COVID-19 2021 Pandemic Response* (Report, 2 December 2021) ('ACT Select Committee on the COVID-19 2021 Pandemic Response').

⁴⁷ 'Australian Capital Territory COVID-19 Government Directions', *Australasian Legal Information Institute* (Web Page) <https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/act/covid-19_dir/>.

⁴⁸ Australian Capital Territory Government, *ACT Legislation Register* (Web Page) <www.legislation.act.gov.au>.

⁴⁹ Kelsey Campbell and Emma Vines, 'COVID-19: A Chronology of Australian Government Announcements (Up Until 30 June 2020)' (Research Paper Series 2020–21, Parliamentary Library, Parliament of Australia, 23 June 2021) 18–25. For discussion of the National Cabinet, see Janina Boughey, 'Executive Power in Emergencies: Where is the Accountability?' (2020) 45(3) *Alternative Law Journal* 168, 169–70.

public health restrictions, and work or study that could not be done remotely.⁵⁰ In addition, National Cabinet agreed that indoor and outdoor gatherings would be limited to two persons unless they were from the same household or family unit, with limits on the numbers attending weddings and funerals.⁵¹

A National Overview

There was a total of 31 lockdowns across Australia in 2020 and 2021. Victoria experienced the highest number of lockdowns, with a total of seven lockdowns, followed by Queensland and the Northern Territory, with six lockdowns each. NSW had four lockdowns, with the remaining jurisdictions each having between one and three lockdowns (Table 1 and Figure 1). However, when calculated according to the number of days in lockdown (Table 2 and Figure 2), Victoria had the largest number of days in lockdown, with a total of 302 days, followed by NSW with 174 days. The total number of lockdown days in Queensland and the Northern Territory, were 91 days and 53 days respectively. Tasmania had a total of 69 days in lockdown, while the ACT had a total of 64 days. South Australia and Western Australia had the shortest periods of lockdown in the country with 10 and 12 days respectively. These figures show the stark differences between jurisdictions. For example, South Australia's two lockdowns with a total of 10 days contrast dramatically with Victoria's seven lockdowns and a total of 302 days. Victoria had 39% of Australia's total days in lockdown, and NSW had 22% (Figure 3). Together, these two states accounted for 61% of the total days in lockdown in 2020 and 2021.

As is clear from these figures, location played a crucial role in shaping the experiences of Australians during the first couple of years of the COVID-19 pandemic. Where people lived mattered in terms of their experience of both the frequency and duration of lockdowns. Furthermore, while it may have been relatively straightforward for members of the public to know and understand lockdown rules in those jurisdictions with few(er) and/or short(er) periods of lockdown, the challenges for openness and clarity of laws became more complex as the frequency and duration of lockdowns increased.

⁵⁰ Campbell and Vines (n 49) 27; Australian Government Department of the Prime Minister and Cabinet, 'National Cabinet Statement', *PM Transcripts* (Web Page, 29 March 2020) <<https://pmtranscripts.pmc.gov.au/release/transcript-43972>> ('PM Transcripts').

⁵¹ PM Transcripts (n 50).

Table 1: Total Number of Lockdowns Per State/Territory

State/Territory	Number of Lockdowns
NSW	4
Vic	7
Qld	6
Tas	2
WA	3
NT	6
SA	2
ACT	1
Grand Total	31

Figure 1: Total Number of Lockdowns Per State/Territory

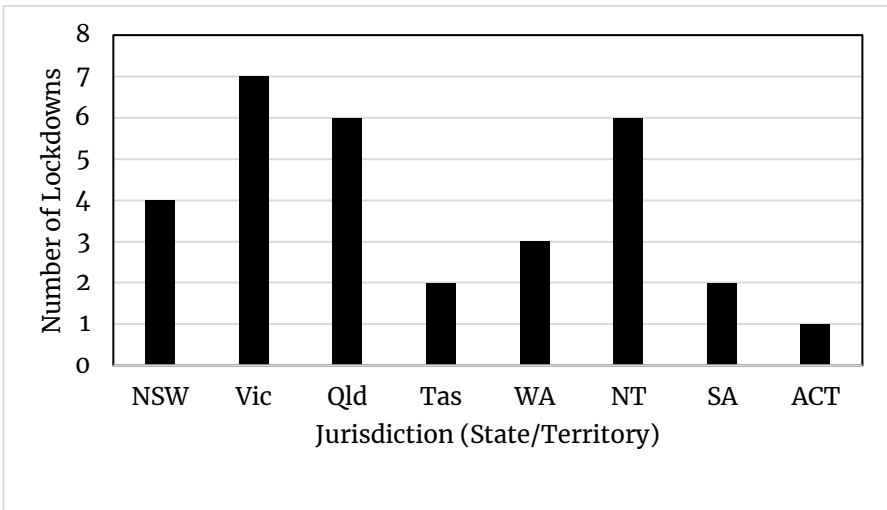


Table 2: Total Lockdown Period (Days)

State/Territory	Total Lockdown Period (Days)
NSW	174
Vic	302
Qld	91
Tas	69
WA	12
NT	53
SA	10
ACT	64
Grand Total	774

Figure 2: Total Lockdown Period (Days) Per Jurisdiction

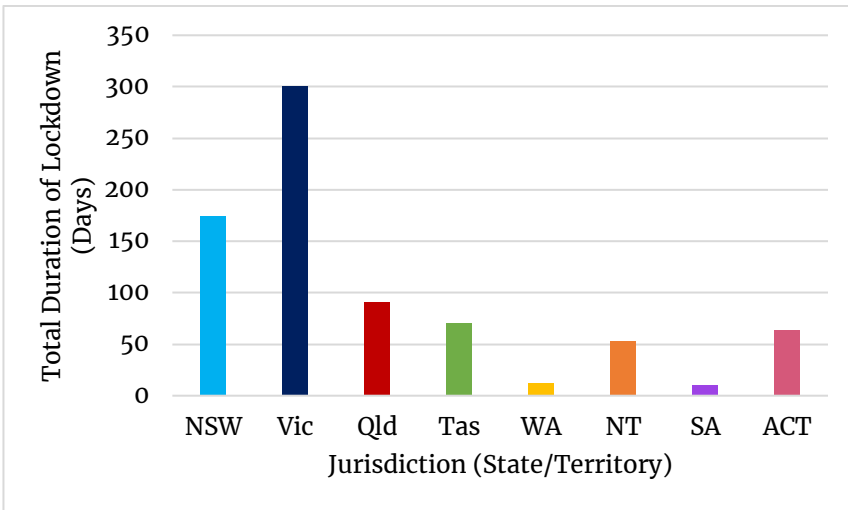
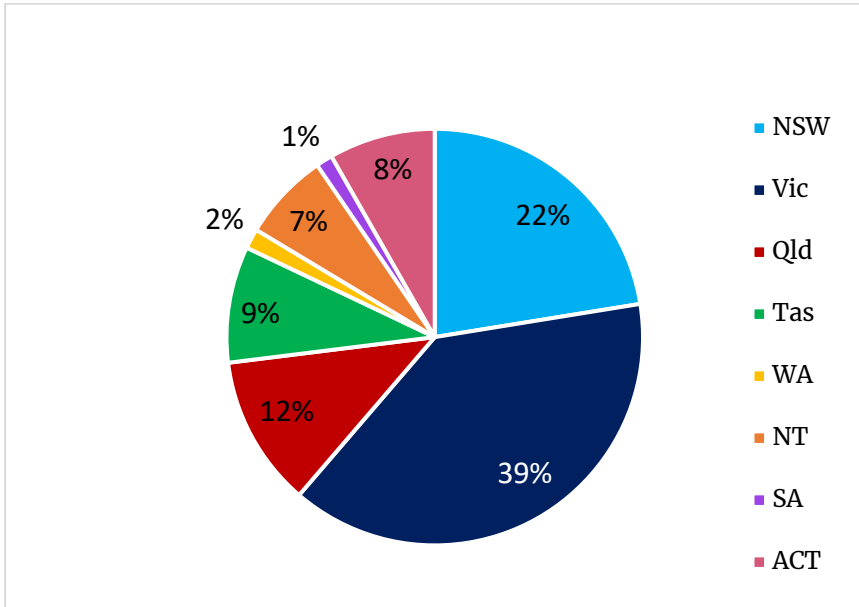


Figure 3: Total Lockdown Duration Per Jurisdiction (State/Territory Percentage)



V A CHANGING REGULATORY ENVIRONMENT

During the pandemic, a large number of orders and directions were made addressing a wide range of issues. In this article, we have only analysed those relating to lockdowns, and collecting these for analysis has been a time-consuming process, even for scholars trained in law.⁵² In May 2022, when announcing the end of South Australia's major emergency declaration, the news release noted that '[t]he declaration has been in place for 793 days, and has been extended 28 times with 289 legal directions issued'.⁵³ While the period of the declaration is longer than the period covered by the study for this article, and this study is limited to directions relating to lockdowns, the South Australian figures provide an indication of the complex and changing regulatory environment

⁵² See also Boughey (n 49) 172; Andrew Edgar, 'Law-Making in a Crisis: Commonwealth and NSW Coronavirus Regulations', *Australian Public Law* (Blog Post, 30 March 2020) <<https://www.auspublaw.org/blog/2020/03/law-making-in-a-crisis-commonwealth-and-nsw-coronavirus-regulations>>; Matthew McLeod, 'Distancing from Accountability? Governments' Use of Soft Law in the COVID-19 Pandemic' (2022) 50(1) *Federal Law Review* 3, 6.

⁵³ South Australian Government, 'COVID Major Emergency Declaration Ends' (Media Release, 24 May 2022) <<https://www.premier.sa.gov.au/media-releases/news-items/covid-major-emergency-declaration-ends>>.

during the COVID-19 pandemic. Furthermore, state and territory orders and directions were at times updated or amended on a frequent basis.⁵⁴ For example, in NSW, the *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* was made on 26 June 2021. However, the Order as amended on 14 August 2021 indicates that it is:

As amended on 28 June 2021 at 7:36pm, 7 July 2021, 8 July 2021, 9 July 2021, 10 July 2021, 13 July 2021, 16 July 2021, 17 July 2021, 18 July 2021 at 6:10pm, 20 July 2021 at 10:44am, 21 July 2021 at the beginning of the day and at 9:47am, 22 July 2021 at 7:18pm, 23 July 2021, 27 July 2021 at 1pm, 28 July 2021, 29 July 2021, 5 August 2021 at 5pm, 7 August 2021 at 5pm, 8 August 2021 at 5pm, 9 August 2021 at 5pm and at 6pm, 10 August 2021, 11 August 2021 at 1pm and at 8:05pm, 12 August 2021 and 14 August 2021.⁵⁵

In Part II of this article, it was suggested that there were rule of law issues relating to the openness and transparency of public health directions. Related to the issue of openness, are the principles of clarity and stability of law (Raz's principles 1 and 2). Generally, where lockdown provisions in a public health direction existed, they were clearly drafted. The problem was that public health directions that contained lockdown provisions were not always named or labelled in an intuitive way, and in some instances, the name of the direction completely changed after it had received multiple amendments. This lack of clarity in terms of naming conventions for public health directions meant that it became quite difficult in some jurisdictions to identify the public health direction that created a lockdown, and the public health direction that extended a lockdown. The example given above of the *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW) raises rule of law concerns with respect to the stability of laws. That said, in a rapidly changing pandemic environment, one can acknowledge the need for public health directions and orders to also change rapidly. The issue is how these changes are then communicated to the broader public. A combination of unstable law (through rapid amendment to public health directions), paired with a lack of openness in terms of public accessibility, meant that the implementation of law in some Australian jurisdictions can fairly be criticised on rule of law grounds.

In the sections below, we provide an overview of the lockdowns introduced in each Australian jurisdiction, with references to the relevant public health orders and directions. In providing this overview, we seek to illustrate both the complexity of the changing regulatory environment, and the differences between — and often within — states and territories in terms of the geographic scope of lockdowns and the rules that applied to them. As is clear from the analysis below, where you lived during 2020 and 2021 made a difference to your experience of the

⁵⁴ See Edgar (n 52).

⁵⁵ *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW), as at 14 August 2021.

pandemic, with the residents of Australia's two most populous states, NSW and Victoria, and particularly in the capital cities of Sydney and Melbourne, experiencing longer lockdowns. Furthermore, as citations to the public health orders and directions show, these jurisdictions also experienced a heavy burden in terms of regulatory change.

A New South Wales

NSW reported its first case of COVID-19 on 25 January 2020 and its first death on 3 March 2020.⁵⁶ During 2020–21, there were four lockdowns in NSW (Table 3 and Figure 4, below). The first lockdown marked the early stages of the pandemic. This initial period of lockdown lasted a total of 45 days from 31 March 2020⁵⁷ to 15 May 2020,⁵⁸ although public health measures (including restrictions on mass gatherings of people)⁵⁹ had been introduced prior to the lockdown, and novel coronavirus had been added to list of scheduled and notifiable medical conditions under the *Public Health Act 2010* (NSW) in late January 2020.⁶⁰ The lockdown prohibited people from leaving their places of residence without reasonable excuse. Examples of reasonable excuse were shopping for food, goods or services; travelling for work or education that could not be undertaken at home; exercise; or to obtain medical care or to care for another person.⁶¹ The *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW) specifically provided that '[t]aking a holiday in a regional area is not a reasonable excuse'.⁶² Gatherings of more than two persons in a public place were also prohibited⁶³ unless they were

⁵⁶ Storen and Corrigan (n 6) 3.

⁵⁷ *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW), as enacted.

⁵⁸ *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020* (NSW).

⁵⁹ See, eg, *Public Health (COVID-19 Gatherings) Order 2020* (NSW), as at 20 March 2020, prohibiting gatherings of 500 or more persons in an outdoor space and 100 or more in an indoor space.

⁶⁰ *Public Health Amendment (Scheduled Medical Conditions and Notifiable Diseases) Order 2020* (NSW), as at 21 January 2020. This was later updated on 19 March 2020 to reflect the name 'COVID-19': *Public Health Amendment (Scheduled Medical Conditions and Notifiable Diseases) Order (No 2) 2020* (NSW).

