



A submission by **COVERSE** to the
Australian Senate Standing Committees on
Finance and Public Administration inquiry into the
*Public Governance, Performance and Accountability Amendment
(Vaccine Indemnity) Bill 2023*¹

For questions about **COVERSE** visit coverse.org.au

Recommendations

1	The Bill should be accepted.
2	The Australian Government and vaccine manufacturers should mutually agree to abandon indemnity clauses in current vaccine contracts, without concessions, as a public demonstration of their confidence in the safety of these products.
3	Parliament should seek to enact new legislation to make it easier for victims of vaccine harms to have their harms documented and causally associated with their vaccinations.

About **COVERSE**

COVERSE is the national peak body representing Australians who have been adversely impacted by COVID-19 vaccines.² The organisation is 100% controlled and operated by COVID-19 vaccine-injured Australians, and is a charity registered with the Australian Charities and Not-for-profits Commission.³

For a full understanding of the issues affecting Australians who have been negatively impacted by harms caused by the COVID-19 vaccines and surrounding Government policies, the Senate is encouraged to read our range of public submissions,⁴ including to other Parliamentary inquiries:

- House of Representatives Standing Committee on Health, Aged Care and Sport: *Inquiry into Long COVID and Repeated COVID Infections (2022-2023)*⁵

¹ www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/VaccineIndemnity47

² coverse.org.au

³ www.acnc.gov.au/charity/charities/ef2b7613-c6d1-ed11-a7c7-00224893b304

⁴ coverse.org.au/submissions

⁵ "Vaccines, Long Vaccine Syndrome, and Long COVID-19", submission by **COVERSE** to the Australian Parliament *Inquiry into Long COVID-19 and Repeated COVID-19 Infections*, coverse.org.au/long-covid-inquiry

- Senate Education and Employment Committees: *COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022 and the Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023*⁶
- Department of Infrastructure, Transport, Regional Development, Communications and the Arts: *Exposure Draft Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*⁷

On the subject matter of the Bill in question - disallowing the Australian Government to provide vaccine manufacturers with indemnity - our community of COVID-19 vaccine-injured Australians are a primary stakeholder in this matter, given that the Government has granted indemnity to all COVID-19 vaccine manufacturers (even though the Government has not seen fit to inform the Australian public of the nature of these indemnity arrangements).

The views of this group of Australians should be considered paramount in examining this Bill, including both this submission as well as any personal submissions from vaccine-injured individuals. Additionally, the views of this group of Australian voters should have significantly greater weight than the views of foreign pharmaceutical corporations who have profited from our suffering, as well as public sector organisations (such as the Department of Health and the TGA) that have ignored our pleas for insight and support.

Why remove indemnity protections

Aaron Siri, one of the foremost litigators in the USA specialising in justice for victims of vaccine harms, eloquently summarises why vaccine manufacturers should never be granted indemnity for harms caused by their products:⁸

- Indemnities incentivise the drive for profits over safety.
- Indemnities reduce innovation incentives to improve the safety and efficacy of products.
- Indemnities leave consumers harmed by these products without adequate recourse for compensation.

It is unfortunate, amidst the public health pressures faced by governments during the COVID-19 pandemic, that the Australian Government caved to demands by vaccine manufacturers to provide them with indemnities.

Had the governments of the world stood together in rejection of such arrangements, we believe that vaccine manufacturers would have had no option but to withdraw their insistence on such clauses, or face zero potential for profit.

Instead, these companies have been allowed to amass obscene levels of windfall profits, yet are not obliged to utilise any of those profits to help individuals and families who have been harmed through serious adverse reactions to their products. In fact, both Pfizer and Moderna, in their

⁶ COVERSE submission to Senate inquiry into the *COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022 and the Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023*, media.coverse.org.au/documents/vaccine-discrimination-bill/003%20COVERSE.pdf

⁷ COVERSE submission to *Exposure Draft Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*, media.coverse.org.au/documents/submissions/ACMA%20misinformation%20bill%202023-08.pdf

⁸ "Why Vaccine Companies Are the Most Protected Companies in America", interview with Aaron Siri, aaron.siri.substack.com/p/why-vaccine-companies-are-the-most

appearance at a recent Senate hearing, refused to concede any liability for harms, and took no responsibility (legal, moral or ethical) for serious harms inflicted by their products on many Australian citizens.⁹ Instead, they reiterated that it is the Australian Government (and hence taxpayers of Australia) who must bear the liability costs of vaccine harms, which is in addition to the purchase and administration costs of the vaccines, and direct public health costs of treating the patients who have been harmed.

