

## Introduction

### The Bill and its referral

1.1 On 24 June 2015, the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, introduced the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (the Bill) into the House of Representatives.

1.2 In his second reading speech, the Minister stated that the Bill proposes three mechanisms for automatic loss of Australian citizenship. As such, the Bill

implements the commitment made by the Prime Minister, myself and the Australian Government to address the challenges posed by dual citizens who betray Australia by participating in serious terrorism related activities.<sup>1</sup>

1.3 The Minister added that the Bill ‘emphasises the central importance of allegiance to Australia in the concept of citizenship’.<sup>2</sup>

1.4 The Minister explained that:

The concept of allegiance is central to the constitutional term ‘alien’ and to this bill’s reliance upon the aliens power in the Constitution. The High Court has found that an alien is a person who does not owe allegiance to Australia. By acting in a manner

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1 Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 24 June 2015, p. 7369.

2 Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 24 June 2015, p. 7369.

contrary to their allegiance, the person has chosen to step outside of the formal Australian community.<sup>3</sup>

- 1.5 On 24 June 2015, the Attorney-General, Senator the Hon George Brandis QC, wrote to the Committee to refer the provisions of the Bill for inquiry. In addition, the Attorney-General asked the Committee to consider whether proposed section 35A of the Bill should apply retrospectively with respect to convictions prior to the commencement of the Act. The Committee was requested, as far as possible, to conduct its inquiry in public.
- 1.6 In his letter, the Attorney-General noted that the Prime Minister, the Hon Tony Abbott MP, had announced on 26 February 2015 that the Australian Government would look at options for dealing with Australian citizens who are involved in terrorism. The Attorney-General informed the Committee that the Bill implements the Government's response to the threat of dual national Australian citizens engaged in terrorism.
- 1.7 The Attorney-General also noted that a discussion paper entitled *Australian Citizenship, Your Right, Your Responsibility* was launched on 26 May 2015.<sup>4</sup> The discussion paper forms the basis for current public consultations led by the Hon Philip Ruddock MP and Senator the Hon Concetta Fierravanti-Wells.
- 1.8 The purpose of the consultations is to enable a national conversation about citizenship. The website explaining the consultation states that

Australian citizens enjoy privileges, rights and fundamental responsibilities. We need to ask ourselves whether the responsibilities of Australian citizenship are well enough known and understood. Do we do enough to promote the value of citizenship, particularly among our young people? Have we got the balance right between the safety of our community and the rights of the individual? How should we deal with citizens who act against the best interests of our country?<sup>5</sup>

- 1.9 A report is to be tabled following these consultations.

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3 Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 24 June 2015, p. 7370.

4 See Department of Immigration and Border Protection, 'Australian Citizenship – Your Right, Your Responsibility', <<http://www.border.gov.au/about/reports-publications/discussion-papers-submissions/australian-citizenship-your-right-your-responsibility>> viewed 2 July 2015.

5 See Department of Immigration and Border Protection, 'Australian Citizenship – Your Right, Your Responsibility', <<http://www.border.gov.au/about/reports-publications/discussion-papers-submissions/australian-citizenship-your-right-your-responsibility>> viewed 2 July 2015.

- 1.10 On 18 August 2015, the Committee wrote to the Attorney-General to advise that, given the significance of the Bill and the need to give further consideration to matters raised during the inquiry, the Committee intended to report to the Parliament on Friday, 28 August 2015. This was then extended to Friday 4 September.

## **Conduct of the inquiry**

- 1.11 The Chair of the Committee, Mr Dan Tehan MP, announced the inquiry by media release on 26 June 2015 and invited submissions from interested members of the public.
- 1.12 The Committee received 43 submissions and 7 supplementary submissions from sources including government agencies, legal, community and civil liberties groups, academics and members of the public. A list of submissions received by the Committee is at Appendix A.
- 1.13 The Committee held three public hearings on 4, 5 and 10 August 2015. It received one private briefing and conducted one classified hearing. A list of hearings and the witnesses who appeared before the Committee is included at Appendix B.
- 1.14 Copies of submissions received and transcripts of public hearings can be accessed on the Committee's website at [www.aph.gov.au/pjcis](http://www.aph.gov.au/pjcis). Links to the Bill and the Explanatory Memorandum are also available on the Committee's website.
- 1.15 In its previous bill inquiries, the Committee was assisted by secondees from relevant agencies. In this instance, the Committee again benefited from the provision of a secondee with technical expertise from the Department of Immigration and Border Protection (the Department).
- 1.16 It has also been the practice in previous bill inquiries for the lead government agency to provide the Committee with written responses to issues raised in submissions both before and after the hearing process. This has helped to clarify the operation of a bill, ensured informed debate at hearings, and has aided the Committee in its consideration of proposed measures.

