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Parliamentary Joint Committee on Intelligence & Security (PJCIS) – Review of the Australian Citizenship renunciation by conduct and cessation provisions

Questions on Notice taken at Hearing

Q. Noting that there is a global war on terrorism, how does Australia work with Five Eyes partners, other like-minded countries, and across jurisdictions on terrorism matters?

(Transcript Page 48, Paragraph 7 onwards.)

- The Counter-Terrorism Coordinator coordinates counter-terrorism efforts across Commonwealth and State and Territory agencies, including working collaboratively with intelligence, law enforcement, security and policy agencies at the international level to manage emerging counter-terrorism risks, threats and issues.
- The Counter-Terrorism Coordination Centre works closely with our international partners to ensure our region is resilient to counter-terrorism threats. The work focuses on information sharing, building capacity and capability. For example, the Australia-New Zealand Counter-Terrorism Committee (ANZCTC) provides a forum for strategic dialogue of bilateral matters of interest to Australia and New Zealand. ANZCTC is focussed on building nationally consistent approaches to countering terrorism with a focus on interoperability across the prepare, prevent, respond and recover spectrum.
- This is otherwise a matter that should be addressed to the Department of Foreign Affairs and Trade.

Q. Do counterterrorism experts within the Department consider the citizenship loss provisions to be effective? (Transcript Page 50, Paragraph 8 preceding and onwards.)

- Further information is provided in the Department's supplementary submission to the Committee.

The Department has addressed other Questions on Notice taken at the hearing in the Supplementary Submission, as requested by the Committee.

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Australian Government

Department of Home Affairs

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Parliamentary Joint Committee on Intelligence & Security (PJCIS) – Review of the Australian Citizenship renunciation by conduct and cessation provisions

Written Questions on Notice received from Committee Secretariat

Questions on Notice – Part 1

Q. There has been a lot of commentary over the last two weeks about the role of this Committee in scrutinising legislation. What is the attitude of the Department to this Committee?

- The Department considers that Parliamentary Committees, including the Parliamentary Joint Committee on Intelligence and Security, play an important role in the scrutiny of Government business, including legislation.

Q. What process does the Department follow when it comes to preparing submissions to this Committee?

- The Department considers the Committee's Terms of Reference and prepares a submission which, as far as possible, responds to the Terms of Reference.
- In preparing this particular submission, the Counter-Terrorism Coordination Centre (CTCC), within the Department of Home Affairs, consulted with ASIO and the AFP.
- The Department also consults with the Minister and his/her office regarding submissions to Parliamentary Committees.

Q. Why didn't Australian Security Intelligence Organisation appear before the Committee?

- The PJCIS did not request Australian Security Intelligence Organisation's (ASIO) attendance at the public hearing.

Q. Why didn't ASIO or the Australian Federal Police make separate submissions to the Committee?

- The Department consulted on the drafting of this submission with ASIO and the Australian Federal Police (AFP), which provided input relevant to their remit.

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Q. Could ASIO and the AFP please prepare separate submissions to the Committee which, in particular, comment on the extent to which the citizenship loss provisions have been effective in combatting terrorism?

- The Department consulted with ASIO and the AFP who have advised that they are preparing separate submissions to the Committee.

Q. Does the Department consult with the Minister or his office regarding submissions to this Committee?

- Yes, the Department consults with the Minister and his/her office regarding submissions to Parliamentary Committees.

Q. Does the Minister or his office review the Department's submissions before they are provided to the Committee? Did the Minister or his office review the Department's submission to this inquiry?

- Yes and yes, in the form of 'noting' the Department's submission(s).

Q. The Deputy Secretary of Citizenship and Social Cohesion, Linda Geddes, gave evidence to the Committee in relation to the Strengthening the Citizenship Loss Provisions Bill in January 2019, and also gave evidence to the INSLM on the same subject matter as this inquiry in June 2019. However, Ms Geddes did not appear before the Committee on 2 August 2019. Why not?

- Ms Geddes was on approved annual leave from 26 July to 2 August 2019 inclusive.

