



**Inquiry into the Australian Citizenship Legislation Amendment  
(Strengthening the Requirements for Australian Citizenship  
and Other Measures) Bill 2017**

**Senate Legal and Constitutional Affairs Legislation Committee**

**Submission by the Office of the  
United Nations High Commissioner for Refugees**

**21 July 2017**

**I. INTRODUCTION**

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Legislation Committee in respect of its inquiry into the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the Bill).
2. UNHCR acknowledges the Government's view, expressed in the Minister's second reading speech that "the Australian community expects that aspiring citizens demonstrate their allegiance to our country, their commitment to live in accordance with Australian laws and values, and be willing to integrate into and become contributing members of the Australian community".<sup>1</sup>
3. UNHCR considers that the proposed amendments to the *Australian Citizenship Act 2007* (Cth) (the Act) are not necessary to enable the successful integration of refugees and stateless persons into the Australian community and will disproportionately affect the ability of such persons to acquire Australian citizenship.
4. UNHCR's submission focuses on the amendments in the Bill which will:
  - a) Change the eligibility criteria for citizenship by conferral, in particular the proposed amendments relating to English language and integration;
  - b) Increase the permanent residency requirement in relation to citizenship by conferral;
  - c) Create an exception to the automatic acquisition of citizenship by abandoned children; and,
  - d) Expand the grounds for refusing an application for citizenship by descent, on the basis of criminal offences.

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<sup>1</sup> Peter Dutton (Minister for Immigration and Border Protection), Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, *Parliamentary Debates*, House of Representatives, 15 June 2017, p. 7.

## II. UNHCR'S AUTHORITY

5. UNHCR offers these comments as the agency entrusted by the United Nations General Assembly (UNGA) with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees.<sup>2</sup>
6. As set forth in the *Statute of the Office of the United Nations High Commissioner for Refugees* (Statute), UNHCR fulfils its international protection mandate by, inter alia, '[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.'<sup>3</sup>
7. UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the *1951 Convention relating to the Status of Refugees* (the Refugee Convention),<sup>4</sup> according to which State Parties undertake to 'co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention'. The same commitment is included in Article II of the *1967 Protocol relating to the Status of Refugees* (1967 Protocol).<sup>5</sup>
8. UNHCR has stipulated responsibilities for refugees who are stateless, pursuant to paragraphs 6(A)(II) of the Statute and Article 1(A)(2) of the Refugee Convention, both of which specifically refer to stateless persons who meet the refugee criteria. Moreover, in accordance with UNGA resolutions 3274 XXIX<sup>6</sup> and 31/36<sup>7</sup>, UNHCR has been designated, pursuant to Articles 11 and 20 of the *1961 Convention on the Reduction of Statelessness* (the 1961 Statelessness Convention),<sup>8</sup> as the body to which a person claiming the benefits of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the appropriate authorities. In resolutions adopted in 1994 and 1995, the UNGA entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.<sup>9</sup>

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<sup>2</sup> See *Statute of the Office of the United Nations High Commissioner for Refugees*, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1 ("Statute").

<sup>3</sup> Statute, para. 8(a).

<sup>4</sup> UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>5</sup> UN General Assembly, *Protocol relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

<sup>6</sup> UN General Assembly, *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply*, 10 December 1974, A/RES/3274 (XXIX).

<sup>7</sup> UN General Assembly, *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply*, 30 November 1976, A/RES/31/36.

<sup>8</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175.

<sup>9</sup> UN General Assembly resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI), *Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, 20 October 1995.

9. Australia is a Contracting Party to the Refugee Convention and its 1967 Protocol, the 1954 *Convention relating to the Status of Stateless Persons*, and the 1961 Stateless Convention.

