

Grant Mistler

26 September 2019

Dear Parliamentary Joint Committee on Intelligence and Security

Re: Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

Thank you for the invitation to make a submission to the review of this Bill.

I am happy with the majority of the text. My only concern here focusses on the Section 36B(7) text located at lines 10 and 11 on page 6 of the Bill, where each line ends with an “or” instead of an “and” in those instances.

The reason for my thoughts can be explained by using the example of the young Australian medical doctor Tareq Kamleh, who travelled to Syria to practice paediatric medicine in a conflict zone. If he were still alive today, he may be able to resort to the Hippocratic Oath in defence of his activities in that conflict zone, and that would present a problematic as the “or” at those lines in the Bill opens opportunities for counter arguments by Tareq Kamleh.

The protection of health care workers in conflict zones is largely governed by International Humanitarian Law, as it is a body of law applicable in armed conflict which seeks to protect those who are not, or no longer, actively participating in hostilities. Here, treaty law mainly draws from the 1949 Geneva Conventions and their additional protocols of 1977. Under treaty law, protection of health care workers in areas of armed conflict is specifically provided for by the First, Second and Fourth Geneva Conventions. Together, the conventions call for the respect and protection of medical personnel involved in searching for, transporting or treating the wounded and ill whether they are civilians or involved with armed forces. The code of medical ethics during times of conflict is no different than during times of peace, and medical professionals are to be impartial and discriminate only on the basis of medical need.

The Australian Medical Association released its revised and ratified Code of Ethics on 17 Mar 2017, and it does not discuss the ethics of practicing in conflict zones. The American Medical Association does vaguely mention their Code of Medical Ethics “are not laws, but standards of conduct that define the essentials of honorable behavior for the physician”. Only the British Medical Association offers an “ethical toolkit for doctors and other health professionals living and working in humanitarian contexts”.

In other contexts, the conduct of medical staff in unusual or grey situations such as what was witnessed in the Auschwitz concentration camp in Poland, or in ‘enemy alien’ citizen internment camps during World War I and World War II in Australia, Canada, New Zealand and the United States, also intersect ethics with duty of care and the Hippocratic Oath. There are ethical questions

that remain today for health care workers who work in immigration detention centres or in prisons that administer capital punishment as a state-sanctioned legal penalty.

A 2012 review of national clinical research ethics regulations and guidelines in Middle Eastern Arab countries indicates “most of the research ethics documents in use in this region demonstrate numerous deficiencies [...] in regard to development, structure, content, and reference to international guidelines”, and this presents problematics where a sovereign country with shaky medical research ethics devolves in to a conflict zone, where health professionals become ensnared.

My recommendation here for the present Australian context, is to strengthen that test under Section 36B(7) in respect to treaty law, and to also change “or” to an “and” at lines 10 and 11 on page 6 of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019.

I welcome this opportunity to contribute towards this inquiry, and I look forward to receiving your final report.

Yours faithfully

Grant Mistler

References

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