

Submission to the Commonwealth Government COVID-19 Response Inquiry

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I am grateful for the opportunity to make a submission to this inquiry, and I would be delighted to meet the panel members in person to answer any questions flowing from my submission.

I am the author of *Australian Citizenship Law* (2nd edition, 2016, Thomson Reuters, 1st edition 2002, Law Book Co).

In addition, as a practitioner on the roll of the High Court of Australia, I have been Counsel in three High Court matters concerning Australian citizenship and have appeared before the Full Federal Court and the Administrative Appeals Tribunal regarding matters involving the interpretation of the Australian Citizenship Act.

Between November 2004 and 30 June 2007, I was a consultant to the Commonwealth of Australia, represented by the then Department of Immigration and Multicultural and Indigenous Affairs, now the Department of Immigration and Border Control (the Department) in relation to its review and restructure of the Australian Citizenship Act 1948 which resulted in the Australian Citizenship Act 2007 (the Citizenship Act) which came into force on 1 July 2007.

In 2008 I was a member of the Independent Committee established by the then Minister for Immigration and Citizenship, Chris Evans, reviewing the Australian Citizenship Test. I therefore assisted in the drafting of its report *Moving Forward: Improving pathways to Citizenship* http://www.citizenship.gov.au/_pdf/moving-forward-report.pdf and there are aspects of that experience that are relevant to my response to these provisions.

I am providing this written submission with the hope of expanding upon it in oral evidence before the Commissioners.

Terms of reference

I appreciate the Inquiry is reviewing the Commonwealth Government's response to the COVID-19 pandemic to make recommendations to improve response measures in the event of future pandemics. I also understand it will consider opportunities for systems to anticipate, adapt and respond to pandemics in areas of Commonwealth Government responsibility more effectively.

I acknowledge the Inquiry is adopting a whole-of-government view in recognition of the wide-ranging impacts of COVID-19 across portfolios and the community.

My submission relates to the following aspects of the Terms of Reference:

- Governance including the role of the Commonwealth Government, responsibilities of state and territory governments, national governance mechanisms (such as National Cabinet, the National Coordination Mechanism and the Australian Health Protection Principal Committee).
- International policies to support Australians at home and abroad (including about international border closures).

Constitutional structures

It is my view that the Commonwealth neglected its responsibilities to provide safe and accessible quarantine for travellers in and out of Australia. The Australian Constitution provides the Commonwealth with a head of power under section 51(ix) Quarantine.

I was on the record commenting publicly on these issues.

These are links to a selection of my radio and television commentary:

<https://www.kimrubenstein.com.au/newsfeed/dimme5chme89grpqgtz1ptj5ygf7cp>

<https://www.kimrubenstein.com.au/newsfeed/ufmawaz0h3i5uk30af8uhp9o7qhmts>

<https://www.kimrubenstein.com.au/newsfeed/qe8q7rqxvp03axk4hxs598zggkbf1v>

<https://www.kimrubenstein.com.au/newsfeed/4d44wja7q5xmjh4acyfrj4x2deflge>

<https://www.kimrubenstein.com.au/newsfeed/blog-post-title-two-y4dlr>

<https://www.kimrubenstein.com.au/newsfeed/h3r1atuux4l3d9662ysv8cnz4rt3c9>

<https://www.kimrubenstein.com.au/newsfeed/skynews/4may2021/kierangilbert>

<https://www.kimrubenstein.com.au/newsfeed/9jfg8ndanrvc2s7js6oa0lcy7fkpoz>

<https://www.kimrubenstein.com.au/newsfeed/p82jdwofpdroctr28jy83nrnmy3yjn>

<https://www.kimrubenstein.com.au/newsfeed/aiifgspq4r4qcfrwwpeplulojkd2vs>

Supporting Australians at home and abroad

I provided legal advice in the application made by two Australians stranded outside of Australia before the Human Rights Committee under the Optional Protocol for the International Convention on Civil and Political Rights.

See <https://www.theaustralian.com.au/nation/coronavirus-australia-stranded-aussies-file-legal-action-with-the-un-against-the-federal-government/news-story/a9d33939ce441dac9fa27592f10d611f>

And

<https://www.canberratimes.com.au/story/7212066/un-ruling-gives-hope-to-abandoned-stranded-australians/>

I also wrote about this in opinion pieces – see:

<https://www.kimrubenstein.com.au/newsfeed/x3ikudrtod0ey65oti8f1fqgge4jr3>

<https://www.kimrubenstein.com.au/newsfeed/odm021siup8wf7lbhavxw85df4dfw4>

Moreover, in this scholarly piece

<https://www.scicccopen.com/document?vid=ca344bc5-6782-4f9c-bc85-9422dc0acca4>

[REDACTED] and I used Australia as a case study to analyse restrictions on international movement during the COVID-19 pandemic. Restrictions on inbound and outbound travel were a key tool deployed by governments across the globe to suppress the COVID-19 pandemic. We use ‘COVID zero’ Australia as a case study to assess an extreme response to restricting international movement. We look at the recent complaint launched before the United Nations Human Rights Council in Geneva. The action was raised with the support of a group of Australian citizens stranded abroad with the assistance of the expert in Australian constitutional law who is the second author of this paper. We argue that the measures implemented by Australian governments to effectively eliminate COVID-19 domestically have provided insufficient consideration of, and alternatives to, the current system’s failure to facilitate essential international travel. For this reason, Australia’s framework for restricting international movement lacks proportionality and necessity from the perspective of human rights and freedoms.

I would be delighted to elaborate upon this submission in person.

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22 February 2024

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