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**Parliamentary Joint Committee on Intelligence & Security (PJCS) –
Review of the Australian Citizenship Amendment (Citizenship
Cessation) Bill 2019**

Questions on Notice (taken following the Hearing)

The breadth of the power under clause 36B of the bill

Q1. Is it the case that, in order for the Minister to make a determination to cancel the Australian citizenship of a person who is aged 14 or older under clause 36B(1):

it would <u>not</u> be necessary:	it would <u>only</u> be necessary:
for that person to <u>in fact</u> be a national or citizen of another country	for <u>the Minister</u> to be <u>satisfied</u> that the person would not “become a person who is not a national or citizen of any country” if the Minister were to make the determination
for that person to <ul style="list-style-type: none">have <u>in fact</u> engaged in any of the conduct specified in clause 36B(5) while outside Australia; orto have <u>in fact</u> engaged in any of the conduct specified in clause 36B(5) while in Australia (prior to that person leaving Australia without having been tried for any offence in relation to the conduct)	for <u>the Minister</u> to be <ul style="list-style-type: none"><u>satisfied</u> that the person engaged in any of the conduct specified in clause 36B(5) while outside Australia; or<u>satisfied</u> that the person engaged in any of the conduct specified in clause 36B(5) while in Australia (prior to that person leaving Australia without having been tried for any offence in relation to the conduct)
for the conduct referred to above to have, <u>in fact</u> , demonstrated that the person has repudiated their allegiance to Australia	for <u>the Minister</u> to be <u>satisfied</u> that the conduct referred above demonstrated that the person has repudiated their allegiance to Australia
for it to be contrary to the public interest for the person to remain an Australian citizen (in the view of any person other than the Minister)	for <u>the Minister</u> to be <u>satisfied</u> that it would be contrary to the public interest for the person to remain an Australian citizen (having regard to the considerations listed in clause 36E of the Bill)?

- Based on the factual information and an assessment by relevant Australian Government agencies, the Minister must be satisfied that the person engaged in the relevant conduct and that the person would not become a person who is not a national or citizen of any country if the Minister were to make the determination.
- The Bill also stipulates that the Minister must have regard to the matters listed at section 36E.

Q2. Under clause 36B of the bill, would it be necessary for a person to have ever been convicted – or even charged – with a criminal offence in order for the Minister to cancel that person’s citizenship under clause 36B(1)?

- No. As is currently the case, section 36B of the Bill allows a dual-national’s citizenship to be ceased where they have engaged in terrorism-related conduct.

Q3. Without being exhaustive, is it correct that two common law principles of “natural justice” are that:

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a. where a decision-maker is proposing to make a decision that would affect a person's fundamental rights, the decision-maker should inform the person of the case against them and provide them with an opportunity to be heard prior to that decision being made (the so-called "hearing rule"); and

b. a decision-maker should disqualify himself or herself from making a decision if the decision-maker is affected by actual bias or where a fair-minded lay observer might reasonably apprehend that the decision-maker is biased (the so-called "bias rule")?

- The doctrine of natural justice has two components – the hearing rule and the bias rule. Their application to administrative decision-making will vary depending on the particular statutory context in which they arise.

Q4. Do the rules of natural justice apply in relation to the Minister's decision to cancel a person's citizenship under clause 36B(1) of the bill?

- The natural justice hearing rule does not apply under section 36B(1); the bias rule does apply.
- The natural justice hearing rule is afforded to a person should they apply under section 36H to the Minister for a revocation of the determination to cease their citizenship. This model is similar to that in sections 501(3) and 501C of the *Migration Act 1958*, which confer personal power on the Minister to cancel a person's visa on character grounds without according natural justice where the Minister considers that to be in the national interest, but where there is then a power (attended by natural justice) for the person to seek revocation of such a decision.

Q5. Under clause 36B(1), is the Minister required to inform a person of the case against them or provide them with an opportunity to be heard prior to making a decision to cancel their Australian citizenship?

- No.

Q6. Provided he was satisfied of the various matters set out in clause 36B(1), does the bill prohibit the Minister from cancelling the citizenship of a person in circumstances where the Minister is affected by actual bias (or where a fair-minded observer might reasonably apprehend that the Minister is affected by bias)?

- Yes. The 'bias' rule is not excluded from section 36B.

The immediate consequences of a person having his or her citizenship cancelled by the Minister under clause 36B(1)

Q7. If the Minister cancels a person's Australian citizenship under clause 36B(1), does the person cease to be an Australian citizen with immediate effect?

- Yes.

Q8. The Department told the Committee that such a person would automatically receive an "ex-citizen visa" under the Migration Act. However, is it correct that a person whose citizenship is cancelled under clause 36B would only receive an "ex-citizen visa" under section 35 of the Migration Act if the person was in the "the migration zone" at the time his or her citizenship was cancelled?

- Yes. The purpose being to give such a person a lawful status, thus avoiding the duty to detain them under section 189 of the Migration Act.

Q9. Is it correct that the "migration zone" is the area consisting of the States and Territories of Australia (as well as Australian resource and sea installations)?