⁶¹ *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW) cl 5(2), as enacted; cl 5(2A), as amended on 1 May 2020 by *Public Health (COVID-19 Restrictions on Gathering and Movement) Amendment Order (No 2) 2020* (NSW) cl 5(2A): 'it is a reasonable excuse for a person to leave the person's place of residence to visit another person's place of residence for the purpose of providing care or support to the other person while no more than one other visitor is present at the place of residence visited'. 'Providing care or support' was defined in cl 5(6) as including 'providing care or support for the mental, physical or emotional health or well-being of the person.'

⁶² *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW) cl 5(4), as amended by *Public Health (COVID-19 Restrictions on Gathering and Movement) Amendment Order 2020* (NSW) on 4 April 2020 and later amended by *Public Health (COVID-19 Restrictions on Gathering and Movement) Amendment Order (No 2) 2020* (NSW) on 1 May 2020.

⁶³ *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW) cl 6, as enacted.

an ‘essential gathering’,⁶⁴ or came within a specified exception,⁶⁵ and closure of certain business and premises was ordered.⁶⁶ When restrictions were eased from 15 May 2020⁶⁷ gatherings of people in public places increased to 10 people and increased numbers were permitted at weddings and funerals,⁶⁸ as was a re-opening of some businesses and premises.⁶⁹ People were permitted to have up to five visitors in their homes.⁷⁰ There was a direction to work from home ‘where it is reasonably practicable to do so’.⁷¹ Restrictions were eased further from 1 July 2020⁷² and 1 December 2020.⁷³

The second lockdown occurred in December 2020. Lasting a total of 22 days, it was a geographically limited lockdown focused on Sydney’s Northern Beaches. The lockdown started on 19 December 2020,⁷⁴ and was extended seven times⁷⁵ before ending on 10 January 2021,⁷⁶ disrupting the Christmas and new year holiday travel plans of thousands of Australians as other states and territories either closed their borders or imposed quarantine requirements on travellers from the Northern Beaches.⁷⁷ Residents within the Northern Beaches Local

⁶⁴ Ibid sch 2. For example, ‘a gathering at a supermarket, market that predominately sells food, grocery store or shopping centre (but not a retail store in a shopping centre other than a supermarket, market that predominately sells food or grocery store) that is necessary for the normal business of the supermarket, market, store or centre’ was an essential gathering: sch 2 item 9.

⁶⁵ For example, the limit on gatherings of two persons did not apply to weddings (which permitted no more than five persons) and funerals (which had a limit of no more than 10 persons) with the limit in each case including the person conducting the service: *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020* (NSW) cls 6(2)(d) and (e), as enacted.

⁶⁶ Ibid cl 7.

⁶⁷ *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020* (NSW).

⁶⁸ Ibid cl 6.

⁶⁹ Ibid cl 7.

⁷⁰ Ibid cl 8(2).

⁷¹ Ibid cl 5.

⁷² *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 4) 2020* (NSW), as at 30 June 2020.

⁷³ *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 6) 2020* (NSW), as enacted.

⁷⁴ *Public Health (COVID-19 Northern Beaches) Order 2020* (NSW), as at 19 December 2020. See ‘Sydney’s Northern Beaches in Lockdown’, *The Sydney Morning Herald* (online, 21 December 2020) <<https://www.smh.com.au/national/nsw/northern-beaches-move-into-lockdown-the-day-in-photos-20201219-h1sx05.html>>.

⁷⁵ The extension periods were 20–23 December 2020, 23–28 December 2020, 29 December 2020, 30 December 2020, 31 December 2020, 31 December 2020 – 2 January 2021, and 3–10 January 2021: see New South Wales Government, ‘Public Health Orders Relating to the Northern Beaches LGA’, *NSW legislation* (Web Page, last updated 18 July 2021) <<https://legislation.nsw.gov.au/information/covid19-legislation/northern-beaches>>.

⁷⁶ *Public Health (COVID-19 Northern Beaches) Order 2020* (NSW), as at 3 January 2021. See also Cecilia Connell, ‘Three-Week Coronavirus Lockdown Lifts in Northern Zone of Sydney’s Northern Beaches’, *ABC News* (online, 10 January 2021) <<https://www.abc.net.au/news/2021-01-10/northern-beaches-reopen-after-three-week-covid-lockdown/13045954>>.

⁷⁷ Megan Levy and Esther Han, ‘Christmas Travel Plans in Disarray After Northern Beaches COVID-19 Cluster’, *The Sydney Morning Herald* (online, 18 December 2020)

Government Area ('LGA') were required to work from home where 'reasonably practicable',⁷⁸ and were required to stay at home, leaving only for a specified permitted reason such as exercise or shopping for food.⁷⁹ Persons were not permitted to enter the Northern Beaches LGA without reasonable excuse,⁸⁰ and outdoor public gatherings were limited to two persons except in specified exceptions.⁸¹ Certain businesses and premises were directed to be closed to the public, subject to some exceptions for hospitality venues (for example, permitting the sale of take-away food).⁸² Over the Christmas period of 24–26 December 2020, special provisions applied. Residents living within the northern part of the Northern Beaches LGA were permitted to leave home to visit another residence within the northern part of the Northern Beaches, and residences were limited to a maximum of 5 visitors.⁸³ Those living in the southern part of the Northern Beaches were permitted to have a maximum of 10 visitors in their homes.⁸⁴

The third lockdown in NSW was associated with the COVID-19 Delta variant and was introduced for the Greater Sydney area from 26 June 2021.⁸⁵ Restrictions on non-essential travel to areas outside metropolitan Sydney had come into effect three days earlier (23 June 2021) and applied to residents of some Sydney LGAs.⁸⁶ During this third period of lockdowns, restrictions were also extended to include some regional areas as cases emerged.⁸⁷ During this period, requirements were also

<<https://www.smh.com.au/national/nsw/christmas-travel-plans-in-disarray-after-northern-beaches-covid-19-cluster-20201218-p560kw.html>>; Alicia Nally and Liam Butterworth, 'Northern Beaches Coronavirus Cluster Throws Christmas Plans into Disarray as States Ramp Up Travel Restrictions', *ABC News* (online, 20 December 2020) <<https://www.abc.net.au/news/2020-12-20/sydney-coronavirus-cluster-throws-christmas-plans-into-disarray/12999754>>.

⁷⁸ *Public Health (COVID-19 Northern Beaches) Order 2020* (NSW), cl 6, as at 19 December 2020.

⁷⁹ *Ibid* cl 7.

⁸⁰ *Ibid* cl 8.

⁸¹ *Ibid* cl 9.

⁸² *Ibid* cl 10.

⁸³ *Public Health (COVID-19 Northern Beaches) Amendment Order (No 2) 2020* (NSW) cl 10C.

⁸⁴ *Ibid* cl 10D.

⁸⁵ *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* (NSW) pt 4, as at 26 June 2021. The 'Greater Sydney' area includes the Greater Sydney region, as well as the Central Coast, the City of Shellharbour and the City of Wollongong LGAs: cl 3.

⁸⁶ *Public Health (COVID-19 Greater Sydney) Order (No 2) 2021* (NSW), as at 23 June 2021.

⁸⁷ *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Amendment (No 18) Order 2021* (NSW), enacted on 5 August 2021, extended some Greater Sydney restrictions to the Newcastle and Hunter area; *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Amendment (No 19) Order 2021* (NSW), enacted on 7 August 2021, extended some restrictions to the Armidale Regional LGA; *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Amendment (No 21) Order 2021* (NSW), enacted on 9 August 2021, extended some restrictions to the Tamworth Regional LGA; *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Amendment (No 22) Order 2021* (NSW), enacted on 9 August 2021, extended some restrictions to the Northern Rivers area; *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Amendment (No 24) Order 2021* (NSW), enacted on 11 August 2021, extended some restrictions to the Dubbo Regional LGA; *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Amendment (No 25) Order 2021* (NSW), enacted on 11 August 2021, extended some restrictions to Bogan, Bourke, Brewarrina, Coonamble, Gilgandra, Narromine, Walgett and Warren LGAs.

introduced for workers from Greater Sydney not to enter premises for work more than 50 km outside Greater Sydney unless the worker had been tested for COVID-19 during the preceding seven days and had ‘evidence of the test available for inspection on request by an employer or occupier of the premises or a police officer.’⁸⁸ A requirement was also introduced requiring COVID-19 testing of workers from certain LGAs within Greater Sydney that were specified by the Chief Health Officer as an affected area⁸⁹ with workers within affected areas required to be tested for COVID-19 every 72 hours in order to be permitted to leave the LGA for work. This led to long queues at testing centres⁹⁰ and differing lockdown rules across the city.⁹¹ In addition, residents of certain LGAs⁹² were not permitted to leave the LGA for work unless they were an authorised worker,⁹³ restrictions were imposed on construction sites⁹⁴ and on leaving home to obtain goods or services,⁹⁵ and exercise was only permitted within 5 km of the person’s home.⁹⁶ In response to the growing number of cases, the Premier announced that the crisis was ‘a national emergency’ and called for other states to send more vaccine doses to NSW.⁹⁷

⁸⁸ *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* (NSW) cl 24C(2), as amended by *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Amendment (No 6) Order 2021* (NSW) on 13 July 2021. This clause was later relocated and relabelled as cl 24AD: *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW), as amended on 8 August 2021.

⁸⁹ *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Amendment (No 6) Order 2021* (NSW) cl 24B. The City of Fairfield was originally listed as an affected area: cl 24A(a). See also NSW Government, ‘Mandatory COVID-19 Surveillance Testing for Greater Sydney Workers’, *NSW Health* (Web Page, 13 July 2021) <https://www.health.nsw.gov.au/news/Pages/20210713_03.aspx>.

⁹⁰ Tom McIlroy, ‘Fairfield Residents Queue for Hours at Testing Sites’, *Australian Financial Review* (online, 14 July 2021) <<https://www.afr.com/politics/federal/fairfield-residents-queue-for-hours-at-testing-sites-20210714-p589ll>>.

⁹¹ Byron Kaye and Jill Gralow, ‘“We Are Not the Virus”: Two-Tier Delta Lockdowns Divide Sydney’, *Reuters* (online, 10 August 2021) <<https://www.reuters.com/world/asia-pacific/we-are-not-virus-two-tier-delta-lockdowns-divide-sydney-2021-08-10/>>.

⁹² This originally included the City of Liverpool and Canterbury-Bankstown: *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* (NSW), as at 18 July 2021 and was later extended to the City of Blacktown, City of Campbelltown, Cumberland, City of Fairfield, Georges River, and City of Parramatta: cl 24E, as at 29 July 2021. This was subsequently extended to include specified suburbs within the City of Penrith: *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW), as at 8 August 2021. Bayside, Burwood and Strathfield were also added: *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW) cl 24DA, as at 14 August 2021.

⁹³ *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW) cl 24E, as at 14 August 2021.

⁹⁴ *Ibid* cl 24EA.

⁹⁵ *Ibid* cl 24EB.

⁹⁶ *Ibid* cl 24EC.

⁹⁷ Deborah Snow, ‘Delta’s Dawn: Our Winter of Discontent’, *The Sydney Morning Herald* (online, 28 August 2021) <<https://www.smh.com.au/national/nsw/delta-s-dawn-our-winter-of-discontent-20210827-p58mjc.html>>.

The lockdown was extended state-wide on 14 August 2021⁹⁸ marking the start of lockdown four in NSW. Lasting 58 days, this lockdown commenced on 14 August 2021 and lasted until 11 October 2021. For Sydney-siders, this meant that their total period in lockdown lasted for more than 100 days, with lockdown ending when 70% of the State's population over 16 years had received two doses of a COVID-19 vaccine.⁹⁹ During this period, the relevant public health order provided for geographic areas within the State to be designated as stay-at-home areas or areas of concern, with differing restrictions applying according to which type of area a city, town, or part thereof was within.¹⁰⁰

⁹⁸ *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021* (NSW) cl 24F, as at 14 August 2021, applied Greater Sydney restrictions to regional NSW. This order had the practical effect of putting the entire state of NSW into lockdown. Clause 19, as modified by Part 4B of the Order, meant that an 'affected person' was one who lived in either Greater Sydney or the regional NSW area (where regional NSW area is defined in cl 24F(4) to mean an area of NSW other than Greater Sydney). See also NSW Government, 'Stay-at-Home Orders for Regional NSW from 5pm Today', *NSW Health* (Web Page, 14 August 2021) <https://www.health.nsw.gov.au/news/Pages/20210814_03.aspx>. Stay-at-home orders applied to an 'affected person'. During this lockdown, *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021* (NSW) changed the language through which stay-at-home orders were implemented. Stay-at-home orders were now applied to a person who had been in a 'stay at home area' or an 'area of concern'. Greater Sydney and regional NSW, other than areas listed as an area of concern, were listed as stay at home areas: sch 1.

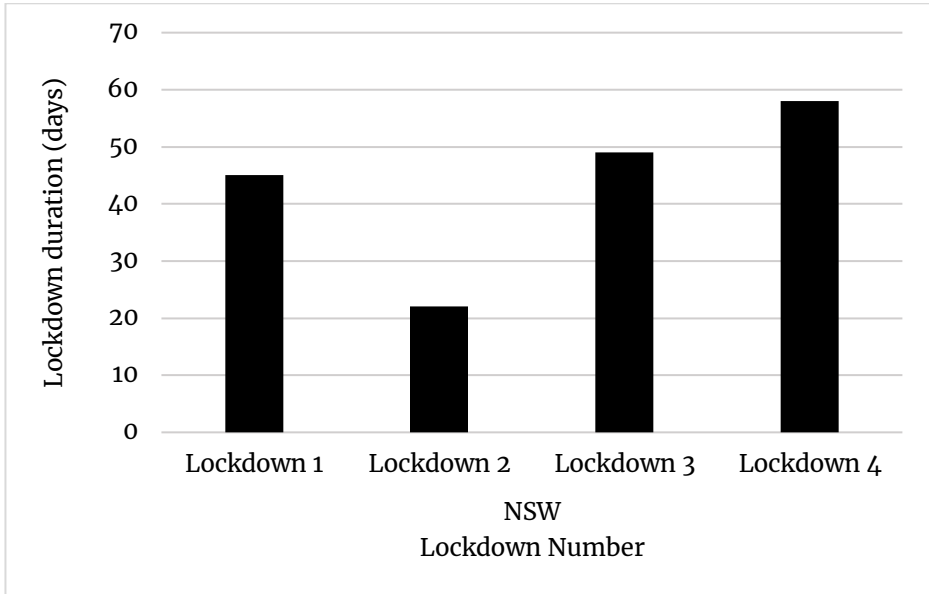
⁹⁹ Alice Klein, 'Sydney Comes Out of a 4-Month Lockdown After Reaching Vaccination Target', *New Scientist* (online, 11 October 2021) <<https://www.newscientist.com/article/2293117-sydney-comes-out-of-4-month-lockdown-after-reaching-vaccination-target/>>. See also *Public Health (COVID-19 General) Order 2021* (NSW), enacted on 3 October 2021 and amended 8 October 2021, where the Explanatory Note for the Order states: 'The object of this Order is to repeal and remake the *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021* as part of the roadmap for easing restrictions when 70% of the population of New South Wales who are over 16 years of age are fully vaccinated against COVID-19.'

