



Submission to the Parliamentary Joint Committee on Intelligence and Security

REVIEW OF THE AUSTRALIAN CITIZENSHIP RENUNCIATION BY CONDUCT AND CESSATION PROVISIONS

Introduction

The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to make a submission to the review by the Parliamentary Joint Committee on Intelligence and Security of the operation, effectiveness and implications of the terrorism-related citizenship loss provisions in the *Australian Citizenship Act 2007*.

DFAT plays a role in the citizenship loss process as a member of the Citizenship Loss Board (CLB). More broadly, DFAT is also responsible for leading on international engagement on global efforts to combat the threat of terrorism.

Operation of the Citizenship Loss Board

The CLB is not a decision-making body and its processes are not enshrined in legislation or regulation. The CLB is an interdepartmental body created to assist in the process of assessment of cases, to ensure relevant agencies have visibility and are able to provide information to inform the submissions that are made to the Minister for Home Affairs.

DFAT has been a member of the CLB since its establishment in February 2016.

DFAT's value-added role on the CLB is to advise on the international implications of cases presented. This includes advice on the manner and timing of any engagement with countries of second citizenship and/or countries where the individual is physically located, and views on whether or not the individual should receive notice of their Australian citizenship loss. DFAT's advice is based on a range of factors, including a case-by-case assessment of Australian interests that may be affected by the issuing of notice to the individual and implications for our engagement with other countries.

Practical implication of the provisions

Operation of law

The ability of Australia to manage its broader international interests and equities can be affected by the automatic operation of the citizenship loss provisions for individuals who have undertaken terrorist acts outside of Australia. This automaticity does not allow the government to consider all aspects of the national interest, including international interests, before an individual loses their citizenship. This has the potential to create challenges in the management of Australia's international relationships and interests. These challenges are managed on a case-by-case basis with foreign governments.

The legislation contains a discretionary provision that allows for the Minister for Home Affairs to rescind a notice issued to an individual, exempting a person from the operation of the citizenship



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loss provisions. Australia's international relations are one factor that the Minister must consider when exercising the power to rescind a notice. A determination by the Minister to rescind a citizenship loss notice and exempt the person from the effect of the relevant provision operates retrospectively and only in relation to the matters that were the basis for the notice..

Briefings to foreign governments

One of the international challenges is how best to advise relevant foreign governments of citizenship loss cases.

The citizenship loss provisions allow the Minister for Home Affairs to determine not to issue a notice informing a person about their citizenship loss, if the Minister is satisfied that issuing a notice would prejudice Australian law enforcement operations or prejudice Australia's security, defence or international relations.

Recommendations on whether a foreign government is briefed will depend on context, such as the nature and depth of Australia's relations with that country, including in the security field, the location of the individual, and the significance of the individual to the country of second citizenship.

Provision of Notice to the Individual

Consular Assistance

DFAT endeavors to provide consular assistance to Australians where practical factors allow, in accordance with the Consular Services Charter. Australians do not have a legal right to consular assistance.

The Australian Government would not ordinarily provide consular assistance to a non-citizen, though this would depend on the individual's circumstances and connection to Australia. An individual who has ceased to be an Australian citizen would generally not receive consular assistance.

Where the Minister for Home Affairs has determined that an individual will not be given notice of their Australian citizenship loss, DFAT is unable to advise the individual of their Australian citizenship loss. There are risks that the cessation of consular services, where the individual had previously been receiving them, or the inability for DFAT consular officers to provide services on request, may inadvertently alert an individual to their Australian citizenship loss. These risks are managed through DFAT's advice to the CLB, which informs the recommendations to the Minister for Home Affairs on the provision of notice.

Passports

DFAT is unable to issue a travel document to an individual who has lost Australian citizenship. Similarly to consular services, there are risks of inadvertent disclosure of Australian citizenship loss where an individual requests a travel document, and is then refused. This risk is also managed through DFAT's advice on handling to the CLB.



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Conclusion

The provisions currently under review are part of a range of measures used by the Australian Government to manage Australians of counter-terrorism interest and act in conjunction with other measures to limit any threat posed by those individuals.

Australia works closely with international partners to manage the common threat of terrorism and retains an interest in any person who may pose a threat to our national security, whether or not they are an Australian citizen.