

Reflections on the Influenza Pandemic of 1919

By Dominic Villa SC

In 1918, as the Great War drew to a close, the death and morbidity of war was soon to be replaced on a much larger scale by a global pandemic of a particularly virulent form of influenza. It is commonly referred to as the 'Spanish Flu' because the first uncensored news reports came from Spain, although it did not originate from there (the Spanish referred to it as the French Flu in the belief it had originated there). Its spread throughout the world was facilitated by the repatriation of troops who had fought during the war.

The response of governments in Australia to this pandemic bears a striking familiarity to the response of governments to the COVID-19 pandemic: enthusiastic cooperation followed by a splintering of the unified approach; conflicts between the Commonwealth and the States, and between the States themselves; debate about the utility and proportionality of restrictions on movement and gatherings; should schools remain open or closed; should we be wearing masks.

In this article I describe the acquisition of quarantine powers by the Commonwealth at Federation, and then describe some of the attempts at cooperation between the Commonwealth and the States in addressing the influenza pandemic, the restrictions imposed by the NSW Government to quell the spread of the disease, and describe a peculiar fascination with masks in the courts.

The Commonwealth power over quarantine

There was not a great deal of consideration of the power to enact laws with respect to quarantine during the convention debates that led to the federation of the Australian Colonies. The first reference to it was in Proceedings No 3 of the 1890 Australasian Federation Conference where it was simply observed that under the British North America Act quarantine was a power that was exclusive to the federal legislature.¹ During the debates of the 1891 Australasian Federation Conference quarantine was noted to be a matter of 'federal concern',² and a matter about which 'no question of state rights can be conceivably involved'.³



It appeared in the draft Commonwealth of Australia Bill adopted by the National Convention on 9 April 1891 as one of the proposed enumerated powers of the Commonwealth Parliament, and one of the departments of the states to be assigned to and assumed by the Commonwealth Executive immediately upon Federation (this provision was later limited to excise and customs, with the transfer of other departments to occur, if at all, by proclamation).

The cost to government of the provision of quarantine was a concern to the 1897 Australasian Federation Conference.⁴ Dr Cockburn noted that because of the vast geographical scope of the Australian continent with its various climactic zones there was a potential for conflict between the interest of the Commonwealth and of a State with respect to the localised outbreak of disease.⁵ The question of quarantine arose as an issue with respect to freedom of interstate trade and commerce, and the capacity of the federal government to administer laws regulating plant and stock diseases,⁶ but there was no dissent from the proposition that the Commonwealth Parliament should have legislative authority over quarantine. There was a question about the scope of the quarantine power, with Richard O'Connor proposing an amendment that would have replaced the word 'quarantine' with the words 'public health in relation to infection or contagion from outside the commonwealth'. Following a brief debate, however, the proposed amendment was not formally moved.⁷

Dr Cockburn again raised concerns about the potential for conflict between the Commonwealth and the States in the exercise of the quarantine power in the 1898 Australasian Federation Conference (his concern being the exercise of the power to acquire property to establish a leper colony against the wishes of the residents of the affected State).⁸ A further debate about the content of the quarantine power was referred to by Edmund Barton in the context of discussion about freedom of interstate trade, where it was suggested that it 'simply applies to quarantine as referring to diseases among man-kind' and was not 'intended to enable the Commonwealth to deal with such matters as the tick disease'.⁹ There was no attempt to clarify whether or not the power was in fact intended to extend to stock diseases, and Barton's limited view of its scope was not more widely embraced.

Ultimately, the Commonwealth's power to legislate (concurrently with the States) was conferred by s 51(ix) of the Constitution with the simple descriptor of 'Quarantine'.

At the sitting of the first Commonwealth Parliament on 10 May 1901 the Governor-General's speech recorded quarantine as being among the 'subjects of proposed legislation' for consideration by the First Parliament, and it was an issue that was soon taken up in the House of Representatives. Section 69 of the Constitution provided that on a date to be proclaimed by the Governor-General certain departments of the public service in each State would be transferred to the Commonwealth. From very early on the Government was urged to take over the quarantine departments in the various States. It was pointed out that 'if certain ships had been properly inspected at the various ports they visited, this serious outbreak in Sydney and Melbourne would not have occurred'.¹⁰ The reference is to outbreaks of smallpox that arrived in Sydney and Melbourne aboard the *Chingtu* and the *Ormuz* respectively.

