

Dissenting Report of the Australian Greens

1.1 The Senate inquiry into the Australian Citizenship and Other Legislation Amendment Bill revealed a number of serious concerns with the legislation, particularly in relation to the grounds on which citizenship may be revoked or refused and the broadening of the Minister for Immigration and Border Protection's discretionary powers.

1.2 The Australian Greens are concerned that the proposed amendments will have serious consequences for Australian citizens as they unnecessarily and unjustifiably broaden the criteria on which citizenship may be cancelled or refused.

1.3 The provisions provide the Minister of the day with unprecedented power to overrule a decision of the Administrative Appeals Tribunal if the Minister is satisfied that it is in the public interest to do so. This is an unprecedented power which places the Minister above the judicial system and denies individuals procedural fairness by barring them from merits review. As stated by Professor Jane Mc Adam:

This makes a mockery of the merits review process by undermining procedural fairness and the independent powers of the merits review process by undermining procedural fairness and the independent powers of the tribunal and interfering in due process and the rule of law.¹

1.4 Further to this, the amendments allow all decisions by the Minister regarding the revocation of citizenship non-reviewable, provided the Minister has included a statement that he/she is satisfied that the decision is in the 'public interest'. Any decision made to refuse or cancel an individual's citizenship or visa must provide the individual access to merits review. A decision of this kind could make a person stateless,² see them indefinitely detained or see them returned to danger or serious harm.³

1.5 The Bill will also give the Minister for Immigration the power to deny and revoke the Australian citizenship of people who have suffered severe mental illness or drug addiction. This is just another power grab which has gone too far. This power will give the Minister of the day the authority to strip the most vulnerable Australians of their very citizenship.

1.6 The amendments go further by allowing the Minister to revoke citizenship for reasons of fraud and misrepresentation, even when the person may not be aware of such acts or has never been convicted of an offence.⁴ This amendment has significant implications for refugees should they seek Australian Citizenship. The amendments fail to recognise the realities of seeking asylum and do not provide the individual with

1 Professor Jane McAdam, Andrew and Renata Kaldor Centre for International Refugee Law, UNSW Australia, *Submission 9*.

2 Ibid.

3 Asylum Seeker Resource Centre, *Submission 1*, p. 3.

4 Australian Human Rights Commission, *Submission 4*, p. 6.

the opportunity to explain the circumstances by which fraud or misrepresentation may have come about.

1.7 Changes proposed in this Bill also extend the 'good character' provisions to children (under the age of 18 years) and give the Minister the power to revoke citizenship by decent if he/she is satisfied that the individual was not of good character at the time of registered citizenship. These amendments have the potential to render a child stateless and could have devastating impacts and young people who may have committed minor offences at a young age from later becoming citizens.⁵

1.8 Under these amendments the ten year residence requirement for persons born in Australia will be amended to limit this automatic acquisition. These amendments will have a significant impact of the children of asylum seekers born in Australia. As stated by Adelaide University Public Law and Policy Research Unit:

It is wrong in principle to deny automatic citizenship to a child who was born in Australia and spent the first ten years living in Australia, regardless of their immigration status.⁶

1.9 These amendments may contravene Australia's human rights obligations, in particular article 15(2) of the Universal Declaration of Human Rights and principles contained in the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness.⁷

1.10 In conclusion, the amendments proposed in this Bill will have serious implications for Australian citizens. The unchecked and unprecedented power that is placed in the hands of the Minister, should this Bill pass, is unwarranted and has not be sufficiently justified by the government. As rightly noted by the Asylum Seeker Resource Centre, no Minister or government authority should be exempt from independent oversight. This is inconsistent with the rule of law and democratic principles.⁸ Similarly, attempts to extend the 'good character' provisions to children may result in Australia contravening a number of human rights obligations. For these reasons, the Australian Greens recommend that this Bill not be passed.

Recommendation 1

1.11 The Australian Greens recommend that this Bill be rejected by the Senate.

Senator Sarah Hanson-Young
Australian Greens

5 UNICEF Australia, *Submission 8*, p. 2.

6 Adelaide University Public Law and Policy Research Unit, *Submission 6*, p. 3.

7 Australian Human Rights Commission, *Submission 4*, p. 7.

8 Asylum Seeker Resource Centre, *Submission 1*, p. 5.