

Concluding comments

- 9.1 The Committee supports the policy intention of the Bill to help protect the community from persons who have clearly renounced their allegiance to Australia by engaging in serious terrorism-related acts that harm Australians or Australian interests.
- 9.2 The Committee also notes the strong concerns raised by many participants in the inquiry about aspects of the Bill, as detailed in the preceding chapters. Concerns were raised both in respect to the policy approach taken in the Bill, and to the fairness and workability of its provisions.
- 9.3 The Committee examined these concerns and has made recommendations in this report aimed at making the Bill's scope more limited and procedures more transparent.
- 9.4 Adding to this, the Committee considers that enhanced transparency, oversight and review mechanisms will help foster public confidence in the process and operation of the provisions in the Bill. Such measures will be important given the evolving threat environment that Australia faces, the high level of public interest in ensuring the provisions are operating as intended, and the serious implications that loss of citizenship may have for an individual.
- 9.5 While the Committee does not consider it appropriate for details of specific cases to be publicly reported, the Committee considers that a degree of public transparency on the operation of the provisions is warranted. This would be achieved if the Government was required to report publicly, every six months, the number of persons who have lost their citizenship under each of the provisions in the Bill, and a brief, declassified, statement of reasons for that loss. The Committee understands that the provisions in the Bill are intended to be used sparingly, for only the most serious conduct. Such reporting would help assure the public that this continues to be the case into the future.

Recommendation 22

The Committee recommends that the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to require the Government to publicly report, every six months, the number of times a notice for loss or revocation of citizenship has been issued under each of the grounds contained in Bill, and provide a brief statement of reasons.

- 9.6 Areas of government involving national security are, necessarily, not able to be subject to the same level of public scrutiny as other areas of government. Therefore it is important that such areas are subject to rigorous independent oversight to ensure that the national security powers entrusted to agencies by the Australian public are wielded fairly, effectively and as intended.
- 9.7 It is essential that sensitive intelligence and security processes are protected; however, it is equally essential that there is a comprehensive system of proper and rigorous oversight of the powers and processes exercised by government departments.
- 9.8 The Committee sees a role for itself in providing ongoing oversight of the exercise of the Bill's provisions. In its advisory report on the Counter-Terrorism Amendment (Foreign Fighters) Bill 2014, the Committee recommended that its oversight functions be extended to include the counter-terrorism activities of the Australian Federal Police (AFP). The Committee noted at the time that this would provide a valuable additional oversight, particularly in relation to classified material that is not able to be considered by other parliamentary committees.
- 9.9 This recommendation was enacted by the Government amending the *Intelligence Services Act 2001* (IS Act) to provide that the Committee is to monitor and review the performance by the AFP of its functions under Part 5.3 of the *Criminal Code Act 1995* and to report its findings to both Houses of Parliament. The Committee was also given the authority to request informational briefings from the Commissioner of the AFP for the purpose of performing its functions.
- 9.10 In recognition of the changed responsibilities of the Department of Immigration and Border Protection and its expanded role in implementing national security measures, the Committee recommends that its own functions be extended to enable it to monitor and review the performance of the Department's new functions under the Bill. The expansion of these functions should be consistent with the Committee's existing remit under the IS Act, which does not allow for review of operational matters.

Recommendation 23

The Committee recommends that *Intelligence Services Act 2001* (IS Act) be amended to extend the functions of the Parliamentary Joint Committee on Intelligence and Security to include monitoring and reviewing the performance by the Department of Immigration and Border Protection of its functions under the provisions of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015. The extended functions should be consistent with the Committee's current remit under the IS Act.

The IS Act should also be amended to enable relevant agency heads to brief the Committee for the purpose of this new function.

- 9.11 Fulfilling this oversight function will require the Committee to be kept informed on a regular basis of the exercise of powers under the Bill. Given the nature of the conduct-based provisions, this will be particularly important in relation to the exercise of sections 33AA and 35.
- 9.12 The Committee notes the intended exceptional nature of proposed sections 33AA and 35. The Committee reiterates that it considers the use of these provisions will be infrequent and in circumstances where criminal prosecution under proposed section 35A is not possible.
- 9.13 Given the nature of their operation, and their importance to ensuring national security, the Committee considers that it should be advised and provided the opportunity to be briefed of each instance where a notice for loss of citizenship has been issued by the Minister under the conduct-based provisions. This advice should go to whether notice has been provided to the person, the conduct leading to the loss of citizenship, and whether an exemption has been given. Providing a timeframe of 20 sitting days within which to advise the Committee affords the requisite flexibility for the relevant agencies.
- 9.14 This requirement to advise the Committee of the Minister issuing a notice under the conduct-based provisions will ensure a robust system of monitoring and oversight that ensures the provisions operate in the circumstances intended. It is intended that these briefings will inform the Committee's review of the operation of the Bill and the Committee will provide comment in its annual report.

Recommendation 24

The Committee recommends that the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to require the Minister to advise the Parliamentary Joint Committee on Intelligence and Security upon issuing a notice for the loss of citizenship under the Bill. A subsequent briefing should be offered to the Committee within 20 sitting days of the initial notice being issued. The advice given to the Committee should detail whether notice has been provided to the person, the conduct that engaged the Bill's provisions and whether an exemption has been given by the Minister.

- 9.15 The serious measures in the Bill are necessary in light of the current threat posed by persons who are Australian citizens but act to cause Australia harm. However, it will be desirable for their effectiveness to be reviewed by this Committee after several years of operation. The Committee's review would explore whether the provisions have been effective in their goal to help protect the Australian community; whether the laws have been applied as intended; any practical difficulties encountered in their application; and any unintended consequences that may have become apparent.
- 9.16 Similarly to other counter-terrorism measures to be reviewed by the Committee in the coming years, the Committee suggests that the Independent National Security Legislation Monitor (INSLM) should be tasked with undertaking his own review of the provisions. The INSLM's review should be completed no less than 12 months before the Committee's review in order for his findings to be taken into account by the Committee.¹

¹ The Committee made similar recommendations, which were accepted by the Government, in its *Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* to require the INSLM to complete a review by 12 months after the next Federal election of the operation of the following powers: the control order regime; prevention detention order regime; stop, search and seizure powers relating to terrorism offences; and the questioning and detention warrant regime. The Committee will subsequently complete a review of each of these powers by 7 March 2018.

Recommendation 25

The Committee recommends that the *Independent National Security Legislation Monitor Act 2010* be amended to require the Independent National Security Legislation Monitor to finalise a review of the revocation of citizenship provisions in the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 by 1 December 2018.

Recommendation 26

The Committee recommends that the *Intelligence Services Act 2001* be amended to require the Parliamentary Joint Committee on Intelligence and Security to complete a review of the revocation of citizenship provisions in the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 by 1 December 2019.

- 9.17 The Committee has recommended a number of amendments to the Bill. Some of these recommended changes provide greater clarity to allay public concerns regarding the operation of the Bill. Other recommendations reinforce the accountability, procedural fairness and oversight of the Bill.
- 9.18 The Committee considers that the recommendations made in this report serve to strengthen the operation of the Bill and the achievement of its policy intent to help protect the community from persons who have demonstrated a clear lack of allegiance to Australia by engaging in serious terrorism-related conduct.

Recommendation 27

The Committee recommends that, following implementation of the recommendations in this report, the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be passed.

Dan Tehan MP
Chair
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