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Ms Sophie Dunstone
Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Dunstone

Submission – Australian Citizenship and Other Legislation Amendment Bill 2014

The Asylum Seeker Resource Centre (ASRC) thanks the Legal and Constitutional Affairs Legislation Committee for the opportunity to make a submission to the Inquiry into the **Australian Citizenship and Other Legislation Amendment Bill 2014.**

The ASRC opposes the bill in its entirety.

Please find following the ASRC's submission to the Inquiry.

If you have any questions please do not hesitate to contact the ASRC on 03 9326 6066, or by email to our Director of Advocacy at serina.m@asrc.org.au

Thank you for the opportunity to participate in this important inquiry.

Kon Karapanagiotidis OAM
CEO & Founder

Background

The Asylum Seeker Resource Centre (ASRC) protects and upholds the human rights, wellbeing and dignity of asylum seekers. We are the largest provider of aid, advocacy and health services for asylum seekers in Australia. Most importantly, at times of despair and hopelessness, we offer comfort, friendship, hope and respite.

We are an independent, registered non-governmental agency and we do not receive any direct program funding from the Australian Government. We rely on community donations and philanthropy for 95 per cent of our funding. We employ just 53 staff and rely on over 1000 dedicated volunteers. We deliver services to over 1,500 asylum seekers at any one time.

Our submission is based on 13 years of experience working with asylum seekers in Victoria.

The Proposed Amendments

The ASRC is concerned about the proposed amendments, as they increase the range of situations where citizenship may or must be cancelled and where an individual's citizenship may be revoked.

Further, the proposed amendments significantly increase the Minister's personal powers to set aside decisions made by the independent Administrative Appeals Tribunal (AAT) in relation to citizenship decisions.

Such significant changes to the ability to call oneself an Australian citizen need clear justification and the Government has failed to sufficiently explain the need for these changes. In fact, Australia's current migration scheme is incredibly robust and the current suite of visa cancellation and refusal powers set out in the *Migration Act 1958* more than adequately protects the security of the Australian community.

The only attempt at a rationale in the explanatory memorandum are anecdotal stories of misrepresentation in citizenship cases.[1] This is entirely insufficient for the broad and sweeping powers proposed in this Bill.

In the context of refugees, these proposed amendments have particularly grave consequences, as a decision to cancel or refuse citizenship could result in an individual facing either indefinite detention or being returned to face persecution.

This Bill seeks to significantly and unnecessarily expand Ministerial powers, which will lead to decision making that is no longer bound by the rule of law and which lacks transparency and accountability.

Such an erosion of appropriate checks and balances is a concern to the community generally and to the millions of Australians who have been granted citizenship after arriving in this country.

Finally, the ASRC notes that given the significance of these changes, very little time has been given to provide submissions to the Senate Inquiry. This is made even more challenging given the lengthy nature of the proposals, including a more than 90 page explanatory memorandum, as well as other major proposed Migration Amendments currently under review.[2]

[1] Commonwealth, *Parliamentary Debates*, House of Representatives, 30 October 2014, 40 (Mitchell Hawke).

[2] See for example the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 and the Migration Amendment (Character and General Cancellation) Bill 2014.

1. Ministerial power to override decisions of the Administrative Appeals Tribunal

The Bill introduces a significant new power for the Minister to override a decision of the Administrative Appeals Tribunal (AAT) and cancel a visa.[3]

This power is alarming, for no person or institution should sit beyond the reach of the legal system. This Bill and others recently proposed[4] by the Minister for Immigration and Border Protection (DIBP) seek to grant the Minister sweeping powers to decide on a range of migration matters with serious consequences for individuals with no court oversight whatsoever.

This power puts the Minister's decisions beyond the reach of the courts and denies procedural fairness to applicants.

For asylum seekers and refugees, decisions about cancellation and refusal of visas are, without overstating it, matters of life and death. It is only appropriate that decisions with such serious consequences undergo appropriate levels of scrutiny and review. Appropriate procedural safeguards are fundamental to any such decisions. This Bill seeks to remove them.

The ASRC is opposed to the introduction of this new Ministerial power and is concerned that it will allow this and future governments to carry out their political will of the day, rather than allowing decisions to be passed through appropriate and accepted checks and balances.

2. Ministerial decisions to revoke citizenship made non-reviewable

The Bill proposes to allow all decisions made by the Minister regarding the revocation of citizenship non-reviewable, provided the Minister has included a statement that he or she is satisfied the decision was made in the public interest.[5]

The ASRC firmly believes that decisions relating to the revocation of citizenship must be subject to legislative safeguards, including access to merits review. In the situation of refugees, such decision making has the potential to render a person stateless, see them indefinitely detained or force them to return to face persecution. In light of these consequences, it is wholly inappropriate for the Minister to hold such unchecked power.

