

UNCLASSIFIED



Australian Government
Australian Security
Intelligence Organisation



ASIO submission to the Parliamentary Joint Committee on Intelligence and Security

Review of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

14 October 2019

Introduction

1. The Australian Security Intelligence Organisation (ASIO) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) Review of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019.
2. ASIO considers citizenship cessation to be a legislative measure that works alongside a number of other tools to protect Australia and Australians from terrorism, but it does not necessarily eliminate the threat posed by those who are subject to citizenship cessation. In any counter-terrorism matter, full and thorough consideration of the individual case and appropriate response needs to occur to effectively protect Australia and its interests from harm. Provisions contained within the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 will provide agencies with scope to provide advice on cessation that has regard to the best security outcome, and ASIO supports this Bill.
3. This unclassified submission is divided into two parts:
 - **Part 1** outlines the current security environment.
 - **Part 2** discusses the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019.

Role of the Australian Security Intelligence Organisation

4. ASIO is Australia's security intelligence service. Our purpose is to protect Australia from violent, clandestine and deceptive efforts to harm its people and undermine its sovereignty.
5. We deliver our purpose by focusing our efforts on three services: Counter, Shape and Build. We counter—through identification and mitigation—violent, clandestine or deceptive efforts to harm Australians and compromise Australian sovereignty, economic wellbeing and national security. We shape and inform efforts to foster institutional and community resilience, by providing Australian governments, law enforcement and industry with intelligence and advice to enable better decision-making in relation to security responses, policies and priorities. We build capability across Australia's national security community by sharing our experience with partners and leading the development of intelligence capabilities.
6. ASIO's key strategic priorities are:
 - countering terrorism and the promotion of communal violence;
 - countering espionage, foreign interference and malicious insiders;
 - countering serious threats to Australia's border integrity; and
 - providing protective security advice to government and industry.
7. We harness our expertise in security, unique intelligence collection capabilities, strong national and international partnerships, and all-source intelligence analysis capabilities to provide trusted, actionable advice.

8. ASIO's role and functions are determined by law. ASIO must act lawfully, in line with the provisions of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) and other relevant legislation and guidance. ASIO must also act with propriety: our activities must be conducted effectively, efficiently, ethically and without bias.
9. In protecting the nation and its interests from threats to security, ASIO operates under a comprehensive accountability framework, with robust and extensive oversight of both operational and non-operational activities. ASIO's key oversight body is the Inspector-General of Intelligence and Security, an independent agency that scrutinises the operational activities of intelligence agencies to ensure they operate with propriety, according to law, consistent with ministerial guidelines and directives, and with due regard for human rights. The PJCIS, the Independent National Security Legislation Monitor and the Independent Reviewer of Adverse Security Assessments also provide wide-ranging oversight of ASIO's activities. Ministerial accountability is to the Minister for Home Affairs, who exercises all ministerial powers and functions under the ASIO Act except those that are explicitly with the Attorney-General.
10. ASIO engages fully with its oversight and accountability mechanisms to provide public assurance of the legality and propriety of ASIO's actions.

Part 1—The security environment

Terrorism in Australia

11. The national terrorism threat level for Australia remains PROBABLE—credible intelligence, assessed by security agencies, indicates that individuals or groups continue to possess the intent and capability to conduct a terrorist attack in Australia. Since September 2014, when the national terrorism threat level was raised, there have been seven attacks targeting people and 16 major counter-terrorism disruption operations in response to potential attack planning in Australia.
12. ASIO assesses that the principal source of the terrorist threat remains Sunni Islamist extremism, emanating primarily from small groups and individuals inspired, directed or encouraged by extremist groups overseas. However, individuals motivated by other forms of extremism and ideology are also present onshore.

Australians involvement in the Syria–Iraq conflict

13. Since 2012, around 230 Australians (or former Australians) have travelled to Syria or Iraq to fight with or support groups involved in the conflict.
 - While we are likely to never know the exact number, identities or fates of all Australians who travelled to engage in or support conflict in Syria–Iraq, ASIO is aware of around 80 Australian (or former Australian) men and women who remain offshore. Not all of these individuals are still active—a number are likely to be located in internally displaced person camps or otherwise detained.

- In addition, an unidentified number of minors—the children of those Australians—are likely to be in the conflict region.
 - Around 110 Australians (or former Australians) who have travelled to Syria or Iraq are assessed to be deceased.
14. We consider that attempted travel by Australians to Syria or Iraq to engage in politically motivated violence has significantly reduced. However, ASIO assesses that individuals will continue to seek to travel to conflict zones in support of extremist groups.

