

Dissenting Report by Australian Labor Senators

Overview

1.1 This bill seeks to strengthen the programme integrity of citizenship by specific tightening of the ability to obtain citizenship. It seeks to strengthen the requirement in some circumstances for a connection with Australia before citizenship can be granted and it provides an increase to ministerial decision making powers under the Australian Citizenship Act 2007.

Introduction

1.2 Labor Senators have significant concerns about the two following elements of this Bill and therefore cannot support the Bill in its current form.

Revocation of citizenship

1.3 The Bill seeks to amend the legislation so that a conviction is not required for the revocation of citizenship so long as the Minister is satisfied that the fraud has occurred.

1.4 This would in effect lower the threshold for revocation of citizenship in this circumstance from "beyond reasonable doubt" to the much lower administrative standard of being in the "reasonable" view of the decision maker.

1.5 The Law Council noted in its submission that these changes 'appear to undermine the rule of law principle that all people are entitled to the presumption of innocence and to a fair and public trial'.¹

1.6 Labor believes the removal of citizenship should not be taken lightly. It is at least as serious a step as convicting a person of a crime. The criminal threshold should remain as the test for the revocation of citizenship in cases of fraud.

1.7 The public policy reason given in the Minister's second reading speech for this change is that "*law enforcement agencies and courts have limited capacity to prosecute all cases of fraud, or any other type of criminal behaviour*".

1.8 This reasoning was not supported by the majority of submitters, for example the Law Council stated:

The loss of a person's citizenship has serious consequences for an individual and their family, and as such, it is appropriate that this decision should follow a criminal conviction in instances of fraud. If there are concerns that law enforcement agencies and courts have insufficient resources to prosecute such matters, it would be preferable to instead address these resourcing issues rather than lowering the applicable standard. In this context, the Law Council notes that "fraud" and "misrepresentation"

1 Law Council of Australia, *Submission 12*, p. 2.

are very wide terms and may be used to justify sanctions well beyond the gravity of the misrepresentation itself.²

1.9 Labor Senators believe this is an extremely weak justification for diminishing the status of Australian Citizenship by giving the Minister the power to decide whether or not something in someone's citizenship application constitutes fraud and therefore demands the revocation of citizenship. The granting of this unrestrained power would allow a much more cavalier approach to the revocation of citizenship.

Limitations on the 10-year rule

1.10 At present a person who is born in Australia and lives in Australia until they are ten years old automatically acquires citizenship.

1.11 This bill seeks to amend the legislation so that an additional requirement would be that at every point in the ten year period, a parent and therefore the child, has been in Australia lawfully.

1.12 Under this change to the legislation, it would prevent a child born in Australia to parents who arrived seeking asylum obtaining citizenship, despite the child having been lawfully present in Australia for his or her entire life.

1.13 The Refugee Council of Australia argued that these changes 'would thus essentially allow children to be penalised for the actions of their parents' and were incompatible with the principle that the best interests of the child should be the primary consideration:

We do not believe that the imperative to maintain the integrity of the citizenship program justifies the denial of citizenship, on the basis of actions over which they had no control, to children who (as noted in the Statement of Compatibility) "were born in Australia, have spent their formative years here and have their established home here". RCOA believes that denying the right of citizenship by birth to these children is an unjustifiably severe penalty when weighed against concerns about the current operation of the 'ten year rule'.³

1.14 Labor Senators are concerned that a child born in Australia and lawfully present for 10 years would be denied citizenship if at any point during that ten year period a parent was deemed an unlawful citizenship – including if they spent any time in immigration or community detention while awaiting processing of their claim.

Conclusion

1.15 The Australian Labor Party has serious concerns about the significant increase in discretionary power this legislation would provide the Minister. It is crucial that the Australian Parliament deal with matters relating to citizenship with the highest diligence. It is the greatest gift a nation can bestow on a migrant. Labor will not support the passing of legislation that has the potential to unfairly affect a person's citizenship.

2 Law Council of Australia, *Submission 12*, p. 2.

3 Refugee Council of Australia, *Submission 13*, p. 2.

Recommendation 1

1.16 Labor Senators recommend that the Bill not be passed.

**Senator Jacinta Collins
Deputy Chair**