### III. NATURALIZATION UNDER THE REFUGEE CONVENTION

10. The Refugee Convention (as amended by the 1967 Protocol) places considerable emphasis on the integration of refugees. It enumerates social and economic rights and obligations designed to assist integration, and Article 34 provides that:

“The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”<sup>10</sup>

11. Naturalization through the conferral of citizenship in a country of refuge is one of the possibilities for putting an end to an individual’s refugee character.<sup>11</sup> As such, the UNHCR Executive Committee, of which Australia is a member, has emphasized that naturalization is an important part of the ultimate goal of international protection, which is to achieve durable solutions for refugees.<sup>12</sup>
12. Article 34 of the Refugee Convention implies that State Parties should make good faith efforts to assist refugees to meet the requirements of naturalization.<sup>13</sup> Article 34 does not require State Parties to treat refugees more favourably than other aliens, but requires that State Parties ensure fair treatment of refugees.<sup>14</sup> Such treatment should acknowledge the lack of choice to leave their country of origin and seek refuge in another country, compared to other foreigners who have come to another country of their own choice,<sup>15</sup> and the consequent challenges to integration that are specific to their situations.
13. A similar provision to Article 34 is contained in Article 6(4)(g) of the *European Convention on Nationality*, according to which each State Party “shall facilitate in its internal law the acquisition of its nationality [...] stateless persons and recognized refugees lawfully and habitually resident on its territory”. In respect of the Convention, the Parliamentary Assembly of the Council of Europe has stated that State Parties should enable the naturalization of long-term residents, in part by limiting the residency requirement, and avoiding discrimination on the grounds of gender, race, religion, ethnic origin or language.<sup>16</sup>

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<sup>10</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 34.

<sup>11</sup> UN High Commissioner for Refugees (UNHCR), *Commentary of the Refugee Convention (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html>, comments on Article 34, at para. 1.

<sup>12</sup> UNHCR Executive Committee, *Conclusion on Local Integration No. 104 (LVI) - 2005*, 7 October 2005, No. 104 (LVI) - 2005, available at: <http://www.refworld.org/docid/4357a91b2.html>.

<sup>13</sup> UNHCR, *Commentary of the Refugee Convention (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html>, comments on Article 34, at para. 4; UNHCR, *Note on the Integration of Refugees in the European Union*, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>, para. 42.

<sup>14</sup> UNHCR, *Commentary of the Refugee Convention (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html>, comments on Article 34, at para.4.

<sup>15</sup> UNHCR, *Commentary of the Refugee Convention (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html>, comments on Article 34, at para.4.

<sup>16</sup> Council of Europe: Parliamentary Assembly, *Access to nationality and the effective implementation of the European Convention on Nationality*, 23 January 2014, Doc. 13392, available at: <http://www.refworld.org/docid/52f49bcb4.html>.

#### IV. AMENDMENTS TO ELIGIBILITY CRITERIA FOR CITIZENSHIP PROPOSED BY THE BILL THAT GIVE RISE TO CONCERN

##### A. APPLICATION AND ELIGIBILITY FOR CITIZENSHIP

14. Under the Act, an applicant must possess a “basic knowledge” of the English language in order to be eligible to apply for citizenship by conferral.<sup>17</sup> The Bill proposes to amend the Act to require applicants to have a “competent knowledge” of the English language.<sup>18</sup> The Minister may prescribe the circumstances in which a person has competent English.<sup>19</sup> The Minister’s second reading speech further clarifies:

“Aspiring citizens are currently required to possess a level of ‘basic’ English. This is indirectly assessed when an applicant sits the citizenship test. Aspiring citizens will now be required to undertake a separate up-front English language test with an accredited provider and achieve a level of ‘competent’. There will be exemptions, such as for applicants over 60 years of age or under 16 years of age at the time they applied for citizenship or those with an enduring or permanent mental or physical incapacity. There will be other exemptions from testing, as is currently the case for skilled migration assessments, such as for citizens of the United Kingdom, the Republic of Ireland, Canada, the United States of America or New Zealand who hold a valid passport or for applicants who have undertaken specified English language studies at a recognized Australian education institution.”<sup>20</sup>

15. Learning the language of the country of refuge is an important aspect of integration. UNHCR appreciates that many integration challenges faced by refugees are similar to those faced by other migrants and that the need to bridge the language and cultural barriers affect refugees and migrants alike. UNHCR considers that integration policies for refugees should be mainstreamed in integration plans drawn up for third country nationals generally. Nevertheless, it is essential to include measures to address refugee-specific concerns, where necessary.<sup>21</sup>
16. While the proposed changes under the Bill are not specific to refugees, the changes to the English language requirement disproportionately affect those from refugee backgrounds. Refugees are less likely than other migrants to move to countries where they already have some cultural, linguistic or economic links, and most come from non-English speaking countries.<sup>22</sup> Moreover, increasing the language

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<sup>17</sup> *Australian Citizenship Act 2007* (Cth) s 21(2)(e).