The official position of the Commonwealth was that it would be necessary to enact legislation before taking over the quarantine departments,¹¹ although the absence of

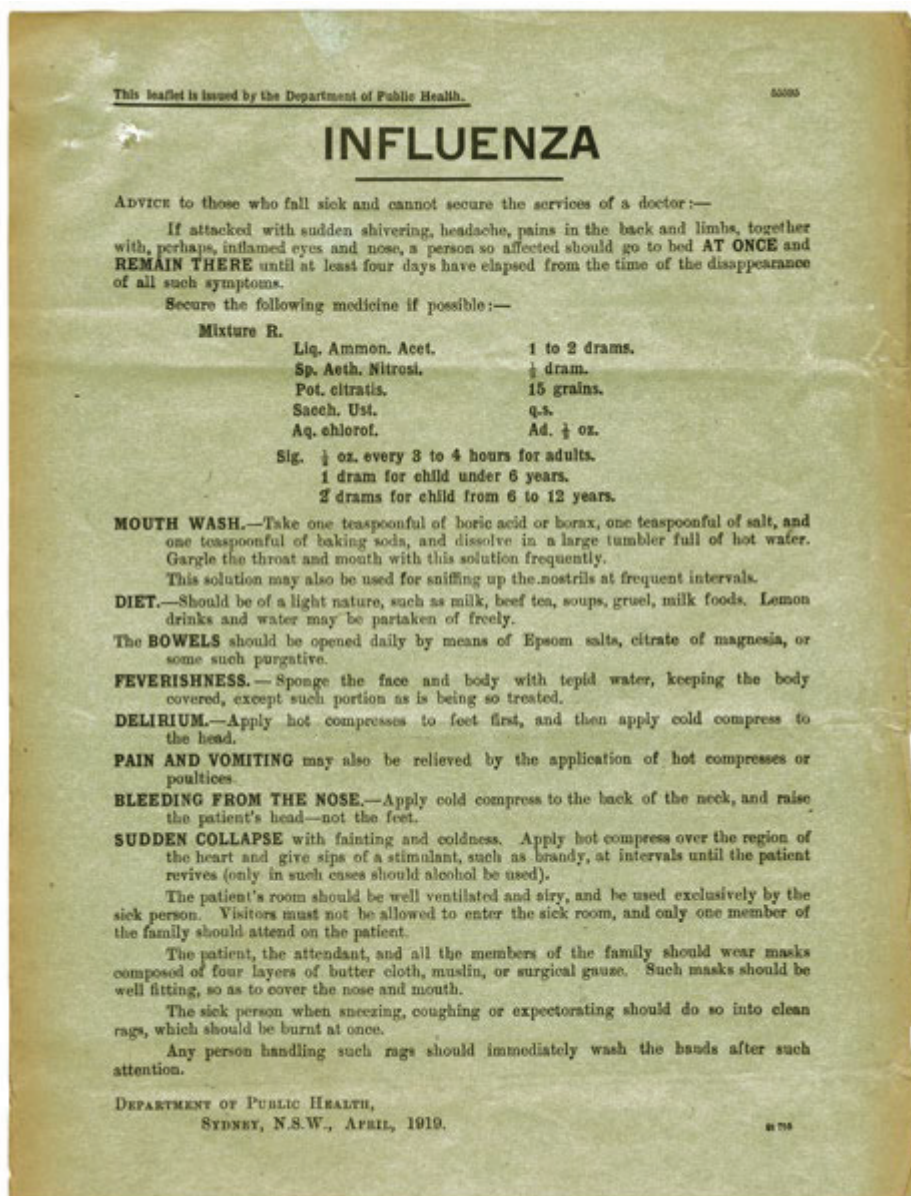
legislation did not apparently prevent the Commonwealth from taking over the departments of Posts, Telegraphs, and Telephones on 14 February 1901¹² or the departments of Naval and Military Defence on 20 February 1901.¹³ The Government claimed the legislation could not be considered at 'the fag end' of the first parliamentary session,¹⁴ and the question was thereafter delayed pending a Federal Quarantine Conference that was held in 1903. A perhaps disingenuous attempt to deflect the simmering controversy over the failure to take over state responsibilities for quarantine was made by short-lived Prime Minister Watson in 1904, who suggested that a proclamation could not be made under s 69 because there were no departments of quarantine in the States, the quarantine functions being part of the departments of Health.¹⁵