- Yes.

Q10. So, if:

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- a. the Minister cancelled a person's Australian citizenship under clause 36B; and
- b. the person was on an overseas holiday at the relevant time,

would that person automatically receive an ex-citizen visa under the Migration Act?

- No.

If the person is in Australia when his or her citizenship is cancelled:

Q11. Does the Minister have a personal power to cancel a person's ex-citizen visa if the Minister (i) reasonably suspects that the person does not pass the "character test" (as defined in the Migration Act) and (ii) is satisfied that the cancellation is in the national interest?

- Yes.

Q12. If Australian officials know or reasonably suspect that a person does not (i) have a valid visa and (ii) the person is in "the migration zone", officials must detain the person. Is that correct?

- Yes, unless they otherwise are granted a bridging or substantive visa.

Q13. If:

- a. the Minister cancelled a person's Australian citizenship under clause 36B of the bill while that person was in the migration zone; and
- b. the Minister cancelled the person's "ex-citizen visa",

would officials from the Minister's Department be required by law to detain that person?

- Yes, unless the person is granted a bridging visa.

Rights of review for a person whose citizenship is cancelled by the Minister under clause 36B(1)

Q14. If the Minister cancels a person's citizenship under clause 36B, does the bill allow that person to seek merits review of the Minister's decision from an independent third party?

- No. However, it remains open to the person to seek Ministerial or judicial review.

Q15. Is it correct that a person whose citizenship is cancelled under clause 36B has only two options for having the Minister's decision reviewed:

- a. he or she could apply to the original decision-maker, the Minister, to have the decision revoked under clause 36H ("ministerial review"); or
- b. he or she could seek review of the Minister's decision in the federal court or in the high court ("judicial review")?

- No. In addition, the Minister could revoke the determination on the Minister's own initiative under proposed section 36J.

Q16. Is it the case that, in order for the Minister to re-affirm his decision to cancel the Australian citizenship of a person who is aged 14 or older under clause 36B:

it would <u>not</u> be necessary:	it would only be necessary:
for that person to <u>in fact</u> be a national or citizen of another country	for <u>the Minister</u> to be <u>satisfied</u> that the person would not "become a person who is not a national or citizen of any country" if the Minister were to re-affirm his determination
for that person to	for <u>the Minister</u> to be

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<ul style="list-style-type: none"> have <u>in fact</u> engaged in any of the conduct specified in clause 36B(5) while outside Australia; or to have <u>in fact</u> engaged in any of the conduct specified in clause 36B(5) while in Australia (prior to that person leaving Australia without having been tried for any offence in relation to the conduct) 	<ul style="list-style-type: none"> <u>satisfied</u> that the person engaged in any of the conduct specified in clause 36B(5) while outside Australia; or <u>satisfied</u> that the person engaged in any of the conduct specified in clause 36B(5) while in Australia (prior to that person leaving Australia without having been tried for any offence in relation to the conduct)
for the conduct referred to above to have, <u>in fact</u> , demonstrated that the person has repudiated their allegiance to Australia	for <u>the Minister</u> to be <u>satisfied</u> that the conduct referred above demonstrated that the person has repudiated their allegiance to Australia
for it to be contrary to the public interest for the person to remain an Australian citizen (in the view of any person other than the Minister)	for <u>the Minister</u> to be <u>satisfied</u> that it would be contrary to the public interest for the person to remain an Australian citizen (having regard to the considerations listed in clause 36E of the Bill)?

- If by “re-affirm” a decision under section 36B, the question is referring to the exercise of the revocation power under section 36H, then in exercising that power, the Minister **must** revoke the determination if satisfied that at the time it was made the person was not a national or citizen of another country or, for a determination under section 36B(1), the Minister is satisfied that the person did not engage in the relevant conduct. Additionally, the Minister **may** revoke the determination if satisfied that it would be in the public interest to do so.

Q17. The Minister would always be reviewing his own decision under clause 36H. Is it arguable that, as a matter of law, the Minister would have a bias – or that a fair-minded observer might reasonably apprehend that the Minister has a bias – in relation to every review the Minister conducts under clause 36H?

- No.

Q18. Is it the case that, where a person seeks judicial review of the Minister’s decision to revoke his or her citizenship:

the court would <u>not</u> be required:	the court would be required to:
to consider whether the person is <u>in fact</u> a national or citizen of another country	consider whether <u>the Minister</u> was satisfied that the person would not “become a person who is not a national or citizen of any country” if the person’s Australian citizenship was cancelled
to consider whether the person: <ul style="list-style-type: none"> <u>in fact</u> engaged in any of the conduct specified in clause 36B(5) while outside Australia; or <u>in fact</u> engaged in any of the conduct specified in clause 36B(5) while in Australia (prior to that person leaving Australia without having been tried for any offence in relation to the conduct) 	consider whether <u>the Minister</u> was: <ul style="list-style-type: none"> satisfied that the person engaged in any of the conduct specified in clause 36B(5) while outside Australia; or satisfied that the person engaged in any of the conduct specified in clause 36B(5) while in Australia (prior to that person leaving Australia without having been tried for any offence in relation to the conduct)
to consider whether the conduct referred above had, <u>in fact</u> , demonstrated that the person had repudiated their allegiance to Australia	consider whether <u>the Minister</u> was satisfied that the conduct referred above had demonstrated that the person had repudiated their allegiance to Australia

