

Bills requiring further information to determine human rights compatibility

Australian Citizenship Amendment (Special Residence Requirements) Bill 2013

Introduced into the House of Representatives on 30 May 2013

Portfolio: Immigration and Citizenship

Summary of committee view

1.1 The committee seeks further information as to whether the Ministerial discretion to revoke a person's citizenship is consistent with the right to a fair hearing, the right of a child to a nationality and the requirement to act in the best interests of a child.

Overview

1.2 This bill seeks to amend the *Australian Citizenship Act 2007* to grant the Minister a non-compellable, non-delegable discretion to waive the residence requirements for citizenship in certain circumstances. The bill also seeks to give the Minister the personal discretion to revoke citizenship granted under this power, if the person does not comply with obligations to be ordinarily resident in Australia for two years (including 180 days of physical presence) following their grant of citizenship. This includes the power to revoke a child's citizenship if citizenship had been approved as a consequence of the discretion being applied in favour of their parent.

Compatibility with human rights

1.3 The bill is accompanied by a detailed self-contained statement of compatibility which sets out that the bill engages the right to freedom of movement, the right to non-discrimination and a child's rights to acquire a nationality.

Freedom of movement and right to a fair hearing

1.4 Article 12 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of movement, which includes the right not to be arbitrarily deprived of the right to enter one's own country. The statement of compatibility identifies that this right is engaged as the Minister is granted the discretion to revoke a person's citizenship if residence requirements are not complied with. The statement notes that as this is a discretion, 'the Minister can take into account the circumstances of the case before deciding whether or not to revoke the person's citizenship' and notes the safeguard that citizenship must not be revoked if it would render a person stateless. The statement of compatibility states

that 'in light of the benefit provided to the person, it is reasonable, necessary and proportionate to provide the Minister with the power to revoke citizenship'.¹

1.5 There does not appear to be any review mechanism for a person whose citizenship has been personally revoked by the Minister, as the ability to seek review before the Administrative Appeals Tribunal has not been included in section 52 of the *Australian Citizenship Act 2007*. There is also no requirement for the Minister to give the person whose citizenship is to be revoked an opportunity to put forward their case.

1.6 The committee notes the comment in the statement of compatibility that as it is a discretion, the Minister can take into account the individual circumstances of the case. However, as it is a personal, non-compellable Ministerial discretion, the Minister could equally choose *not* to take into account individual circumstances. A Ministerial discretion, in and of itself, cannot be taken to be a safeguard to ensure compliance with human rights. The UN Human Rights Committee has stated, in relation to the right to freedom of movement, that any restriction on this right 'should use precise criteria and may not confer unfettered discretion on those charged with their execution'.²

Children's rights

1.7 Similarly, the Minister can revoke the citizenship of a child who was granted citizenship because their parent was granted citizenship under the discretionary power. Under article 24(3) of the ICCPR and article 7(1) of the Convention on the Rights of the Child (CRC), a child has the right to acquire a nationality. The CRC provides (article 3) that in all actions concerning children, the best interests of the child shall be a primary consideration. The statement of compatibility notes that the best interests of the child may be outweighed by countervailing considerations, including the ability of the State to prescribe citizenship criteria. It goes on to note:

Children would not unreasonably lose their citizenship through the new revocation provision as it is a discretion, allowing individual circumstances to be taken into account. In particular, the Minister would take into account the best interests of the child in the process of deciding whether or not to exercise the discretion to revoke.³

1.8 As already noted, a Ministerial discretion, in and of itself, does not constitute a safeguard. As there is nothing in the legislation requiring the Minister to consider the best interests of the child when revoking citizenship, it is not clear to the

1 Statement of compatibility, p. 4.

2 UN Human Rights Committee, General Comment No. 27: Freedom of Movement, 2 November 1999, para 13.

3 Statement of compatibility, p. 5.

committee that these provisions would be consistent with the right of a child to a nationality and their right to a fair hearing.

1.9 The committee intends to write to the Minister for Immigration and Citizenship to ask whether the Ministerial discretion to revoke a person's citizenship is consistent with the right to a fair hearing in article 14(1) of the ICCPR and, in relation to children, to the right of a child to a nationality and the requirement to act in the child's best interests.