¹⁰⁰ *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021* (NSW), as at 20 August 2021.

Table 3: New South Wales Lockdowns

NSW		Dates	Total Lockdown Period (Days)
Lockdown 1	Entire State	31 March – 15 May 2020	45
Lockdown 2	Northern Beaches	19 December 2020 – 10 January 2021	22
Lockdown 3	Greater Sydney	26 June – 5 August 2021	40
	Greater Sydney + Newcastle and Hunter Area	5 August – 7 August 2021	2
	Areas listed for Lockdown 3 above + Armidale	7 August – 9 August 2021	2
	Areas listed for Lockdown 3 above + Tamworth and Northern Rivers area	9 August – 11 August 2021	2
	Areas listed for Lockdown 3 above + Dubbo area	11 August – 12 August 2021	1
	Areas listed for Lockdown 3 above + Far North area	12 August – 14 August 2021	2
			49
Lockdown 4	Entire State ¹⁰¹	14 August – 11 October 2021	58
Total			174

¹⁰¹ Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021 (NSW) commenced at 5pm on 14 August 2021. See above n 98 and accompanying text.

Figure 4: Duration of Each Lockdown in NSW

B Victoria

Victoria's first case of COVID-19 was reported on 25 January 2020 and the first death from COVID-19 was reported in Victoria on 26 March 2020.¹⁰² During the COVID-19 pandemic, Victorians not only experienced the longest total period of lockdowns in Australia, but Melbourne earned the title of being the most locked-down capital city in the world, surpassing the record previously held by Buenos Aires.¹⁰³ There were a total of seven lockdowns during 2020 and 2021, involving 302 days in lockdown. The number and duration of lockdowns in Victoria are illustrated in Table 4 and Figure 5 respectively.

The lockdowns were not without controversy. A lockdown of approximately 3,000 residents in nine public housing towers in Melbourne in July 2020 attracted widespread media attention.¹⁰⁴ The lockdown of the housing towers was also the subject of a report by the Ombudsman.¹⁰⁵ The lockdowns also led to litigation. In *Gerner v Victoria*,¹⁰⁶ the plaintiff, who owned a restaurant business, unsuccessfully

¹⁰² Storen and Corrigan (n 6) 2.

¹⁰³ Boaz (n 5).

¹⁰⁴ See also Mclean and Huf (n 27) 42.

¹⁰⁵ For discussion, see Ian Freckelton, 'Government Inquiries, Investigations and Reports During the COVID-19 Pandemic' in Belinda Bennett and Ian Freckelton (eds), *Pandemics, Public Health Emergencies and Government Powers: Perspectives on Australian Law* (Federation Press, 2021) 106–8.

¹⁰⁶ (2020) 270 CLR 412.

challenged the lockdown laws in the High Court of Australia, alleging that the lockdown had caused a significant loss of revenue to his business. He had sought a declaration that the provisions of Victoria's *Public Health and Wellbeing Act 2008* which permitted the Chief Health Officer to make directions to restrict the movement of people within an emergency area, and the lockdown directions that had been made, were invalid as they infringed an implicit Constitutional guarantee of freedom of movement. A further challenge to Victoria's lockdown laws was made in *Loiello v Giles*¹⁰⁷ which unsuccessfully challenged a COVID-related curfew in Victoria.

The COVID-19 pandemic was declared a public health emergency in Victoria on 16 March 2020.¹⁰⁸ With extensions, the emergency declaration lasted until 10 December 2021. On 22 March 2020, the Victorian Premier Daniel Andrews announced that non-essential activities would be shut down over 48 hours and the start of school holidays would be moved forward to 24 March.¹⁰⁹ Stage 2 restrictions, including closure of non-essential services, started on 25 March 2020.¹¹⁰ At midnight on 30 March 2020,¹¹¹ Victoria began its first lockdown which was to last until 11:59pm on 31 May 2020.¹¹² Restrictions were eased from 12 May 2020.¹¹³

Lockdown two commenced on 1 July 2020 and lasted until 19 July 2020.¹¹⁴ Initially focused on 10 specific postcodes,¹¹⁵ this was extended on 4 July 2020 to

¹⁰⁷ (2020) 63 VR 1. For discussion, see Rosalind Croucher, 'Lockdowns, Curfews and Human Rights – Unscrambling Hyperbole' (2021) 28(3) *Australian Journal of Administrative Law* 137; Bruce Chen, 'The Victorian COVID-19 Response: Reflections on *Loiello v Giles*' (2021) 32(1) *Public Law Review* 8.

¹⁰⁸ Premier of Victoria, 'State of Emergency Declared in Victoria Over COVID-19' (Media Release, 16 March 2020) <<https://www.premier.vic.gov.au/state-emergency-declared-victoria-over-covid-19>>. See also Pandemic Declaration Accountability and Oversight Committee (n 30) 10.

¹⁰⁹ Storen and Corrigan (n 6) 75.

¹¹⁰ *Ibid.*

¹¹¹ Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions' in Victoria, *Victoria Government Gazette*, No S 169, 31 March 2020, 8, 8. See also Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 30 March 2020' (Media Release, 30 March 2020) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-30-march-2020>>, archived at <<https://web.archive.org/web/20200817220836/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-30-march-2020>>. The lockdown was extended again from midnight on 2 April 2020: Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions (No. 2)' in Victoria, *Victoria Government Gazette*, No S 177, 3 April 2020, 1, 1; from midnight on 7 April 2020: Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions (No. 3)' in Victoria, *Victoria Government Gazette*, No S 191, 8 April 2020, 13, 13; and from midnight on 13 April until midnight on 11 May 2020: Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions (No. 4)' in Victoria, *Victoria Government Gazette*, No S 194, 14 April 2020, 16, 16.

¹¹² Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions (No. 7)' in Victoria, *Victoria Government Gazette*, No S 253, 25 May 2020, 12, 12.

¹¹³ Pandemic Declaration Accountability and Oversight Committee (n 30) 13.

¹¹⁴ Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions (Restricted Postcodes)' in Victoria, *Victoria Government Gazette*, No S 339, 2 July 2020, 3, 3.

¹¹⁵ Deputy Chief Health Officer (Communicable Disease) (Vic), 'Area Directions' in Victoria, *Victoria Government Gazette*, No S 339, 2 July 2020, 1, 1.

include two additional postcodes and a number of public housing towers.¹¹⁶ During this period, other states and territories introduced restrictions on people from Victoria entering their jurisdiction and closed their borders to Victoria.¹¹⁷

Victoria's third lockdown commenced at 11:59pm on 8 July 2020 and originally applied to greater Melbourne and the Mitchell Shire.¹¹⁸ Originally scheduled to last until 19 July 2020, the lockdown in Greater Melbourne extended to 28 October 2020 — a total of 112 days.¹¹⁹ During that time, the Victorian government declared a state of disaster on 2 August 2020¹²⁰ and in early August 2020, a night-time curfew was introduced for Melbourne.¹²¹ In regional Victoria, lockdown restrictions were implemented from 5 August 2020,¹²² and were not eased until 16 September 2020.¹²³

¹¹⁶ Deputy Chief Health Officer (Communicable Disease) (Vic), 'Area Directions (No. 2)' in Victoria, *Victoria Government Gazette*, No S 343, 5 July 2020, 1, 1. For discussion of the lockdown of the public housing towers, see Freckelton (n 105).

¹¹⁷ Wright (n 9) 2–5.

¹¹⁸ Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions (Restricted Areas)' in Victoria, *Victorian Government Gazette*, No S 346, 9 July 2020, 5, 5; Deputy Chief Health Officer (Communicable Disease) (Vic), 'Area Directions (No. 3)' in Victoria, *Victorian Government Gazette*, No S 346, 9 July 2020, 1, 1; Department of Health and Human Services (Vic), 'Coronavirus update for Victoria — 8 July 2020' (Media Release, 8 July 2020) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-08-july-2020>>, archived at <<https://web.archive.org/web/20200711185105/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-08-july-2020>>.

¹¹⁹ Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 19)' in Victoria, *Victoria Government Gazette*, No S 531, 19 October 2020, 1, 1 initially had extended the lockdown until 8 November 2020. This direction was revoked by Chief Health Officer (Vic), 'Stay Safe Directions (Melbourne)' in Victoria, *Victoria Government Gazette*, No S 552, 28 October 2020, 12, 12; Pandemic Declaration Accountability and Oversight Committee (n 30) 18.

¹²⁰ Pandemic Declaration Accountability and Oversight Committee (n 30) 17. The declaration of the state of disaster expired on 8 November 2020: at 19.

¹²¹ Pandemic Declaration Accountability and Oversight Committee (n 30) 18. See also Zena Chamas, 'Victoria Has Introduced a Curfew and Stage 4 Coronavirus Restrictions for Melbourne, and Stage 3 Restrictions for Regional Victoria. Here's What That Means', *ABC News* (online, 2 August 2020) <<https://www.abc.net.au/news/2020-08-02/victorias-latest-coronavirus-restrictions-explained/12516182>>; Yara Murray-Atfield and Joseph Dunstan, 'Melbourne Placed Under Stage 4 Coronavirus Lockdown, Stage 3 for the Rest of Victoria as State of Disaster Declared', *ABC News* (online, 2 August 2020) <<https://www.abc.net.au/news/2020-08-02/victoria-coronavirus-restrictions-imposed-death-toll-cases-rise/12515914>>.

¹²² Public Health Commander (Vic), 'Stay at Home Directions (Non-Melbourne)' in Victoria, *Victoria Government Gazette*, No S 397, 6 August 2020, 33, 33.

¹²³ Chief Health Officer (Vic), 'Stay Safe Directions (Non-Melbourne)' in Victoria, *Victoria Government Gazette*, No S 474, 17 September 2020, 26, 26 with the effect that stay-at-home orders for regional Victoria ended on 16 September 2020 at 11:59pm.

In February 2021, Victoria had its fourth lockdown — a snap lockdown that lasted five days, starting from 12 February.¹²⁴ As the State exited lockdown, it recorded a ‘donut day’ of zero locally acquired cases of COVID-19.¹²⁵

In lockdown number five, ‘circuit breaker restrictions’ were introduced from 11:59pm on 27 May 2021.¹²⁶ This involved a seven-day state-wide lockdown for Victoria in response to 26 cases of COVID-19 and 14,000 Victorians either in 14-day quarantine or required to isolate until they returned a negative test result.¹²⁷ On 2 June 2021, Melbourne’s lockdown was extended for a further seven days,¹²⁸ with the Acting Premier stating: ‘We now have 60 local cases and more than 350 exposure sites. And a variant of the virus that is quicker and more contagious than we’ve seen before’.¹²⁹ Lockdown five ended for metropolitan Melbourne at 11:59pm on 10 June 2021.¹³⁰

- ¹²⁴ Chief Health Officer (Vic), ‘Stay Safe Directions (Victoria) (No. 14)’ in Victoria, *Victoria Government Gazette*, No S 70, 13 February 2021, 1, 1; Department of Health and Human Services (Vic), ‘Coronavirus Update for Victoria — 13 February 2021’ (Media Release, 13 February 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-13-february-2021>>, archived at <<https://web.archive.org/web/20210213122655/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-13-february-2021>>; Pandemic Declaration Accountability and Oversight Committee (n 30) 20; Yara Murray-Atfield and staff, ‘Daniel Andrews Announces Snap Coronavirus Lockdown for Victoria in Response to “Hyper-Infectious” UK Strain’, *ABC News* (online, 12 February 2021) <<https://www.abc.net.au/news/2021-02-12/victoria-coronavirus-lockdown-announced-by-daniel-andrews/13128514>>. The lockdown directions were revoked from 11:59pm on 17 February 2021: Chief Health Officer (Vic), ‘Stay Safe Directions (Victoria) (No. 15)’ in Victoria, *Victoria Government Gazette*, No S 77, 18 February 2021, 1, 1.
- ¹²⁵ Lucy Mae Beers, ‘Victoria Records Another DONUT DAY as State Exits Harsh Snap COVID Lockdown’, *7 News* (online, 18 February 2021) <<https://7news.com.au/lifestyle/health-wellbeing/victoria-records-another-donut-day-as-state-exits-harsh-snap-covid-lockdown-c-2187481>>.
- ¹²⁶ Acting Chief Health Officer (Vic), ‘Stay at Home Directions (Victoria)’ in Victoria, *Victoria Government Gazette*, No S 256, 28 May 2021, 13, 13; Department of Health and Human Services (Vic), ‘Coronavirus Update for Victoria — 27 May 2021’ (Media Release, 27 May 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-27-may-2021>>, archived at <<https://web.archive.org/web/20210527135708/>>; James Merlino, ‘Statement from the Acting Premier’ (Media Release, Victoria State Government, 27 May 2021) <<https://www.premier.vic.gov.au/statement-acting-premier-1>>.
- ¹²⁷ Richard Willingham and staff, ‘Victoria Enters COVID-19 Lockdown as Cases from Melbourne Outbreak Grow’, *ABC News* (online, 27 May 2021) <<https://www.abc.net.au/news/2021-05-27/victoria-covid-cases-melbourne-outbreak-lockdown-restrictions/100169172>>.
- ¹²⁸ Acting Chief Health Officer (Vic), ‘Stay at Home Directions (Metropolitan Melbourne)’ in Victoria, *Victoria Government Gazette*, No S 266, 4 June 2021, 35, 35 (‘Stay at Home Directions (Metropolitan Melbourne)’) declaring a stay-at-home period from 11:59pm on 3 June 2021 until 11:59pm on 10 June 2021; ‘Victorians Urged to “Keep Fighting” by Premier Daniel Andrews as Lockdown Extended’, *ABC News* (online, 2 June 2021) <<https://www.abc.net.au/news/2021-06-02/new-covid-cases-recorded-in-victoria-lockdown-decision/100183416>>.
- ¹²⁹ James Merlino, ‘Statement from the Acting Premier’ (Media Release, Victoria State Government, 2 June 2021) <<https://www.premier.vic.gov.au/statement-acting-premier-2>>.
- ¹³⁰ Stay at Home Directions (Metropolitan Melbourne) (n 120) as repealed by Acting Chief Health Officer (Vic), ‘Stay Safe Directions (Metropolitan Melbourne)’ in Victoria, *Victoria Government Gazette*, No S 281, 11 June 2021, 39, 39; James Merlino, ‘Statement from the Acting Premier’ (Media Release, Victoria State Government, 9 June 2021) <<https://www.premier.vic.gov.au/statement-acting-premier-3>>. See also ‘Victoria Records No New Local COVID Cases as Melbourne Emerges from Two-Week Lockdown’, *ABC News* (online, 11 June 2021) <<https://www.abc.net.au/news/2021-06-11/victoria-new-covid-cases-melbourne-lockdown-lifts/100207318>>.