Robber-barons and the transfer of risk

The Australian Government has often claimed to support innovation, and has recently provided significant resources for the development of the RNA industry in Australia (including public funding for relevant university research, and political and taxpayer support for the establishment of new RNA manufacturing capabilities on Australian soil).

However, by granting liability protections to vaccine manufacturers (including of mRNA vaccines), the government has created an industrial environment that favours profiteering by pharmaceutical companies over the advancement of new and safe innovative health products for the benefit of Australians.

Innovation in health products demands that manufacturers are acutely concerned with the safety of new products and work hard to improve the safety profile of existing products. The legal threat of liability provides the necessary financial incentive to work towards those goals, and acts as a natural balance to profit motives that seek to downplay and ignore potential safety issues.

By providing such companies with indemnities, the Australian Government is enabling pharmaceutical corporations to pursue “robber-baron” type behaviour at the expense of Australian citizens.

Unlike other products in the marketplace - where the manufacturers are responsible for not only warranting the safety of their products but are legally responsible for harms caused by them - these basic product safety premises are discarded with the granting of indemnity.

However, the Australian Government, in its purchase of these products, has already paid a purchase price that is meant to include a profit margin that the manufacturer will put towards any potential financial contingencies resulting from product liability. In the granting of indemnity, the manufacturers have been able to both retain this profit margin, and absolve itself of these potential liability issues, thereby maximising their profits.

At the very least, if indemnity arrangements are to make even the slightest rational sense, they should at least deny the manufacturer the windfall of pocketing these profits while someone else (the Australian taxpayer) covers their liabilities.

Inadequacy of government safety-nets

The granting of indemnities to vaccine manufacturers, by definition, transfers liabilities to the Australian Government, and ultimately the Australian taxpayer.

⁹ Senate Education and Employment Committee proceedings, 3rd August 2023, www.aph.gov.au/News_and_Events/Watch_Read_Listen/ParView/video/1585181

Some argue that this transferral of risk from the vaccine manufacturer to the taxpayer can be managed by establishing government compensation programs for citizens who become harmed by vaccine products.¹⁰

In the case of the COVID-19 vaccines, to put the Australian compensation scheme into global comparison, the Faculty of Law at the University of Oxford has developed a comprehensive database of no-fault compensation programs around the world.¹¹ Whilst it accurately describes these programs, it does not attempt to explore the accessibility of these programs for citizens who seek to obtain compensation, or whether these schemes are fit-for-purpose.

COVERSE notes - through our extensive international connections - that around the world, this myriad of programs largely fail to compensate the majority of citizens whose lives have been considerably disrupted by severe injuries caused by the COVID-19 vaccines. There are some exceptions, and we will detail these later.

The Australian disaster

In Australia, the Government developed the COVID-19 Vaccine Claims Scheme.¹² This program is meant to provide a “lightweight” scheme for timely and easy access to compensation for Australians harmed by these vaccines.

Setting aside the fact that this scheme is in actual fact incredibly complex - and many vaccine-injured Australians are simply incapable of understanding how to go about making a claim - upon its announcement, some 10,000 Australians who had been injured by the COVID-19 vaccines registered for information. However, once the details of the scheme were made public, only 3,500 of these have actually proceeded with applications,¹³ and of those who have received an outcome the overwhelming majority have had their claims rejected.¹⁴

This begs the questions, why have the majority of injured Australians *not* applied to this scheme, and why are so many who have applied having their claims rejected?

The answer largely lies in the narrow definition of the scheme, which only provides compensation against a very short list of specified injuries attributed to specific brands of COVID-19 vaccines, as well as other arbitrary qualifying criteria. In other words, the scheme has been designed to exclude the vast majority of Australians who have been injured by a COVID-19 vaccine.