Q. Could you please provide this Committee with the names of any independent prominent counter-terrorism or national security experts who argue that the Australian citizen revocation provisions are effective?

- The citizenship cessation provisions have a broad policy aim. The legislation recognises that Australian citizenship is a common bond, involving reciprocal rights and obligations, and that citizens may, through certain conduct incompatible with the shared values of the Australian community, demonstrate that they have severed that bond and repudiated their allegiance to Australia. The provisions have been effective in protecting the integrity of the Australian citizenship framework by limiting membership in the Australian community to those who uphold Australian values.
- The issue of the effectiveness of the provisions is further addressed in the Department's supplementary submission to the Committee.

Q. The INSLM asked the Department whether stripping citizenship could leave dangerous former Australians in the hands of countries with fewer resources to deal with them. Could you point the Committee to where you address this concern – which has also been raised by other submitters – in your submission? What is your response to that concern?

- Australia's counter-terrorism interest does not stop at its borders. Australia has strong relationships with key security partners both in the region and globally.
- These relationships enable Australia to work collaboratively in addressing the global threat of terrorism, including through intelligence sharing, information exchange, technical support, and joint investigations and operational activities.
- Further, as discussed above, the citizenship cessation provisions have a broader policy aim of ensuring the Australian community is limited to those persons who continue to retain an allegiance to Australia.

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Q. You say on page 4 of your submission under the heading “Ensuring the safety and security of Australia and its people” that Australia’s counter-terrorism framework “provides a range of mechanisms that can be tailored to an individual’s level of risk, which can be used simultaneously or on their own”. But how is it that an “automatic ‘operation of law’ model” –as you refer to it – can be “tailored”? Do you agree that sections 33AA and 35 are at odds with the Department’s own description of Australia’s “tailored” counter-terrorism framework?

- The Department’s description of Australia’s ‘tailored’ counter-terrorism framework referred to the range of mechanisms available for addressing terrorist-related conduct. The Department was not suggesting that the citizenship cessation provisions, by or of themselves, can be tailored to an individual’s level of risk.
- As outlined in the Department’s submission to this Inquiry, the automatic nature of the citizenship loss provisions can present several challenges including reducing the availability of other mechanisms that can be used to manage an Australian of counter-terrorism interest.

Q. The Department states at the bottom of page 4 of its submission that “[c]itizenship cessation reduces the risk of a terrorist act being undertaken by that person in Australia”. One argument that has been raised by numerous submitters is that citizenship cessation may increase the risk of a terrorist attack being undertaken by a person against Australians outside Australia. You do not address that concern in your submission. Why not? What is your response to that concern? In providing your response, please have regard to the fact that sections 33AA and 35 operate automatically.

- As outlined above, Australia has strong relationships with key security partners both in the region and globally, enabling effective cooperation in addressing the global threat of terrorism.
- Further, as discussed above, the citizenship cessation provisions have a broader policy aim of ensuring the Australian community is limited to those persons who continue to retain an allegiance to Australia.

Q. Since 1 January 2001, how many Australian lives have been lost to terrorism (i) overseas and (ii) on Australian soil?

- Since 1 January 2001, 132 Australian lives have been lost to terrorism overseas.
- Since 1 January 2001, 5 Australian lives have been lost to terrorism on Australian soil.

Q. During the public hearing, the Department argued that the citizenship revocation regime could be used to address the risk posed by people who do not meet the threshold for a continuing detention order. Could you please provide practical examples of situations in which a person would meet the legal threshold for citizenship revocation but not for a continuing detention order?

- The threshold for citizenship cessation differs from the continuing detention order (CDO) threshold. The CDO regime requires a Court to be satisfied to a high degree of probability that a person poses an unacceptable risk of committing a serious terrorism offence. The CDO threshold also requires that there is no other less restrictive measure that would be effective in preventing the unacceptable risk posed by the person of committing a serious Part 5.3 terrorism offence if released into the community. In contrast, the threshold for citizenship loss is focused on the threat posed by the person to the Australian community and whether it is in the public interest for the person to remain an Australian citizen.
- Thus the threshold for making a CDO is more defined, in terms of the degree of satisfaction required, the evidence on which such satisfaction must be based, and nature of the risk posed by the person to the community.

