



Parliamentary Joint Committee on Intelligence and Security

Review of the Australian
Citizenship renunciation by
conduct and cessation
provisions

August 2019

Submission by the
Australian Federal Police

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Introduction

The AFP welcomes the request by the Parliamentary Joint Committee on Intelligence and Security to make a submission to the Committee as part of its review of the Australian citizenship renunciation by conduct and cessation provisions. The Committee has requested the AFP comment in particular on the extent to which the citizenship loss provisions have been effective in combatting terrorism.

2. The threat of terrorism in Australia is continually evolving. The AFP supports necessary, appropriate and modernised laws to adapt to evolving terrorism threats. The AFP supports citizenship cessation as one of a suite of measures to mitigate the threat of terrorism within Australia and to the Australian people.

Terms of Reference

3. The Committee has resolved to focus on:
 - operation:
 - the process of renunciation by conduct or cessation, including the operation of the Citizenship Loss Board
 - the legal threshold for a Ministerial decision under section 35A of the Act;
 - effectiveness:
 - citizenship loss as a response to the threat environment;
 - the extent of the use of the provisions (including details on persons affected by their use);
 - comparisons with similar legislation in other countries; and
 - implications:
 - unintended consequences flowing from renunciation by conduct or cessation of citizenship (including consequences for relatives and friends of individuals who have lost their citizenship).

The Committee will also examine whether the current oversight and reporting requirements are appropriate.

Threat environment

4. Terrorism remains a significant threat to Australia's national security and the safety of Australians.
 - The AFP's response is multi-faceted: the prevention and disruption of terrorism, and protection of Australians at home and offshore, are our primary objectives.
5. The operational tempo remains high. Since 12 September 2014, when the national terrorism threat level was raised to "probable", 98 people have been charged as a result of 44 counter-terrorism operations in Australia.

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- Overall since 2001, 79 individuals have been convicted of terrorism offences in Australia and many are still serving sentences of imprisonment.
 - There are a further 42 active arrest warrants relating to alleged foreign fighters who are offshore.
6. The AFP notes the Home Affairs submission to this inquiry, which confirms around 80 Australians (or former Australians) remain in Syria and Iraq. Some of these individuals may attempt to return to Australia and may continue to show commitment to violent extremism, including potentially radicalising others within their sphere of influence onshore.
7. Current key priorities for the AFP include managing the return of these Australian foreign fighters and their families from the conflict zone, joint investigations with partners to disrupt onshore attack planning, and managing the increasing number of individuals who have been prosecuted, convicted and are now serving sentences for terrorism offences, who may pose an ongoing risk to the community when they are released.

Benefit to law enforcement

8. The citizenship cessation provisions can have operational benefits for law enforcement as they contribute to efforts to prevent terrorism onshore. The AFP continues to be very concerned about the activities of Australians who have participated illegally in conflict zones overseas, and seek to return to Australia, where they may present a risk to the Australian community onshore.
- As a cohort, returning foreign fighters have increased capability and potential willingness to carry out attacks.
 - This cohort may also take steps to radicalise others in the community onshore, if they were to return to Australia.
9. Holistically addressing the issue of foreign terrorist fighters who want to return to Australia is not simple. There will never be a strategy or solution that fits all cases.
- While the primary objective of the AFP is to bring foreign fighters before a court (where sufficient evidence exists to do so), Australian authorities need to have a range of treatment mechanisms available. One of these is citizenship cessation, which restricts the ability of individuals to enter Australia and move within the community freely.

Effectiveness in combatting terrorism

10. Citizenship cessation is a treatment mechanism that sits alongside a suite of legislative and other measures available to agencies to assist in addressing the risk of terrorism.
11. The Joint Counter Terrorism Teams (JCTTs), comprising of AFP, state and territory police, ASIO and other partners continue to focus on reducing the risk of a terrorist attack in Australia, or against Australians offshore.