This raises a key problem with government-operated vaccine compensation schemes around the world - they are too narrowly designed.

By designing schemes in this way, governments can proclaim they have a mechanism to support citizens who have been injured by a vaccine, and when the majority of those harmed cannot obtain support from these schemes governments can problematically proclaim the overwhelming safety of vaccines due to the low number of people compensated.

¹⁰ “Churchill Fellowship to improve the clinical advice and management of vaccine reactions for the Australian community”, report by Professor Nicholas Wood, 2019 Churchill Fellow, www.churchilltrust.com.au/fellow/nicholas-wood-nsw-2019

¹¹ COVID-19 Vaccine No-Fault Compensation Schemes Project, www.law.ox.ac.uk/no-fault-compensation-schemes-covid-19-vaccines

¹² www.servicessaustralia.gov.au/covid-19-vaccine-claims-scheme

¹³ Services Australia, freedom of information request LEX 71932, 11 April 2023, www.servicessaustralia.gov.au/freedom-information-disclosure-log

¹⁴ [x.com/CoVerseAU/status/1661476359871541248](https://twitter.com/CoVerseAU/status/1661476359871541248)

This perversion of the factual statistics of harm through badly designed government programs has serious consequences: citizens most negatively affected by vaccines remain unsupported, and distrust in government vaccine programs rise as the public realises the extent to which governments are not protecting their own citizens.

We also wonder if pharmaceutical company lobbyists have had a hand in influencing the design of these inadequate and cruel policies, to further their commercial interests.

The USA disaster

The compensation environment in the USA is perhaps one of the worst examples in the world. Vaccine manufacturers have been granted blanket indemnity via legislation, and compensation is handled via a dedicated federal vaccine compensation court with payouts financed by a product levy on vaccine manufacturers.

Regardless of the rationale and logic of this arrangement, the proof is in the pudding. To-date only a small handful of US citizens have been granted (derisory small) compensation for COVID-19 vaccine harms,¹⁵ compared with Australia where still only several hundred have been awarded some form of compensation by the Australian Government.

Should Australia move to a US-style indemnity and compensation environment, we can be confident that the outcomes for impacted Australians will be even worse, not better, than current arrangements.

Programs that focus on real public health confidence

Despite the largely poor performance of no-fault vaccine compensation schemes around the world, there are two countries that are worth mentioning for their approaches towards recognising and compensating COVID-19 vaccine injuries.

These are Thailand¹⁶ and South Korea.¹⁷

In both countries, the number of people who have been compensated demonstrates a level of acceptance and compassion not found in many other jurisdictions (including Australia and the USA). There are fewer limitations on the types of reactions eligible for compensation (as it is widely acknowledged that vaccines can precipitate a large and diverse range of serious reactions, though each type of reaction might only occur in a very small number of people).

Recently, South Korea even extended its scheme to provide a commiseration payment to families of citizens who had died within 90 days of having a COVID-19 vaccine, regardless of proven causality.¹⁸

While such schemes may end up delivering payments to people who have suffered health conditions unrelated to their vaccinations, the approaches taken ensure that the number of genuine

¹⁵ "COVID-19 vaccine claims yield small payouts from U.S. government", Reuters, 19th April 2023, www.reuters.com/legal/government/covid-19-vaccine-claims-yield-small-payouts-us-government-2023-04-18

¹⁶ "One billion baht paid to COVID-19 vaccine recipients experiencing side effects", National Health Security Office, Government of Thailand, 21st January 2022, bit.ly/3USdVYE

¹⁷ "코로나 주간 위험도 '낮음'...사망자 전주 比 26.3% 증가", dongA.com, 21st June 2023, www.donga.com/news/Society/article/all/20230621/119869329/1

¹⁸ "Gov't to distribute condolence money for COVID-19 vaccine deaths", Pulse by Maeil Business News Korea, 7th September 2023, pulsenews.co.kr/view.php?year=2023&no=680590

cases who slip through the cracks will be minimised, and the government conveys a very strong message to the public that they *will* be taken care of if their vaccinations cause harms.