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- For example, a person may not meet the threshold for a CDO where a Court is satisfied that a control order would be effective in preventing the unacceptable risk. However, if the person is also a national or citizen of a country other than Australia, the Minister may be satisfied that the conduct of the person demonstrates that they have repudiated their allegiance to Australia and, having regard to the mandatory public interest factors the Minister must consider, the Minister may be satisfied it is not in the public interest for the person to remain an Australian citizen. In considering revocation of citizenship under section 35A, the Minister need not consider the effectiveness of other measures which could address the threat posed by the person.

Q. Could the Department please provide an update on the status of the extradition process in relation to Neil Prakash? Specifically:

- **Has the Australian government appealed against the decision by Judge Ismail Deniz in July last year to deny Australia's extradition request?**
- **If so, what is the status of that appeal?**
- **What are anticipated to be the next steps in that extradition process?**
- **If, having exhausted all rights of appeal, the extradition request fails, what is likely to happen to Mr Prakash at the conclusion of his sentence if:**
 - **Fiji refuses to issue Mr Prakash with a passport; or**
 - **Fiji refuses to allow Mr Prakash to enter that country?**
- Questions regarding legal proceedings in Turkey and extradition are best directed to the Department of Foreign Affairs and Trade and the Attorney-General's Department.
- The Department of Home Affairs is unable to answer hypothetical scenarios and continues to consider that Mr Neil Prakash was a citizen of Fiji at the time of the conduct that resulted in the cessation of his Australian citizenship.
- However, we note that judicial review is available in situations where a person contests the loss of their Australian citizenship. Where a court finds that the person did not in fact hold a second citizenship at the time of the conduct that resulted in the cessation of their Australian citizenship, the cessation is taken never to have occurred.

Q. In its supplementary submission to this inquiry, the Law Council proposed an amendment to paragraph 35AA(2)(b) of the Australian Citizenship Act to include the phrase "seriously prejudicial to the vital interests of Australia". Please provide a detailed response to that recommendation by the Law Council, including:

- **whether the Department supports that recommendation; and**
- **if the Department does not support that recommendation, a detailed explanation as to why.**
- Paragraph 35AA(2)(b) was inserted to give effect to a recommendation by the Committee in its report on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015, that there be explicit criteria that the Minister must be satisfied of before declaring a terrorist organisation for the purpose of section 35. The criteria should make clear the connection between section 35 and the purpose of the Bill. The Department believes that the criteria in paragraph 35AA(2)(b) are adequate for this purpose. Accordingly, it does not support the Law Council's recommendation.
- It should be noted that under section 35AA(4), the Committee may review a declaration made under the section (which is a legislative instrument) and this has occurred in relation to the two declarations that have been made to date.

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Q. On 2 July 2019, the US Secretary of State, Michael R Pompeo, commended the Government of Italy for the repatriation of an Italian foreign terrorist fighter from Syria. Mr Pompeo said: “Italy is a key partner in the Global Coalition to Defeat ISIS, and we appreciate its commitment to countering terrorism. With this repatriation, Italy has provided an important example to all members of the Global Coalition and the international community on how we need to work together to address the issue of foreign terrorist fighters who have travelled to fight for ISIS. It is our hope that other Western European countries will follow Italy’s example and take responsibility for their citizens in Syria.”

- **Does the Department believe that countries should take responsibility for their citizens in Syria?**
 - **Does the Department believe that it is important for the international community “to work together to address the issue of foreign terrorist fighters who have travelled to fight for ISIS”?**
 - **Does the Department believe that terrorism is a global threat requiring an international response?**
 - **Does the Department believe that Australia’s citizenship revocation regime sets a good example to all members of the Global Coalition and the international community? Is it an example that the Department would like to see followed by other countries?**
- Questions regarding Australia’s international response to terrorism are best directed to the Department of Foreign Affairs and Trade.

