



Inquiry into Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018

Department of Home Affairs responses to Questions on Notice.

Index

QoN No.	Title
SCLPB/001	Minister's announced the measures in the Bill on 22 November 2018. Was the Bill drafted at this point.
SCLPB/002	Did you send DFAT a draft of the Bill.
SCLPB/003	Was the advice of the Solicitor-General sought on the constitutionality of the Bill? Why not.
SCLPB/004	What date did Mr Prakash lose his citizenship.
SCLPB/005	Who contacted Fiji, and who was contacted in Fiji in relation to Mr Prakash's loss of citizenship.
SCLPB/006	Has any Fijian official ever told the government that Mr Prakash is citizen of Fiji.
SCLPB/007	Legal advice produced by the Office of International Law.
SCLPB/008	Breach international law.
SCLPB/009	Bourke Street terrorist attack on 9 November 2018.
SCLPB/010	Powers of the Bill.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry question taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Date of Hearing: Wednesday 30 January 2019

QoN Number: SCLPB/001

Question asked by: Mr Mark Dreyfus

Question:

Mr DREYFUS: So the department provided advice in November; the minister announced it on 22 November; and sometime in the next few days the bill was drafted—is that right?

Ms Geddes: It's something, though, that we have been considering for a couple of years now, particularly as we're looking offshore and looking onshore at ways to continue to ensure that this provision is fit for purpose to the evolving threat to Australia.

Mr DREYFUS: You said before, Ms Geddes, that the current section 35A has not been used, because of priorities, and not to do with the effectiveness of the provision—did I get that right?

Ms Geddes: That's correct.

Mr DREYFUS: Given that nothing has happened that demonstrates the inadequacy of the current section 35A, because you haven't used it—it's been in place since 2015; you didn't want to use it, because of priorities—what possible basis is there for suggesting that the current law is inadequate?

Ms Geddes: I wouldn't say that we didn't want to use it. It's just that we didn't use it, because our practice—

Mr DREYFUS: Well, which is it, Ms Geddes? Is it that you made a priorities decision and you were concentrating on offshore and you weren't looking at all of the local issues, or you decided some other thing? It can't be both.

Ms Geddes: What I was saying, Senator, is that it's not that we didn't want to use it—

Mr DREYFUS: It's Mr Dreyfus, thank you.

Ms Geddes: Sorry. It's not that we didn't want to use it; it's that our priorities were looking at offshore. We did look at onshore cases, but we didn't progress them, because of managing risks in the offshore caseload. So it's not that we didn't want to use it; it's just that we chose to focus on offshore because of the risk posed to Australia.

Mr DREYFUS: In the six days between the minister's announcement and 28 November, when the bill was introduced to parliament, during which time apparently the bill was drafted, who was consulted about the bill, about the drafting?

Ms Geddes: We certainly consulted through the Citizenship Loss Board with the agencies.

Mr DREYFUS: In that six-day period?

Ms Geddes: And leading up to—as I said, this has been something that we continue to engage on regularly, as we meet.

Mr DREYFUS: I'm focusing on the six-day period between the minister's announcement on 22 November and the introduction of the bill on the 28th.

Ms Geddes: That was a very hectic period, and we engaged with all agencies over that period.

Answer: The Department of Home Affairs received a first draft of the Bill on 23 November 2018.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry questions taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Public hearing date: Wednesday 30 January 2019

QoN Number: SCLPB/002

Asked question submitted by: Mr. Mark Dreyfus

Question:

Mr DREYFUS: Did you send DFAT a draft of the bill?

Ms Geddes: I'd have to check that one.

Mr DREYFUS: I'm happy for you to tell us later whether you did send a draft of the bill to DFAT. What was the response of the deputy secretary?

Ms Geddes: It was, 'Yes, okay.' I'm not sure where this is going.

Mr DREYFUS: It's not for you to worry about where it's going. I'm asking you: what was the response of the deputy secretary?

Ms Geddes: I think the deputy secretary said something like, 'Okay, if there's anything that we can do to help, let me know.'

Mr DREYFUS: But you didn't think it necessary to send them a draft of the bill?

Ms Geddes: I'm not saying that. I said we'd have to confirm that. I'm fairly sure that we did, but we'll have to confirm.

Answer: The Department of Home Affairs consulted with the Department of Foreign Affairs and Trade on the development of the measures in the Bill as per usual processes.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry question taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Date of Hearing: Wednesday 30 January 2019

QoN Number: SCLPB/003

Question asked by: Mr Mark Dreyfus and Senator Jenny McAllister

Question:

Mr DREYFUS: Has the department received legal advice regarding the constitutionality of this bill?