Despite compensating significantly more people than many other programs, it is worth noting that both of these programs maintain capped compensation payments, meaning that a number of people with extremely serious and ongoing medical conditions will not be adequately provided for, which again demonstrates the limitation of government programs.

Comment on other submissions

We note that several other submissions (already made public at the time of our submission) have argued in favour of the bill except where particular vaccines are covered by a national no-fault compensation scheme.

As we have outlined above, not only does indemnity arrangements discourage genuine innovation and efforts to improve product safety by vaccine manufacturers, but existing no-fault compensation schemes have proven largely inadequate to cover the needs of the many citizens harmed by the COVID-19 vaccines, including in Australia. While we don't support indemnities for vaccine manufacturers under any circumstance, any and all efforts to pursue the development of such no-fault compensation schemes in Australia must centrally involve affected patients and patient groups such as **COVERSE** if there is to be any genuine efforts to establish schemes that are meaningful, accessible, and legitimate.

Furthermore, in the case of the COVID-19 vaccines, the indemnity arrangements have introduced an unquantifiable liability and distributed this between the Australian Government and the Australian taxpayer. Given a very small fraction (less than 1%)¹⁹ of Australians harmed by COVID-19 vaccine products have received any compensation from the COVID-19 Vaccine Claims Scheme, there is a significant unrecognised and unquantified liability in the community. Thus we argue it is impossible for the Australian Parliament to calculate the costs and liabilities of indemnifying vaccine manufacturers if Parliament were to consider implementing broader no-fault compensation schemes that offer meaningful financial compensation for all citizens who are impacted by vaccines.

The power of product liability

As already discussed above, civil product liability creates powerful market forces that incentivise manufacturers to create better and safer products, out of fear of financial loss in the event of product liability claims.

For the consumer, the ability to sue a manufacturer for harms caused by their product enables them to pursue compensation regardless of the specific nature of harms. This is in stark contrast to the Government's compensation scheme, which offers only limited compensation in a perversely narrow set of circumstances.

The power of public and political pressure

Unfortunately for victims of COVID-19 vaccine harms, the proposed Bill will not hold manufacturers to account for harms their products have inflicted, as it will only operate on future contracts.

¹⁹ The majority of those who have been harmed by COVID-19 vaccines do not currently qualify for the Government's claim scheme, and of those who have applied the vast majority have yet to have a determination from Services Australia.

Governments and vaccine manufacturers have continued to tout the safety and efficacy of the COVID-19 vaccine products.

We submit that if the Australian Government and these manufacturers are confident in these proclamations of product safety, then they ought to have no issue mutually agreeing to remove indemnity clauses from existing purchase contracts. Indeed, such a mutual agreement - without concessions - would demonstrate both parties' confidence in these products in a manner that no amount of marketing could convey.

However, if the pharmaceutical corporations are not willing to do this, they demonstrate that they in fact do not have confidence in their products, and the public would be right to deduce that these vaccines must hence be broadly unsafe. If these corporations are unwilling to acquiesce to the removal of these conditions, all representatives in Parliament should be seriously interrogating the public integrity of these manufacturers, exposing their hypocrisy and socially irresponsible behaviour as corporations with undue influence upon our democracy and policies, alongside other democracies worldwide.

We make the case very plainly that the business and human rights case for, and corporate social responsibility of, the pharmaceutical industry in Australia receives almost no regulatory attention from whole sections of the Australian Parliament to date, and that this puts Australians at risk of harm from which there are limited to no routes for appropriate compensation.

In summary, either the vaccine manufacturers are prepared to put their money where their mouth is, or the public and Parliament should hold them to political account. There are no in-between options.

Making product liability work

However, having said this, the burden of proof for individuals to pursue civil claims against pharmaceutical companies is incredibly high, which is a particular disadvantage for patients who are often suffering ongoing and highly debilitating medical conditions caused by the products in question, and for those additionally disenfranchised by limited financial resources or medical literacy.

