Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

The *Australian Citizenship Amendment (Allegiance to Australia) Bill* 2015 (Cth)

The dangers of unchecked ministerial power

Submission to Parliamentary Joint Committee on Intelligence and Security
Inquiry into the *Australian Citizenship Amendment (Allegiance to Australia) Bill* 2015 (Cth)

16 July 2015

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WHO WE ARE

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.[1]

INTRODUCTION

The Australian Lawyers Alliance ('ALA') welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security in its inquiry into the *Australian Citizenship Amendment (Allegiance to Australia) Bill* 2015 (Cth) ('the Bill').

The Australian Lawyers Alliance is concerned with a number of aspects of this Bill.

THE NATURE OF CITIZENSHIP

Clause 4 states:

> 'This Act is enacted because the Parliament recognises that Australian citizenship is a common bond, involving reciprocal rights and obligations, and that citizens may, through certain conduct incompatible with the shared values of the Australian community, demonstrate that they have severed that bond and repudiated their allegiance to Australia.'

The rule of law and more particularly, the requirement that all individuals in a liberal democratic society are entitled to procedural fairness when their interests are adversely impacted, is a core value of Australia. Paradoxically, this Bill seeks to undermine that 'shared value,'

Article 15 of the *Universal Declaration of Human Rights* provides that:

> '(1) Everyone has the right to a nationality.
>
> (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.'

We believe that Article 15 is incompatible with Clause 4, as the Bill will arbitrarily deprive persons of their nationality as Australians. This will apply to people 'regardless of how [they] became an Australian citizen (including a person who became an Australian citizen upon the person's birth)', under clause 33AA(4).

RENUNICATION BY CONDUCT

Clause 33AA makes provision regarding 'renunciation by conduct'. There are a number of serious flaws with this provision.

A person is liable to having his her citizenship renounced simply on the basis of intelligence, hearsay and other forms of 'evidence' that suffer from the risk of being unreliable.

The removal of citizenship does not occur following a decision regarding the conduct in a court of law, but instead can occur after 'engaging in conduct'.

On the basis of such flimsy 'evidence' the stripping of citizenship takes place immediately. To make matters worse and even more obscene, a child of that person also has their citizenship renounced. One assumes this means babies being arrested and taken into immigration detention.

UNFETTERED MINISTERIAL POWER

Clauses 33AA(6),(7),(8),(9),(10) import considerable decision-making to the Minister, with no rights to review of the decision. We note that clause 33AA specifically notes that 'the rules of natural justice do not apply in relation to the powers of the Minister under this section'.

Clause 33AA(6) provides a mandatory power that the Minister must issue a written notice when becoming aware that an individual has engaged in conduct as described in clause 33AA(2):

> 'If the Minister becomes aware of conduct because of which a person has, under this section, ceased to be an Australian citizen, the Minister must give written notice to that effect at such time and to such persons as the Minister considers appropriate.'

The minister exercises power under clause 33AA with complete and unfettered discretion. This is a power that history tells us is dangerous and liable to abuse.

The removal of citizenship is akin to punishment, in fact it is termed 'banishment' by some in the political world in Australia. The imposition of punishment can and must only be undertaken by the judiciary. To allow a member of the Executive to have such a power is to undermine the rule of law.

We submit that the same principles and comments apply to clause 35, as described above in Clause 34AA.

RELEVANCE TO THE MAGNA CARTA

It is sadly ironic that in the year when the Australian Parliament notes the 800th

anniversary of the Magna Carta that one of its clauses is severely undermined by this Bill. As Chapter 39 provides:

> No free man shall be taken or imprisoned ruined or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.

The current Chief Justice of the High Court of Australia, Robert French lists five mutually inclusive and important reasons as to why compliance by decision makers with natural justice or procedural fairness is critical:

1. That it is instrumental, that is to say, an aid to good decision-making.
2. That it supports the rule of law by promoting public confidence in offi cial decision-making.
3. That it has a rhetorical or libertarian justification as a first principle of justice, a principle of constitutionalism.
4. That it gives due respect to the dignity of individuals – the dignitarian rationale
5. By way of participatory or republican rationale – it is democracy's guarantee of the opportunity for all to play their part in the political process.[2]

REFERENCES

[1] Australian Lawyers Alliance (2012) <www.lawyersalliance.com.au>

[2] (Sir Anthony Mason Lecture The University of Melbourne Law School Law Students' Society, Procedural Fairness – Indispensable to Justice? By Chief Justice Robert S French 7 October 2010)