

Refugee Legal:

Submission to the Parliamentary Joint Committee on Intelligence and Security: *Australian Citizenship Legislation Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Introduction – Refugee Legal

1. Refugee Legal (formerly the Refugee and Immigration Legal Centre) is a specialist community legal centre providing free legal assistance to asylum-seekers and disadvantaged migrants in Australia.¹ Since its inception over 30 years ago, Refugee Legal and its predecessors have assisted many thousands of asylum seekers and migrants in the community and in detention.
2. Refugee Legal specialises in all aspects of refugee and immigration law, policy and practice. We also play an active role in professional training, community education and policy development. We are a member of the peak Department-NGO Dialogue and the Department's Protection Processes Reference Group. Refugee Legal has substantial casework experience and is a regular contributor to the public policy debate on refugee and general migration matters.
3. We welcome the opportunity to make a submission to the Joint Standing Committee on Intelligence and Security's inquiry into the Strengthening the Citizenship Loss Provisions Bill (**the Inquiry**). The focus of our submissions and recommendations reflect our experience and expertise as briefly outlined above.

Outline of submissions

4. We recommend that the *Australian Citizenship Act 2007* (**the Citizenship Act**) not be amended in the way proposed by the Bill. It is our opinion that the amendments proposed by the Bill seek to unnecessarily broaden section 35A of the Citizenship Act and in doing so expands the existing powers of the three Ministers administering the Citizenship Act to personally determine when a person's citizenship ceases consequently;
 - 4.1 increasing the range of scenarios where a person's citizenships is liable to cease; and
 - 4.2 increasing the likelihood of a person becoming stateless.
5. We have identified the following principal concerns with the amendments proposed by the Bill:
 - 5.1 They constitute an **unjustifiable expansion** of the power by removing the requirement that a person convicted of a terrorism-related offence must be sentenced to at least a six year term of imprisonment or to periods of imprisonment that total at least six years.
 - 5.2 The removal of the requirement for any term of imprisonment widens the Minister's personal powers when dealing with 'relevant terrorism convictions'.
 - 5.3 The removal of the requirement that a person be required to serve a term of imprisonment for 'relevant terrorism convictions' conceivably means that a person

¹ Refugee Legal (Refugee and Immigration Legal Centre) is the amalgam of the Victorian office of the Refugee Advice and Casework Service (RACS) and the Victorian Immigration Advice and Rights Centre (VIARC) which merged on 1 July 1998. Refugee Legal brings with it the combined experience of both organisations. RACS was established in 1988 and VIARC commenced operations in 1989.

who has been convicted but given no custodial sentence could have their citizenship ceased.

5.4 The removal of the requirement that a person has been given a custodial sentence is particularly concerning in a context where the power is to be exercised personally by the Minister 'in the public interest' and there is no access to merits review. It is Refugee Legal's experience that "public interest" powers in the migration context have been characterised by arbitrary, inconsistent and unpredictable outcomes.

5.5 For persons present in Australia at the time who have their citizenship ceased, they are granted a permanent visa permitting them to remain in Australia but not to depart (even for a temporary period).² Following this, any cancellation or revocation of citizenship may have far-reaching adverse consequences for the individual beyond just being stripped of their Australian citizenship.

5.6 They inappropriately expand the offences captured under 'relevant terrorism conviction' to include 'associating with a terrorist organisation'.

5.7 They **undermine the rule of law** by applying them retrospectively to any conviction received since 12 December 2005.

5.7.1 This is a radical departure from the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* which was restricted to individuals who had been convicted of a relevant offence, with a term of at least 10 years imprisonment 10 years prior to the passage of the Allegiance Act.

5.7.2 The Explanatory Memorandum does not sufficiently explain why these amendments should be applied to someone who may have been convicted over thirteen years ago and may not have received a custodial sentence.

5.8 Amending the dual citizenship threshold, would have an **incredibly harsh impact** with the potential to render people stateless and result in them experiencing indefinite detention. Without implementing further safeguards, such an amendment also places Australia at risk of breaching our international obligations including under the *1954 Convention relating to the Status of Stateless Persons* and *1961 Convention on the Reduction of Statelessness*.

6 For these reasons we submit that the Citizenship Act not be amended in the way proposed by the Bill.

Refugee Legal

21 January 2019

Defending the rights
of refugees.

Refugee & Immigration
Legal Centre Inc.
ABN 94 806 293 897

PO Box 1139
Level 6, 20 Otter Street
Collingwood, VIC 3066 Australia
T (03) 9413 0101
F (03) 9413 0144
www.rilc.org.au

² *Migration Act 1958* (Cth), s 35.