Despite the urgings of some members of the Parliament, the Commonwealth did not exercise its power under section 69 to take over the quarantine departments of the various states, and while certain quarantine measures were implemented at a federal level under the *Customs Act 1901* and under the *Immigration Restriction Act 1901*, no general quarantine legislation was enacted until the passage of the *Quarantine Act 1908*, which received Royal Assent on 30 March 1908 but did not come into force until 1 July 1909.¹⁶

The Spanish Flu pandemic bears down upon Australia

In July 1918, unofficial advices had been received by the Commonwealth Quarantine Service that there was evidence of an impending epidemic of a severe form of influenza. In the early part of October it became apparent that the disease had progressed in its march around the world to such an extent that it was within striking distance of Australia. Instructions were issued to all officers of the quarantine service to order into quarantine any vessel that had any cases of influenza during the voyage. The necessity for these instructions was confirmed a few days later when telegrams arrived advising that a severe and virulent epidemic was prevalent in South Africa.

As well as full quarantine of vessels that were actually infected with the disease, quarantine detention for observation was imposed on all vessels coming from countries adjacent to Australia in which it was known that the disease was prevalent. This measure was applied to vessels from South Africa, New Zealand, and the South Sea Islands, and for a time to vessels from America. In all vessels which were detained, a daily thermometer parade was held; any person showing a temperature of 99°F or over was isolated for observation.