<sup>18</sup> Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, s 21(2)(e).

<sup>19</sup> Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, s 21(9)(a).

<sup>20</sup> P Dutton (Minister for Immigration and Border Protection), Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, *Parliamentary Debates*, House of Representatives, 15 June 2017, p. 7.

<sup>21</sup> UNHCR, *Note on the Integration of Refugees in the European Union*, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>.

<sup>22</sup> It is noted that 55 per cent of all refugees worldwide come from the Syrian Arab Republic, Afghanistan and South Sudan. The other countries of origin from which most of the world’s refugees originate are: Somalia, Sudan, the Democratic Republic of Congo, the Central African Republic, Myanmar, Eritrea and Burundi. See: UNHCR, *Global Trends: Forced Displacement in 2016*, 21 June 2017, available at: <http://www.refworld.org/docid/594aa38e0.html>, p. 17.

threshold may distinctly limit, and perhaps even preclude, access to naturalization for certain categories of refugees such as torture and trauma survivors, older persons, and illiterate persons.<sup>23</sup> In particular, studies have shown that experiences of war, torture, assault, and other extreme events that cause harm, can create significant barriers to learning a second language.<sup>24</sup>

17. While the Act contains existing exemptions for persons over 60 years of age and persons who are permanently mentally incapacitated, there are many refugees and stateless persons who may not fall within these exempt categories, but will nevertheless effectively be unable to acquire the requisite standard of English proficiency and thus attain citizenship.
18. Given that the proposed increase to the minimum English language level would inhibit rather than facilitate the naturalization through the grant of citizenship of those from refugee backgrounds into the Australian community, UNHCR recommends that the current English language standard of “basic knowledge of the English language” be retained. Alternatively, it is strongly recommended that an express exemption be inserted into the Act for humanitarian entrants.
19. UNHCR also notes the existing requirement for applicants to “have adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship”. This is evidenced by the successful completion of the citizenship test, which in itself necessitates a high standard of English proficiency.<sup>25</sup> The Bill is further proposing to insert an additional element to this criterion for citizenship by conferral, by requiring an applicant to have “integrated into the Australian community”.<sup>26</sup> Under paragraph 21(9)(e) it is for the Minister to determine, by legislative instrument, matters that the Minister may or must have regard to when determining whether a person has integrated into the Australian community.
20. The Explanatory Memorandum clarifies that such matters could include “a person’s employment status, study being undertaken by the person, the person’s involvement with community groups, the school participation of the person’s children, or, adversely, the person’s criminality or conduct that is inconsistent with the Australian values to which they committed throughout their application process”.<sup>27</sup>

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<sup>23</sup> UNHCR, *Note on the Integration of Refugees in the European Union*, May 2007, available at: <http://www.refworld.org/docid/463b24d52.html>, para. 43; UNHCR, *Note on Refugee Integration in Central Europe*, April 2009, available at: <http://www.refworld.org/docid/4bfe70d72.html>.

<sup>24</sup> See e.g. Heather Borrow Finn, ‘Overcoming Barriers: Adult Refugee Trauma Survivors in a Learning Community’ (2010) 44 (3) *Migration and Adult Language Learning* 586; Adkins, M.A, Birman, D. and Sample, B *Mental health and the adult refugee: The role of the ESL teacher*, (1999) Washington DC: National Clearing house for ESL Literacy Education; Janet Isserlis, *Trauma and the Adult English Language Learner*, (2000) Washington DC: National Clearing house for ESL Literacy Education.

<sup>25</sup> *Australian Citizenship Act 2007* (Cth) s 21(2)(f); Department of Immigration and Border Protection, ‘Citizenship Test’ <https://www.border.gov.au/Trav/Citi/pathways-processes/Citizenship-test>.