Victoria's sixth lockdown was to occur only a little over a month later in response to the spread of the Delta variant.¹³¹ At 11:59pm on 15 July 2021, Victoria entered a five-day lockdown¹³² with the Premier stating: 'If we act now — while we're right on the heels of this outbreak — we can give ourselves every chance of getting ahead of it. If we wait — we lose that option'.¹³³ The Department's update stated: 'This lockdown has been put in place in response to our new cases of COVID-19, a large number of popular exposure sites and to combat the circulating strain of virus that is wildly infectious'.¹³⁴ On 20 July 2021, the lockdown was extended for another seven days and a pause was placed on issuing permits on those from Red Zones to enter Victoria.¹³⁵ The effect of the pause on Red Zone permits was that Victorians who were seeking to return home from Red Zones in NSW were unable to do so without a permit.¹³⁶

With 80 active cases of COVID-19 in Victoria, the State entered its seventh lockdown on 5 August 2021.¹³⁷ This was a state-wide lockdown initially planned for seven days,¹³⁸ but lockdowns affecting different areas at different times would continue until 21 October 2021.¹³⁹ On 16 August 2021, it was announced that the

¹³¹ 'Victoria to Enter Five-Day Snap Lockdown as More COVID Cases Recorded', *ABC News* (online, 15 July 2021) <<https://www.abc.net.au/news/2021-07-15/melbourne-lockdown-response-to-covid-outbreak/100296220>> ('Victoria to Enter Five-Day Snap Lockdown').

¹³² Acting Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 2)' in Victoria, *Victoria Government Gazette*, No S 389, 16 July 2021, 13, 13; 'Victoria to Enter Five-Day Snap Lockdown' (n 131).

¹³³ Daniel Andrews, 'Statement from the Premier' (Media Release, Victoria State Government, 15 July 2021) <<https://www.premier.vic.gov.au/statement-premier-92>>.

¹³⁴ Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 15 July 2021' (Media Release, 15 July 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-15-july-2021>>, archived at

<<https://web.archive.org/web/20210716002633/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-15-july-2021>>.

¹³⁵ Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 3)' in Victoria, *Victoria Government Gazette*, No S 398, 21 July 2021, 13, 12; Daniel Andrews, 'Extended Lockdown and Stronger Borders to Keep Us Safe' (Media Release, Victoria State Government, 20 July 2021) <<https://www.premier.vic.gov.au/extended-lockdown-and-stronger-borders-keep-us-safe>> ('Extended Lockdown and Stronger Borders to Keep Us Safe').

¹³⁶ 'Extended Lockdown and Stronger Borders to Keep Us Safe' (n 135).

¹³⁷ Acting Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 4)' in Victoria, *Victoria Government Gazette*, No S 427, 6 August 2021, 13, 13; Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 5 August 2021' (Media Release, 5 August 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-5-august-2021>>, archived at <<https://web.archive.org/web/20210806044428/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-5-august-2021>>.

¹³⁸ Acting Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 4)' in Victoria, *Victoria Government Gazette*, No S 427, 6 August 2021, 13, 13 cl 4; Daniel Andrews, 'Seven Day Lockdown to Keep Victorians Safe' (Media Release, Victoria State Government, 5 August 2021) <<https://www.premier.vic.gov.au/seven-day-lockdown-keep-victorians-safe>>.

¹³⁹ This extension of the lockdown was initially managed through: Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 5)' in Victoria, *Victoria Government Gazette*, No S 455, 23 August

lockdown would be extended until 2 September and a curfew implemented from 9pm to 5am each night.¹⁴⁰

On 21 August 2021, it was announced that the restrictions in place in Melbourne, except for the curfew, would be extended to regional Victoria.¹⁴¹ The Premier stated:

With the number of positive cases this high and so many Victorians still to be vaccinated, we cannot afford to let this virus run free — our hospital system would be overrun, our frontline staff would be placed under huge pressure and quite simply, people will die.¹⁴²

On 2 September 2021, it was announced that most of the lockdown restrictions would remain in place until 70% of Victorians had received at least one dose of a COVID-19 vaccine, which was estimated to occur around 23 September 2021.¹⁴³ Lockdown restrictions were lifted for regional Victoria (except Greater Shepparton) from 11:59pm on 9 September 2021.¹⁴⁴ On 19 September, the Premier announced that Melbourne would remain in lockdown until late October when it was expected that 70% of the population aged 16-and-over would have received two doses of a

2021, 1; Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 6)' in Victoria, *Victoria Government Gazette*, No S 458, 23 August 2021, 14; Acting Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 7)' in Victoria, *Victoria Government Gazette*, No S 467, 27 August 2021, 2; Acting Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 8)' in Victoria, *Victoria Government Gazette*, No S 483, 3 September 2021, 1. The extension was then further achieved through: Acting Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 20)' in Victoria, *Victoria Government Gazette*, No S 495, 10 September 2021, 1; Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 21)' in Victoria, *Victoria Government Gazette*, No S 511, 16 September 2021, 4; Acting Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 22)' in Victoria, *Victoria Government Gazette*, No S 515, 18 September 2021, 1; Acting Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 23)' in Victoria, *Victoria Government Gazette*, No S 529, 24 September 2021, 2. See also Pandemic Declaration Accountability and Oversight Committee (n 30) 21.

¹⁴⁰ Daniel Andrews, 'Extended Melbourne Lockdown to Keep Victorians Safe' (Media Release, Victoria State Government, 16 August 2021) <<https://www.premier.vic.gov.au/extended-melbourne-lockdown-keep-victorians-safe-0>>.

¹⁴¹ Chief Health Officer (Vic), 'Stay at Home Directions (Victoria) (No. 5)' in Victoria, *Victoria Government Gazette*, No S 455, 23 August 2021, 1.

¹⁴² Daniel Andrews, 'Lockdown Across Regional Victoria to Keep Us Safe' (Media Release, Victoria State Government, 21 August 2021) <<https://www.premier.vic.gov.au/lockdown-across-regional-victoria-keep-us-safe>>.

¹⁴³ Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 2 September 2021' (Media Release, 2 September 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-2-september-2021>>, archived at <<https://web.archive.org/web/20210902121106/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-2-september-2021>>. Playgrounds were re-opened from 11:59pm on 2 September 2021.

¹⁴⁴ Acting Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 20)' in Victoria, *Victoria Government Gazette*, No S 495, 10 September 2021, 1, 1; Acting Chief Health Officer (Vic), 'Area Directions (No. 15)' in Victoria, *Victoria Government Gazette*, No S 495, 10 September 2021, 77; Daniel Andrews, 'Coronavirus Restrictions to Lift for Regional Victoria' (Media Release, Victoria State Government, 8 September 2021) <<https://www.premier.vic.gov.au/coronavirus-restrictions-lift-regional-victoria-0>>.

COVID-19 vaccine, with a further easing of restrictions once 80% of Victorians aged 16-and-over had received two doses of a COVID-19 vaccine.¹⁴⁵

While Melbourne was to remain in lockdown until late October 2021, parts of regional Victoria also experienced periods of lockdown in late 2021. We have listed these separately in Table 4 below in order to distinguish the experience of people living in regional Victoria from those living in Melbourne. As noted above, on 21 August 2021, the lockdown in Melbourne was extended to regional Victoria.¹⁴⁶ It was originally due to last until 2 September but was extended until 9 September when it was lifted, except for Greater Shepparton.¹⁴⁷ The lockdown in Shepparton continued until 15 September 2021.¹⁴⁸ At 11:59pm on 15 September 2021, Ballarat entered lockdown,¹⁴⁹ and lasted until 22 September 2021.¹⁵⁰ On 19 September 2021, Greater Geelong, the Surf Coast Shire and Mitchell Shire began a seven-day lockdown,¹⁵¹ with the same restrictions as in Ballarat and metropolitan Melbourne except for the curfew.¹⁵² From 11:59pm on 26 September 2021, the lockdown was

¹⁴⁵ Richard Willingham, Bridget Rollason and Yara Murray-Atfield, 'Victoria's Roadmap Out of COVID Lockdown Released by Premier Daniel Andrews', *ABC News* (online, updated 3 October 2021) <<https://www.abc.net.au/news/2021-09-19/victoria-roadmap-out-of-covid-lockdown-released-dan-andrews/100474302>>.

¹⁴⁶ See above n 141.

¹⁴⁷ Acting Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 20)' in Victoria, *Victoria Government Gazette*, No S 495, 10 September 2021,1; Acting Chief Health Officer (Vic), 'Area Directions (No. 15)' in Victoria, *Victoria Government Gazette*, No S 495, 10 September 2021, 77; Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 9 September 2021' (Media Release, 11 July 2022) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-9-september-2021>>, archived at <<https://web.archive.org/web/20210909093712/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-9-september-2021>>; Daniel Andrews, 'Coronavirus Restrictions to Lift for Regional Victoria' (Media Release, Victoria State Government, 8 September 2021) <<https://www.premier.vic.gov.au/coronavirus-restrictions-lift-regional-victoria-0>>; Christopher Testa, 'Regional Victoria is About to Leave COVID-19 Lockdown. Here's What's Changing', *ABC News* (online, 8 September 2021) <<https://www.abc.net.au/news/2021-09-08/regional-victoria-new-rules-once-covid-19restrictions-ease/100443524>>.

¹⁴⁸ Chief Health Officer (Vic), 'Area Directions (No. 16)' in Victoria, *Victoria Government Gazette*, No S 511, 16 September 2021, 1; Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 21)' in Victoria, *Victoria Government Gazette*, No S 511, 16 September 2021, 4; Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 15 September 2021' (Media Release, 15 September 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-15-september-2021>>, archived at <<https://web.archive.org/web/20210915100601/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-15-september-2021>> ('Coronavirus Update for Victoria — 15 September 2021').

¹⁴⁹ Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 15 September 2021' (n 148).

¹⁵⁰ Victoria, *Victoria Government Gazette*, No S 524, 23 September 2021; Pandemic Declaration Accountability and Oversight Committee (n 30) 21.

¹⁵¹ Victoria, *Victoria Government Gazette*, No S 518, 20 September 2021; Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 19 September 2021' (Media Release, 19 September 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-19-september-2021>>, archived at <<https://web.archive.org/web/20210920001757/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-19-september-2021>>.

