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## **NSWCCL SUBMISSION**

### **PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY**

### **REVIEW OF THE AMENDMENTS MADE BY THE AUSTRALIAN CITIZENSHIP AMENDMENT (CITIZENSHIP REPUDIATION) BILL 2023**

**8 February 2024**

NSWCCL

## **Acknowledgment**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security (**PJCIS**) in regard to the Review of the amendments made by the Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 (the **Bill**).

The Bill was introduced into Parliament on 29 November 2023, and was passed by both Houses on 6 December 2023. Now in force as the Australian Citizenship Amendment (Citizenship Repudiation) Act 2023 (**Act**), it has repealed and replaced provisions of Subdivision C of Division 3 of Part 2 of the Australian Citizenship Act 2007.

This Bill should have been referred to the PJCIS to allow proper scrutiny before, not after, the Bill passed. This legislation was rushed through both the House and the Senate with very limited consultation, no exposure drafts and very short notice. In our view, no clear or adequate justification has been given for this rushed process.

In 2015, in a highly politicised environment, where there was very little nuanced public debate regarding national security, the Australian government added citizenship revocation on terrorism-related grounds (citizenship stripping) into the Australian Citizenship Act. Citizenship revocation was introduced to both dissuade disaffected people from committing acts of terrorism, as well as addressing the anticipated risks that individuals who had been convicted of terrorism related offences may pose to the community upon their release.

It is our submission that these additions have not achieved any of their purported outcomes. Instead, they have created a fertile breeding ground for the espousal of narratives, by designated terrorist organisations, that certain members of the Australian community did not belong and were not part of “us”.

It is lamentable that the response to rectify this hurried and poorly conceptualised citizenship revocation scheme is a new proposal that is also hurried and poorly conceptualised.

### **Judicial Oversight**

The effect of the amendments to s32A removes the power from the Minister to make the determination on cessation of citizenship and confers that function on the Court.

Whilst the NSWCCL believes that citizenship revocation is a dangerous tool which has demonstrably been used in a manner contrary to human rights in the past, this is an improvement on the approach of the previous legislation which was arbitrary, at the “stroke of an executive pen”, and completely unacceptable. Given successive governments’ inability to demonstrate that they are able to use immigration and citizenship powers in a way which is compatible with human rights, NSWCCL is deeply hesitant to support the conferral of any power to strip citizenship.

Whilst the Act now recognises that under the Australian Constitution criminal type penalties or punishments can only be exercised by a court, the court is now required to consider whether the conviction “demonstrates a repudiation of the values, democratic beliefs, rights and liberties that underpin Australian society”. These concepts are broad and not well defined in Australian law.

We note that Australia does not have, as it should, a bill of rights that is enforced on a federal level. Australia is unique among Western nations in that it is now the only democratic nation in the world without a national human rights act.<sup>1</sup> It seems illusory then to require the court to regard the ‘rights and liberties that underpin Australian society’ when Australian society is not duly clear on how it regards these rights and liberties. In our view, this is not an appropriate matter for the court to regard in its decision making.

If the Parliament seeks to impose such a test, it should provide more legislative guidance to the Court through legislation which is robustly and vigorously debated in Parliament and the public sphere.

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<sup>1</sup> George Williams, ‘The Role of Parliament Under an Australian Charter of Human Rights’ (Australia – New Zealand Scrutiny of Legislation Conference, 8 July 2009)

The NSWCCCL also believes the Bill's definition of 'serious offence' is too broad. It encompasses a wide array of offences, extending to preparatory conduct characterised by a comparatively low level of harm.

Ben Saul, UN Special Rapporteur on Human Rights and Counterterrorism, and Challis Chair of International Law at the University of Sydney, also underlined the issue with removing citizenship:

"If people have citizenship here and have lived here and have connections here and so on, then it's the responsibility of our country to deal with the terrorist threat that they may pose. So that could be through criminal prosecution here and putting people in jail if they've done something wrong, and there are other counterterrorism laws to address any other security threats that they may face."<sup>2</sup>

The NSWCCCL also notes that under this legislation court orders operate immediately, regardless of any possibility of appeal. Where there is the possibility of an appeal, the operation of any order must be stayed.

### **Citizenship revocation of a child**

The NSWCCCL holds a strong view that in no circumstances should children be subject to citizenship revocation powers.

Under the Convention on the Rights of the Child<sup>3</sup> (**Convention**) and the Conventions on Statelessness<sup>4</sup>, Australia has legal obligations to prevent children from being or becoming stateless. Considering whether the inclusion of the term 'best interests of the child' is sufficient to uphold the obligations under the Convention, and Article 3.

In *General Comment 14*, the Committee on the Rights of the Child (**Committee**) states that the best interests of the child is a paramount consideration when judicial decision making is involved. The best interests of the child should be viewed as a primary right, which requires that decision makers give high priority to those interests.

The Committee stated that decisions which will have a major impact on a child will require a greater level of protection and detailed procedure to consider their best interests.

Additionally, the Committee states that where children are involved in criminal cases, the traditional objectives of criminal justice such as repression or retribution, must give way to rehabilitation and restorative justice objectives.

The section puts the best interests of the child as 'a' consideration, not a 'primary' consideration and therefore breaches the requirements of the Convention.

As is the case for the treatment of all children who commit criminal offences, rehabilitation should be the primary aim of the criminal justice response to children charged and convicted of terrorism offences.

This Bill should not permit the revocation the citizenship of children.

Additionally, it is our view that the age requirement is immediately problematic due to the requirements of the Bill.

- A person must be 18 or over to apply to the Minister to be a citizen under s.21(2)(a) of the Act.
- A person can become a citizen under the age of 18 under s.21(5) but must first be a permanent resident.

<sup>2</sup> <https://www.aljazeera.com/features/2023/12/2/qa-un-expert-on-australia-citizenship-stripping-plan-and-legal-fiction>

<sup>3</sup> United Nations Human Rights Instruments – Convention on the Rights of a Child, 1989 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>4</sup> United Nations Human Rights Instruments – Convention on the reduction of statelessness, 1961 [https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf)

- Citizenship renunciation application under s.33(3) the minister must approve renunciation, if the minister is satisfied (amongst other things) that the person is aged 18 or over.
- This suggests that the 14 years of age is incongruous with the rest of the legislation.

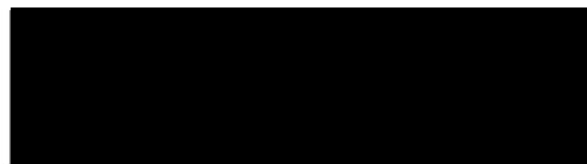
**Citizenship revocation of Aboriginal and Torres Strait Islander People**

First Nations people who were born overseas should not be able to be deported, regardless of whether they have formally applied to become an Australian citizen or not. First Nations people should always be entitled to live in Australia. First Nations people have a special cultural, historic, and spiritual connection to Australia which is inconsistent with them being considered "aliens" in the meaning of the Australian constitution.

The NSWCCCL believes that citizenship revocation weakens the citizenship of all by making the fundamental right of having a nation to which to belong, precarious and contingent on behaviour. While concerns about terrorism and national security are legitimate, effective counterterrorism measures should focus on comprehensive and evidence-based approaches that address the root causes of radicalisation and protect both national security and individual rights.

We trust this submission will be useful to the committee.

Yours sincerely,



**Lydia Shelly**  
**President**  
**NSW Council for Civil Liberties**

Contact in relation to this submission: 



