

PROSECUTE;
DON'T PERPETRATE
*Ending impunity for sexual
violence in armed conflict*

SUBMISSION TO THE REVIEW OF AUSTRALIAN CITIZENSHIP AMENDMENT
(CITIZENSHIP CESSATION) BILL 2019

Introduction

Prosecute; don't perpetrate is glad to provide this submission after giving evidence at the committee hearing on Friday 18 October 2019. We have also previously provided two submissions to the committee's review the Australian Citizenship renunciation by conduct and cessation provisions of the Citizenship Act. As our campaign architect testified at the hearing, we hope to see an amendment to the *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* to ensure that any decision to revoke citizenship accounts for Australia's obligations to investigate and prosecute sexual violence perpetrated as war crimes, crimes against humanity or genocide.

As the bill stands, members of the Australian Defence Force are held to a higher criminal standard than foreign fighters originating in Australia. This is entirely unacceptable. It is the responsibility of the government of Australia under the Rome Statute of the International Criminal Court, to investigate and prosecute breeches of the Geneva Conventions, crimes against humanity and genocide within our own court systems.

The bill does call for the Minister to consider any other matters of public interest in making a decision to revoke someone's citizenship. However, at the 18 October hearing, AFP Assistant Commissioner for Counter Terrorism Mr Ian McCartney testified to the committee that the possibility of war crimes-type charges were not included in the current conception of section 36E (2). Information on these charges would come from a different part of the AFP and Home Affairs than those responsible for terrorism, so it is prudent that the bill include an amendment to ensure Chapter 8 crimes are specifically and explicitly considered in the Minister's decision to revoke citizenship.

Attached to this submission are a draft business process map designed as a tool for a planned multiagency workshop, to help agencies overcome practical barriers such as gathering evidence, to support successful prosecution of sexual violence as war crimes, crimes against humanity and genocide. We have also attached the draft program for this workshop.

Recommendation

Amend section 36E (2) to include a sub paragraph to the effect:

In deciding whether to make a determination under subsection 36B(1) or revoke such a determination-whether the person has perpetrated offences under Chapter 8-'Offences against humanity and related offences' of the Criminal Code Act 1995.

Attachments

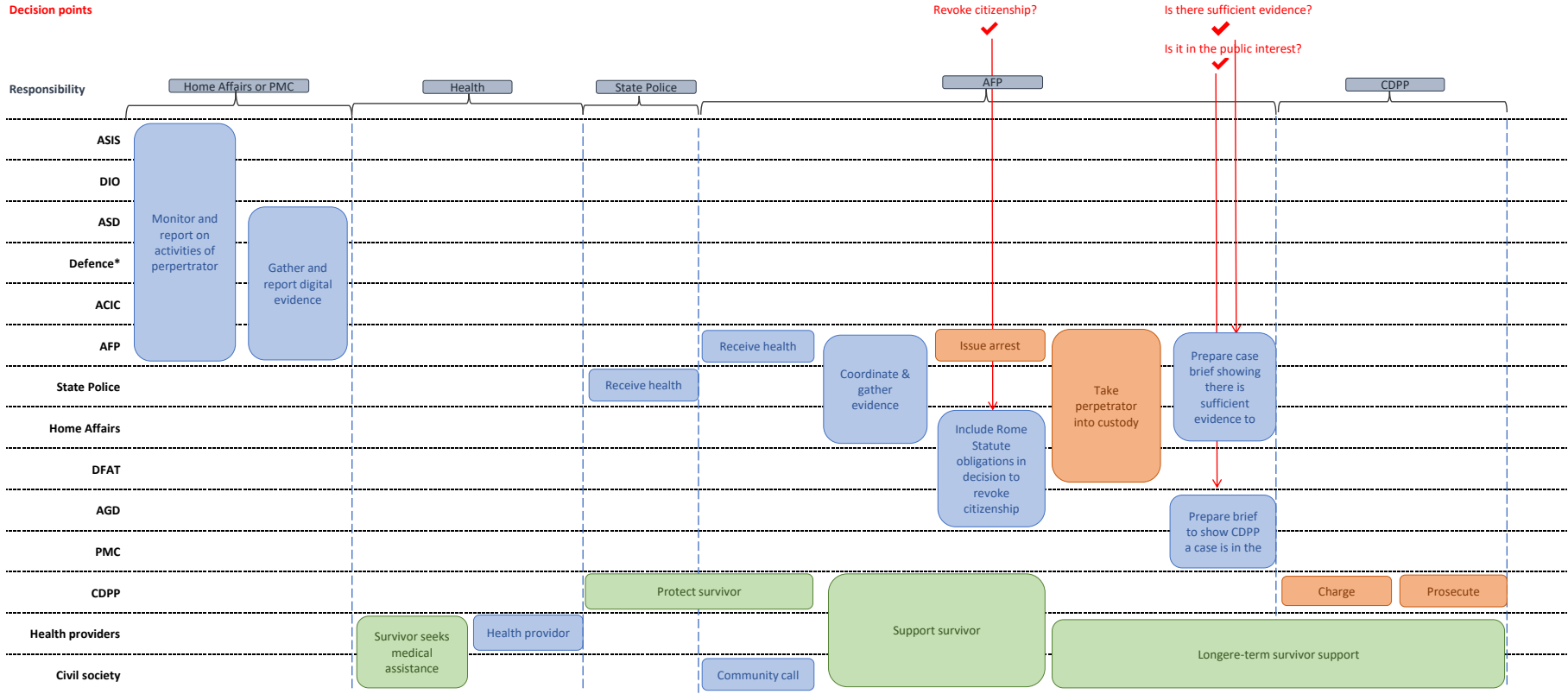
1. Draft business process map – multiagency process for investigation and prosecution of sexual violence as war crimes, crimes against humanity and genocide
2. Draft agenda for 'overcoming the barriers' multiagency workshop

PROCESS MAP FOR INVESTIGATING AND PROSECUTING CONFLICT RELATED SEXUAL VIOLENCE

START STATE:
 Australian citizen perpetrates conflict related sexual violence

END STATE:
 Perpetrator is prosecuted

Decision points



* Operations & policy: JOC, ADFIS, Joint Health Command

- Government
- Survivor
- Perpetrator

time	item	lead	format
	Working breakfast?		
830	Welcome		Lecture
840	Opening address	Departmental host	Lecture
900	Setting the scene	Susan Hutchinson	Powerpoint
915	Ice breaker: intro, 2 barriers to & 2 requirements for effective investigation & prosecution		Participatory activity
1000	Barriers to investigation and prosecution		Small group discussions
1050	Morning tea		
1120	Visualising an effective process		
1130	Testimony, physical and digital evidence 1		Small group discussions
1230	Testimony, physical and digital evidence 2		Small group discussions
1330	Lunch		
1430	Report back and discussion		Plenary
1530	Agreeing on multi-agency process		Business process map
1650	Thank you	Susan Hutchinson	
1700	Closing address		
	Dinner with keynote?		