One of the first go-to rebuttals towards someone who declares they have been injured by a vaccine is the condescending phrase "coincidence is not causality". This is in reference to the fact that in cases of vaccine injuries, direct evidence of the harm being caused by the vaccine is only rarely (initially) available, and that in some instances an individual's health event may have occurred regardless of their vaccination.

However, what such a comment fails to recognise is that in drug safety examinations, coincidence is the first sign that an individual has experienced a health event caused by their vaccination, and warrants further investigation. In many cases, not only does the patient consult a number of physicians and specialists, but no other plausible explanation can be found. In such cases, coincidence is indeed a very strong indicator of harm caused by vaccination.

Nevertheless, the phrase "coincidence is not causality" has been so widely propagated - by public health officials, ministers, drug regulators, the media, and especially by pharmaceutical corporations - that many medical professionals succumb to this paradigm, and their very first response is that "the vaccine can't cause that", rather than "this concerning coincidence must be explored and documented".

In order for patients to begin the journey towards meaningful compensation, the very first and most important thing that they require is robust medical documentation of their injury and clear medical opinions as to the likely association with the vaccination.

As detailed above, the culture amongst too many the medical community sadly has major shortcomings in this area, which only serves to prolong the suffering of patients, and protect the financial interests of pharmaceutical corporations. As the situation stands, the power of finance also reigns in the fact that it is only those who can afford to pay up front for, and have the scientific literacy to insist on, the pursuit of expensive diagnostic tests beyond those publically available who are in any position to prove causality and apply for compensation, especially when no initial proof of causality was provided.

If there is a single area where the Government can improve outcomes for vaccine-injured patients, it's this.

For example, legislation could be considered that provides extremely harsh penalties (loss of licence and hefty financial fines) for medical professionals who fail to appropriately acknowledge or investigate potential vaccine harms. Additionally, Parliament could develop a legislative framework for the detail of evidence required for successful civil prosecution of vaccine harm cases, with a core tenant of this framework being a pro forma presentation of medical evidence that would satisfy the question of whether a patient has likely experienced a major medical event on account of a vaccination.

Overall, in order to maintain and build trust in vaccines, and ensure that those who become harmed by them receive appropriate medical support and financial compensation, it is critical that efforts are made to make it easy for these patients to have their vaccine harms acknowledged, and for this acknowledgement to be indisputable by vaccine manufacturers who rely on the vagaries of causality to deny liability for these harms purely for their own profit agenda.

A call for independent investigation

While Government has a key role in not only ensuring that vaccines brought to market are genuinely safe and effective, but in ensuring that patients harmed by adverse reactions have accessible pathways for treatment and financial recourse, we know that relying on good governance alone is inadequate, as Robodebt and many other catastrophic public system failures have clearly demonstrated.

Whilst the Government has recently announced an “independent” inquiry into government handling of the pandemic,²⁰ we are concerned that this inquiry will barely touch the issues of vaccine harms and associated systemic failings, if they are addressed at all.

It is hence necessary for not just Parliament, but also investigative journalists and independent corporate watch groups to maintain scrutiny over vaccine manufacturers and government drug regulators to ensure constant pressure on those organisations to ensure the highest levels of patient safety.

²⁰ “Improving future preparedness: inquiry in the response to the COVID-19-19 pandemic”, press release, 21st September 2023, www.pm.gov.au/media/improving-future-preparedness-inquiry-response-covid-19-pandemic

Sadly, in the case of the COVID-19 vaccines, there has been a litany of worrying issues raised by whistleblowers, patients, and scientists that have gone unacknowledged and uninvestigated by government agencies, and also uninvestigated by journalists and corporate watch groups.