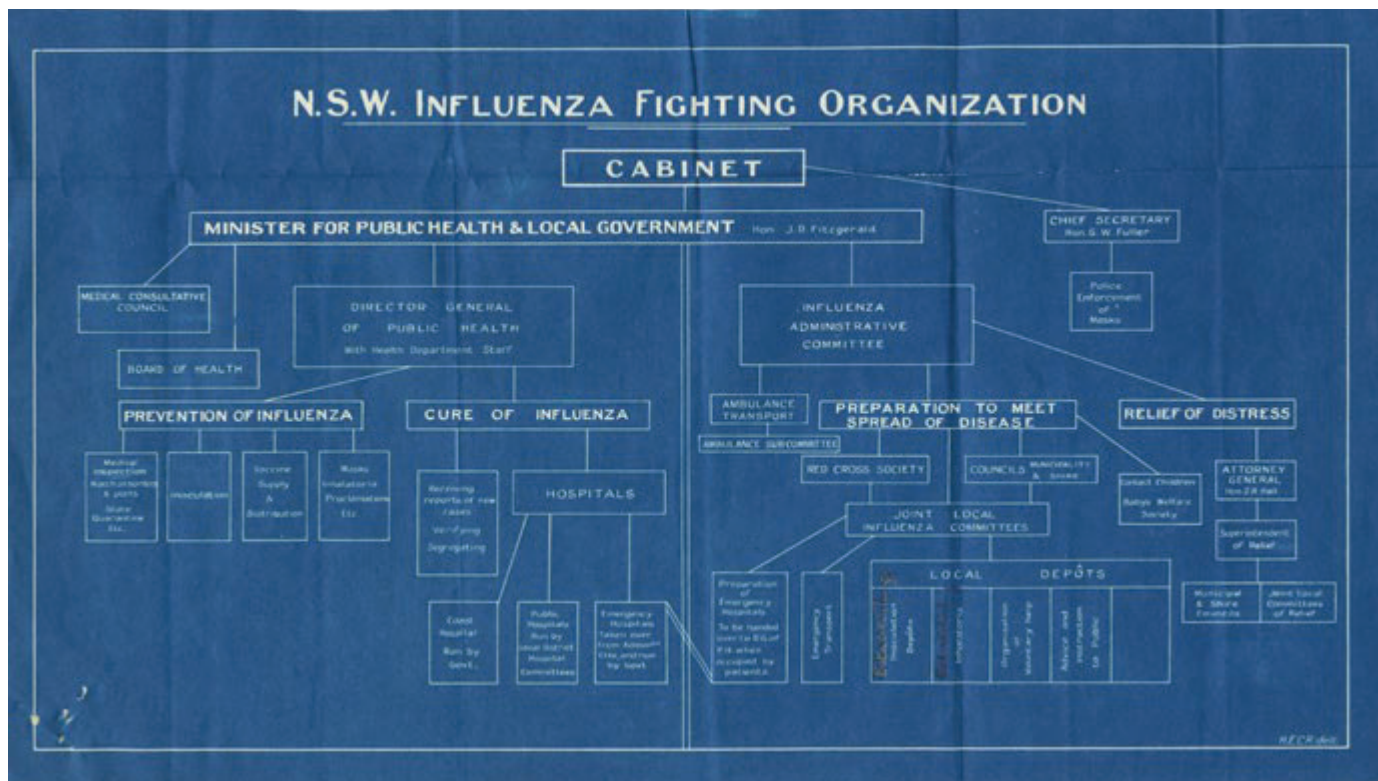


One initial difficulty that presented itself was in establishing a diagnosis of influenza, particularly under conditions which any quarantine system would have to fulfil, namely, accepting the statements of ships' staff. Influenza was, it was noted, among all diseases the one concerning which confusion in diagnosis, particularly in mild cases, was likely to arise. Accordingly, under the powers contained in the Quarantine Act of proclaiming a disease as a quarantinable disease, the following phraseology was adopted: 'Influenza, or any febrile, toxic, septicæmic conditions similar to influenza, is hereby declared to be a quarantinable disease.'¹⁷

An early case of misdiagnosis involved a man named MacAllister who arrived in Newcastle from Melbourne on 25 February 1919 in the steamer *Ooma*, suffering from an illness which was diagnosed by the ship's surgeon and the acting health officer

at Newcastle as typhoid fever. Neither of those officers had had any experience of pneumonic influenza. The patient was admitted into the Newcastle Hospital and died on 3 March 1919. The post-mortem examination disclosed all the signs of pneumonic influenza and none of typhoid fever. Meanwhile, five nurses, six other hospital patients, two wardsmen, and one doctor, all of whom had been in the same ward with MacAllister during his illness, developed pneumonic influenza.

The voyage of the *SS Medic* in November 1918 dramatically illustrated the tragic connection between the Great War and the influenza pandemic that followed. The *Medic* left Sydney at the beginning of November 1918, bound for Europe with a large contingent of Australian troops. It was recalled on Armistice Day, and stopped into Wellington on the return voyage. While on shore-leave, a number of the passengers and



Credit: NSW State Records

crew became infected. On arrival in Sydney there were more than 300 cases of influenza aboard, and the ship was placed in quarantine where it remained for almost a month. During this time 25 of those placed in quarantine died, including 13 troops and two nurses.

As the reality of the pandemic impressed itself upon the Commonwealth Government it exercised its recently-acquired powers over quarantine to isolate the Australian continent. The *SS Medic* was just one of more than 320 international vessels placed in quarantine in the period from October 1918 to April 1919, with over 81,000 passengers and crew subjected to medical inspection.¹⁸ The attempt at isolation failed to completely insulate Australia from the pandemic, and it became necessary to enlist the resources of the State Governments to contain its spread once it arrived.