¹⁵² Daniel Andrews, 'Seven-Day Lockdown: Geelong, Surf Coast and Mitchell Shire' (Media Release, Victoria State Government, 19 September 2021) <<https://www.premier.vic.gov.au/seven-day-lockdown-geelong-surf-coast-mitchell-shire>>.

lifted for Greater Geelong and the Surf Coast Shire and remained in place for the Mitchell Shire.¹⁵³ For the Mitchell Shire, the lockdown was lifted on 13 October 2021.¹⁵⁴ From 28 September to 5 October 2021, the City of Latrobe was in a seven-day lockdown.¹⁵⁵ Greater Shepparton had a lockdown period from 1 to 8 October 2021.¹⁵⁶ However, as Shepparton was ending its period of lockdown, Mildura was entering a seven-day lockdown from 8–15 October.¹⁵⁷ On 15 October 2021, Mildura's lockdown was extended 'for a further seven days due to the significant

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- ¹⁵³ Victoria, *Victoria Government Gazette*, No S 530, 27 September 2021; Department of Health and Human Services (Vic), 'Coronavirus Update for Victoria — 26 September 2021' (Media Release, 26 September 2021) <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-26-september-2021>>, archived at <<https://web.archive.org/web/20210926075240/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-26-september-2021>>.
- ¹⁵⁴ Department of Health and Human Services (Vic), 'Lockdown Restrictions in Mitchell Shire to Lift Tonight — 13 October 2021' (Media Release, 13 October 2021) <<https://www.dhhs.vic.gov.au/lockdown-restrictions-mitchell-shire-lift-tonight-13-october-2021>>, archived at <<https://web.archive.org/web/20211013045317/https://www.dhhs.vic.gov.au/lockdown-restrictions-mitchell-shire-lift-tonight-13-october-2021>>. See also Pandemic Declaration Accountability and Oversight Committee (n 30) 21.
- ¹⁵⁵ Acting Chief Health Officer (Vic), 'Area Directions (No. 22)' in Victoria, *Victoria Government Gazette*, No S 539, 29 September 2021, 85; Department of Health and Human Services (Vic), 'City of Latrobe to Enter Seven Day Lockdown Tonight — 28 September 2021' (Media Release, 28 September 2021) <<https://www.dhhs.vic.gov.au/city-latrobe-enter-seven-day-lockdown-tonight-28-september-2021>>, archived at <<https://web.archive.org/web/2021109075600/https://www.dhhs.vic.gov.au/city-latrobe-enter-seven-day-lockdown-tonight-28-september-2021>>. See also Pandemic Declaration Accountability and Oversight Committee (n 30) 21.
- ¹⁵⁶ Commenced by Acting Chief Health Officer (Vic), 'Area Directions (No. 23)' in Victoria, *Victoria Government Gazette*, No S 543, 2 October 2021, 80 and ended by Chief Health Officer (Vic), 'Area Directions (No. 25)' in Victoria, *Victoria Government Gazette*, No S 555, 9 October 2021, 27; Department of Health and Human Services (Vic), 'City of Greater Shepparton to Enter Seven-day Lockdown Tonight — 1 October 2021' (Media Release, 1 October 2021) <<https://www.dhhs.vic.gov.au/city-greater-shepparton-enter-seven-day-lockdown-tonight-1-october-2021>>, archived at <<https://web.archive.org/web/20211027152345/https://www.dhhs.vic.gov.au/city-greater-shepparton-enter-seven-day-lockdown-tonight-1-october-2021>>; Department of Health (Vic), 'Lockdown Restrictions in Shepparton to Lift Tonight — 8 October 2021' (Media Release, 8 October 2021) <<https://www.health.vic.gov.au/media-releases/lockdown-restrictions-in-shepparton-to-lift-tonight-8-october-2021>>, archived at <<https://web.archive.org/web/2022011801119/https://www.health.vic.gov.au/media-releases/lockdown-restrictions-in-shepparton-to-lift-tonight-8-october-2021>>.
- ¹⁵⁷ Victoria, *Victoria Government Gazette*, No S 551, 6 October 2021; Yara Murray-Atfield and Alexandra Treloar, 'Mildura Enters COVID-19 Lockdown as Regional Victorian Regions of Shepparton and Moorabool Exit', *ABC News* (online, 8 October 2021) <<https://www.abc.net.au/news/2021-10-08/mildura-covid-lockdown-shepparton-moorabool-ease/100526008>>; Department of Health (Vic), 'Mildura to Enter Seven-Day Lockdown Tonight — 8 October 2021' (Media Release, 8 October 2021) <<https://www.health.vic.gov.au/media-releases/mildura-to-enter-seven-day-lockdown-tonight-8-october-2021>>, archived at <<https://web.archive.org/web/20220125013028/https://www.health.vic.gov.au/media-releases/mildura-to-enter-seven-day-lockdown-tonight-8-october-2021>>.

and ongoing transmission of COVID-19 in the local community'.¹⁵⁸ The final lockdown in this study period was lifted in Mildura on 21 October 2021.¹⁵⁹

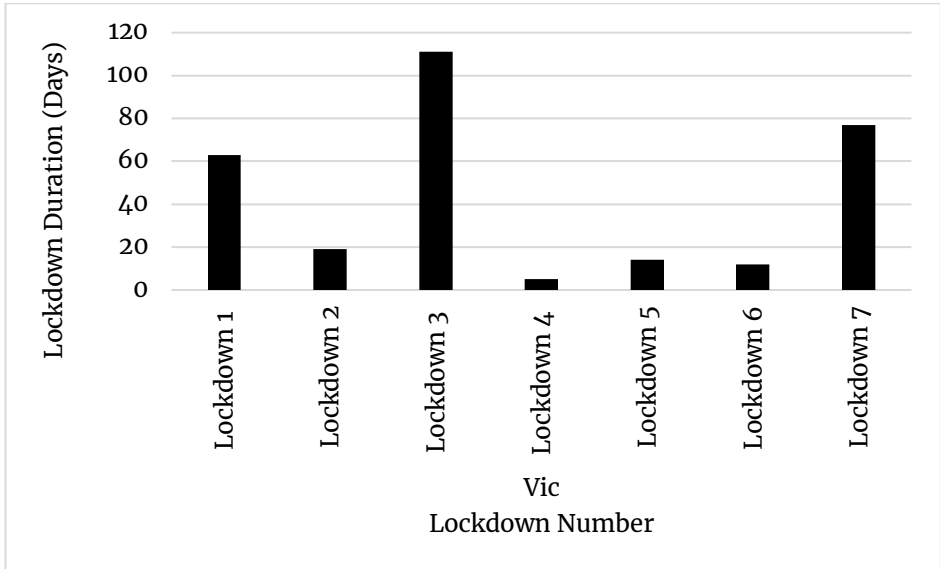
Table 4: Victorian Lockdowns

Victoria		Dates	Total Lockdown Period
Lockdown 1	All Victoria	30 March – 31 May 2020	63
Lockdown 2	10 postcodes	1–4 July 2020	4
	Two additional postcodes	4–19 July 2020	15
			19
Lockdown 3	Greater Melbourne + Mitchell Shire	8 July 2020 – 28 October 2020	112
	Regional Victoria	5 August 2020 – 16 September 2020	42
			112
Lockdown 4	All Victoria	12–17 February 2021	5
Lockdown 5	All Victoria	27 May 2021 – 3 June 2021	7
	Metropolitan Melbourne	3–10 June 2021	7
			14
Lockdown 6	All Victoria	15–27 July 2021	12

¹⁵⁸ Department of Health (Vic), 'Seven-day Extension to Mildura's Lockdown to Curb Transmission – 15 October 2021' (Media Release, 15 October 2021) <<https://www.health.vic.gov.au/media-releases/seven-day-extension-to-milduras-lockdown-to-curb-transmission-15-october-2021>>, archived at <<https://web.archive.org/web/20220125105947/https://www.health.vic.gov.au/media-releases/seven-day-extension-to-milduras-lockdown-to-curb-transmission-15-october-2021>>.

¹⁵⁹ Acting Chief Health Officer (Vic), 'Stay Safe Directions (Metropolitan Melbourne) (No. 4)' in Victoria, *Victoria Government Gazette*, No S 588, 22 October 2021, 2 ended this lockdown by revoking Chief Health Officer (Vic), 'Stay at Home Directions (Restricted Areas) (No. 28)' in Victoria, *Victoria Government Gazette*, No S 556, 10 October 2021, 1; Department of Health (Vic), 'Lockdown Restrictions in Mildura to Lift Tonight' (Media Release, 21 October 2021) <<https://www.health.vic.gov.au/media-releases/lockdown-restrictions-in-mildura-to-lift-tonight>>, archived at <<https://web.archive.org/web/20220709154059/https://www.health.vic.gov.au/media-releases/lockdown-restrictions-in-mildura-to-lift-tonight>>.

Lockdown 7	All Victoria	5–9 August 2021 21 August – 9 September 2021	23
	Metropolitan Melbourne	9 August 2021 – 21 October 2021	73
	All Regional Victoria	21 August – 9 September 2021	19
	Greater Shepparton	21 August – 15 September 2021	25
	Ballarat	15–22 September 2021	7
	Geelong + Surf Coast and Mitchell Shire	19–27 September (Geelong and Surf Coast) 19 September – 13 October (Mitchell Shire)	8 24
	Latrobe Valley	28 September – 5 October 2021	7
	Greater Shepparton	1–8 October 2021	7
	Mildura	8–21 October 2021	13
			77
Total Lockdown days in Victoria			302

Figure 5: Duration of Each Lockdown in Victoria

C Queensland

Queensland reported its first case of COVID-19 on 29 January 2020 and its first death on 25 March 2020.¹⁶⁰ In Queensland, a public health emergency was declared on 29 January 2020. During 2020 and 2021, the emergency declaration was extended a number of times, with the public health emergency ending on 31 October 2022.¹⁶¹ Although Queensland experienced a total of six lockdowns, with the exception of lockdown one (which lasted 70 days), most were of relatively short duration as shown by Table 5 and Figure 6 (below).

In March 2020, restrictions were imposed on entry into remote designated areas in the State.¹⁶² Non-essential businesses were closed from 23 March 2020, with restaurants and cafes only permitted to serve take-away food or hotel room

¹⁶⁰ Storen and Corrigan (n 6) 3.

¹⁶¹ Public Health (Further Extension of Declared Public Health Emergency — COVID-19) Regulation (No 3) 2022 (Qld).

¹⁶² Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020 (Cth) ('Biosecurity Determination 2020').

service.¹⁶³ Queensland's first lockdown started at 11:59pm on 29 March 2020¹⁶⁴ and was extended a number of times until 1 June 2020.¹⁶⁵ People were permitted to travel up to 50 km from their principal place of residence for approved recreational activities.¹⁶⁶ From 15 May 2020, seated dining was permitted, and recreational travel was permitted up to 500 km from a person's principal place of residence for residents of the Outback, and for up to 150 km from a person's principal place of residence for those who did not live in the Outback, with the

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- ¹⁶³ Chief Health Officer (Qld), *Non-Essential Business Closure Direction* (23 March 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/non-essential-business-closure-direction-23-03-2020>>.
- ¹⁶⁴ Chief Health Officer (Qld), *Home Confinement Direction* (29 March 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-direction-1>>.
- ¹⁶⁵ Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (2 April 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-movement-gathering-direction-1>>; Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 2) (26 April 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-movement-gathering-direction-2>>; Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 3) (1 May 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-movement-gathering-direction-3>>; Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 4) (8 May 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-movement-gathering-direction-4>>; Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 5) (14 May 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-movement-gathering-direction-5>>; Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 6) (19 May 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-movement-gathering-direction-6>>. Lockdown orders were effectively removed by Chief Health Officer (Qld), *Movement and Gathering Direction* (31 May 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/movement-and-gathering-direction>>, which replaced Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 6) (19 May 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-movement-gathering-direction-6>>.
- ¹⁶⁶ Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 2) (n 165); Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 3) (n 165); Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction* (No. 4) (n 165).

proviso that the person must not enter the Outback.¹⁶⁷ Queenslanders were able to travel freely within the State from 1 June 2020.¹⁶⁸

Queensland's second lockdown was a three-day lockdown for the Greater Brisbane area in January 2021 in response to cases of a more infectious strain of the virus.¹⁶⁹ Another three-day lockdown for the Greater Brisbane area — lockdown three — was imposed from 29 March to 1 April 2021.¹⁷⁰ Lockdown four was from 29 June 2021 to 2 July 2021, and applied to areas of South-East Queensland, as well as Townsville, Magnetic Island and Palm Island,¹⁷¹ although the lockdown for Brisbane City Council area and Moreton Bay Regional Council area was extended for another 24 hours and lifted on 3 July 2021.¹⁷²

During lockdown five, which commenced on 31 July 2021, large areas of South-East Queensland were placed in lockdown. The affected areas were Brisbane City Council, Gold Coast City Council, Ipswich City Council, Lockyer Valley Regional Council, Logan City Council, Moreton Bay Regional Council, Noosa Shore Council, Redland City Council, Scenic Rim Regional Council,

¹⁶⁷ Chief Health Officer (Qld), *Home Confinement, Movement and Gathering Direction (No. 6)* (n 165). This *Direction* included a list of areas of Queensland that were regarded as the Outback for the purposes of the *Direction*. It included the Shire Councils of Balonne, Banana, Barcoo, Boulia, Bulloo, Carpentaria, Cloncurry, Croydon, Diamantina, Etheridge, Flinders, McKinlay, Murweh, Paroo, Quilpie, Richmond and Winton and the Regional Shire Councils of Barcardine, Blackall-Tambo, Central Highlands, Longreach, Maranoa, and Mount Isa City Council.

¹⁶⁸ Annastacia Palaszczuk, 'Major Easing of Restrictions Will Open Queensland for Queenslanders' (Media Statement, Queensland Government, 31 May 2020) <<https://statements.qld.gov.au/statements/89931>>.

¹⁶⁹ Chief Health Officer (Qld), *Restrictions for Impacted Areas Direction (8 January 2021)* <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-impacted-areas>>. Greater Brisbane is composed of Brisbane City, Ipswich, Logan City, Moreton Bay and Redland City. This lockdown was effectively ended by the publication of Chief Health Officer (Qld), *Restrictions for Impacted Areas Direction (No. 2)* (11 January 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-impacted-areas-2>>.

¹⁷⁰ Chief Health Officer (Qld), *Restrictions for Impacted Areas Direction (No. 3)* (29 March 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/revocation-of-restrictions-for-impacted-areas-direction-3>>.

¹⁷¹ Chief Health Officer (Qld), *Restrictions for Impacted Areas Direction (No. 5)* (29 June 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-impacted-areas-5>>. The impacted areas were the following city council areas: Brisbane, Ipswich, Logan, Redland, Gold Coast, Townsville; the following regional council areas: Moreton Bay, Sunshine Coast, Somerset, Lockyer Valley, Scenic Rim; and Noosa Shire Council and Palm Island Aboriginal Shire Council.

¹⁷² Chief Health Officer (Qld), *Revocation of Restrictions for Locked Down Areas (Brisbane and Moreton Bay Lockdown) Direction* (3 July 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/revocation-of-restrictions-for-locked-down-areas>>.