The threat posed by Australians involved in the Syria–Iraq conflict

15. We continue to assess that the return of Australians who have spent time with Islamist extremist groups in Syria or Iraq has the potential to exacerbate the Australian threat environment for many years to come. Most of the Australian adults currently in Syria or Iraq have been there for an extended period of time. We can expect the majority to have developed:
- a greater tolerance for and propensity towards violence as a result of exposure to it over an extended period of time;
 - increased capabilities as a result of military-type training and combat;
 - networks of security concern as a result of their co-location with Islamist extremists from a diverse range of backgrounds; and
 - established jihadist credentials as a result of activities undertaken while in Syria or Iraq.
16. The greatest threat is likely to emanate from individuals who have occupied leadership, training or logistical support roles and engaged in combat in support of Islamist extremist groups in Syria or Iraq. In addition, individuals are likely to hold a position of greater standing among Australia-based Islamist extremists. There is potential they could use this to radicalise and recruit others, providing them with access to networks they built while in Syria or Iraq.
17. Many of the children are likely to have been exposed to violence and extremist ideologies through a range of vectors. Some vectors may serve as a direct conduit for involvement with Islamist extremist groups, and others may help to frame the child’s world view over the longer term. However, the specific experiences of individual children will vary based on their age, gender, location and the group their parent/s are affiliated with.

Part 2—The Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

18. ASIO considers citizenship cessation to be a legislative measure that works alongside a number of other tools to protect Australia and Australians from terrorism, but it does not necessarily eliminate the threat posed by those who are subject to citizenship cessation.
19. In some instances, citizenship cessation will curtail the range of threat mitigation capabilities available to Australian authorities. It may also have unintended or unforeseen adverse security outcomes—potentially including reducing one manifestation of the terrorist threat while exacerbating another. There may be occasions where the better security outcome would be that citizenship is retained, despite a person meeting the legislative criteria for citizenship cessation.

Ministerial decision-making model

20. ASIO is supportive of an alternative model for citizenship cessation where full and thorough consideration can be given to each citizenship cessation case, including having regard to whether ceasing an individual's Australian citizenship would reduce the threat and protect Australia and its interests from that harm. Such consideration has no practical value where citizenship is ceased through operation of law.
21. The proposed amendments provide scope for ASIO to advise against citizenship cessation in circumstances where that outcome would be prejudicial to security or where the security risk could be better managed using other options.
22. Additionally, they would provide scope for citizenship cessation to be weighed against broader national interests, such as Australia's relations with other countries.
23. Therefore, ASIO supports the introduction of a citizenship cessation model whereby cessation of citizenship requires a ministerial decision, rather than it occurring through operation of law.
24. If ASIO provides information about an individual to the minister to inform a cessation determination and the individual seeks judicial review of the minister's determination, ASIO would rely on common-law public interest immunity claims to prevent ASIO's classified information from being disclosed.

Retrospectivity

25. The introduction of retrospectivity (to 29 May 2003) in relation to conduct forming the basis for the minister's determination on citizenship cessation, and in relation to the date from which relevant convictions can form the basis of a citizenship cessation determination, would broaden the net of potential candidates for consideration of citizenship loss. However, it would be unlikely to significantly increase the number of individuals who meet the threshold for citizenship cessation based on conduct, given ASIO may have only limited coverage and visibility of conduct that occurred during the relevant time frame.

26. ASIO would not support this amendment if the operation of law model were to be retained. Citizenship cessation due to conviction or conduct from 2003 may capture individuals who engaged in conduct or were convicted historically but whom ASIO may no longer assess to be a security threat, or for whom there are other factors or equities that mean it would not be in the national interest for their citizenship to cease. ASIO considers a ministerial decision-making model would enable discretion to be applied in these circumstances and enable consideration on a case-by-case basis.

Conclusion

27. As outlined, ASIO considers citizenship cessation to be a legislative measure that works alongside a number of other tools to protect Australia and Australians from terrorism, but it does not necessarily eliminate the threat posed by those who are subject to citizenship cessation. In any counter-terrorism matter, consideration of the individual case and appropriate response needs to occur to effectively protect Australia and its interests from harm.
28. Provisions contained within the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 will provide agencies with scope to provide advice on cessation that has regard to the best security outcome, and ASIO supports this Bill.