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to consider whether it would be contrary to the public interest for the person to remain an Australian citizen	consider whether <u>the Minister</u> was satisfied that it would be contrary to the public interest for the person to remain an Australian citizen (having regard to the considerations listed in clause 36B of the Bill)?
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- The provision in section 36K, where a person's citizenship is taken never to have ceased if a court finds that the person did not engage in the conduct to which the determination relates or that the person was not a national or citizen of a country other than Australia, envisages a court having jurisdiction to make such a finding.

Scenario

Q19. If this bill were to become law, could the following scenario play out in Australia:

Peter

- **Peter works in IT and lives in Melbourne. He has never been convicted of a crime – or even charged with one. In fact, he has never even received a parking ticket.**
- **The Minister is satisfied that Peter sought to recruit people for a terrorist organisation in 2004.**
- **It's not true – the Minister has made a terrible mistake. But the Minister is very confident and does not bother to make basic inquiries that would alert him to his mistake.**
- **The Minister is also satisfied – for reasons that are secret to him – that:**
 - **if Peter lost his Australian citizenship, he would not become a person who is not a national or citizen of any country;**
 - **by engaging in the conduct that the Minister thought Peter had engaged in (albeit mistakenly), Peter had repudiated his allegiance to Australia; and**
 - **it would be contrary to the public interest for Peter to remain an Australian citizen (having regard to the considerations listed in clause 36B of the Bill).**
- **The Minister cancels Peter's Australian citizenship and notifies Peter by letter.**
- **Because Peter is in Australia, he is automatically given an ex-citizen visa. But the Minister revokes that visa immediately in accordance with the *Migration Act*.**
- **Peter, who is now an unlawful non-citizen, is detained by Border Force and placed in immigration detention. He is confused – and has to tell his family, friends or his employer that he has had his Australian citizenship cancelled because, according to the Minister for Home Affairs, he is a terrorist. He loses his job and friends distance themselves from Peter.**
- **Peter asks the Minister to change his decision and provides the Minister with evidence that the Minister is making a terrible mistake. After one month, the Minister rejects Peter's application.**
- **Peter applies to the federal court for judicial review. After reviewing the application, the court is appalled – the Minister has clearly made a terrible mistake. Worse, the Minister failed to make basic inquiries and ignored key evidence that would have alerted him to his mistake.**
- **The court orders that the Minister's decision to revoke Peter's citizenship be quashed.**
- **Peter gets his citizenship back but, by this time, he has lost his job and his mental and physical health has seriously deteriorated.**

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- No.

Statelessness

Q20. Under the bill, the Minister must not make a determination to cancel a person's Australian citizenship under either clause 36B or clause 36D if "the Minister is satisfied that the person would, if the Minister were to make the determination, become a person who is not a national or citizen of any country". Is that formulation contrary to Australia's obligations under the Convention on the Reduction of Statelessness?

- No.

Q21. If this bill were to become law, would it be possible for the Minister to lawfully render a person stateless?

- The legislation contains provisions so that the Minister must not make a determination to cease a person's citizenship if the Minister is satisfied such a determination would result in the person not being a national or citizen of any country.

Human beings are fallible

Q22. Do you agree with the following propositions:

- all Ministers in the Australian Government are human beings;
 - all human beings are fallible;
 - Peter Dutton is a human being;
 - Peter Dutton is a Minister in the Australian Government; and
 - Peter Dutton is fallible?
- The Department will respond to this question in due course.

Independent National Security Legislation Monitor Recommendations

Q23. Please provide a detailed response to every recommendation – or "suggestion" or "proposal" – made by the Independent National Security Legislation Monitor in his *Review of the operation, effectiveness and implications of terrorism-related citizenship loss provisions contained in the Australian Citizenship Act 2007*. This response should include detailed reasons as to why the Government has not accepted particular recommendations.

- The Department confirms that the Government's response to the INSLM's review formed part of the second reading speech for the Bill. A copy of the speech has been included ([Attachment A](#)) for ease of reference.
- Please see the table overleaf for a detailed response to every recommendation made by the INSLM.

