



Australian Government

Australian Government response to the
Senate Legal and Constitutional Affairs Legislation Committee
report:

Migration and Citizenship Legislation Amendment (Strengthening
Information Provisions) Bill 2020 [Provisions]

APRIL 2024

Recommendations

Recommendation 1:

The committee recommends that the Senate pass the bill.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Australian Labor Party's minority report

Recommendations

Recommendation 1:

Labor Senators recommend that the bill not be passed in its current form.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2:

Labor Senators recommend that the bill is sent to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) for further inquiry.

- **The committee has a fundamental role in being briefed on citizenship issues with national security implications.**
- **As recently as 2019, the PJCIS reviewed the Australian Citizenship Amendment (Citizenship Cessation) Bill and conducted a review of the Australian Citizenship renunciation by conduct and cessation provisions.**
- **The PJCIS also receives regular briefings on citizenship cancellations.**
- **It is important that this bill is subject to a lengthier and more thorough inquiry process. Given the PJCIS's lengthy experience in reviewing citizenship matters it would be well-placed to examine this bill.**

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3:

Given the inadequate timeframe, Labor Senators recommend the bill also undergo detailed stakeholder consultation in line with the Department of Prime Minister and Cabinet's Best Practice Consultation guidelines, ensuring a genuine consultation process that considers the real-world impact of the bill.

- **In particular, Labor Senators encourage further consultation on matters raised by the Law Council of Australia noting the committee did not have time to consider these submissions sufficiently.**
- **The government must allow for far more realistic reporting timelines for inquiries, that treat submitters and witnesses with due respect.**

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4:

Should the government not withdraw the bill or consider further stakeholder consultation through PJCIS, and they secure enough votes for a second reading of the bill, Labor Senators recommend the bill be amended to:

- **list the bodies that are 'gazetted agencies' in primary legislation;**
- **amend the 'public interest' test to enable the court to consider and balance competing objectives in addition to those currently prescribed, including the right to a fair hearing, issues of procedural fairness and any other matter that it considers relevant to the proper administration of justice;**
- **enable the High Court, the Federal Court and the Federal Circuit Court the flexibility to permit partial disclosure of confidential information to applicants and/or their lawyers, sufficient to ensure that they understand, and can respond to, the gist of the information and the allegations made;**
- **ensure for the purposes of the preliminary hearings that the applicant may be represented by a lawyer (if necessary, a security cleared lawyer) or have their interests represented by a special advocate. This would require the lawyer to be able to access the confidential information so that they can make submissions and tender evidence concerning the use that the Court should make of the information, and the impact that not disclosing the information may have on the public interest (including the proper administration of justice);**
- **prescribe a minimum level of officers within a 'gazetted agency' who can communicate such information;**
- **review exceptions to the current general prohibitions for disclosure to oversight and integrity agencies, or in relation to disclosures made in accordance with the Public Interest Disclosure Act and the Freedom of Information Act;**
- **ensure disclosure and declaration offences align with the Criminal Code;**
- **introduce safeguards regarding the ability of a gazetted agency to communicate information on condition that it be treated as confidential, including:**
 - **introducing a definition of 'confidential information';**
 - **independent review of such decisions;**

- enable the High Court, the Federal Court and the Federal Circuit Court to order disclosure in relation to any proceedings, rather than only substantive proceedings relating to the exercise of listed citizenship powers and section 501-character test regime powers;
- ensure that officers are not prevented from providing information or evidence to other courts where such courts also order such disclosure and have appropriate procedures for managing disclosure-related risks;
- remove the blanket prohibition against disclosure to Parliament and parliamentary committees, noting that the PJCIS already receives regular briefings on citizenship cancellations; and review the expanded definition of 'non-disclosable information' in line with stakeholder comments.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.

Australian Greens dissenting report

Recommendations

Recommendation 1:

The Australian Greens recommend that the bill be rejected by the Senate.

Response:

The Government **notes** this recommendation. However, given the passage of time since the report was tabled, a substantive Government response is no longer appropriate.