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I am grateful for the opportunity to make a submission to this current review.

My submission is short due to having recently taken up the position of Director of CIPL and not having further time to devote to answering the inquiry’s questions.

I would like to comment on the following specific question raised in the review:

**12 Citizenship: Should Australia continue to extradite Australian citizens?**

As I state in my book *Australian Citizenship Law in Context* (2002, Lawbook Co)

[c]itizenship does not protect a person from foreign prosecution or provide specific protection from extradition.\(^1\) Importantly, in *Barton v The Commonwealth*\(^2\) Barwick CJ stressed the lawfulness of extradition had nothing to do with citizenship. “The plaintiff’s citizenship, is in my opinion irrelevant to the application in this case of the relevant principles”.\(^3\) The issue is rather whether the person has been charged with a crime of a particular kind. Moreover, Australia’s extradition law covers citizens and non-citizens.

In looking at the *Extradition Act* 1988 (Cth), Kirby J stated:

“[T]he history of the Act, and the regulations made pursuant to the Act, suggests the persistence, within Australia, of a determination to preserve a broadly expressed exception to the extradition of Australian citizens (and others protected by Australian law) to other countries (including Commonwealth countries).”\(^4\)

Legal citizens do not necessarily have any particular protection from other legislative forms of removal. Justice Kirby discussed this in *DJL v Central Authority*\(^5\) where an Australian citizen child was subject to compulsory return overseas under the *Family Law Act* 1975 (Cth). The Act gives effect to the Hague Convention on the Civil Aspects of International Child Abduction. In that case he denied the legal status of citizen protected an individual from removal from the country.\(^6\)

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\(^1\) See chapter 5, *Australian Citizenship Law in Context*, paras [5.2.7], [5.2.9] and [5.2.14].
\(^3\) Ibid at 482.
\(^6\) All the judges agreed with Kirby on this point. See (Australian Citizenship Law in Context) at para [6.3.1].
However, this inquiry is interested in the underlying policy question of whether Australia should change its legislation to enable Australian citizenship to be a factor to be taken into account in making a decision about extradition.

I am of the view that it should be a factor in the decision making process. This is because Australian citizenship represents a reciprocal relationship between government and its citizens. Citizens have rights and responsibilities that flow from their status, and governments also have responsibilities towards their citizens that flow from the relationship.

While there may not be a current legal duty to take into account the Australian citizenship of the person, regarding extradition, there is, in my view, a moral responsibility on the part of the country to which the person is connected as a citizen, to act in that person’s best interests. The welfare and protection of its citizens is an underlying incident of Australia’s sovereignty. While the executive may not always be able to act with the welfare of the Australian citizen as the sole criterion or paramount issue in making a decision about extradition, it should be a significant factor.

In my view, this would also call upon the government to think of ways in which to better protect the interests of the accused Australian citizen if extradited.

For that reason, the matters that follow the question about citizenship in the inquiry discussion paper (questions 13 and 14 and 15) should all be answered positively to best protect the interests of the Australian citizen subject to the extradition order.

Finally, can I refer the review committee to my book referred to above, and in particular the first chapter which sets out broader issues about Australian citizenship that might be useful as the review committee resolves the questions posed?

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