<sup>26</sup> *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017* (Cth), s 21(2)(fa).

<sup>27</sup> Explanatory Memorandum, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, para. 142.

21. UNHCR emphasizes that integration is a two-way process between refugees and their host communities.<sup>28</sup> Refugees must be prepared to adapt to the host society, and the host society in return should be welcoming and responsive to refugees.<sup>29</sup> It is essential to recognize that integration is a multifaceted process that has legal, economic, socio-economic and cultural dimensions and, importantly, does not require a refugee to abandon their own culture and way of life.<sup>30</sup> It is unclear how the Minister will take into account these complex considerations in objectively assessing whether an applicant has integrated into the Australian community.
22. The proposed changes to the eligibility requirements for applicants for citizenship by conferral are inconsistent with Australia's role in facilitating naturalization for people from refugee backgrounds. Moreover, the proposed changes are likely to instead create a barrier for integration for vulnerable groups among them.
23. UNHCR considers that the criteria to attain Australian citizenship should be expressly set out in the Act itself, rather than through a legislative instrument made by the Minister. Moreover, in due recognition of the fact that successful integration into a refugee's country of asylum is not a static notion that can be easily assessed, it is recommended that the Act not be amended to incorporate this additional criterion.

#### **Recommendation 1:**

UNHCR recommends that the current English language standard of "basic knowledge of the English language" contained in existing paragraph 21(2)(e) of the Act be retained. Alternatively, existing exemptions should be expanded to expressly include humanitarian entrants.

UNHCR recommends that criteria for naturalization be comprehensively set out in the *Australian Citizenship Act 2007*. UNHCR also recommends against the inclusion of a statutory criterion requiring successful integration into the Australian community.

### ***B. GENERAL RESIDENCY REQUIREMENT***

24. Under the Act, an individual satisfies the residency requirement if, inter alia, they have held permanent residency for a period of 12 months before the date of application, have been present in Australia for a period of four years before the date

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<sup>28</sup> UNHCR, *Integration of Beneficiaries of International Protection in the European Union - Recommendations to the European Ministerial Conference on Integration, Zaragoza (15 and 16 April 2010)*, April 2010, available at: <http://www.refworld.org/docid/4bc862412.html>, para. 3.

<sup>29</sup> UNHCR, *Integration of Beneficiaries of International Protection in the European Union - Recommendations to the European Ministerial Conference on Integration, Zaragoza (15 and 16 April 2010)*, April 2010, available at: <http://www.refworld.org/docid/4bc862412.html>, para. 7.

<sup>30</sup> UNHCR, *Global Consultations on International Protection/Third Track: Local Integration*, 25 April 2002, EC/GC/02/6, available at: <http://www.refworld.org/docid/3d6266e17.html>, p. 2; UNHCR, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, June 2006, POLAS/2006/02, available at: <http://www.refworld.org/docid/44bb9b684.html>, p. 7-9.



of application, and were not an unlawful non-citizen at any time during that period.<sup>31</sup> The Bill proposes to increase the period of permanent residency required to be eligible to make a citizenship application from 12 months to four years, and retain the requirement that the applicant was not an unlawful non-citizen at any time during that period.<sup>32</sup>