	INSLM Recommendation	Reasoning
1.31(c)	ss 33AA and s 35 be repealed retrospectively	<ul style="list-style-type: none"> Sections 33AA and 35 are being repealed, but not retrospectively. The 2015 provisions were lawfully enacted by the then Parliament. <ul style="list-style-type: none"> Individuals whose citizenship ceased by operation of the existing provisions have right to judicial review. However, there is no citizenship cessation under ss33AA or 35 in circumstances where the person may have engaged in relevant conduct but the Minister has not become aware and made any determination in relation to the conduct. For those persons whose ceasing-conduct under the existing provisions the Minister has become aware of, they will be able to apply for revocation under the new provisions if they have not been given notice of citizenship cessation. For the small cohort of persons who have been given notice of citizenship cessation, they will not be able to apply for revocation under the new provisions but will continue to have the right to seek judicial review of the cessation, which under the transitional provisions (item 17 of Part 2 of the Bill) will be taken to have occurred by way of a determination under new s 36B(1) .
1.31(d)	A Ministerial decision making model for ss 33AA and 35	<ul style="list-style-type: none"> Allows Minister to exercise case-by-case decision making. <ul style="list-style-type: none"> Provides Minister ability to consider citizenship loss alongside other measures. Allows conscious and deliberate decisions based on consideration of all relevant factors.
1.32(a)(i)	The Minister must be reasonably satisfied that the physical conduct element exists	<ul style="list-style-type: none"> Existence of conduct element is part of current provisions and it is appropriate that Minister should be satisfied of this as part of the decision.
1.32(a)(ii)	The Minister must be satisfied a person has repudiated their allegiance to Australia such that it is not in the public interest for them to remain an Australian citizen.	<ul style="list-style-type: none"> Including public interest consideration ensures the Minister considers all relevant factors when making a decision. <ul style="list-style-type: none"> Public interest consideration is also in current provisions (as part of the rescission / exemption consideration).
1.32(b)	The Minister may rely on classified material in coming to a decision	<ul style="list-style-type: none"> Classified material is probative with respect to the legislative criteria (e.g. relating to conduct and threat).
1.32(c)(i)	The Minister does not provide procedural fairness before revoking citizenship	<ul style="list-style-type: none"> The Department agrees with the INSLM that providing procedural fairness ahead of a decision would undermine the effectiveness (i.e. could allow an individual to pre-emptively renounce their second citizenship, rendering them ineligible for consideration).
1.32(c)(ii)	The Minister must give notice and inform the person of their right to request the Minister revoke the cessation	<ul style="list-style-type: none"> Given the significance of citizenship cessation to an individual, it is appropriate that individuals should have opportunity to seek reconsideration of decision, and that natural justice should apply to this process.

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1.32(c)(iii)	The Minister may withhold notice for 90 days, with an additional one-off 90 day extension reported to the PJCIS and IGIS	<ul style="list-style-type: none"> It is appropriate that a decision to withhold notice should be the subject of regular reconsideration, given the significance of citizenship cessation to an individual. <ul style="list-style-type: none"> However, a 'one-off' extension would mean notice would 'automatically' be provided after this 90 days, even though doing so may continue to be prejudicial to security, defence, international relations or law enforcement operations. It is feasible that these considerations will not be resolved within 90 or even 180 days. The Bill mandates reconsideration of a decision to withhold notice every 90 days. For notice to be withheld for the maximum allowable period (6 years) it would be necessary for the Minister to have been satisfied that there were grounds to continue to withhold notice on 24 occasions (i.e. 4 opportunities to revoke the withholding of notice every year for up to 6 years). This balances public interest and national security considerations. In practice, there have been multiple occasions where, on review, the Minister has revoked a decision to withhold notice in shorter timeframes. It is appropriate the PJCIS be informed of decisions to continue withholding notice. <ul style="list-style-type: none"> However, the Department considers there to be no basis for reporting the determination to the IGIS. IGIS already has oversight of those intelligence functions that support citizenship loss consideration.
1.32(e)(i)	Merits review in the Security Division of the Administrative Appeals Tribunal	<ul style="list-style-type: none"> The INSLM's recommendation for merits review was limited to the conduct element. Avenues for review exist, including judicial review. <ul style="list-style-type: none"> Bill also allows individual to apply for revocation (unlike current provisions). In relation to conduct, merits review is available through review of the ASIO QSA in the Security Appeals Division of the AAT. Consistent with <i>Migration Act</i> approach, it is not appropriate for the Tribunal to review a decision made in the Minister's personal capacity, who is responsible to Parliament, in relation to the public interest.
1.32(e)(ii)	Special Advocates in the merits review process.	<ul style="list-style-type: none"> This recommendation is dependent on the AAT having a role in reviewing citizenship cessation decisions, which the Department does not recommend for reasons outlined above.
1.32(f)	Right of appeal of AAT decision to the Federal Court	<ul style="list-style-type: none"> This recommendation is dependent on the AAT having a role in reviewing citizenship cessation decisions, which the Department does not recommend for reasons outlined above.

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Q24. Specifically, the INSLM writes at paragraph 6.95 of his report that “[t]here seems to be no good reason why the Security Division of the AAT could not review what probably would be the key issue in many decisions by the Minister; namely, whether the person engaged in particular (terrorist like) conduct. To an extent, the Security Division can already deal with that issue in conducting a review of qualified security assessments”.

a. How many submissions did the Department make to the INSLM’s inquiry into the citizenship loss provisions? When were those submissions made?

- One. The submission was provided to the INSLM on 7 June 2019.

b. How many discussions did the Department hold with the INSLM’s inquiry into the citizenship loss provisions? Who attended those discussions and when did they take place?