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- We work alongside our partner agencies, including foreign law enforcement and security and intelligence agencies, to identify where threats may be and consider all options available to address these risks.
 - The fact that a person does not have Australian citizenship does not prevent law enforcement from continuing to investigate people overseas for Commonwealth offences, including those who threaten Australians, either in Australia or offshore.
 - Lack of Australian citizenship does, however, limit the charges which could be pursued. This can create a challenge for law enforcement.
 - For example, some terrorism-related offences, like foreign incursions and being in a declared area, only apply to Australian citizens and residents.
 - If a person's citizenship ceases, they may not be able to be prosecuted for conduct after the point at which their citizenship ceases, because an element of the offence is not made out.
 - Where this is the case, we may need to rely on other terrorism offences, or other mechanisms, for addressing the risk a person poses. There are 23 outstanding arrest warrants involving foreign incursion and declared area offences as per Division 119 of the Criminal Code. Any cessation of citizenship could potentially impact on future prosecutions for these offences.
 - The potential for further radicalisation of the individual and others is acknowledged, but must be balanced alongside other considerations like preventing an onshore attack.
 - The AFP is cognisant of the risk that non-Australians, including those who may have lost Australian citizenship, can pose from offshore by spreading propaganda and encouraging or inciting terrorism online. However, exposure to radicalised persons within the Australian community can have a significant influence on persons vulnerable to radicalisation.
 - It should also be noted if an individual with dual citizenship ceases to have Australian citizenship under sections 33AA and 35 of the Citizenship Act 2007, they have engaged in conduct that the Australian Parliament has recognised as being so serious it amounts to repudiating their allegiance to Australia.
 - There is no 'one size fits all' solution, and citizenship cessation is but one measure that can assist the AFP in ensuring the safety of Australians, including Australians overseas.
12. The citizenship cessation provisions may also have a deterrent effect, discouraging would-be perpetrators from engaging in terrorism onshore or travelling to conflict zones.
- The AFP acknowledges that citizenship cessation works alongside other factors that may act as a deterrent, including offences for entering

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and/or remaining in a declared area, strengthened passport cancellation provisions and the growing Countering Violent Extremism programs.

- However, the seriousness of losing citizenship cannot be discounted as a factor that may influence an individual's decision, for example, whether or not to travel to a conflict zone for the purpose of engaging in terrorist conduct.

13. It is not possible to quantify the effectiveness of the terrorism-related citizenship cessation provisions.

- As with many of the different treatment options available to agencies to address the threat of terrorism, the best indication of effectiveness is a lack of harm or the absence of an attack onshore. It is difficult to attribute the absence of attacks to any particular treatment option. In some cases, particular operations can be demonstrated to have disrupted intended terrorist acts; however, due to the range of factors that may lead someone down the path of radicalisation, attack planning or travelling to a conflict zone, there are many factors that could divert someone from ultimately carrying out such conduct.
- Another consideration in quantifying effectiveness is any operational benefit derived from reducing the number of foreign fighters returning to the Australian community. While the AFP maintains continued interest in persons offshore whose citizenship has ceased, and works with foreign law enforcement and our security and intelligence partners to identify offshore threats, a reduction in foreign fighters returning onshore may reduce the number of resource-intensive orders (such as control orders or other supervision orders) to mitigate the threat of their return. Any reductions would allow resourcing to be redirected to other critical investigations.

14. While the provisions have been in place since December 2015, there has not been an evaluation of the motivations and actions of those whose citizenship has ceased under the provisions so far. Nor has there been a voluminous data set from which to undertake such an evaluation or to quantify any downstream resourcing benefits.

Conclusion

The AFP supports citizenship cessation for terrorism related conduct as it contributes to mitigating risks posed to Australians. The provisions act alongside a suite of measures aimed at combatting terrorism, and their effectiveness cannot be considered in isolation of the range of treatment options for dealing with the threat of terrorism in Australia.