## Report structure

1.17 This report consists of nine chapters:

- This chapter sets out the context, scope and conduct of the inquiry.
- Chapter 2 provides an overview of key provisions of the Bill and a brief international comparison of provisions for loss or revocation of citizenship in Canada, New Zealand, the United Kingdom, the United States and France
- Chapter 3 sets out a number of constitutional issues raised in evidence to the Committee.
- Chapter 4 includes discussion of a number of matters of principle and effectiveness, including:
  - ⇒ different conceptions of the meaning and value of Australian citizenship,
  - ⇒ the effectiveness of the measures in the Bill in combating terrorism and protecting the Australian community, and possible unintended consequences, and
  - ⇒ Australia's international obligations relating to statelessness, human rights, combatting terrorism, children and humanitarian assistance.
- Chapters 5 to 7 examine the main issues raised in evidence to the inquiry relating to operation of the Bill, and the Committee's comments and recommendations on these issues.
  - ⇒ Chapter 5 examines the conduct based provisions of the Bill (proposed sections 33AA and 35).
  - ⇒ Chapter 6 examines the conviction based provisions of the Bill (proposed section 35A), and includes discussion of the question of whether proposed section 35A should be applied retrospectively.
  - ⇒ Chapter 7 discusses how the Bill would operate in practice, including the Minister's notice and exemption, avenues of appeal, consequences if the grounds for citizenship loss are overturned, and practical considerations relating to the Bill's implementation.
- Chapter 8 discusses the application of the Bill to children and issues raised in evidence about the Bill's compatibility with Australia's international obligations relating to children.
- Chapter 9 includes the Committee's concluding comments and recommendations about ongoing oversight and accountability.

## Delegation to United Kingdom, France and United States

- 1.18 In association with the inquiry into the Bill, a delegation of the Committee travelled to the United Kingdom, France and the United States from 18 July to 1 August 2015. The Committee sought approval for a delegation in order to inform its inquiry into citizenship revocation and also to engage more broadly in discussions on international counter terrorism measures.
- 1.19 Approval was granted for the Chair, the Deputy Chair and a Government member to attend the delegation. Due to other commitments, the Deputy Chair was unable to attend and the Committee agreed the attendance of Mr Dan Tehan MP, the Hon Philip Ruddock MP and Senator David Fawcett on the delegation.
- 1.20 The delegation provided members with the opportunity to discuss policy and operational challenges to combatting terrorism, and to investigate actions other governments are undertaking both domestically and abroad to counter terrorist activity. The delegation also sought to engage with other intelligence oversight bodies to discuss their roles and the interaction of oversight powers.
- 1.21 In the United Kingdom, the Committee held detailed discussions with intelligence and enforcement agencies on the scope of their citizenship revocation provisions, and the operation and effectiveness of these provisions in reducing risk to the community. The delegation discussed the effectiveness of these measures, the practical and operational requirements, and the critical review and oversight mechanisms needed. The United Kingdom faces a high threat from returning fighters in addition to domestic radicalisation of youth from online sources. The delegation heard that citizenship revocation measures have provided a further tool to respond to the threat represented by some individuals.
- 1.22 The Chair, Mr Dan Tehan MP, reported to the House on the findings of the delegation commenting that
- All those we spoke to in each nation agreed that a range of tools and approaches are needed to combat terrorism on different fronts and that citizenship revocation is a much needed and effective mechanism, in particular, to address the threat of returning fighters.<sup>6</sup>
- 1.23 An overview of citizenship revocation measures in other countries is provided in Chapter 2.

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<sup>6</sup> House Hansard 17 August 2015 p. 8.

- 1.24 Other delegation discussions centred on combating the radicalisation of individuals, particularly through social media where the quantity and reach of extremist propaganda is growing. The delegation noted that extremism, not just violent extremism, was considered a threat. The UK, France and the US are well advanced in working with communities to counter online extremist propaganda which is contributing to domestic radicalisation.
- 1.25 Cultural identification, ethnic differences, social cohesion and integration within communities, and access to contact with disaffected persons varied between nations and determined the degree of threat each nation perceived from domestic or returning fighters. France and the US identified different types of threats posed by violent extremism. The delegation heard that understanding the drivers of extremism and the recruitment methodology of these organisations enables more targeted counter narrative and intervention responses to be developed.
- 1.26 Another critical issue discussed during the delegation was the protection of classified intelligence information in warrants, affidavits and other court proceedings. The UK has an advanced system of special advocates who represent the interests of clients but also have access to certain classified information which may not be able to be presented in other circumstances. This system attempts to balance security needs with ensuring fair representation during judicial proceedings.
- 1.27 Across the three nations, the delegation met with a range of oversight authorities, government officials, intelligence and enforcement agencies and counter terrorism experts.
- 1.28 In the United Kingdom, meetings were conducted with:
- Scotland Yard,
  - former Chief of the Secret Intelligence Service,
  - the Office for Security and Counter-Terrorism,
  - the Office of Surveillance Commissioners,
  - the Home Office,
  - the Independent Reviewer of Terrorism Legislation,
  - the Interception of Communications Commissioner's Office,
  - the National Security Directorate,
  - a former Special Advocate to the courts, and

- countering radicalisation and extremism experts from the International Centre for the Study of Radicalisation and the Royal United Services Institute.

1.29 In France the delegation met with representatives from:

- the Anti-Terrorist Coordination Unit,
- the Directorate-General for Internal Security,
- the Inter-Ministerial Committee for the Prevention of Crime,
- the Parliamentary Committee for Intelligence,
- the Ministry of Justice, and
- the National Intelligence Coordinator.

1.30 In Washington the delegation met with:

- the Central Intelligence Agency,
- the Federal Bureau of Investigation,
- the National Counterterrorism Centre,
- the House Permanent Select Committee on Intelligence,
- the Senate Select Committee on Intelligence,
- the House Committee on Homeland Security,
- the State Department,
- the Department of Homeland Security,
- Office of the Director of National Intelligence, and
- Counter-terrorism experts from the American Enterprise Institute and political analysts.

1.31 The delegation concluded in San Francisco where meetings took place with Twitter, Google and Facebook, and cybersecurity experts. A copy of the delegation program is at Appendix C.

