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Committee Secretary

Parliamentary Joint Committee on Intelligence and Security

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**Scholarly Analysis on Review of Australian Citizenship renunciation by conduct and cessation provisions**

**Submission to Parliamentary Joint Committee on Intelligence and Security Review of Australian Citizenship renunciation by conduct and cessation provisions**

**Citizenship loss provisions make Australians second class citizens**

The Law Council and experts have argued that stripping Australians does not assist Australian security, but rather risks undermining it. (Submission to the Independent National Security Legislation Monitor Review of terrorism related citizenship loss provisions in the Australian Citizenship Act 2007 (Cth)).

The offences that purport to trigger the citizenship loss provisions require the person to have been an Australian citizen at the time of the alleged offence , for example, the foreign incursions offences under Part 5.5 of the *Criminal Code Act 1995 (Cth)*

The Joint Councils for Civil Liberties expressed strong opposition to the Australian Citizenship Amendment ( Allegiance to Australia) Bill 2015 prior to its passage ( Joint Councils for Civil Liberties , Letter to the Australian Parliament , Citizenship Stripping Bill Should be abandoned ( 20 Nov 2015))

The provisions are discriminatory and risk reinforcing the identity issues that can lead to radicalization (The Sydney Morning Herald, ‘ Stripping Dual Citizenship “ Completely Counter – Productive “ to Fighting Terrorism: UK Report ‘ ( 21 July 2015)).

The provisions add little of practical utility to existing counter- terrorism tools , and are not necessary as means of preventing travel to Australia (Pillai and Williams, ‘The Utility of Citizenship Stripping Laws in UK , Canada and Australia’ ( 2017) 41 (2) University of Melbourne Law Review 845).

The repeal was justified as protecting the principles of secure and equal citizenship (Ibid p 870)

### **Provisions are a legal fiction and do promote law and justice**

Sections 33AA and 35 of Citizenship Act provide loss automatically of citizenship where a person aged 14 years or over has engaged in specified conduct. It denies basic due process and legal certainty on matters affecting a person's fundamental rights and freedoms.

In *Kioa v West* [1985] HCA 159 CLR 550, the High Court held 'that an essential element of any legal or administrative process in Australia that adversely affects a person's rights or interests is real and meaningful opportunity for that person to present his or her case, be told the substance of the case to be answered and be given an opportunity of replying to it.

### **Section 35A risks extreme and disproportionate consequences**

The offences listed in s35A(1)(a) include terrorist and foreign incursion offences. The scope of these offences has been criticized as vague and overly broad, holding potential to encompass legitimate, defensible, or minor acts (UN Rights Committee, *Concluding Observations*, Australia. (7 May 2009)

### **Provisions risk rendering Australians stateless**

Reports that the government did not obtain legal advice on Fijian citizenship law nor take steps to verify Prakash's citizenship status with Fijian authorities (ABC News, "Home Affairs did not seek legal advice from experts in Fijian law before cancelling terrorist's Australian citizenship (29 Jan 2019) raise serious concerns about the process.

### **Retrospective application.**

S35A of the Citizenship Act applies retrospectively to conduct that occurred before commencement of the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* (*Australian Citizenship Amendment (Allegiance to Australia) Act 2015*), Schedule 1, item 8(4))

### **Conclusion**

The provisions should be repealed as no justification