Somerset Regional Council, Sunshine Coast Regional Council.¹⁷³ The lockdown was extended on 3 August 2021.¹⁷⁴ While the lockdown for Southeast Queensland ended on 8 August 2021,¹⁷⁵ a three-day lockdown for Cairns and Yarrabah — lockdown 6 — started on the same day and lasted for three days from 8–11 August 2021.¹⁷⁶

Table 5: Queensland Lockdowns

Queensland	Dates	Total Lockdown Period
Lockdown 1 — All Queensland	23 March – 1 June 2020	70
Lockdown 2 — Greater Brisbane	8–11 January 2021	3
Lockdown 3 — Greater Brisbane	29 March – 1 April 2021	3
Lockdown 4 — Southeast Queensland + Impacted Areas	29 June – 3 July 2021	4
Lockdown 5 — South-East Qld	31 July – 8 August 2021	8
Lockdown 6 — Cairns + Yarrabah	8–11 August 2021	3
Total		91

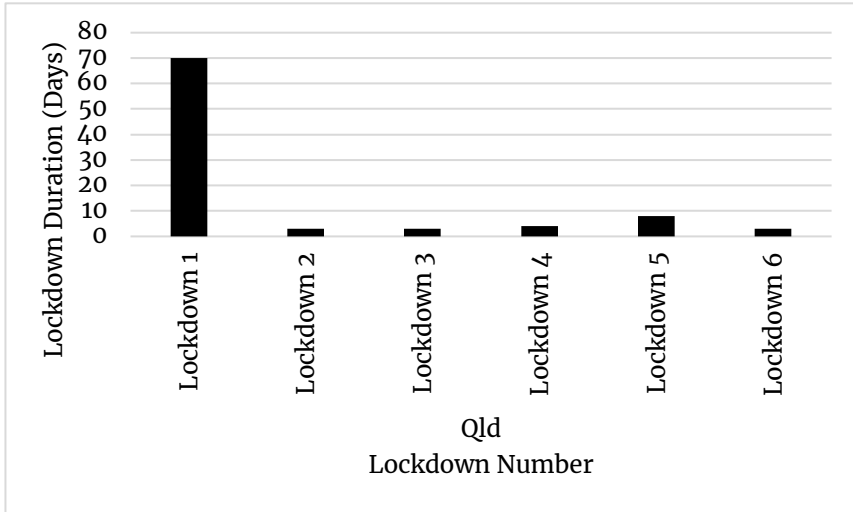
¹⁷³ Chief Health Officer (Qld), *Restrictions for Locked Down Areas (South-East Queensland) Direction* (31 July 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-for-locked-down-areas-1>>. See also ‘South-East Queensland is Going into Lockdown: Here Are Some of the COVID-19 Restrictions’, *ABC News* (online, 1 August 2021) <<https://www.abc.net.au/news/2021-07-31/queensland-covid-19-lockdown-restrictions/100339780>>.

¹⁷⁴ Chief Health Officer (Qld), *Restrictions for Locked Down Areas (South-East Queensland) Direction* (No. 2) (1 August 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-for-locked-down-areas-2>>; Chief Health Officer (Qld), *Restrictions for Locked Down Areas (South-East Queensland) Direction* (No. 3) (3 August 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-for-locked-down-areas-3>>.

¹⁷⁵ Chief Health Officer (Qld), *Restrictions for Locked Down Areas (South-East Queensland) Direction* (No. 4) (4 August 2021, revoked 8 August 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-for-locked-down-areas>>.

¹⁷⁶ Chief Health Officer (Qld), *Restrictions for Locked Down Areas (Cairns and Yarrabah) Direction* (8 August 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-for-locked-down-areas-cairns>>. See also ‘Lockdown Lifts in Queensland’s South, as Another Starts in the North. Here’s What You Need to Know’, *ABC News* (online, 8 August 2021) <<https://www.abc.net.au/news/2021-08-08/queensland-coronavirus-lockdown-lifts-explainer/100356356>>.

Figure 6: Duration of Each Lockdown in Queensland



D Tasmania

Tasmania recorded its first case of COVID-19 on 2 March 2020 and its first death on 30 March 2020.¹⁷⁷ A Public Health Emergency for Tasmania was declared on 17 March 2020, and a state of emergency was declared on 19 March 2020.¹⁷⁸ From 23 March 2020, a range of businesses were required to close, and social distancing measures were introduced in line with restrictions adopted across Australia.¹⁷⁹ Commencing 31 March 2020, Tasmanians were required to stay at home except for a limited number of reasons.¹⁸⁰ In mid-April, additional restrictions were

¹⁷⁷ Storen and Corrigan (n 6) 3.

¹⁷⁸ Melick (n 36) 14. See also *ibid* 61–2.

¹⁷⁹ Tasmanian Parliamentary Standing Committee of Public Accounts (n 36) 103.

¹⁸⁰ Director of Public Health (Tas), 'Public Health Act 1997 Direction Under Section 16' in Tasmania, *Tasmanian Government Gazette*, No 21 959, 31 March 2020, 167. This initial lockdown order was extended by directions called: Director of Public Health (Tas), 'Stay at Home Requirements – No. 2' in Tasmania, *Tasmanian Government Gazette*, No 21 969, 8 April 2020, 235; Director of Public Health (Tas), 'Stay at Home Requirements – No. 3' in Tasmania, *Tasmanian Government Gazette*, No 21 977, 22 April 2020, 269; Director of Public Health (Tas), 'Stay at Home Requirements – No. 4' in Tasmania, *Tasmanian Government Gazette*, No 21 988, 20 May 2020, 351; Director of Public Health (Tas), 'Stay at Home Requirements – No. 5' in Tasmania, *Tasmanian Government Gazette*, No 21 990, 27 May 2020, 374. See also Peter Gutwein, 'Press Conference — 30 March 2020: Coronavirus Update' (Press Conference, Department of Premier and Cabinet (Tas), 30 March 2020) <https://www.premier.tas.gov.au/covid-19_updates/press_conference_-_30_march_2020>.

imposed upon businesses in response to a cluster of cases in Northwest Tasmania. These business restrictions were imposed in Northwest Tasmania from 13 April 2020¹⁸¹ and lifted on 4 May 2020.¹⁸² Restrictions began to be eased from 11 May 2020 and the stay-at-home direction was revoked on 5 June 2020.¹⁸³ In October 2021 Hobart and Southern Tasmania entered a three-day lockdown.¹⁸⁴

Table 6: Tasmanian Lockdowns

Tasmania	Dates	Total Lockdown Period
Lockdown 1 — Tasmania	31 March – 5 June 2020	66
Lockdown 2 — Southern Tasmania	15–18 October 2021	3
Total		69

E Western Australia

Western Australia recorded its first case of COVID-19 on 21 February 2020 and its first death on 1 March 2020.¹⁸⁵ In March 2020 restrictions were imposed on entry into remote communities in designated areas of the State.¹⁸⁶ Western Australia introduced strict border controls in April 2020. These were to remain in place for

archived at <https://web.archive.org/web/20200401232052/https://www.premier.tas.gov.au/covid-19_updates/press_conference_-_30_march_2020>; Matt Maloney, 'Tasmanian Households Ordered to Go into Lockdown for Four Weeks Due to Coronavirus Pandemic', *The Examiner* (online, 31 March 2020) <<https://www.examiner.com.au/story/6704057/tasmanian-households-to-be-in-lockdown-for-month/>>.

¹⁸¹ Peter Gutwein and Sarah Courtney, 'Further Measures to Protect the North-West Community' (Media Release, Department of Premier and Cabinet (Tas), 12 April 2020)

<https://www.premier.tas.gov.au/releases/further_measures_to_protect_the_north-west_community>, archived at <https://web.archive.org/web/20200418145905/https://www.premier.tas.gov.au/releases/further_measures_to_protect_the_north-west_community>. See also Melick (n 36) 24.

¹⁸² Peter Gutwein, 'Additional North West COVID-19 Measures to be Lifted' (Media Release, Department of Premier and Cabinet (Tas), 1 May 2020)

https://www.premier.tas.gov.au/releases/additional_north_west_covid-19_measures_to_be_lifted, archived at <https://web.archive.org/web/20200502002409/https://www.premier.tas.gov.au/releases/additional_north_west_covid-19_measures_to_be_lifted>.

¹⁸³ Tasmanian Parliamentary Standing Committee of Public Accounts (n 36) 112–14.

¹⁸⁴ Director of Public Health (Tas), 'Stay at Home Requirements — Southern Lockdown — No. 1' in Tasmania, *Tasmanian Government Gazette*, No 22 133, 27 October 2021, 1028; Australian Associated Press, 'Hobart and Southern Tasmania Enter Snap Three-Day COVID Lockdown', *The Guardian* (online, 15 October 2021) <<https://www.theguardian.com/australia-news/2021/oct/15/hobart-and-southern-tasmania-enter-snap-three-day-covid-lockdown>>.

¹⁸⁵ Storen and Corrigan (n 6) 3.

¹⁸⁶ *Biosecurity Determination 2020* (n 162).

almost 700 days,¹⁸⁷ until the restrictions were lifted in March 2022.¹⁸⁸ Western Australia's border closure was also challenged unsuccessfully in the High Court with the plaintiff arguing unsuccessfully that the Western Australian directions that closed the Western Australian border were contrary to s 92 of the *Australian Constitution* which addresses freedom of interstate 'trade, commerce and intercourse'.¹⁸⁹ Western Australia's state of emergency and public health state of emergency which came into effect on 16 March 2020 were not lifted until 4 November 2022.¹⁹⁰ As detailed in Table 7 and Figure 7, the State entered a five-day lockdown in early 2021,¹⁹¹ a three-day lockdown in April 2021,¹⁹² and a further lockdown for four days from late June 2021.¹⁹³

¹⁸⁷ Cason Ho et al, 'WA Border to Open After Two Years of COVID-19 Travel Restrictions, Bringing Tears of Joy in Perth', *ABC News* (online, 3 March 2022) <<https://www.abc.net.au/news/2022-03-03/wa-border-opens-after-697-days-closed-as-first-planes-land-perth/100871788>>.

¹⁸⁸ Elias Visontay, 'Western Australia to Reopen 3 March to Triple-Vaccinated Travellers', *The Guardian* (online, 18 February 2022) <<https://www.theguardian.com/australia-news/2022/feb/18/western-australia-to-reopen-3-march-to-triple-vaccinated-travellers>>.

¹⁸⁹ *Palmer v Western Australia* (2021) 272 CLR 505.

¹⁹⁰ Department of the Premier and Cabinet (WA), 'Western Australia's State of Emergency Set to End', *Government of Western Australia* (News Story, 1 November 2022) <<https://www.wa.gov.au/government/announcements/western-australias-state-of-emergency-set-end>>; Department of the Premier and Cabinet (WA), 'COVID-19 Coronavirus: Declarations', *Government of Western Australia* (Web Page, 4 November 2022) <<https://www.wa.gov.au/government/document-collections/covid-19-coronavirus-declarations>>.

¹⁹¹ Commissioner of Police and State Emergency Coordinator (WA), *Stay at Home and Closure (Perth, Peel and the South West Regions) Directions (No 2)* (1 February 2021); Mark McGowan and Roger Cook, 'Western Australia Enters Five-Day Lockdown from 6pm Tonight' (Media Statement, Government of Western Australia, 31 January 2021) <<https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/Western-Australia-enters-five-day-lockdown-from-6pm-tonight-20210131>>.

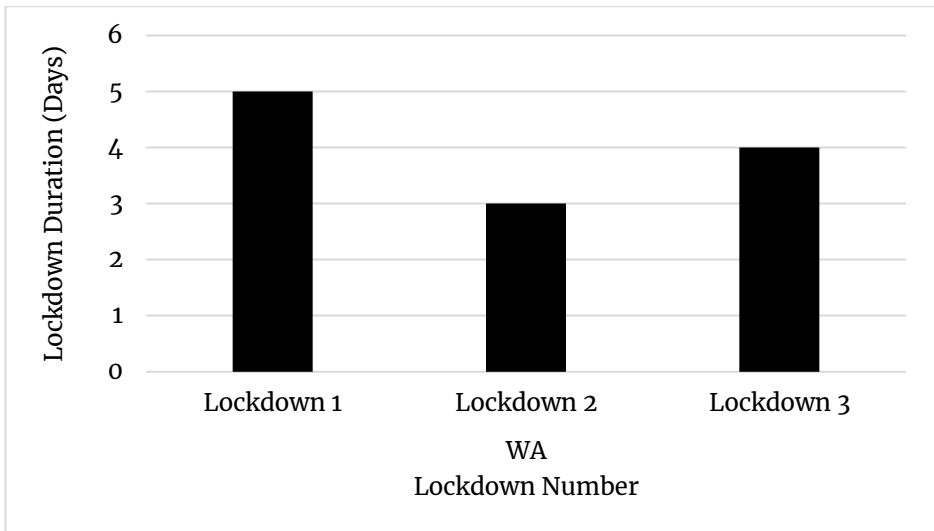
¹⁹² Department of the Premier and Cabinet (WA), 'Perth Metro and Peel to Enter a 3-day Lockdown', *Government of Western Australia* (News Story, 27 June 2023) <<https://www.wa.gov.au/government/announcements/perth-metro-and-peel-enter-3-day-lockdown>>; Department of the Premier and Cabinet (WA), 'End of Lockdown in Perth and Peel', *Government of Western Australia* (News Story, 26 June 2023) <www.wa.gov.au/government/announcements/end-of-lockdown-perth-and-peel>. See also Department of Health (WA), *PHEOC Bulletin No 59* (27 April 2021) <<https://www.lakegrace.wa.gov.au/council-meetings/ordinary-council-meetings/26-may-2021/184/documents/information-bulletin-26-may-2021.pdf>>.

¹⁹³ Commissioner of Police and State Emergency Coordinator (WA), *Outbreak Restrictions (Circuit-Break Lockdown -- Level 3) Directions* (28 June 2021); Department of the Premier and Cabinet (WA), '4-Day Lockdown Introduced for Perth and Peel', *Government of Western Australia* (News Story, 27 June 2023) <<https://www.wa.gov.au/government/announcements/4-day-lockdown-introduced-perth-and-peel>>. See also Department of Health (WA), *PHEOC Bulletin No 68* (29 June 2021) <https://www.ravensthorpe.wa.gov.au/Profiles/ravensthorpe/Assets/ClientData/Coronavirus/PHEOC_BULLETIN__68.pdf>.

