

PUBLIC SUBMISSION TO THE COVID-19 RESPONSE INQUIRY PANEL

Sunday 7th January 2024

Dear Members of the Inquiry Panel to the COVID-19 Response Inquiry,

I appreciate the advertised deadline for public submissions has passed but I hope the panel is able to receive this written submission.

I am also available to answer questions arising from my submission.

My background, relevant to this submission

I am a Professor in the Faculty of Business, Government and Law at the University of Canberra. A graduate of the University of Melbourne and Harvard University, I am Australia's leading expert on citizenship, both around its formal legal status and in law's intersection with broader normative notions of citizenship as membership and participation.

This has led to my scholarship around gender and public law, and broader constitutional law issues, and includes my legal work and oral history work around women lawyers' contributions in the public sphere.

I was the Director of the Centre for International and Public law at the ANU from 2006-2015 and the Inaugural Convener of the ANU Gender Institute from 2011-2012. I am a Fellow of the Australian Academy of Law and the Australia Academy of Social Sciences.

Areas of the inquiry that I can make an expert contribution.

Throughout the period of COVID I was a public commentator on various issues relating to COVID. I provided public policy analysis around the following areas related to two aspects of the inquiry (my bolding to highlight the areas within):

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) and advisory bodies supporting responses to COVID-19.

And

International policies to support Australians at home and abroad (including with regard to international border closures and securing vaccine supply deals with international partners for domestic use in Australia).

My public commentary can be seen at the following links:

Television

ABC Q & A panellist commentary on the border closures:

7 September 2020 (On travel bans)

<https://www.youtube.com/watch?v=P8gBdZf775c>

11 March 2021 (On continuing COVID limitations)

<https://www.youtube.com/watch?v=4k1SfB0O4e4>

Opinion pieces

Sydney Morning Herald, April 21, 2021

'Why MPs are unwilling to do more for Australians trapped by COVID travel bans.'

<https://www.smh.com.au/national/why-mps-are-unwilling-to-do-more-for-australians-trapped-by-covid-travel-bans-20210419-p57kkm.html>

The Saturday Paper, May 1-7, 2021

'Stranded citizens an international disgrace'

<https://www.thesaturdaypaper.com.au/opinion/topic/2021/05/01/stranded-citizens-international-disgrace/161979120011559#hrd>

The Age, May 2, 2021

'The essence of liberalism is under challenge from Australia's India travel ban.'

<https://www.theage.com.au/national/the-essence-of-liberalism-under-challenge-20210502-p57o5a.html>

In addition, I was often on the radio answering questions and providing commentary – my media work can be seen more at <https://www.kimrubenstein.com.au/media-history>

Scholarly publications

As then Co-Director of the 50/50 by 2030 Foundation at the University of Canberra, I co-authored with my Co-Director [REDACTED] and our colleague Dr [REDACTED] an article:

Gender, Leadership and Representative Democracy, <https://doi.org/10.3167/dt.2020.070212>

Abstract

That effective leadership is crucial during global emergencies is uncontested. However, what that leadership looks like, and how it plays out in different contexts is less straightforward. In representative democracy, diversity is considered to be a key element for true representation of the society. In addition, previous research has unequivocally demonstrated the positive impacts of gender equality in leadership. The COVID-19 pandemic has laid bare some of the real-world implications of gender inequalities in the leadership context. In this article, we examine the differential impacts of COVID-19 on women and reflect on potential pathways for women's active participation.

In addition, I wrote a scholarly piece with my colleague Associate Professor [REDACTED]

The challenge of 'COVID-19 free' Australia: international travel restrictions and stranded citizens, <https://www.tandfonline.com/doi/full/10.1080/13642987.2022.2058496>

Abstract

This paper uses Australia as a case study to analyse restrictions on international movement during the COVID-19 pandemic. Restrictions on inbound and outbound travel have been 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.

Additional comments

I would also like to highlight the following issues relevant to the inquiry:

The Federal government had and continues to hold clear power under section 51 (xix) of the Constitution, over quarantine.

In thinking about future pandemics and the need to regulate people's movement in and out of Australia, the government could identify regions around the country where specific purpose quarantine facilities could be quickly set up.

I met Tony Abbott in April 2022 at the opening of a new exhibition at the Museum of Australian Democracy at Old Parliament house (on which I had been a consultant) titled *Democracy DNA: The People, The Prime Ministers and The World*.

Mr Abbot told me in person that during the [SARS epidemic](#) when he was Minister for Health and Aging (7 October 2003 – 3 December 2007) they had commissioned 'flat pack' structures ready to be established as quarantine facilities and I was later told by someone working in the Health department during that period that they had identified areas in the country where they could have been established during that pandemic.

Whether this is accurate, or not, it is a reminder that the Federal government *does* have the power to do this and having purpose-built quarantine facilities ready to go during the COVID pandemic would have been a way to ensure Australians outside of the country could have returned in health safe ways during a pandemic and would not have been stranded, as they were.

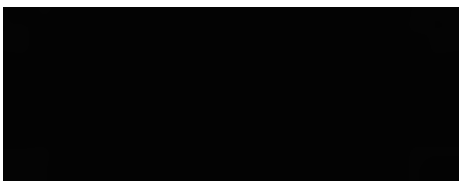
In addition, there was also power for the Federal government, through the implied nationhood power in the Constitution, which provides the Commonwealth executive with 'a capacity to engage in enterprises and activities peculiarly adapted to the government of a nation and which cannot otherwise be carried on for the benefit of the nation' to have created a more uniform arrangement around the country for travel between states and territories.

Given the extent of connections of people living around the country who were trapped within their own state or territory, with different restrictions and requirements around the country, a more

uniform approach would have benefitted the nation in which people otherwise travel freely and live and work and have family beyond the specific territory in which they reside.

In conclusion, I would be happy to meet and provide further oral submissions if the Panel would like,

Yours sincerely,



Professor Kim Rubenstein, FAAL, FASSA
University of Canberra and Honorary Professor the Australian National University