An early exercise in cooperative Federalism...or not

A special conference of state ministers and health officers, together with the Minister and officers of quarantine of the Commonwealth and representatives of the British Medical Association from the various states was held on 27 November 1918 in the Senate Club Room in Melbourne. They agreed on a 13 point plan. The disease was designated as 'pneumonic influenza'. The State was to immediately notify the Commonwealth Director of Quarantine upon the presence of any case of pneumonic influenza, whereupon the Commonwealth would proclaim the State to be infected. Upon the proclamation

of any State as infected the Commonwealth would take complete control of all interstate traffic both by land and sea, with all traffic being suspended until a case broke out in a neighbouring state, whereupon traffic could be resumed between the infected states (that border restriction did not apply to interstate local traffic among residents within 10 miles of the border of any state in any area which was 'clean'). The conference recommended that in the event of an outbreak of pneumonic influenza in any state, it was advisable to close all places of public resort, such as theatres, musicals, picture shows, race meetings, churches and schools, and to prohibit all public meetings. What seemed to be a well-meaning exercise in cooperative federalism quickly fell apart.

On 27 January 1919 the Federal Minister for Trade and Customs, Walter Massy Greene, declared 'the State of New South Wales is infected with a quarantinable disease, to wit, Pneumonic Influenza', that NSW was a 'Quarantine Area', and that all persons and goods from NSW 'shall be subject to quarantine'. The same day the Commonwealth's Quarantine (Pneumonic Influenza) Regulations 1919 were made, which prohibited a person from crossing the border line between a quarantine area and another part of the Commonwealth, although consistently with the 13 point plan agreed upon in November 1918 there was an exemption for persons whose place of residence was within 10 miles of the border line between the quarantine area and an adjoining State.

On 28 January 1919 the Commonwealth proclaimed Victoria to be a quarantine area. New South Wales accused Victoria of not immediately notifying the Commonwealth and other States of its first case of influenza, thus allowing the disease time to spread across the border with rail passengers. The first known case of influenza in Melbourne occurred on or about 10 January 1919. Other cases were declared, and the fact of influenza being present in Melbourne was recognised by the Victorian Department of Health by 23 January. However, formal notification of the presence of 'pneumonic influenza' in Victoria was not provided to the Director of Quarantine until 28 January 1919.

The NSW Government retaliated on 30 January 1919 by closing the border with Victoria, prohibiting any person residing or being in Victoria from entering NSW (there was an exception for NSW residents within 10 miles of the border who had crossed into Victoria, who could return to NSW if they proved to the Officer in charge of Police and a Government Medical Officer that they had not been in infected regions of Victoria in the preceding seven days and they were declared to be free from infection).

With the 13 point plan crumbling around him, the Acting Prime Minister sent a terse telegram to the New South Wales Premier: 'I understand you're still inspecting Victorian steamers. This is not in accordance with conference resolutions... Please note maritime quarantine even interstate is a function of the Commonwealth Government. I must ask in these circumstances that any restrictions

by the state on interstate traffic by sea shall cease. Again, to remind you the November agreement which distinctly specified that on two adjoining states becoming infected, restrictions as between two states should cease.' This fell on deaf ears, the NSW Premier urging strong federal quarantine actions be taken to quarantine ships from Melbourne, 'otherwise our state will be compelled to take whatever steps may be thought necessary to safeguard the interests of the people of New South Wales'.

The Acting Prime Minister responded to the NSW threat by saying: 'The independent and uncoordinated action by individual states has already produced serious dislocation of trade and intercourse which must become intensified if persisted in. The situation as it exists today was anticipated by the Commonwealth Government and for this reason the conference was summoned. A grave aspect arises from the terms of your proclamation which apparently prohibits all sea traffic between Victoria and New South Wales ports including the transport of soldiers, a problem in itself particularly complex.'

New South Wales was not the only state to discard the 13 point plan. Tasmania was accused of interfering with interstate trade by placing unfair restrictions on shipping: it alone had the advantage of not having a land border, and required seven days' quarantine upon arrival. On 30 January 1919 the West Australian Government held up the Commonwealth's transcontinental train at Parkeston for the quarantine of all passengers,¹⁹ even though South Australia had not been declared an infected State (the proclamation of South Australia occurred on 5 February 1919,²⁰ where again there were accusations by the NSW Premier of tardiness on the part of the state health officials and the Commonwealth Director of Quarantine). On 1 February the Queensland Premier notified that the border between Queensland and New South Wales would be closed absolutely, with no exception being shown even to bona fide residents of Queensland.

