

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Joint Intelligence and Security

19 February 2024

QoN Number: 1

Subject: Revocation of a Person's Citizenship

Asked by: Andrew Wallace

Question:

Mr Andrew Wallace MP: Does that mean that we then have a person, or a class of persons, because we can't deport them once they are rendered stateless, that are wandering around Australia, they can't get work, they can't get Social Security or Medicare, what happens then?

Ms Clare Sharp: At that point, I think the minister of the day would need to manage them in the same way they manage other stateless people in the country, by working out what an appropriate visa is for a person with their characteristics.

Mr Andrew Wallace MP: Can I put this to you – and this is not a loaded question, I am trying to be helpful to get some good sensible outcomes here. If that is a real possibility that that could happen, is there any benefit or utility in providing something in the legislation which enables the matter to be reopened and the matter to be heard de novo? I don't want to create a never ending loop?

Mr Nathan Smyth: I think we would have to take that on notice, to be honest. One thing I would say is we've not come across this situation in the nine years that this legislation...

Mr Andrew Wallace MP: How many times has the legislation been used?

Mr Nathan Smyth: There have been 22, I think, people that have lost their citizenship in total, 19 under the original 2015 legislation and three under the 2020 legislation. Those decisions have now been revoked, obviously with the decision of the High Court but we're not aware, and I could take this on notice, as to whether or not any of those people – we haven't been informed by other governments as far as I'm aware, but I would have to take that on notice as to whether or not there has been a revocation of that person's other citizenship.

Answer:

Only individuals who hold dual Australian citizenship are eligible to be considered for a citizenship cessation order by a court.

Of the 22 historical cases where Australian citizenship was ceased under the previous legislation, the Department is not aware of any cases where the individual's country of other citizenship has revoked that citizenship following the making of the determination under Australian law.

Following the making of a citizenship cessation order by the court under the new regime, the Department will follow the removal pathway process that it has in place for all persons who have no lawful right to remain in Australia.

The Department would utilise all avenues available to ensure removal of the person.

Circumstances may arise where removal is not an option, alternative lawful and constitutionally valid arrangements that are available to the Commonwealth will be made.

Ensuring the safety of the community remains a priority for the Department and the Government.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Joint Intelligence and Security

19 February 2024

QoN Number: 2

Subject: Individual cases - Revocation of a Person's Citizenship

Asked by: Andrew Wallace

Question:

Mr Wallace: With those 23 individuals, where those decisions to cancel their citizenship, they've been informed obviously of the High Court decisions and those decisions have been revoked. How many of those are still in Australia?

Mr Smyth: I would have to take that on notice but a number of those individuals are also deceased, so we would have to take that on notice.

Mr Wallace: Can you take on notice how many of them are still alive, in Australia, how many are overseas, whether any have returned back to Australia as a result of the revocation of those laws?

Mr Smyth: I would just – can I look at that and take that on notice because it does go to the privacy of individuals as well and we normally do not discuss individual cases or matters as a matter of course. But we will look at it and provide you with what we can.

Answer:

Under the now repealed citizenship cessation provisions, 22 individuals had their citizenship ceased.

Two determinations for citizenship cessation were made under the previous s36B of the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020* between 12 June 2021 and 11 December 2021.

One determination was made under the previous s36B and one determination was made under the previous s36D between 12 June 2020 and 11 December 2020.

Two determinations were given under the previous s33AA and four determinations were made under the previous s35 of the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* between 12 December 2019 and 11 June 2020. A further one determination was made and notice was unsuccessfully given under s35 during this period.

One determination was made under the previous s33AA and seven determinations were made under the previous s35 between 12 June 2019 and 11 December 2019.

Two determinations were made under the previous s35 between 12 December 2018 and 11 June 2019. A further one determination was made and notice was unsuccessfully given under s35 during this period.

One determination was made and notice was unsuccessfully given under the previous s35 between 12 June 2017 and 11 December 2017.

Further information regarding the orders is available at www.homeaffairs.gov.au/reports-and-publications/reports/reports-to-parliament/citizenship-cessation.

The Department of Home Affairs does not provide details or comment on individual cases.

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Joint Intelligence and Security

19 February 2024

QoN Number: 3

Subject: Intended Interpretation of s 36C(2)

Asked by: Andrew Wallace

Question:

Mr Wallace: To follow up on the question that Mr Hill raised earlier, Ms Sharp, you talked about the 36C(2) was drafted in the negative. I hope I'm not verbally there.

Ms Sharp: That's right, it reads: the court must not make an order ... in relation to the person if the court is satisfied that the person would, if the court were to make the order, become a person who is not a national or citizen of any country.

Mr Wallace: Today we've received evidence from legal experts and academics who have been uncomfortable with the drafting of that insofar as they say that that puts the onus back on the individual to establish that they are not in fact a citizen of another country, when that might be very difficult for them. What do you say about that?

Ms Sharp: Section 26D(4) requires us to provide the court with information about the person's nationality or citizenship. We have to produce the evidence that the court will need to look at. No doubt, the offenders' lawyers will produce evidence contesting what we've put to the court, and the judicial process will flow.

Mr Wallace: What about if they can't provide evidence to that effect because of the particular country that we're dealing with? The immense resources of the Commonwealth would usurp the resources of the individual. What if they can't get that material, but you can? Does 36C(2), in effect, provide almost a reverse onus?

Ms Sharp: I don't think that was the intended effect of the drafting. I think in practice, for example, the person could go on affidavit and -

Mr Wallace: That may not have been the intended effect of the drafting, but could that be the effective -

Ms Sharp: I would need to take that on notice. You've kind of asked me to provide an opinion on the fly about that interpretation.

Mr Wallace: That's fine. You're going to have to come back to me on the section 51(19) issue anyway. You, Mr Smyth, undertook to come back to me on that point. You need to come back to me on that, and you might as well come back to me on this one as well.

Answer:

The Department of Home Affairs considers that section 36C(2) of the *Australian Citizenship Act 2007* does not reverse the onus of proof.