- The Department attended a private hearing with the INSLM on 28 March 2019. Departmental officials were:
 - Ms Linda Geddes, Commonwealth Counter-Terrorism Coordinator;
 - Ms Pip de Veau, General Counsel, Legal Division;
 - Mr Ian Deane, Special Counsel;
 - Mr Luke Mansfield, A/Deputy Secretary Immigration and Citizenship Services Group;
 - Mr Hamish Hansford, FAS National Security and Law Enforcement Division; and
 - Dr Derek Bopping, AS Counter-Terrorism Strategic Policy.
- The Department attended a public hearing with the INSLM on 27 June 2019. Departmental officials were:
 - Ms Linda Geddes, Commonwealth Counter-Terrorism Coordinator;
 - Ms Pip de Veau, General Counsel, Legal Division;
 - Mr Ian Deane, Special Counsel; and
 - Dr Derek Bopping, AS Counter-Terrorism Strategic Policy.
- Departmental officials met with the INSLM’s Principal Advisor on 19 July 2019. Departmental officials were:
 - Ms Pip de Veau, General Counsel, Legal Division;
 - Mr Ian Deane, Special Counsel; and
 - Dr Derek Bopping, AS Counter-Terrorism Strategic Policy.

c. Did the Department make any submission to the INSLM addressing the appropriateness – or inappropriateness – of merits review in the context of decisions made under the existing citizenship loss provisions?

- Yes.

d. Did the Department hold any discussions with the INSLM addressing the appropriateness – or inappropriateness – of merits review in the context of decisions made under the citizenship loss provisions?

- Yes.

e. Did the Department make any submissions to the INSLM – or hold any discussions with the INSLM – about how the citizenship loss provisions could be improved?

- Yes.

f. Did the Department make any submissions to the INSLM – or hold any discussions with the INSLM – about the INSLM “alternate mode”, or about any other potential models of citizenship cessation? Please provide details of when those discussions took place, who took part and what the Department submitted to / told the INSLM?

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- Yes. Ms de Veau, Mr Deane, and Dr Bopping met with the INSLM's Principal Advisor on 19 July 2019 for a briefing about the INSLM's review where potential alternative models were discussed.

g. Did the Department tell the INSLM that, in its view, it would be inappropriate for the AAT to conduct merits review of any aspect of the Minister's decision cancel a person's citizenship? If so, what did the Department say? When did the Department say it?

- No.

Timeline

Q25. When did the Department, or the Minister, first give instructions to parliamentary counsel to prepare this Bill?

- 19 July 2019.

Q26. How many drafts did this Bill go through and when was each draft prepared?

- The Department was provided 22 drafts of the Bill, although a number of these made only minor changes to the previous version.
- These were drafted between 5 August 2019 and 18 September 2019.

Q27. When was the Bill finalised?

- The Bill was introduced into the House of Representatives on 19 September 2019.

Section 36D (replacement of 35A)

Q28. In his report, the INSLM concluded that the existing section 35A "is necessary, proportionate ... and generally contains appropriate safeguards". He did not recommend its repeal or amendment. You have not explained why the Government believes the INSLM was wrong. Why was the INSLM wrong?

- The decision to amend section 35A was made for policy reasons. Decisions on amending the legislation were not wholly dependent on the recommendations of the INSLM.

Q29. In relation to the Strengthening Citizenship Loss Provisions Bill, the Department told the Committee the following:

"Having regard to information currently known as at January 2019, the amendments, if passed, may give the Minister the power to cease the Australian citizenship of a further 18 individuals (five currently serving sentences, and 13 who have been released into the community) under section 35A."

It subsequently transpired that the number may, in fact, be zero because the Department was not factoring in whether any of those 18 individuals were dual citizens.

- At the time of the January 2019 hearing, the number of individuals who met the conviction-based criteria being proposed under the Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018 had not been assessed for dual citizenship. This is consistent with evidence given by Departmental officials to a public hearing on this Bill on 30 January 2019.

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Q30. Having regard to the information currently known by the Department, if the bill were to pass today, how many individuals could become subject to having their citizenship cancelled under section 36D by virtue of having been sentenced to three or more years for committing a relevant offence since 29 May 2003? (i.e. putting the question of dual citizenship to one side). Of those:

a. how many are known – as a matter of fact – to be nationals or citizens of another country; and

- The number of individuals known to be nationals or citizens of another country has not been determined.

b. how many does the Department believe are – or are likely to be – nationals or citizens of another country?

- The number of individuals believed to be, or likely to be, nationals or citizens of another country has not been determined. On that basis, the Department does not wish to speculate on how many people could become subject to this measure.

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Questions on Notice (taken at the Hearing)

Q. You have told us about the offences. To the extent it's possible I wonder if you can provide us with some information around the facts of those cases. I think people look at this and say, 'Well, they sound like serious offences' but what did these people actually do?
(Transcript Page 41, Paragraph 12.)

- The below table provides a brief summary of the approximately 17 convictions for terrorism offences where a person has been sentenced to a period of three to six years' imprisonment.
- This list is approximate due to some of the offenders being subject to non-publication orders.
- This table is not intended to represent persons who would be eligible for citizenship loss.