The Acting Prime Minister must have been apoplectic when on 5 February 1919 NSW imposed restrictions on vessels arriving from Victoria or South Australia, which were not permitted to berth or moor in NSW but were instead required to 'anchor in the stream' for a period of four days. Persons onboard were not permitted to come ashore until after the four-day period of quarantine had elapsed, and they had undergone a medical examination.²¹ Similar quarantine arrangements were imposed by the States of Queensland and Western Australia.²²

In February the Commonwealth officially wrote to all State Premiers stating that Cabinet had decided that as four States had

broken away from the terms of the 1918 agreement that unless the States notify the Commonwealth by noon Wednesday that they would abide by the terms of the agreement, the Commonwealth would renounce the agreement and would confine its activities to the control of seaborne traffic. No such response came from the States concerned and the 1918 Influenza Agreement lay in tatters, leaving each State to impose its own quarantine and control regulations. Commonwealth control over interstate traffic with NSW was not re-asserted until mid-April 1919, and with Queensland until May 1919.

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A roundabout of lockdowns and relaxation

Adding to the overall problem was that in all States restrictions were continually being applied, relaxed, and then reapplied because of vested interests and public opinion on the one hand, and public panic and hysteria on the other. This led to wave after wave of infection and corresponding imposition then relaxation of restrictions.

From 30 January 1919 residents in the County of Cumberland were required to wear masks in public, including in public buildings or travelling in vehicles, to prevent the spread of the disease.²³ They were also prohibited from assembling together in licensed hotel bars, wine saloons, club rooms, court houses or other places of public assembly, unless there was 250 cubic feet of air space for each person.²⁴ Racecourses within the County of Cumberland were closed the following day,²⁵ and the wearing of face masks was extended to all passengers in NSW railways and trams,²⁶ and to people residing within 10 miles of the border with Victoria.²⁷

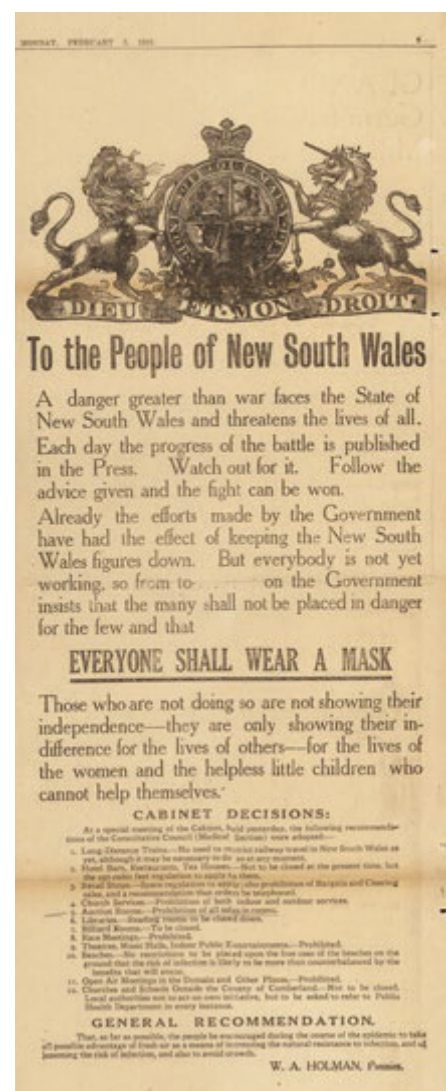
On 3 February 1919 the Government closed all libraries, schools, churches, theatres, picture shows, public billiard rooms, public halls, and places of indoor resort for public entertainment in the County of Cumberland,²⁸ extending the

previous closures that had been limited to the Metropolitan Police District. The closure of premises licensed for the sale of liquor was also announced the same day, although it did not come into effect until 4pm the following day.²⁹