Q. Has the government ever obtained advice regarding the constitutionality of the provisions under review in the form in which they were ultimately passed by the Parliament in 2015 from:

- **the Australian Government Solicitor;**
- **the Solicitor-General; or**
- **any other lawyer?**

If the answer to any of those questions is “yes”, when was that advice obtained (and from whom)?

- The former Attorney-General has previously updated the Committee on what legal advice was received at the time of the passage of the legislation.
- Beyond what was disclosed at this time, the government does not provide comment on the nature of legal advice it has obtained on particular legislative provisions.

Q. The Department has informed the Committee that since the inception of the Australian Citizenship Act 1948, there have been a total of 45 revocations of Australian citizenship under the fraud or serious offence provisions (currently in section 34 of the Australian Citizenship Act 2007).

In respect of each of those 45 revocations, please identify:

- **the provision of the Australian Citizenship Act 1948 or the Australian Citizenship Act 2007 (as applicable) under which the person’s citizenship was revoked (including all relevant subsections, where applicable); and**
- **the year in which the person’s citizenship was revoked.**

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In respect of each revocation on the basis of the person having committed a serious offence under the serious offence provisions (e.g. section 34(2)(b)(ii) of the Australian Citizenship Act 2007):

- Please identify the nature of the serious offence.
- How many of those revocations related to serious offences that had been committed during the period between the person making an application to become an Australian citizen and having Australian citizenship conferred on them?
- How many of those revocations related to serious offences that had been committed prior to the person making an application to become an Australian citizen?
- This question appears to fall outside the scope of the Terms of Reference for this Inquiry.
- On 2 August, the Department provided a response to a similar question raised by the Committee.

Q. Since 18 September 2013, has any Minister declined to exercise the discretion under sections 34(1) of the *Australian Citizenship Act 2007* to revoke a person's citizenship in circumstances where a person satisfies the statutory criteria in section 34(1)(a), 34(1)(b) and 34(1)(c)? If so, how many times?

- This question appears to fall outside the scope of the Terms of Reference for this Inquiry.

Q. Since 18 September 2013, has the Minister ever declined to exercise his discretion under sections 34(2) of the *Australian Citizenship Act 2007* to revoke a person's citizenship in circumstances where a person satisfies the statutory criteria in section 34(2)(a), 34(2)(b) and 34(2)(c)? If so:

- How many times?
- In respect of each example involving a person who had committed a serious offence for the purposes of section 34(2)(b)(ii), what was the nature of the serious offence committed by the person?
- This question appears to fall outside the scope of the Terms of Reference for this Inquiry.

Q. The Department's submission states that "[o]n 14 February 2019, the Minister for Home Affairs stated that 12 individuals had ceased their Australian citizenship through the operation of the Citizenship Act." As far as the Department is aware, how many individuals have ceased their Australian citizenship through the operation of the Citizenship Act as at 3 August 2019?

- Pursuant to section 51C of the *Australian Citizenship Act 2007* and a standing request from the PJCIS (re-issued on 24 July 2019), the Department provides written briefings to the Committee.
- Further information is provided in the Department's supplementary submission to the Committee.

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Questions on Notice – Part 2

Q. According to public sources, Neil Prakash’s father was born in Fiji and subsequently emigrated to Australia sometime prior to Neil Prakash’s birth. Is that correct? If not, where was Neil Prakash’s father born and when did he arrive in Australia?

Q. According to public sources, Neil Prakash was born in Australia on 7 May 1991. Is that correct? If not, when was he born?

Q. At the time Neil Prakash was born, isn’t it the case that section 28(1) of the 1990 Fiji Constitution provided that “...a person shall forfeit forthwith his Fiji citizenship if he acquires or retains the citizenship or nationality of a country other than Fiji” or words to that effect?