Some of the worrying claims that warrant such investigation include:

- Claims of clinical trial mismanagement and fraud²¹
- Claims of cover-ups of large number of serious adverse reactions during clinical trials²²
- Clinical trial participants who experienced severe adverse reactions having their cases either misrepresented or simply removed from pharmaceutical company reports to regulatory agencies²³
- Contamination of vaccines with potentially dangerous levels of DNA fragments²⁴
- The online trolling, harassment and censorship of patients, doctors and scientists who raise legitimate concerns about the COVID-19 vaccines,²⁵ including patients who convey their experiences of serious vaccine harms
- Media companies refusing to investigate any of these issues under threat from governments and/or vaccine manufacturers
- Social media censoring true stories of vaccine harms and concerning scientific findings²⁶
- Governments and drug regulators colluding with vaccine manufacturers on preparing media statements, public messaging campaigns, and political talking points²⁷
- Drug regulators being aware of specific adverse reactions yet failing to warn the public²⁸
- Drug regulators and other public health actors prioritising research and public awareness campaigns that address vaccine hesitancy over disclosing emerging adverse vaccine reactions to the public and the medical community resulting in vast unnecessary harms due to lack of early interventions

²¹ COVID-19-19: Researcher blows the whistle on data integrity issues in Pfizer's vaccine trial. *BMJ*, 2nd November 2021, doi.org/10.1136/bmj.n2635

²² "Serious irregularities in clinical trials in Argentina". Deutsche Welle, 29th May 2023, www.dw.com/es/graves-irregularidades-en-ensayos-clinicos-en-argentina/video-65761028 (with English subtitles: youtu.be/rlp7uj_f0EE)

²³ "4 clinical trial participants", Dearly Discarded Podcast, Episode 13, 8th August 2022, odysee.com/@React19Clips:b/Dearly-Discarded_4InjuredTalk_45min-cut-smaller:7

²⁴ Sequencing of bivalent Moderna and Pfizer mRNA vaccines reveals nanogram to microgram quantities of expression vector dsDNA per dose. Preprint, 10th April 2023, doi.org/10.31219/osf.io/b9t7m

²⁵ "Twitter Files dump shows company suppressed debate and information from doctors and experts which clashed with White House". The Daily Mail, 27th December 2022, www.dailymail.co.uk/news/article-11574573/Twitter-suppressed-covid-information-doctors-experts.html

²⁶ "NCLA Challenges Government's Censorship of Support Groups for Victims of COVID-19 Vaccine Injuries", New Civil Liberties Alliance, 22nd May 2023, nclalegal.org/2023/05/ncla-challenges-governments-censorship-of-support-groups-for-victims-of-covid-vaccine-injuries

²⁷ "Notification and subsequent investigation conducted as part of the TGA review of reports of deaths in nursing home residents in Norway after Pfizer BioNTech vaccination." TGA, FOI 4073, www.tga.gov.au/resources/publication/publications/documents-released-under-section-11c-freedom-information-act-1982-jul-2022-jun-2023

²⁸ "Officials Neglect COVID-19 Vaccines' Side Effects". *Wall St Journal*, 12th May 2023, www.wsj.com/articles/the-covid-vaccines-neglected-side-effects-neuropathy-nih-fda-cdc-transparency-react19-8afa87b1

For those of us who remain invested in our parliamentary democracy, evidence-led policy, the separation of powers, and shared struggles against corruption, these concerning issues must be interrogated and exposed so that the regulatory capture that has permeated the development, approvals, and implementation of the COVID-19 vaccines is addressed and the harm that has been done will not occur with future vaccine policies and pandemics.

Conclusion & recommendations

We support any and all efforts to improve the ability of Australians harmed by vaccines to obtain prompt and meaningful compensation. Additionally, efforts that seek to hold manufacturers accountable for these harms will not only benefit the Australian taxpayer, but also serve to incentivise manufacturers to improve the safety and efficacy profiles of their products.

Recommendation 1: The Bill should be accepted.

Recommendation 2: The Australian Government and vaccine manufacturers should mutually agree to abandon indemnity clauses in current vaccine contracts, without concessions, as a public demonstration of their confidence in the safety of these products.

Recommendation 3: Parliament should seek to enact new legislation to make it easier for victims of vaccine harms to have their harms documented and causally associated with their vaccinations.

As a final remark, COVERSE believes that whether Parliament undertakes these recommendations, or actions similar, comes down to whether or not Parliament considers its responsibility to protect Australians from vaccine harms, and to support those who have already been harmed, is greater than its commitment to see that large foreign pharmaceutical corporations extract the maximum amount of profit from Australia at the expense of Australian voters. The Australian electorate will pay great attention to which of their representatives choose the latter.