25. The Explanatory Memorandum states that extending the general residency period strengthens the integrity of the citizenship programme by providing more time to examine a person's character as a permanent resident in Australia.<sup>33</sup> However, it is not clear how an individual's migration status in Australia (lawful but not permanent for the four-year eligibility period) affects their commitment to Australia, nor why the current residency requirement is no longer considered adequate.
26. In line with States' obligations under Article 34, UNHCR encourages Australia to facilitate the acquisition of citizenship by refugees and stateless persons. Given that such persons are likely to remain outside their home country for extended durations, the period of permanent residency required before lodging an application for citizenship should not be increased, in order to allow refugees to develop a sense of security and certainty.
27. Additionally, the requisite residency period should include any time spent as a recognized refugee on a temporary protection visa. Such recognition is particularly important as temporary protection visas perpetuate a state of uncertainty for refugees who have fled persecution and often experience prolonged family separation, impeding their ability to restart their lives.<sup>34</sup>
28. The changes proposed by the Bill will have a disproportionate effect on refugees and stateless persons, many of whom may spend extended periods of time in Australia on temporary protection visas before being eligible to apply for citizenship. For example, thousands of asylum-seekers in Australia have waited up to four years to be granted permission to apply for protection. Once an application is lodged, it may take several years before the temporary visa is granted (especially if merits and/or judicial review are engaged). Refugees who are granted a Safe Haven Enterprise (Subclass 790) visa will not be eligible to apply for permanent residency until five years have elapsed.<sup>35</sup> Under the proposed changes to the Act, they will then be required to wait an additional four years before they are eligible to apply for Australian citizenship. There are therefore a significant number of refugees who are likely to wait in excess of 15 years before being granted Australian citizenship, assuming they are able to satisfy other statutory requirements that present significant obstacles for refugees relating, inter alia, to English language proficiency, documentation, and integration.

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<sup>31</sup> *Australian Citizenship Act 2007* (Cth) s 22(1).

<sup>32</sup> Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, s 22(1)(a) and (b).

<sup>33</sup> Explanatory Memorandum, Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, para 144.

<sup>34</sup> UNHCR, *Submission to the Expert Panel on Asylum-seekers*, 27 July 2012, available at: <http://www.refworld.org/docid/5915f25c4.html>.

<sup>35</sup> *Migration Regulations 1994* (Cth), Sch 2.

29. As noted in UNHCR commentary on Article 34 of the Refugee Convention,
- “A Contracting State may also be prevented from lengthening the period of residence required for naturalization. In such a case a State must show good cause why it is not possible any longer to grant refugees naturalization at the expiration of the period which hitherto has been prescribed.”<sup>36</sup>
30. In the absence of a clear basis for extending the permanent residency period and given that refugees and stateless persons are likely to have spent extensive periods in Australia on temporary visas before becoming eligible to make a citizenship application inhibiting their integration, UNHCR recommends against any increase to the requisite permanent residency period.

**Recommendation 2:**

UNHCR recommends that the proposed increase to the permanent residency requirement in section 22 of the Act not be adopted.

**V. AMENDMENTS THAT RAISE CONCERNS REGARDING AUSTRALIA’S OBLIGATIONS TO PREVENT AND REDUCE STATELESSNESS**

31. Under Article 15 of the *Universal Declaration of Human Rights*, each individual has a right to a nationality.<sup>37</sup> This right is important not only because it provides a sense of identity and inclusion in society, but also because those without a nationality are generally excluded from political processes, the right to entry, the right to work, and the right to reside in any country.<sup>38</sup>
32. Australia is a State Party to the 1961 Statelessness Convention, the purpose of which is to prevent and reduce statelessness, thereby guaranteeing every individual’s right to a nationality. Consequently, Australia has an obligation to take measures to avoid statelessness, in particular, among children. Articles 1 to 4 of the 1961 Statelessness Convention principally concerns the acquisition of nationality by children who would otherwise be stateless, and have ties to the Contracting State either by birth in the territory or descent.

**A. CITIZENSHIP FOR ABANDONED CHILDREN**

33. The Act currently provides that a person is an Australian citizen if the person is found abandoned in Australia as a child, unless and until the contrary is proved.<sup>39</sup> The Bill proposes to make amendments to the Act to the effect that a child found abandoned in Australia is presumed to be born in Australia and to a parent who is

<sup>36</sup> UNHCR, *Commentary of the Refugee Convention (Articles 2-11, 13-37)*, October 1997, available at: <http://www.refworld.org/docid/4785ee9d2.html>, comments on Article 34, at para. 2.

<sup>37</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 15.

<sup>38</sup> UNHCR, *Preventing and Reducing Statelessness: The 1961 Convention on the Reduction of Statelessness*, March 2014, available at: <http://www.refworld.org/docid/4cad866e2.html>, p. 2.