Table 7: Western Australian Lockdowns

Western Australia	Dates	Total Lockdown Period
Lockdown 1 — Perth Metro + Peel and South West	31 January – 5 February 2021	5
Lockdown 2 — Perth Metro + Peel	24–27 April 2021	3
Lockdown 3 — Perth + Peel and Rottnest Island	29 June – 3 July 2021	4
Total		12

Figure 7: Duration of Each Lockdown in Western Australia



F Northern Territory

The Northern Territory recorded its first case of COVID-19 on 4 March 2020¹⁹⁴ and its first death on 2 December 2021.¹⁹⁵ A public health emergency was declared on 19 March 2020.¹⁹⁶ In March 2020, access to remote communities in the Northern Territory was restricted.¹⁹⁷ From 24 March 2020, travellers arriving in the Northern Territory were required to quarantine for 14 days, unless exempt.¹⁹⁸ On 23 March 2020, it was announced that, in line with the decision of National Cabinet, some businesses would close, and limits were imposed on the number of attendees at weddings and funerals.¹⁹⁹ Restrictions began to be eased from May 2020.²⁰⁰

As shown in Table 8 and Figure 8 below, the Northern Territory did not experience lockdowns until 2021 when, in the second half of 2021, the Northern Territory experienced a series of lockdowns in response to the Delta strain. While the first lockdowns in Darwin,²⁰¹ Alice Springs²⁰² and Katherine,²⁰³ respectively, were in late June through to August 2021, the remaining lockdown periods were in November and December 2021. As shown in Table 8 below, most of the lockdowns were for seven days or less. The exception to this was the lockdown in Binjari in November 2021 which lasted for 18 days. During this period, Binjari was in a hard lockdown from 20 November until 2 December 2021. During the hard lockdown, Binjari residents were prohibited from leaving their homes except for a very limited number of reasons: to receive medical treatment; to provide care or support to another person within the lockdown area who could not care for themselves; in an

¹⁹⁴ Storen and Corrigan (n 6) 4.

¹⁹⁵ Alicia Perera and Jacqueline Breen, 'Binjari Woman in her 70s Becomes First Person in Northern Territory to Die from COVID-19', *ABC News* (online, 4 December 2021) <<https://www.abc.net.au/news/2021-12-03/nt-covid-outbreak-first-death-binjari-woman-in-her-70s/100671362>>.

¹⁹⁶ Storen and Corrigan (n 6) 24.

¹⁹⁷ *Ibid* 24–5. See also *Biosecurity Determination 2020* (n 162).

¹⁹⁸ Storen and Corrigan (n 6) 25.

¹⁹⁹ *Ibid* 25. Remote communities were exempt from these requirements, given previously introduced measures.

²⁰⁰ *Ibid* 28.

²⁰¹ Chief Health Officer (NT), *COVID-19 Directions (No. 9) 2021: Directions to Lock Down Darwin, Palmerston, Litchfield, Wagait, Belyuen and Dundee Beach* (27 June 2021). This was extended by the following: Chief Health Officer (NT), *COVID-19 Directions (No. 13) 2021: Directions to Lock Down Darwin and Surrounding Areas of the Territory* (27 June 2021); Chief Health Officer (NT), *COVID-19 Directions (No. 16) 2021: Directions to Lock Down Darwin and Surrounding Areas of the Territory* (28 June 2021); Chief Health Officer (NT), *COVID-19 Directions (No. 20) 2021: Directions to Lock Down Darwin and Surrounding Areas of the Territory* (29 June 2021); Chief Health Officer (NT), *COVID-19 Directions (No. 25) 2021: Directions to Lock Down Darwin and Surrounding Areas of the Territory* (1 July 2021).

²⁰² Chief Health Officer (NT), *COVID-19 Directions (No. 21) 2021: Directions to Lock Down Alice Springs* (30 June 2021); Chief Health Officer (NT), *COVID-19 Directions (No. 23) 2021: Directions to Lock Down Alice Springs* (1 July 2021).

²⁰³ Chief Health Officer (NT), *COVID-19 Directions (No. 42) 2021: Directions to Lock Down Darwin and Surrounding Areas of the Territory and Katherine* (16 August 2021); Chief Health Officer (NT), *COVID-19 Directions (No. 46) 2021: Directions to Lock Down Katherine* (19 August 2021).

emergency; in order ‘to escape a risk of harm, including harm relating to family violence’; or if authorised by a law of the Territory or Commonwealth.²⁰⁴

In some instances, lockdowns were supplemented by lockouts which restricted movement into and out of areas covered by lockdowns. A further feature of the Northern Territory lockdowns was that in some instances, the stay-at-home orders only applied to unvaccinated persons. As is clear from Table 8, these directions meant longer stay-at-home periods for unvaccinated persons.

Table 8: Northern Territory Lockdowns

Northern Territory		Dates	Total Lockdown period
Lockdown 1	Darwin + surrounding areas	27 June – 2 July 2021	5
	Alice Springs	30 June – 3 July 2021	3
			6
Lockdown 2	Darwin + surrounding areas	16–19 August 2021	3
	Katherine	16–20 August 2021	4
			4
Lockdown 3	Katherine ²⁰⁵	5–7 November 2021	2
	Katherine (unvaccinated only) ²⁰⁶	7–8 November 2021	1

²⁰⁴ Chief Health Officer (NT), *COVID-19 Directions (No. 105) 2021: Directions for Hard Lockdown in Binjari* (27 November 2021) 3 cl 11. See also Myles Houlbrook-Walk, ‘After Enduring the Northern Territory’s Harsh COVID-19 Lockdown Rules, the Community of Binjari is Grieving’, *ABC News* (online, 12 December 2021) <<https://www.abc.net.au/news/2021-12-12/nt-binjari-grieves-after-covid-outbreak/100693438>>.

²⁰⁵ Acting Chief Health Officer (NT), *COVID-19 Directions (No. 59) 2021: Directions to Lock Down Katherine* (4 November 2021); Acting Chief Health Officer (NT), *COVID-19 Directions (No. 68) 2021: Directions to Lock Down Katherine* (5 November 2021); Acting Chief Health Officer (NT), *COVID-19 Directions (No. 71) 2021: Directions to Lock Out Katherine* (7 November 2021) (‘Directions to Lock Out Katherine’).

²⁰⁶ *Directions to Lock Out Katherine* (n 205).

	Darwin + surrounding areas (unvaccinated only) ²⁰⁷	5–9 November 2021	4
			4
Lockdown 4	Katherine ²⁰⁸	15–18 November 2021	3
	Robinson River + surrounding homelands ²⁰⁹	15–18 November 2021	3
			3
Lockdown 5	Binjari ²¹⁰	20 November – 8 December 2021	18
	Robinson River (unvaccinated only) ²¹¹	22 November – 1 December 2021	9
	Katherine (unvaccinated only) ²¹²	27 November – 8 December 2021	11
	Lajamanu ²¹³	27 November – 1 December 2021	4
		1–7 December 2021	6

²⁰⁷ Acting Chief Health Officer (NT), COVID-19 Directions (No. 61) 2021: Directions to Lock Out Darwin and Surrounding Areas of the Territory (4 November 2021); Acting Chief Health Officer (NT), COVID-19 Directions (No. 67) 2021: Directions to Lock Out Darwin and Surrounding Areas of the Territory (5 November 2021); Acting Chief Health Officer (NT), COVID-19 Directions (No. 76) 2021: Directions to Lock Out Darwin and Surrounding Areas of the Territory (8 November 2021).

²⁰⁸ Acting Chief Health Officer (NT), COVID-19 Directions (No. 85) 2021: Directions to Lock Down Katherine (15 November 2021).

²⁰⁹ Acting Chief Health Officer (NT), COVID-19 Directions (No. 86) 2021: Directions to Lock Down Robinson River and Homelands (15 November 2021).

²¹⁰ Acting Chief Health Officer (NT), COVID-19 Directions (No. 94) 2021: Hard Lockdown of Binjari and Rockhole (20 November 2021); Acting Chief Health Officer (NT), COVID-19 Directions (No. 105) 2021: Directions for Hard Lockdown in Binjari (27 November 2021); Deputy Chief Health Officer (NT), COVID-19 Directions (No. 112) 2021: Directions to Lock Down Binjari (2 December 2021); Deputy Chief Health Officer (NT), COVID-19 Directions (No. 115) 2021: Amendment of COVID-19 Directions (No.106) 2021 and revocation of COVID-19 Directions (No. 112) 2021 (6 December 2021) ('COVID-19 Directions (No. 115) 2021').

²¹¹ Acting Chief Health Officer (NT), COVID-19 Directions (No. 97) 2021: Directions to Lock Out Robinson River and Surrounding Homelands (22 November 2021).

²¹² Acting Chief Health Officer (NT), COVID-19 Directions (No. 106) 2021: Directions to Lock Out Katherine (27 November 2021); COVID-19 Directions (No 115) 2021 (n 210).

²¹³ Acting Chief Health Officer (NT), COVID-19 Directions (No. 108) 2021: Directions to Lock Down Lajamanu and Homelands (27 November 2021), revoked by Acting Chief Health Officer (NT), COVID-19 Directions (No. 111) 2021: Directions to Lockout Lajamanu and Homelands (1 December 2021) ('COVID-19 Directions (No. 111) 2021').

	Lajamanu (unvaccinated only) ²¹⁴		
			18
Lockdown 6	Beswick (unvaccinated only) ²¹⁵	11–14 December 2021	3
	Kalkarindji + Daguragu ²¹⁶ (unvaccinated only)	14–17 December 2021	3
	Timber Creek + Gilwi ²¹⁷ (unvaccinated only)	14–17 December 2021	3
	Tennant Creek ²¹⁸	17–22 December 2021	5
	Ali Curung + Imangara + Imperrenth + Double D + Junkaji and Wakurlpu ²¹⁹	19–22 December 2021	3
	Tennant Creek (unvaccinated only) ²²⁰	23–29 December 2021	6
			18
Total			53

²¹⁴ COVID-19 Directions (No. 111) 2021 (n 213).

²¹⁵ Acting Chief Health Officer (NT), COVID-19 Directions (No. 121) 2021: Directions to Lock Out Beswick (11 December 2021).

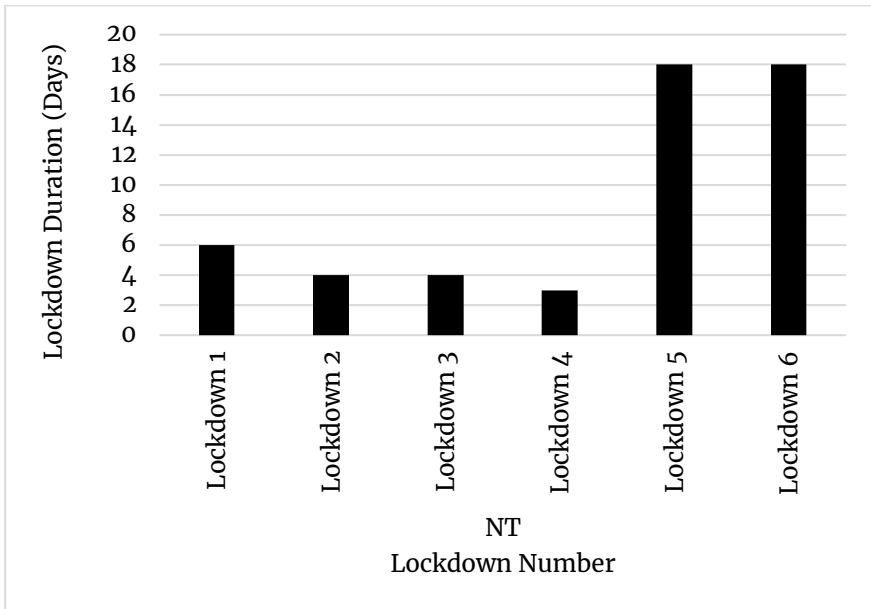
²¹⁶ Chief Health Officer (NT), COVID-19 Directions (No. 125) 2021: Directions to Lock Out Kalkarindji and Daguragu (14 December 2021).

²¹⁷ Chief Health Officer (NT), COVID-19 Directions (No. 126) 2021: Directions to Lock Out Timber Creek and Gilwi (14 December 2021).

²¹⁸ Chief Health Officer (NT), COVID-19 Directions (No. 127) 2021: Directions to Lockdown Tennant Creek (17 December 2021); Chief Health Officer (NT), COVID-19 Directions (No. 135) 2021: Amendment and Revocation of Other Directions (20 December 2021). See also Samantha Dick and Steve Vivian, 'NT Town of Tennant Creek Enters Lockdown After Four COVID-19 Cases Recorded in Community', ABC News (online, 17 December 2021) <<https://www.abc.net.au/news/2021-12-17/nt-covid-tennant-creek-lockdown/100708100>>; Steve Vivian, 'NT Records Three New COVID-19 Cases as Tennant Creek Lockdown Extended', ABC News (online, 20 December 2021) <<https://www.abc.net.au/news/2021-12-20/nt-covid-outbreak-tennant-creek-ali-curung-katherine/100713116>>.

²¹⁹ Chief Health Officer (NT), COVID-19 Directions (No. 133) 2021: Directions to Lock Down Ali Curung, Imangara, Imperrenth, Double D, Junkaji and Wakurlpu (19 December 2021).

²²⁰ Chief Health Officer (NT), COVID-19 Directions (No. 140) 2021: Directions to Lock Out Tennant Creek (23 December 2021).

Figure 8: Duration of Each Lockdown in the Northern Territory

G South Australia

South Australia recorded its first case of COVID-19 on 1 February 2020 and its first death on 7 April 2020.²²¹ South Australia declared a major emergency in relation to COVID-19 on 22 March 2020 and the declaration remained in place until 24 May 2022 — a total of 793 days.²²² On 22 March 2020, the Premier announced that the State's borders would be closed from 24 March with travellers arriving from interstate or overseas required to self-isolate for 14 days.²²³ In March 2020, restrictions were imposed on entry into remote communities in designated areas in the State.²²⁴ In November 2020, all of South Australia entered a six-day 'circuit breaker' lockdown in which people were required to stay at home except for a

²²¹ Storen and Corrigan (n 6) 3.

²²² 'COVID Major Emergency Declaration Ends', *Government of South Australia* (News Story, 24 May 2022) <<https://www.premier.sa.gov.au/media-releases/news-items/covid-major-emergency-declaration-ends>>.

²²³ Storen and Corrigan (n 6) 6, 45.

