



## Submission to the Review of the Australian Citizenship renunciation by conduct and cessation provisions

### **Addressed to**

Committee Secretary  
Parliamentary Joint Committee on Intelligence and Security  
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This submission was written by Andrea Leong on behalf of the Science Party.

### **Confidentiality**

This submission does not need to be kept confidential and may be made public.

## Background

The Science Party appreciates the opportunity to provide feedback to the Committee on this matter.

In January 2019 we made a submission to the inquiry *Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill*. That bill lapsed at the dissolution of parliament in April 2019, but we remain strongly opposed to proposals that make it easier to strip Australian citizenship on any grounds other than Australian citizenship having been fraudulently gained. Our recommendations would render the Citizenship Loss Board unnecessary.

## Recommendations

1. The Science Party recommends against expanding the range of offences that can lead to revocation of citizenship.
2. The Science Party recommends repealing sections 33AA and 35 and 35A of the *Citizenship Act 2007*.

## Comments on Operation

Regarding section 33AA (Renunciation by conduct), section 35 (Service outside Australia in armed forces of an enemy country or a declared terrorist organisation), and 35A (Conviction for terrorism offences and certain other offences) of the Citizenship Act 2007<sup>1</sup>:

- Having the minister of the day merely satisfied that something is the case is an extraordinarily low bar for cessation of citizenship, and not an acceptable substitute for a finding made by a court of law;
- It is especially inadequate to base citizenship loss on whether the minister is satisfied that the person holds citizenship of a second country, as an error of judgement would leave a person stateless. ***This appears to have actually happened with no repercussions in the case of Neil Prakash***<sup>2</sup>;
- It is particularly concerning that even citizenship by birth is liable to be renounced by conduct. This allows for a person born in Australia who gained a second citizenship to be stripped of Australian citizenship for actions that bear no relation to the second country of citizenship;
- It is also concerning that the Minister need not actually notify the person who is having their citizenship revoked (section 33AA(10));

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<sup>1</sup> Australian Citizenship Act 2007, Australian Government. <https://www.legislation.gov.au/Details/C2016C00726>

<sup>2</sup> 'Fiji casts fresh doubt on decision to strip terrorist Neil Prakash of Australian citizenship'. Australian Broadcasting Corporation. <https://www.abc.net.au/news/2019-01-08/neil-prakash-definitely-not-fijian-argue-officials/10698462>

- A person must fight the renunciation in court if they wish to have their citizenship reinstated. This reverses the burden of proof (under normal circumstances, Australian citizens may not voluntarily renounce their citizenship if they cannot demonstrate that they hold citizenship of another country); and
- That this legislation applies to citizens aged 14 and above may also bring it into conflict with sections of the Convention on the Rights of the Child<sup>3</sup>, for example the principle of not separating a child from their parents against their will.

## Comments on Effectiveness

Home Affairs Minister Peter Dutton is quoted<sup>4</sup> as saying that the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Department of Defence, the Department of Immigration and Border Protection, the Attorney-General and the Department of Prime Minister and Cabinet all have links to the Citizenship Loss Board, presumably to share information regarding Australians who are being considered for citizenship loss.

The Science Party believes that involving these organisations in revoking an individual's citizenship is a poor use of resources when the person in question could instead be tried in court on any relevant charges.

The current approach of revoking citizenship leaves a person who is ostensibly a terrorist or terrorist sympathiser free, albeit potentially stateless, and unable to be extradited to Australia.

## Comments on Implications

The safety of Australians should be the primary consideration for national security laws. This being the case, renunciation of Australian citizenship by conduct should not be a legal possibility, as it disincentivises Australians from reporting to the authorities a loved one who they fear is becoming radicalised, by increasing the (real or perceived) risk that the person in question will lose their citizenship.

We are also concerned about the psychological impact of legislation that regards Australian citizenship as revocable by an individual (the minister) based on mere belief.

It is also difficult to see how the threat of citizenship loss will deter a truly radicalised individual.

We are unable to comment comprehensively on individuals affected, as we don't know if the public is privy to all instances in which citizenship has been stripped through 'Renunciation by conduct'.

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<sup>3</sup> Convention on the Rights of the Child. <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>4</sup> 'What is the Citizenship Loss Board and how will it work?' SBS News. <https://www.sbs.com.au/news/what-is-the-citizenship-loss-board-and-how-will-it-work>

## Closing comments

Australia should deal with Australian citizens who are suspected of terrorism offences, in Australian courts, if they return to Australia. Our home-grown terror threats are our responsibility.

Finally, we would like to reiterate that an Australian Charter of Rights is urgently needed to protect those rights that we consider inalienable from rushed, poorly-drafted legislation.