Q. At the time Neil Prakash was born, was his father a citizen of Australia?

Q. If Neil Prakash’s father was a citizen of Australia when Neil Prakash was born, isn’t it the case that:

- Neil Prakash’s father had automatically forfeited his Fijian citizenship (due to the operation of section 28(1) of the 1990 Fiji Constitution) and so was no longer a Fijian citizen at the time of Neil Prakash’s birth;
- the father was therefore incapable of transmitting Fijian citizenship to Neil Prakash; and
- Neil Prakash is not now and has never been a Fijian citizen?
- If not, why not?

Q. If Neil Prakash’s father was not a citizen of Australia, but was a citizen of Fiji, at the time of Neil Prakash’s birth:

- Is it correct that section 25 of the 1990 Fiji Constitution provided that “[a] person born outside Fiji after 6 October, 1987 shall become a citizen of Fiji at the date of his birth if at the date his father is a citizen of Fiji” or words to that effect?
- Is it also correct that a new Fijian Constitution came into effect in approximately 1997?
- And is it the case that Chapter 3 of the 1997 Fiji Constitution governed citizenship of Fiji? If not, what instrument did?
- Is it also correct that, in accordance with section 8 of the 1997 Fiji Constitution, the citizenship of anybody who had acquired Fijian citizenship under the previous Constitution was preserved?
- However, is it also correct that the 1997 Fiji Constitution prohibited dual citizenship and, under section 14(2), “[a] citizen of the State who, while a minor, acquires the citizenship of another country forfeits his or her citizenship of the State at the age of 22 unless, after reaching the age of 21 and before reaching the age of 22, he or she renounces the other citizenship (emphasis added)” or words to that effect?
- Clearly, Neil Prakash did not renounce his Australian citizenship after reaching the age of 21 and before reaching the age of 22. Correct?
- Is it therefore correct that Neil Prakash automatically forfeited his Fijian citizenship on his 22nd birthday? If not, why not?

Q. If Neil Prakash automatically forfeited his Fijian citizenship on his 22nd birthday, is it correct that – under Fijian law – he could not have been a citizen of Fiji at the time Australia purportedly stripped him of his Australian citizenship?

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Q. Putting that to one side, is it correct that Fijian citizenship law is currently governed by the Citizenship of Fiji Decree 2009 which the military government issued with effect from 10 April 2009? If not, what document currently governs Fijian citizenship law?

Q. If Fijian citizenship law is currently governed by the Citizenship of Fiji Decree 2009, is it correct that – under section 8(1) of that Decree – a child born abroad may apply to register as a Fijian citizen, if either parent was a citizen of Fiji at the time of their birth?

Q. Was Neil Prakash's father or mother a citizen of Fiji at the time of Neil Prakash's birth?

Q. If so, did Mr Prakash ever apply to register as a Fijian citizen? If so, when?

Q. If Mr Prakash did apply to register as a Fijian citizen, why did the director of the Fijian immigration department tell the Guardian Australia that Prakash had never held or sought Fijian citizenship?

Q. Noting that (i) biographical information about Mr Prakash is publicly available and (ii) the law governing Fijian citizenship since Mr Prakash's birth in 1991 is also publicly available, on what basis did the Department's Citizenship Loss Board conclude that Mr Prakash is a citizen of Fiji?

- This series of questions regarding Mr Prakash appear to be designed to draw out or test the legal advice provided to the Department in his case. As a matter of long-standing practice, the Department does not disclose the content of legal advice. Accordingly, it would be inappropriate to respond to these questions.

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Questions on Notice – Part 3

Q. Total numbers

Excluding Australian officials and military personnel, how many Australian citizens have successfully travelled from Australia to Syria or Iraq since the beginning of 2011 to (i) engage in armed conflict or (ii) join, or support, groups that are engaged in armed conflict? Please provide a year to year breakdown (up to and including 2019).

Of those, please provide a breakdown of:

- What group(s) they fought for, joined or otherwise supported;
 - How many are women;
 - How many are men;
 - How many have returned to Australia (please provide a year by year breakdown); and
 - Of those who have returned to Australia, how many have been convicted of terrorism offences (please provide a breakdown of the relevance offences).
- The Department has consulted with ASIO on this question. ASIO has advised that any information on foreign fighters and statistics that they are able to provide have been incorporated into their PJCIS submission.