²²⁴ *Biosecurity Determination 2020* (n 162).

small number of specified reasons, such as to receive medical care.²²⁵ The lockdown commenced on 19 November 2020,²²⁶ was extended on 20 November²²⁷ and ended on 22 November 2020.²²⁸ In July 2021, South Australia entered a week-long lockdown in response to cases of the Delta variant. The lockdown commenced on 20 July 2021²²⁹ and ended on 27 July 2021.²³⁰

Table 9: South Australian Lockdowns

South Australia	Dates	Total Lockdown Period
Lockdown 1 (statewide)	19–22 November 2020	3
Lockdown 2 (statewide)	20–27 July 2021	7
Total		10

H Australian Capital Territory

The ACT reported its first case of COVID-19 on 12 March 2020 and its first death on 30 March 2020.²³¹ A public health emergency was declared on 16 March 2020.²³² Although the ACT did not enter a lockdown with stay-at-home orders during this initial period of the pandemic, restrictions on gatherings were imposed and non-essential businesses were closed. Indoor gatherings of more than 100 people²³³ and outdoor gatherings of more than 500 people²³⁴ were prohibited from 19 March 2020.

²²⁵ Bension Siebert and Rebecca Brice, 'South Australia Ordered into Six-day Lockdown Amid Coronavirus Outbreak', *ABC News* (online, 18 November 2020) <<https://www.abc.net.au/news/2020-11-18/sa-ordered-into-major-lockdowns-amid-coronavirus-outbreak/12894666>>.

²²⁶ Commissioner of Police and State Co-ordinator (SA), *Emergency Management (Stay at Home) (COVID-19) Direction 2020* (18 November 2020).

²²⁷ Commissioner of Police and State Co-ordinator (SA), *Emergency Management (Stay at Home No 2) (COVID-19) Direction 2020* (19 November 2020); Commissioner of Police and State Co-ordinator (SA), *Emergency Management (Stay at Home No 3) (COVID-19) Direction 2020* (20 November 2020) ('*Stay at Home No 3 Direction 2020*').

²²⁸ *Stay at Home No 3 Direction 2020* (n 227).

²²⁹ Jack Paynter and Health Parkes-Hupton, 'South Australia Heads into Lockdown After Fifth Covid-19 Recorded', *News.com.au* (online, 20 July 2021) <www.news.com.au/national/south-australia/south-australia-records-one-new-local-covid19-case-as-restrictions-tighten/news-story/edb822e1da5664bcec5f7bca72f24efb>.

²³⁰ Rebecca Opie, 'South Australia's COVID-19 Lockdown is Ending — Here's What You Will and Won't Be Able to Do', *ABC News* (online, 26 July 2021) <<https://www.abc.net.au/news/2021-07-26/what-restrictions-will-remain-when-sa-covid-19-lockdown-ends/100323482>>.

²³¹ Storen and Corrigan (n 6) 4.

²³² *Ibid* 7.

²³³ Chief Health Officer (ACT), *Public Health (Indoor Gatherings) Emergency Direction 2020* (NI2020-162, 19 March 2020).

²³⁴ Chief Health Officer (ACT), *Public Health (Outdoor Gatherings) Emergency Direction 2020* (NI2020-163, 19 March 2020).

Non-essential businesses and activities were closed from 23 March 2020, in line with the decision of National Cabinet.²³⁵ From 11:59pm on 31 March 2020, restrictions were imposed on the number of visitors people could have in their homes.²³⁶ Some easing of restrictions was announced on 1 May 2020,²³⁷ with a further easing of restrictions during May and June 2020.²³⁸ The ACT entered a period of lockdown from 12 August 2021. Initially for a period of seven days,²³⁹ the lockdown was extended a number of times and was finally lifted on 15 October 2021.²⁴⁰

Table 10: Australian Capital Territory Lockdowns

ACT	Dates	Total Lockdown Period
Lockdown 1	12 August – 15 October 2021	64
Total		64

VI LOCKDOWNS AND THE RULE OF LAW

By charting the course of the pandemic through the lockdown laws of 2020–21, we have provided a rich doctrinal history of the primary legal sources for the lockdowns that were such a defining feature of the COVID-19 pandemic.

There are two key findings from our analysis. First, there were pronounced differences in the number and duration of lockdowns experienced by people in different states and territories in Australia. To a large degree, these differences were shaped by Australian federalism, as most of the lockdown laws were made under state or territory public health laws. While some national harmonisation occurred, for example, through the National Cabinet, the reality was that state and territory governments made their own decisions about the geographic reach and duration of lockdowns within their borders,²⁴¹ and the locking out of others

²³⁵ Storen and Corrigan (n 6) 8. See, eg, Chief Health Officer (ACT), *Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020* (NI2020-169, 23 March 2020).

²³⁶ Chief Health Officer (ACT), *Public Health (Non-Essential Gatherings) Emergency Direction 2020* (NI2020-202, 31 March 2020).

²³⁷ Storen and Corrigan (n 6) 11.

²³⁸ *Ibid* 12–13.

²³⁹ Chief Health Officer (ACT), *Public Health (Lockdown Restrictions) Emergency Direction 2021 (No 1)* (NI2021-480, 12 August 2020); Australian Capital Territory Government, 'Seven-Day Lockdown for the ACT', *COVID-19* (News Article, 12 August 2021) <<https://www.covid19.act.gov.au/news-articles/seven-day-lockdown-for-the-act>>, archived at <<https://web.archive.org/web/20210812023408/https://www.covid19.act.gov.au/news-articles/seven-day-lockdown-for-the-act>>. See also ACT Select Committee on the COVID-19 2021 Pandemic Response (n 38) 2.

²⁴⁰ ACT Select Committee on the COVID-19 2021 Pandemic Response (n 38) 3–4.

²⁴¹ Scott Stephenson, 'The Relationship Between Federalism and Rights During COVID-19' (2021) 32(3) *Public Law Review* 222, 224.

through domestic border closures.²⁴² This localised decision-making meant that, 'limitations were imposed by decision-makers that had detailed knowledge of local conditions, were closely accountable to affected persons, and were in a better position to explain and therefore justify their decisions to members of the public'.²⁴³ However, it also meant that there were inconsistencies between the states in terms of their responses that added to the challenges for members of the public in understanding the implications of the restrictions.²⁴⁴

These differing experiences of the pandemic are also reflected in public sentiment. In its recent report on the COVID-19 pandemic and human rights in Australia, the Australian Human Rights Commission reported that in a quantitative survey of more than 3,000 participants, 66% believed 'that their State Government took the appropriate steps to stop the spread of COVID-19'.²⁴⁵ However, the results varied between the states and territories, with the Northern Territory (83%), Western Australia (79%) and South Australia (78%) receiving the highest results agreeing with the statement. This compared to Tasmania (71%), the ACT (69%), and NSW and Queensland (both 68%). Victoria, the most locked down state in terms of number and duration of lockdowns, only had 54% of participants agree with the statement.

The second key finding from our analysis relates to the sheer number of orders and directions that were introduced during 2020–21, the difficulty that existed in locating the primary sources for the public health requirements, and the frequency with which they changed. All of these factors presented challenges to the rule of law. Commentators have noted the difficulties with locating the directions and orders and the challenges this presents for clarity about obligations.²⁴⁶ As one commentator noted in 2020: 'Given the number of declarations, directions and amendments being made to facilitate the response to COVID-19, knowing what the law is at a given point in time and how it will be implemented has become a daily challenge'.²⁴⁷

In its quantitative survey of more than 3,000 participants, the Australian Human Rights Commission reported that 42% of respondents agreed (29% mildly agreed; 13% strongly agreed) with the statement 'I was not always clear on what the current restrictions were'.²⁴⁸ In its report the Commission observed: 'If

²⁴² Ibid 229–30.

²⁴³ Ibid 224.

²⁴⁴ Ibid.

²⁴⁵ Australian Human Rights Commission, *Collateral Damage: What the Untold Stories from the COVID-19 Pandemic Reveal About Human Rights in Australia* (Report, March 2025) 28.

²⁴⁶ Boughey (n 49); Edgar (n 52); McLeod (n 52) 6; Peta Stephenson and Jonathan Crowe, 'Queensland Public Health Laws and COVID-19: A Challenge to the Rule of Law?' *Australian Public Law* (Blog Post, 21 August 2020) <<https://www.auspublaw.org/blog/2020/08/queensland-public-health-laws-and-covid-19-a-challenge-to-the-rule-of-law>>.

²⁴⁷ Katie Miller, 'Finding Law in a Time of Emergency: COVID-19' (2020) 27(2) *Australian Journal of Administrative Law* 66, 68.

²⁴⁸ Australian Human Rights Commission (n 245) 94.

close to half of the population is unsure what the current regulations are, this raises serious concerns about human rights, the rule of law, and the validity of enforcing rules that people did not necessarily know they are breaking'.²⁴⁹

It is important to recognise what aspect of the rule of law was lacking in the legal response of different state and territory governments to the pandemic. This article highlights that the principle of openness/transparency of laws was one of the major rule of law failings across the nation. Authors such as Fuller, Raz and Lord Bingham all stress the importance of legal certainty to the operation of the rule of law.²⁵⁰ Laws must be clear, published and relatively stable, so that law-abiding citizens can conduct their lives in accordance with the law.²⁵¹ Some situations demand frequent changes to the law, but that simply increases the need for government to openly and transparently publish those laws. When public health directions are issued that majorly curtail fundamental rights, including a requirement that people stay in their homes, then there is a concomitant need for those directions to be readily accessible and understood by members of the public. Accessibility means that there is a known resource (in the form of a government website, or the government gazette) that contains for example, all of the public health directions relating to lockdowns. Whilst media reporting through traditional outlets and social media was helpful in terms of informing the public about the area of effect, duration and conditions of a lockdown, this was not a substitute for a well compiled government resource that captured verbatim each public health direction.

VII CONCLUSION: THE FUTURE OF PUBLIC HEALTH DIRECTIONS

As our analysis has illustrated, there was considerable variation between Australian states and territories in terms of the number and duration of lockdowns in response to the COVID-19 pandemic in 2020 and 2021. This variation was understandable given factors such as differences between jurisdictions in the number of COVID-19 cases, differing approaches to and availability of hotel quarantine, and state-based differences in views about closure of state borders,²⁵² as well as population density and rolling vaccination rates across geographical locations.

Analysing the frequency and duration of the lockdowns in response to COVID-19 across the Australian states and territories has presented significant challenges. These challenges arose in three main areas: (i) the difficulty in some jurisdictions with locating historical directions; (ii) the number of directions, and the frequency with which they were introduced or amended; and (iii) the titles given to the directions in some jurisdictions. Together these challenges made it

²⁴⁹ Ibid.

²⁵⁰ Fuller (n 15) 33–9; Raz (n 12) 214–18; Bingham (n 17) 37–8.

²⁵¹ Ibid.

²⁵² For discussion, see Stephenson (n 241) 224–6.

difficult to readily identify the periods of lockdown and the restrictions that applied during those periods.

We have outlined in Part II the methodology that was used to locate the relevant public health directions in each jurisdiction. In some jurisdictions, such as Tasmania and Western Australia for example, historical restrictions were not included on the government webpage for coronavirus restrictions.²⁵³ In other jurisdictions, such as Queensland, all directions were readily available. In Victoria, the introduction of a Pandemic Orders Register following amendment of the public health legislation in 2021 will ensure that orders are readily available during any future emergency. The introduction of similar legislative provisions in other states and territories would ensure that public health orders and directions made during an emergency are readily available to the public during the emergency, and also available for historical analysis following the emergency.²⁵⁴

Another area in which reform would be welcome is in the titles given to public health orders and directions. In some instances, the topic and content of the order were clear from the title; for example, the *Stay at Home Directions* made in Victoria,²⁵⁵ the *Home Confinement Directions* in Queensland,²⁵⁶ or the *Lockdown Directions* made in the Northern Territory.²⁵⁷ In other instances, stay-at-home requirements were included within orders that had broader titles covering a geographic area, as for example in NSW with the orders relating to the Northern Beaches²⁵⁸ or Greater Sydney,²⁵⁹ or in Queensland in orders for impacted areas.²⁶⁰ These broader titles make it more difficult to identify the orders and directions that relate to lockdowns and stay-at-home orders. Providing a title which clearly indicates the topic and content of the order would help to address this issue.

²⁵³ For discussion of Western Australia, see Falck, Kerr and Rizzi (n 21).

²⁵⁴ See also *ibid.* Miller has recommended the establishment of a single website covering both federal and state laws to ensure citizens can find the relevant laws affecting their right during the pandemic, chart the changes to laws during the recovery phase and assist with deciding which laws should be retained or repealed, and to assist with historical legal analysis: Miller (n 247) 69.

²⁵⁵ See, eg, Deputy Chief Health Officer (Communicable Disease) (Vic), 'Stay at Home Directions' in Victoria, *Victoria Government Gazette*, No S 169, 31 March 2020, 8.

²⁵⁶ See, eg, Chief Health Officer (Qld), *Home Confinement Direction* (29 March 2020) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/home-confinement-direction-1>>.

²⁵⁷ See, eg, Chief Health Officer (NT), *COVID-19 Directions (No. 42) 2021: Directions to Lock Down Darwin and Surrounding Areas of the Territory and Katherine* (16 August 2021).

²⁵⁸ See, eg, *Public Health (COVID-19 Northern Beaches) Order 2020* (NSW).

²⁵⁹ See, eg, *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* (NSW), as at 26 June 2021.

²⁶⁰ See, eg, Chief Health Officer (Qld), *Restrictions for Impacted Areas Direction* (8 January 2021) <<https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-impacted-areas>>.

Ideally, the titles given to directions and orders made during a public health emergency would also be an issue for national harmonisation.²⁶¹

Clarity of public health orders and directions during an emergency is of vital importance. While emergencies require flexible forms of regulation to deal with rapidly evolving situations, the speed and frequency with which public health directions (and therefore the legal obligations of the public) may change, requiring clear and accessible means of communicating public health laws in an emergency.

²⁶¹ See also, Peta Stephenson, Ian Freckelton and Belinda Bennett, 'Public Health Emergencies in Australia' in Belinda Bennett and Ian Freckelton (eds) *Pandemics, Public Health Emergencies and Government Powers: Perspectives on Australian Law* (Federation Press, 2021) 69, 89 arguing for harmonised public health legislation.