3. Revocation of citizenship for reasons of fraud and misrepresentation

The Bill introduces a power to allow the Minister to revoke citizenship when a person has engaged in fraud or misrepresentation in connection with the person's entry into Australia.[6] This includes in situations where the fraud or misrepresentation was not carried out by the applicant, but was by someone else.

Given the reality of seeking asylum, this proposed amendment has the potential to disproportionately affect refugees when they seek citizenship, due to the nature of their experiences and journey to Australia. Over the past 13 years, the ASRC Human Rights Law Program has worked with over 3000 asylum seekers. Our experience shows that asylum seekers regularly flee for their lives by whatever means necessary. This may mean using false documents to obtain necessary visas to enter a safe country.

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[3] Proposed section 52A.
[4] See for example the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 and the Migration Amendment (Character and General Cancellation) Bill 2014.
[5] Proposed section 52(4).
[6] Proposed section 34AA.

Article 31 of the Refugee Convention reflects this reality, stating that asylum seekers should not be penalised for arriving without valid travel documents.[7] Australia's own Refugee Review Tribunal ("RRT") also notes in its Guidance on the Assessment of Credibility ("Credibility Guidelines") that "the use of false documents does not necessarily mean that an applicant's claims are untrue".[8]

Further, due to their vulnerability, asylum seekers may unknowingly submit fraudulent documentation by relying on trusted friends or worse still, they may be misled by poor migration agents that provide fraudulent advice.

The proposed legislation does not provide the opportunity for asylum seekers or other vulnerable applicants to explain the circumstances of the fraud or misrepresentation and thus the ASRC is very concerned that refugees with accepted claims for protection will be caught up in this amendment.

Case Study 1 - The difficulty of documentation when fleeing harm

Pa is a man from Myanmar. While at university he organised a protest that was supported by an opposition party. During the protest government officials arrived and started arresting all of Pa's classmates. Pa managed to run and hide in the house of a friend from the political party.

The next day Pa found out that his house had been raided, his brother was arrested and police were looking to arrest Pa as well. Knowing people who had been detained and tortured without charge for years, Pa realised he had to flee Myanmar. While in hiding, his friend organised a tourist visa to Australia for Pa and completed all the English paperwork. Pa could not read English and so did not understand what was being submitted, but he was told he had to sign and, having no other option, Pa did.

Pa sought asylum and discovered that his friend submitted false documents which related to his identity with his tourist visa application. Pa couldn't explain where these documents came from as his friend did it all for him. At the RRT Pa's story was accepted and the issues with the inconsistencies in documents were accepted as having happened as Pa described. The RRT found Pa to be a refugee and Pa was granted a protection visa.

Under these proposed amendments it is possible for the Minister to revoke Pa's citizenship because fraudulent or misrepresented information was provided as part of his initial visa application and entry to Australia. This is despite the RRT believing Pa's explanation about the documents.

[7] http://www.unhcr.org/419c778d4.html.
[8] Refugee Review Tribunal, Guidance on the Assessment of Credibility, section 9.4, available at http://www.mrt-rrt.gov.au/Files/HTML/CredibilityGuidance-GU-CD.html.

Case study 2 - The difficulty of documentation when fleeing harm

Rodrigue is a man from the Democratic Republic of Congo (DRC). Rodrigue's father was involved in politics and discovered some high level corruption by the opposition party. Rodrigue's father was killed by political opponents and his family went into hiding. Rodrigue managed to obtain a false Liberian passport, which he used to travel out of DRC to Australia.

After arriving in Australia, Rodrigue applied for asylum and explained his true identity from the beginning. It was accepted that Rodrigue had used the false identity and passport as a means of escaping. It was also accepted that it was not possible for Rodrigue to obtain identity documents from DRC, as this may put his remaining family in further danger. He was found to be a refugee and granted a protection visa.

Under these proposed amendments it is possible for the Minister to revoke Rodrigue's citizenship because Rodrigue submitted false documents as a means of fleeing DRC. This is despite the RRT believing Rodrigue's explanation about his identity.

Conclusion

The consequences of revoking citizenship for a refugee can be devastating and life shaping. The amendments in this Bill should be read in recognition of the fact that refugees are amongst those that these amendments will greatly impact.

No Minister or decision-maker, of any department or government authority, should be exempt from independent oversight. It is wholly inconsistent with the rule of law and democratic principles.

In light of the grave consequences, the ASRC firmly submits that the proposed changes delegate too much individual discretion and power to the Minister, unreasonably lower the thresholds for revocation and all do so without sufficient justification from the Minister.

The ASRC opposes the Bill in its entirety and recommends the Bill not be passed.