<sup>39</sup> *Australian Citizenship Act 2007* (Cth) s 14.



an Australian citizen or a permanent resident at the time the child is born. This presumption applies unless and until it is proved that the child was physically outside Australia before the child was found abandoned in Australia as a child, or born in Australia to a parent who is not a citizen or permanent citizen at the time of birth.<sup>40</sup>

34. Under the 1961 Statelessness Convention, Australia has an obligation to grant nationality to a person born on its territory who would otherwise be stateless.<sup>41</sup> In particular, Article 2 of the 1961 Statelessness Convention states that:

“A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.”<sup>42</sup>

35. The obligations for preventing statelessness among children contained in Articles 1 to 4 of the 1961 Statelessness Convention must be read in light of later human rights treaties, including the *Convention on the Rights of the Child*.<sup>43</sup> Article 7(2) of that Convention provides:

“States Parties shall ensure the implementation of these rights [right to a name, **nationality**, and to know and be cared for by parents] in accordance with their national law and their obligations under the relevant international instruments in this field, **in particular where the child would otherwise be stateless.**”<sup>44</sup> [Emphasis added]

36. Article 3 of the *Convention on the Rights of the Child* also applies in conjunction with Article 7, and requires that all actions concerning a child, including decisions relating to nationality, must be undertaken with the best interests of the child as a primary consideration.<sup>45</sup>

37. UNHCR considers that proposed paragraph 12(9)(a) does not fall within the scope of Article 2 of the 1961 Statelessness Convention. Evidence of a child being physically in another country before it is found abandoned in Australia, without more, is not evidence that the child was born outside Australia. This is particularly the case if the child in question is not an infant.

38. Moreover, a child may have been born in Australia, to an Australian parent, lawfully taken overseas, returned and then abandoned without any documentation at such an age that the child would not be able to communicate its own nationality

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<sup>40</sup> Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, s 12(8) and (9).

<sup>41</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, Article 1.

<sup>42</sup> UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, Article 2.

<sup>43</sup> UNHCR, *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: ("Dakar Conclusions")*, September 2011, available at: <http://www.refworld.org/docid/4e8423a72.html>, para. 2.

<sup>44</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 7(2).

<sup>45</sup> UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>, para. 9.

or that of its parents. The proposed amendment risks rendering some abandoned children as stateless, and is therefore contrary to Australia's obligations under the 1961 Statelessness Convention.

**Recommendation 3:**

UNHCR recommends that proposed paragraph 12(9)(a) be removed, as it is contrary to Australia's international obligations under the 1961 Statelessness Convention.

***B. MINISTER'S DECISION ON APPLICATION FOR CITIZENSHIP BY DESCENT***

39. The Bill proposes to insert subsection 17(4C) into the Act, which provides that the Minister must not approve a person becoming an Australian citizen by descent if any of the paragraphs 17(4C)(a) to 17(4C)(j) apply to the person, relating to criminal offences.
40. Article 4(2)(c) of the 1961 Statelessness Convention provides that a State may include a condition that an applicant for nationality by decent must not have been convicted of an offence against national security. Whether a crime can be qualified as an "offence against national security" should be judged against international standards and not simply by such a characterization by the concerned State.<sup>46</sup>
41. Existing subsection 17(4A) already provides that the Minister must not approve a person becoming an Australian citizen if the person has been convicted of a national security offence.
42. UNHCR considers that the additional proposed grounds upon which the Minister must reject an application as outlined in paragraphs 17(4C)(a) to 17(4C)(j) exceed the scope of Article 4(2)(c), to the extent that they do not relate to a conviction of an offence against national security. These amendments are therefore inconsistent with Australia's obligations under the 1961 Statelessness Convention.
43. UNHCR recommends that an express exception to proposed subsection 17(4C) be inserted into the Act for stateless persons. It is noted that such an exception already exists in subsection 24(8) relating to citizenship by conferral, consistent with Australia's obligations under Article 1(2)(c) of the 1961 Statelessness Convention.

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<sup>46</sup> UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>, para. 46.

**Recommendation 4:**

UNHCR recommends that an express exception to proposed subsection 17(4C) be inserted into the Act for stateless persons, in compliance with Australia's international obligations under the 1961 Statelessness Convention.

*UNHCR Regional Representation in Canberra  
21 July 2017*