Q. Failed foreign fighters

Since the beginning of 2011, how many Australian citizens have attempted but failed to travel from Australia to Syria or Iraq to fight for ISIL because they have been prevented from leaving Australia because their passports were cancelled? Please provide a year to year breakdown (up to and including 2019).

- Questions regarding passport cancellation are best directed to the Department of Foreign Affairs and Trade.

Q. Since the beginning of 2011, how many Australian citizens have attempted to travel from Australia to Syria or Iraq to fight for ISIL but have only made it as far as Turkey, Lebanon or another third country? Please provide a year to year breakdown (up to and including 2019).

- The Department has consulted with ASIO on this question. ASIO has advised that any information on foreign fighters and statistics that they are able to provide have been incorporated into their PJCIS submission.

Q. ISIL Supporters / Fighters

Since the beginning of 2011, how many Australian citizens have successfully travelled from Australia to Syria or Iraq to join, support or fight for ISIL? Please provide a year to year breakdown (up to and including 2019).

Of those, please provide a breakdown of:

- How many are women;
- How many are men;
- How many have returned to Australia (please provide a year by year breakdown); and

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- **Of those who have returned to Australia, how many have been convicted of terrorism offences (please provide a breakdown of the relevance offences).**
- The Department has consulted with ASIO on this question. ASIO has advised that any information on foreign fighters and statistics that they are able to provide have been incorporated into their PJCIS submission.

Q. Free Syrian Army Supporters / Fighters

Since the beginning of 2011, how many Australian citizens have successfully travelled from Australia to Syria to join, support or fight for the Free Syrian Army or its allies? Please provide a year to year breakdown (up to and including 2019).

Of those, please provide a breakdown of:

- **How many are women;**
- **How many are men;**
- **How many have returned to Australia (please provide a year by year breakdown); and**
- **Of those who have returned to Australia, how many have been convicted of terrorism offences (please provide a breakdown of the relevance offences).**
- The Department has consulted with ASIO on this question. ASIO has advised that any information on foreign fighters and statistics that they are able to provide have been incorporated into their PJCIS submission.

Q. Re-instatement of citizenship

Since the passage of the Allegiance to Australia Bill, how many times has the Minister made a determination under section 33AA(14) or section 35(9) to effectively re-instate a person's citizenship?

- Further information is provided in the Department's supplementary submission to the Committee.

Q. Small number of citizenship cancellations

According to government statements, as many as 230 Australian "foreign fighters" have travelled to Syria or Iraq. Why is it that as few as 12 people have lost their Australian citizenship under sections 33AA or 35? Why isn't that number higher?

- Further information is provided in the Department's supplementary submission to the Committee.

Q. Detail of citizenship cancellations

Please confirm the total number of citizenship cancellations under sections 33AA, 35 or 35A as at 7 August 2019.

Of the people who have had their citizenship cancelled under sections 33AA, 35 or 35A:

- **how many are women;**
- **how many were under 18 years of age at the date of cancellation;**
- **how many have died since the date of cancellation;**

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- **in what countries are each of those people currently living; and**
- **how many of the cancellations have been under 33AA and how many under 35 or 35A?**
- Where the Department holds this information, that information is provided in the Department's supplementary submission to the Committee.
- The Department has also consulted with ASIO on this question. ASIO has advised that information on foreign fighters and statistics has been incorporated into their PJCIS submission.

Q. To give the Committee a comprehensive understanding of what the process described in Attachment B of your submission looks like in practice, please provide the Committee with the following documents for each of the citizenship cancellations (with appropriate redactions to protect the identity of the people concerned and any operational information):

- **the “issues paper” referred to in Attachment B of your submission; and**
- **the “Ministerial submission” referred to in Attachment B of your submission.**
- Further information is provided in the Department's supplementary submission to the Committee.