Convictions	Sentence Length	Brief Facts
102.3(1) of the Criminal Code - membership of a terrorist organisation	4 year(s)	Convicted in connection with Operation Pendennis, which disrupted a significant plot to commit a terrorist attack in Australia.
101.6(1) and 11.5(1) of the Criminal Code - conspiring to do acts in preparation for a terrorist act	3 year(s), 9 month(s)	Conspired with a co-offender to do acts in preparation for a terrorist act in Sydney, including by urging the co-offender to proceed with a terrorist act and expressing respect for the co-offender's commitment to carry out the terrorist act.
102.3(1) of the Criminal Code - membership of a terrorist organisation	4 year(s)	Convicted in connection with Operation Pendennis, which disrupted a significant plot to commit a terrorist attack in Australia.
119.4(1) of the Criminal Code - preparations for an incursion into foreign countries for the purpose of engaging in hostile activities	5 year(s), 5 month(s)	Travelled to Turkey with the intention of engaging in hostile activities with a listed terrorist organisation, and made attempts while in Turkey to cross into Syria.
7(1)(a) of the Crimes (Foreign Incursions and Recruitment) Act 1978 - preparations for entering a foreign state with intent to engage in hostile activity whether by the person or another person (3X)	5 year(s), 6 month(s)	Attempted to travel to Syria for the purpose of engaging in hostile activities.
119.4(1) of the Criminal Code - preparations for an incursion into foreign countries for the purpose of engaging in hostile activities	4 year(s)	Attempted to travel overseas for the purpose of engaging in hostile activities. Convicted in connection with Operation Middleham.
102.7(1) of the Criminal Code - provide support or resources to help a terrorist organisation engage in terrorist activity 102.3(1) of the Criminal Code - membership of a terrorist organisation	5 year(s), 6 month(s)	Convicted in connection with Operation Pendennis, which disrupted a significant plot to commit a terrorist attack in Australia.
119.4(1) of the Criminal Code - preparations for an incursion into foreign countries for the purpose of engaging in hostile activities	4 year(s)	Attempted to travel overseas for the purpose of engaging in hostile activities. Convicted in connection with Operation Middleham.

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6(1)(a) of the Crimes (Foreign Incursions and Recruitment) Act 1978 - entering a foreign state with intent to engage (or engaging) in hostile activity	4 year(s), 9 month(s)	Travelled to Syria with the intention of engaging in hostile activities with a listed terrorist organisation.
101.4(1) of the Criminal Code - possess a thing connected with the preparation for a terrorist act	4 year(s), 8 month(s)	Convicted in connection with Operation Pendennis, which disrupted a significant plot to commit a terrorist attack in Australia. Found to be in possession of pipes and chemicals, and instructions on how to make explosives.
119.4(1) of the Criminal Code - preparations for an incursion into foreign countries for the purpose of engaging in hostile activities	3 year(s), 8 month(s)	Attempted to travel overseas for the purpose of engaging in hostile activities. Convicted in connection with Operation Middleham.
7(1)(a) of the Crimes (Foreign Incursions and Recruitment) Act 1978 - preparations for entering a foreign state with intent to engage in hostile activity whether by the person or another person (2X) 7(1)(e) of the Crimes (Foreign Incursions and Recruitment) Act 1978 - giving money or goods to another person with the purpose of them entering a foreign state to engage in hostile activity (2X)	4 year(s), 6 month(s)	Facilitated travel arrangements and provided funds for another person to enter Syria with the intent that the person would engage in hostile activity in Syria.
119.4(1) of the Criminal Code - preparations for an incursion into foreign countries for the purpose of engaging in hostile activities	4 year(s)	Attempted to travel overseas for the purpose of engaging in hostile activities. Convicted in connection with Operation Middleham.
101.6(1) and 11.5(1) of the Criminal Code - conspiring to do acts in preparation for a terrorist act	4 year(s)	Conspired with a co-offender to do acts in preparation for a terrorist act in Sydney.
101.5(2) of the Criminal Code - collect/make a document connected with preparation for/engagement with/assistance for a terrorist act reckless as its connection to the terrorist act 102.3(1) of the Criminal Code - membership of a terrorist organisation	5 year(s)	Convicted in connection with Operation Pendennis, which disrupted a significant plot to commit a terrorist attack in Australia.
119.4(1) of the Criminal Code - preparations for an incursion into foreign countries for the purpose of engaging in hostile activities	3 year(s) 10 month(s)	Assisted others to attempt to travel overseas for the purpose of engaging in hostile activities. Convicted in connection with Operation Middleham.
102.3(1) of the Criminal Code - membership of a terrorist organisation	3 years	Pledged allegiance to a listed terrorist organisation (ISIL), and actively communicated with members of the terrorist organisation.

Unclassified

Q. Do those 17 people have other convictions for longer periods of time? (Transcript Page 48, Paragraph 14 onwards.)

- To the best of the Department's knowledge, none of the 17 individuals has been convicted and sentenced for a longer period of time.
- One of the 17 individuals received an additional, shorter sentence for an offence to which section 35A of the Australian Citizenship Act 2007 does not apply.