Ms De Veau: Yes.

Mr DREYFUS: Who prepared that advice?

Ms De Veau: The Australian Government Solicitor, but I don't propose to divulge what the advice says or go into it in detail in a public forum.

Mr DREYFUS: Was the advice of the Solicitor-General sought?

Ms De Veau: Not on the wording of this bill.

Mr DREYFUS: Why not?

Ms De Veau: Because the advice of the Office of General Counsel was.

Mr DREYFUS: Is it the Office of General Counsel in the Attorney-General's Department or the Australian Government Solicitor?

Ms De Veau: It was the Australian Government Solicitor that sits in the Attorney-General's Department.

Mr DREYFUS: I am trying to get which it is. There are two different things here. We've got the Office of General Counsel in the Attorney-General's Department and we have got the Australian Government Solicitor and, as I understand it, they are separate.

Ms De Veau: It wasn't the Office of Corporate Counsel in the Attorney-General's Department; it was the Office of General Counsel in the Australian Government Solicitor.

Mr DREYFUS: When was advice sought from the Office of General Counsel?

Ms De Veau: I don't have the date with me but I can provide that on notice.

Senator McALLISTER: I want to go back to the evidence that you provided earlier, Ms De Veau, in relation to which entities within the government provided advice to the Department of Home Affairs in relation to the bill before us now. Did you say that the Office of General Counsel at the Australian Government Solicitor's Office provided the advice? Was that your evidence earlier?

Ms De Veau: Yes. That was in relation to constitutionality. I also indicated that it was my recollection that the Office of International Law in the Attorney-General's Department was also consulted in relation to the bill, for different reasons.

Senator McALLISTER: But the Solicitor-General has not provided advice to the Department of Home Affairs about the constitutionality of the legislation before us?

Ms De Veau: Not in relation to the provisions of this bill. That advice was obtained, as I said, in a period of days in November from the Office of General Counsel.

Senator McALLISTER: Why did you not ask the Solicitor-General for advice?

Ms De Veau: I do not know whether it was that he was not asked or whether there was another reason as to why he was not available.

Senator McALLISTER: Can anyone assist?

Ms De Veau: We might have to consider our position on that. I do not know the answer.
CHAIR: Well, take it on notice.

Answer: The advice of the Solicitor-General was sought on the draft Bill. Due to availability, the Office of General Counsel in the Australian Government Solicitor (AGS) provided advice on the draft Bill.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry questions taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Date of Hearing: Wednesday 30 January 2019

QoN Number: SCLPB/004

Question asked by: Mr Mark Dreyfus

Question:

Mr DREYFUS: My question went to when he first determined for the purposes of section 35 that Mr Prakash had ceased to be a citizen?

Ms Geddes: We'll get that detail back to you, Mr Dreyfus.

Answer: The Minister did not make a determination that Mr Prakash had ceased to be an Australian citizen. Under section 35 of the *Australian Citizenship Act 2007*, Mr Prakash's Australian citizenship ceased by operation of law on 6 May 2016, as a result of being in the service of a declared terrorist organisation (Islamic State).

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry question taken on notice:

Parliamentary Joint Committee on Intelligence and Security Australian Citizenship
Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018

Date of Hearing: Wednesday 30 January 2019

QoN Number: SCLPB/005

Question asked by: Mr Mark Dreyfus

Question:

Mr DREYFUS: Thank you for the guidance, Ms Geddes. Who contacted the Fijian government back in October?

Ms Geddes: That was done through our DFAT colleagues and post in Fiji.

Mr DREYFUS: Who in the Fijian government was contacted?

Ms Geddes: I'll have to get that to you—the detail.

Answer: On advice from the Department of Foreign Affairs and Trade, the Australian Government does not discuss publicly the manner in which it exchanges information confidentially with foreign governments.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry questions taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Date of Hearing: Wednesday 30 January 2019

QoN Number: SCLPB/006

Question asked by: Mr Mark Dreyfus

Question:

Mr DREYFUS: Are you able to explain, for the purpose of this committee and the Australian public, how it is that a conclusion was reached that Mr Prakash is a Fijian citizen when, on publicly available statements by this government, publicly available citizenship law of Fiji and publicly made statements by the government of Fiji, it is absolutely clear that he is not a citizen of Fiji?

