

5 November 2014

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir/Madam

We thank you for the opportunity to contribute to the Inquiry into the Australian Citizenship and Other Legislation Amendment Bill 2014 [Provisions].

As you may be aware UNICEF is a multilateral organisation that works in over 190 countries to promote and protect the rights of children. UNICEF Australia is the national committee for UNICEF in Australia and has a dual mandate of raising funds to advance the rights of all children and advocating for the rights of all children by improving public and government support for child rights and international development.

UNICEF Australia is concerned about the timeframe for contributions to this inquiry. The Senate referred the Australian Citizenship and Other Legislation Amendment Bill 2014 to the Committee for inquiry on 30 October 2014 with a reporting deadline of 1 December 2014. Submissions are requested by 6 November 2014.

We do not believe that the one week timeframe for submissions is sufficient, appropriate or reasonable to allow apposite scrutiny and examination of the Bill. Given the serious and lifelong potential ramifications of changes to citizenship arrangements, a more thorough process with adequate consultative timeframes is necessary.

Given the timeframe, UNICEF Australia is not in a position to provide a comprehensive submission to this inquiry considering the bills compatibility with the *Convention on the Rights of the Child* and other human rights instruments. However, we take this opportunity to identify some areas of concern that we urge the Committee to further consider.

#### *Character considerations for children*

The changes include the introduction of character requirements for people under the age of 18 and also significantly broaden the circumstances under which the Minister must not grant citizenship on character grounds.<sup>1</sup> The broad and expanded range of grounds that dictate that citizenship must be refused is likely to capture an expansive range of both serious and less serious offences. For example, the changes would dictate that the Minister must not approve citizenship for children or adults who are subject to a court order to attend drug, mental illness, or other

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<sup>1</sup> For eg. Schedule 1, Part 1, Items 21-22, 26-27, 58, 61.

residential programs. This extends to children and adults who are subject to a good behaviour bond, suspended sentence or subject to parole conditions.<sup>2</sup>

The explanatory memorandum states that the amendment is required because “the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen under section 19D of the Act.”<sup>3</sup> However the amendments do not appear to allow the Minister discretion in these matters, rather they dictate that “The Minister must not approve the person becoming an Australian citizen at a time...”<sup>4</sup> The Committee should seek clarification in this regard. We are also concerned that the expansive ground for citizenship refusal will capture behaviours which would not reasonably raise ‘serious character concerns’.

The scope of these provisions could have devastating impacts in depriving young people who have committed offences at a young age from attaining Australian citizenship. This impact would extend to families who would have to deal with the challenging prospect of not being able to hold Australian citizenship with their children or to have their citizenship application delayed because of the situation of a child. It is well established both internationally and nationally, that the culpability of children before the law is less than adults due to the difference in psychological and physical development as well as their emotional and education needs.<sup>5</sup> Children’s psychosocial capacity is not fully developed and evolving throughout childhood heightening the propensity of children to take risks, and increasing general susceptibility to peer influence and to immediate reward.<sup>6</sup> Children are therefore at increased risk of contact with the criminal justice system as their ability to make decisions, control impulses and understand long term consequences isn’t completely developed.

The denial of any prospects of citizenship on this basis could therefore be inconsistent with established knowledge and practice regarding the capacity and culpability of children, and render a disproportionate consequence for mistakes that are not uncommonly made by young people.

Due to the developmental nature of many such catalysts for youth offending, mistakes made by young people should not be automatically considered a ‘serious character concern’ which would deny young people citizenship.

We recommend the Committee consider whether it is necessary and reasonable to impose such harsh and lifelong consequences on young people for the purposes of this bill.

### *Impact on children of asylum seekers and refugees*

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<sup>2</sup> For eg. Schedule 1, Part 1, Items 22(g),22(j), 27(g), 27(j), 61(j), 61(g)

<sup>3</sup> Explanatory Memorandum, Australian Citizenship and Other Legislation Amendment Bill 2014 [Provisions], p 22.

<sup>4</sup> Schedule 1, Part 1, Item 22 (Proposed s 19(7B)).

<sup>5</sup> United Nations Committee on the Rights of the Child, GENERAL COMMENT No. 10 (2007) Children’s rights in juvenile justice, 2007, retrieved via <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

<sup>6</sup> Elizabeth Cauffman & Laurence Steinberg, ‘Emerging Findings from Research on Adolescent development and Juvenile Justice’, *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, Vol. 7, No.4, 2012, pp.428-449)

We have concerns over how changes may affect the children of asylum seekers and refugees from outside Australia's special humanitarian program.<sup>7</sup> We are concerned that the bill would deny children born to asylum seekers of any prospect of citizenship. We recommend that the Committee considers the consequences of these provisions and particularly any potential for them to leave children stateless. Such a provision appears in breach of the *Convention on the Rights of the Child* Article 8.

#### *Scope of Ministerial powers*

We urge the Committee to consider the whether the broad discretionary powers granted to the Minister for Immigration in several parts of this bill are necessary and will allow appropriate and proportionate oversight and appeal.

We are concerned about the powers granted to the Minister to overrule decisions of the Administrative Appeals Tribunal.<sup>8</sup> We also urge the Committee to consider whether these are appropriate powers, particularly considering the importance of the independence and integrity of the judicial system and the foundation separation of powers principle.

We would welcome the opportunity to expand upon this correspondence were it to assist the Committee. Please don't hesitate in contacting myself or Advocacy Officer Jack Regester, who can be reached on [redacted] or [redacted]

Yours Sincerely  
Norman Gillespie

**Chief Executive  
UNICEF Australia**

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<sup>7</sup> For eg. Schedule 1, Part 1, Item 12.

<sup>8</sup> Schedule 1, Part 1, Item 73.