Q. What I'd like the department to do is to provide a detailed response to every recommendation made by the independent monitor. (Transcript Page 58, Paragraph 27.)

- See answer to Question 23.

Q. When did the department or the minister first give instructions to Parliamentary Counsel to prepare the bill that is now before the committee? When was the bill finalised? (Transcript Page 59, ParaQ24(graph 6 onwards.)

- See answers to Questions 25 and 27.

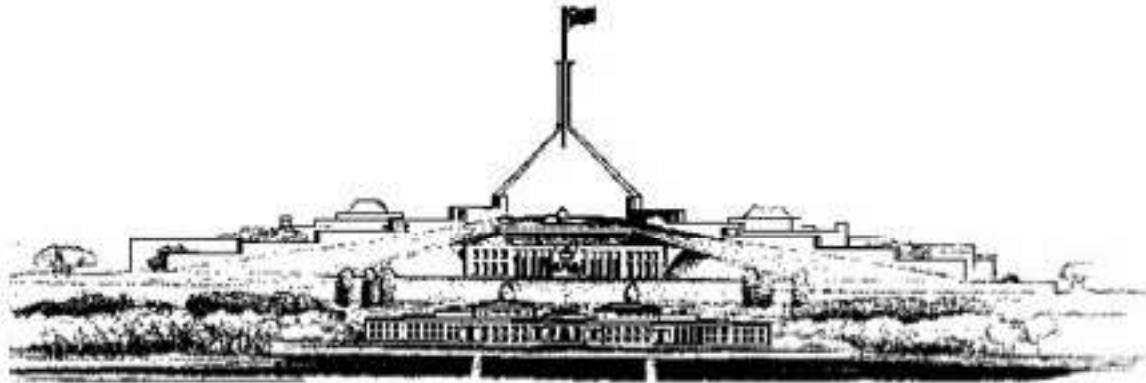
Q. I am seeking to know, if it was the case that instructions were given to Parliamentary Counsel before 2 August, why no mention was made by the department of the fact that the government was already working on a very substantial overhaul and, indeed, repeal of the current provisions. (Transcript Page 59, Paragraph 6 onwards.)

- On 2 August 2019, the Department was awaiting policy authority for the Bill. Without policy authority, the Department was unable to discuss prospective legislation.



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

BILLS

**Australian Citizenship Amendment
(Citizenship Cessation) Bill 2019**

Second Reading

SPEECH

Thursday, 19 September 2019

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date Thursday, 19 September 2019
Page 3601
Questioner
Speaker Dutton, Peter, MP

Source House
Proof No
Responder
Question No.

Mr DUTTON (Dickson—Minister for Home Affairs) (09:50): I move:

That this bill be now read a second time.

Governments must ensure that Australia's counterterrorism laws remain strong, targeted, and effective. There is no room for complacency in this endeavour, and our national security and counterterrorism laws are under constant review to ensure that Australia's law enforcement and intelligence agencies have the powers they need to prevent terrorist attacks and to deal with those individuals who would commit them.

Recently, the government introduced the Counter-Terrorism (Temporary Exclusion Orders) Act 2019, adding to the suite of measures to manage Australians who present a threat to the community, and today, the government introduces the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 to amend the terrorism-related citizenship loss provisions in the Australian Citizenship Act 2007.

The terrorism-related citizenship cessation provisions were first introduced in 2015 in response to the threat of foreign terrorist fighters returning to Australia from Syria and Iraq.

Since 2012, around 230 Australians have travelled to Syria or Iraq to fight with or support Islamic State, and around 250 Australian passports have been cancelled or refused in relation to the Syria-Iraq conflict, and others, as we know, who have fought for, or otherwise supported Islamic extremist groups, remain in Syria and Iraq and may seek to return to Australia at some time in the future.

The terrorism-related citizenship cessation provisions have been effective since their introduction. They have been able to result in the removal from the Australian community of dual citizens who fought in Syria and Iraq and who would have sought to return home with new skills, combat experience, and lethal intent. These provisions have protected the Australian community.

The Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 continues the coalition government's effort to address the threat of terrorism and to deliver on our commitment to keep the Australian community safe. It's central reform and it provides for ministerial decision-making with respect to the cessation of Australian citizenship, replacing the current automatic operation of law provisions. Under this model, the Minister for Home Affairs can cease a person's Australian citizenship if satisfied that their conduct demonstrates a repudiation of their allegiance to Australia and that it is not in the public interest for the person to remain an Australian citizen.

The overarching purpose of this bill remains the same as when the provisions were first introduced in 2015. The parliament recognised then, as it does now, that Australian citizenship is a common bond, involving reciprocal rights and obligations. Citizens may, through certain conduct incompatible with the shared values of the Australian community, sever that bond and repudiate their allegiance to Australia. A citizen's duty of allegiance to Australia was not created by the Australian Citizenship Act 2007, but it is recognised by it and this bill reinforces that obligation.