On 7 February 1919 public assemblies within the County of Cumberland, whether for the purposes of holding meetings or for a religious service or any other purpose, were prohibited.³⁰

The same day the NSW Government, clearly concerned about the transmission of disease between Victoria and NSW, extended all of the prohibitions and regulations enacted with respect to the County of Cumberland to the Municipal District of Albury.³¹

On 11 February 1919 the closure of racecourses was extended to the whole of NSW.³² However, the following day racecourses in the Broken Hill and Southern Broken Hill districts were re-opened,³³ and on 15 February 1919 the restrictions on public assemblies were eased.³⁴



Open-air religious services could be held provided that congregants wore face masks and remained three feet apart, the service did not go for more than 30 minutes, and the clergyman (who did not need to wear a mask) was at least six feet from the congregation. Provided the same conditions were adhered to, auction sales, statutory meetings and 'open air meetings for the hearing of bands' were also permitted.

The requirements relating to the wearing of face-masks in the County of Cumberland³⁵ and in Albury³⁶ were also eased. Masks were no longer required while in a public park, public baths or beaches so long as people were not congregated together in groups of more than three (unless all were from the same family). They were not required while engaged in repairing roads, telephone or electrical wires or posts, or other 'laborious occupation' so long as a distance of 6 feet between people was maintained. Nor were they required in unfrequented roads, while riding on horseback or alone in a conveyance, or in boats or ships (but they were still required on ferries). Masks were not required while playing a musical instrument in the open air as a member of a band, or while playing cricket, tennis, football, or 'other active games' in the open air (spectators, however, were still required to wear masks).

On 27 February 1919 there was a further easing of restrictions, with race meetings, sports gatherings, agricultural shows and meetings of all kinds in the open air now allowed. It was also no longer necessary for any person to wear face masks in the open air, except while travelling in a railway train, tramcar, motor omnibus, or within the cabin of a ferry steamer or boat.³⁷

On 28 March 1919 the NSW Government revoked all of the restrictions and the requirements for the wearing of face masks that had previously been enacted with respect to the County of Cumberland. Instead, all that was now required was the wearing of face masks by a person travelling in a public motor bus or ferry steamer. The only remaining restriction on gatherings was a requirement not to remain in a licensed hotel bar for more than five minutes.³⁸

The return to relative normality was short-lived. From 31 March 1919 masks were required to be worn in public lifts.³⁹ A few days later the requirement was extended to people in classrooms at the University of Sydney, shops, and workrooms where more than five people were employed, except where the employees were engaged in hard labour. In addition billiard rooms, reading rooms in libraries, theatres, music halls, picture shows, and other places of indoor amusement were closed in the County of Cumberland; all

open-air meetings in the Domain and other public places in the County of Cumberland were prohibited; and all race meetings throughout the state were prohibited. Restrictions were also placed on the opening of private schools, and Sunday schools were closed.⁴⁰

Restrictions were placed on church services. All persons, except the officiating clergyman, were required to wear masks, unless participating in communion; people were required to remain three feet apart; services could only go for 45 minutes. All persons delivering foodstuffs from house to house, attending an auction, or participating in indoor meeting that were not already prohibited, were also required to wear a mask.⁴¹

Restrictions were placed on railway journeys and intra-state sea journeys. Passengers were required to declare that they had not been in contact with an infected

person in the previous two days, had been inoculated in the previous three months, or had passed through an approved inhalation chamber within 24 hours before their departure, or were willing to pass through such a chamber before proceeding on their journey.⁴² These requirements were extended to apply to travel by motor car between Sydney, Mount Victoria, Picton, Gosford and Wollongong from 13 April 1919.⁴³ Gradually, the restrictions imposed in the County of Cumberland were extended to the Central Coast,⁴⁴ Orange,⁴⁵ and eventually by mid April to the rest of the State.

From mid-April 1919 until August 1919 there were proclamations made on an almost daily basis imposing, extending and then relaxing the restrictions on activity and travel, and the requirements for the wearing of masks, as wave after wave of the pandemic spread through NSW. **BN**

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