Ms De Veau: I don't concede that it's absolutely clear. Without divulging the nature of the legal advice, it's been second counselled and I don't propose to reveal the nature of the way that the advice is constructed, other than to say we don't concede it's incorrect. How you might reach an assurance for yourself as to that, I don't propose to do it by way of publicly having either Mr Deane or someone else debate the legal interpretation. I can give assurance that the legal advice, we say, has been checked and, we say, is accurate. I will ask the government as to whether they propose to release some form of it or some other assurance to you. Short of that, I don't propose to go into the details of it.

Mr DREYFUS: Can I leave it with you and express, at least on my own personal behalf, that we have, on the face of public statements by the government of Fiji, publicly available facts and publicly available constitutional law of Fiji, a very clear position that Mr Prakash is not a citizen of Fiji. All that I have received and all that the Australian public have received from the government is a blank assertion, without any reasoning, without any facts, that, in the view of the government, Mr Prakash is a citizen of Fiji. Can I suggest that you do seek instructions from the government and that a great deal more will have to be provided to this committee directly in the context of the legislation that we are here considering, because it goes directly to the legislation we are here considering, as to what processes are in place and what processes were used by the department to form an absolutely vital conclusion underlying the stripping of Mr Prakash's citizenship. I'd ask you to take that on notice.

Answer: See answer to question SCLPB/005

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry questions taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Date of Hearing: Wednesday 30 January 2019

QoN Number: SCLPB/007

Written question submitted by: Chair, Andrew Hastie

Question:

What did the legal advice produced by the Office of International Law in respect of the bill say?

Could the Department please provide a copy of this advice to the Committee? If not, why not?

Answer: The Department of Home Affairs consulted with the Office of International Law in the Attorney-General's Department in the process of developing the measures in the Bill, and on the development of the Statement of Compatibility with Human Rights in the Explanatory Memorandum. These consultations concerned the compatibility of the Bill with human rights. The department is satisfied that to the extent the Bill may limit some human rights, those limitations are reasonable, necessary and proportionate in light of the Bill's objective and purpose to protect the Australian community and Australia's interests from persons convicted of terrorist offences.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry questions taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Public hearing date: Wednesday 30 January 2019

QoN Number: SCLPB/008

Written question submitted by: Chair, Andrew Hastie

Question:

Is the Department confident that the bill, as drafted, does not breach international law (yes or no)? If yes, what is the basis of the Department's confidence?

Answer: Yes. The Department of Home Affairs considers that, as outlined in the Statement of Compatibility with Human Rights, the Bill is consistent with Australia's obligations under international law.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry question taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Public hearing date: Wednesday 30 January 2019

QoN Number: SCLPB/009

Written question submitted by: Chair, Andrew Hastie

Question:

In its submission, the Department specifically cites the Bourke Street terrorist attack on 9 November 2018 as illustrative of why this bill is needed. If the powers in this bill were available to the Minister before 9 November 2018, could the Minister have legally revoked the Bourke Street attacker's citizenship before the attack?

Answer: The Bourke Street terrorist attack of 9 November 2018 illustrates the enduring nature of the domestic terrorist threat – namely – that there are still individuals and groups with the intent and capability to commit a terrorist attack on Australian soil. Section 35A enables the Minister to cease an individual's Australian citizenship where that person has already been convicted by a court in Australia of a relevant terrorism (or other) offence. It therefore does not apply to individuals who have never been convicted of a relevant offence.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

Parliamentary inquiry questions taken on notice:

*Parliamentary Joint Committee on Intelligence and Security
Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018*

Public hearing date: Wednesday 30 January 2019

QoN Number: SCLPB/010

Written question submitted by: Chair, Andrew Hastie

Question:

In its submission, the Department specifically cites the arrests of three men in Melbourne on 20 November 2018 thwarting an alleged planned mass-casualty attack as illustrative of why this bill is needed. If the powers in this bill were available to the Minister before 20 November 2018, could the Minister have legally revoked the citizenship of the three men arrested in Melbourne before their arrests?

Answer: The arrest of three men in Melbourne on 20 November 2018 illustrates the enduring nature of the domestic terrorist threat – namely – that there are still individuals and groups with the intent and capability to commit a terrorist attack on Australian soil. Section 35A enables the Minister to cease an individual's Australian citizenship where that person has already been convicted by a court in Australia of a relevant terrorism (or other) offence. There are a number of offenders before the courts on terrorism charges who, if convicted, may be eligible for consideration under section 35A. Under the current legislation, they must be sentenced to at least six years' imprisonment. If the Bill is passed, all persons who are convicted of relevant offences would be eligible for consideration under section 35A (should the Minister be satisfied of all relevant criteria).