The current citizenship loss provisions were recently reviewed by the Independent National Security Legislation Monitor (INSLM), who has made a number of recommendations as to how the provisions can be improved. The bill presented here today implements the majority of these recommendations.

In his report, the INSLM states 'the notion of allegiance by citizens to Australia is thought by some to be outdated; however, there can be no doubt of its current legal relevance in international law, the law of Australia, and the law of other countries'. In recognising the importance of laws to cease a person's citizenship, the INSLM recommends that sections 33AA and 35 be replaced with a ministerial decision-making model. This is the central amendment incorporated in this bill.

The bill retains three mechanisms for an individual to be considered for cessation of citizenship if they repudiate their allegiance to Australia:

First, a person can cease to be a citizen if they engage in specified terrorist conduct.

Second, a person can cease to be a citizen if they fight for, or are in the service of, a specified terrorist organisation overseas, and the bill retains provisions that a person is not in the service of a declared terrorist organisation if acting unintentionally, under duress, or providing humanitarian assistance.

Finally, a person can cease to be a citizen if they have been convicted of a specified terrorism offence by an Australian court.

In accordance with Australia's international law obligations, the bill retains provisions that no persons will have their citizenship ceased unless the minister is satisfied they are a citizen or national of another country. As an additional safeguard, the bill includes a provision whereby if a court finds the person was not a national or citizen of another at the time of the determination, their citizenship is taken never to have ceased.

In considering whether to cease a person's citizenship, the minister must have regard to certain public interest criteria. This, amongst other things, includes the degree of threat the person poses to the Australian community, Australia's international relations and the person's connection with the other country of citizenship. This enables the minister to consider a person within their specific context. The inclusion of the public interest criteria aligns with one of the INSLM's recommendations.

Once the minister has decided to cease a person's citizenship, the minister must inform the person in writing as soon as practicable. However, the minister retains the right to withhold notice if satisfied that giving notice could prejudice the security, defence or international relations of Australia, or Australian law enforcement operations.

Similar to the existing provisions, a decision to withhold notice can remain in place for five years. However, the new provisions require the minister to review this determination every 90 days. Additionally, at the conclusion of the five years, the person is provided notice unless the minister extends the determination once for a year. Withholding notice does not prevent a person from seeking judicial review if they become aware of the cessation of their citizenship through other means.

Once a person is provided notice, the new provisions give them 90 days to apply to the minister in writing for a revocation of the determination to cease their citizenship. Natural justice is afforded to the person so they can make representations on their case. This provision also aligns with a recommendation made by the INSLM.

In addition to applying to the minister, the bill contains several other avenues for a person's citizenship to be reinstated. Firstly, the minister may reinstate an individual's citizenship if it is in the public interest to do so. Secondly, in certain circumstances, a person's citizenship is taken never to have ceased and it is automatically reinstated. Finally, a person can access judicial review in relation to the minister's decision to cease their citizenship or reject their application for reinstatement.

The bill retains existing accountability and transparency measures. The minister must report to the parliament and the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on the use of the provisions. In upholding transparency, the bill also amends the Intelligence Services Act 2001 to provide the PJCIS until 30 June 2021 to review the new provisions.

The bill includes transitional provisions to manage those persons whose citizenship may have ceased under the existing provisions, but whose circumstances are yet to come to the attention of the minister.

There are two additional measures that expand the operation of this new model.

Firstly, the bill amends the conduct provision so that behaviour dating from 29 May 2003 onwards can be taken into consideration when the minister determines whether to cease a person's citizenship. This enables the government to take into consideration and address a person's historic conduct that is incompatible with the shared values of the Australian community.

Secondly, the bill amends the conviction provision to allow the minister to cease a person's citizenship if they are convicted from 29 May 2003 onwards of certain terrorism offences for a period or periods totalling three years.

The current requirement is a sentence of six years for a conviction from 2015 to now, or 10 years from conviction from 2005 to 2015. This amendment reflects the seriousness of a criminal conviction for a terrorism offence.

The date of 29 May 2003 is pertinent, as it is the date on which relevant offences were fully enacted under the Criminal Code Amendment (Terrorism) Act 2003.

These amendments build on, adapt and modernise the citizenship cessation provisions. They strengthen the operation of the measures in response to the increasingly complex challenges facing the national security, defence and international relations of Australia.

They further establish citizenship cessation as one of a suite of measures—which includes control orders, prosecution, temporary exclusion orders, the Commonwealth high-risk terrorist offenders scheme and deradicalisation programs—that can be applied appropriately and proportionately on a case-by-case basis.

Australia is a united and cohesive country. It is something we pride ourselves on. In recognising and protecting this unity and cohesion, it is essential that we continue to monitor, update and amend the way in which we deal with those who would threaten it. Behaviour that harms, or seeks to harm, our community—whether that be in Australia or offshore—is in clear opposition to the common bond and shared values that underpin membership the Australian community.

This bill is designed to protect the integrity of Australian citizenship and to ensure we have the necessary powers to keep Australians safe. It reflects the government's strong approach to combating terrorism, and protecting the sovereignty and safety of this country and its citizens.

I commend the bill to the House.

Debate adjourned.