



Peter Dutton MP

Minister for Immigration and Border Protection

Minister - Government responds to report on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015

Tuesday, 10 November 2015

Joint media release with the Hon Peter Dutton MP, Minister for Immigration and Border Protection and Senator The Hon George Brandis QC, Attorney-General.

The Australian Government has responded to the recommendations of the Parliamentary Joint Committee on Intelligence and Security and will move amendments to the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 currently before Parliament.

The Government will implement the Committee's recommendations made in its bipartisan report.

The purpose of the Bill is to deal with the threat caused by dual citizens who act in a manner contrary to their allegiance to Australia.

The Australian Government believes it is important to protect the community from dual citizens who would seek to do harm by fighting for, or being in the service of, a declared terrorist organisation overseas or engaging in terrorist acts.

Supporting terrorist activities is a breach of a person's commitment and allegiance to Australia, a bond that should unite all Australian citizens. Citizenship of this great country is to be respected and not taken for granted.

The complexity of the challenges to Australia's national security continues to increase with the evolution and influence of terrorist organisations such as ISIL.

The Government will take the necessary steps to better protect Australians against terrorist threats.

Consistent with Australia's international obligations, the Bill only provides for loss of citizenship for dual nationals engaged in or supporting terrorist activities.

The new grounds for cessation of citizenship are where a person: engages in a terrorist act or other specified terrorism-related conduct; engages in hostile activity with a terrorist organisation overseas; or is convicted of a terrorist act or other terrorism-related offence.

The Committee made 27 recommendations in its report including that conviction based provisions of the Bill should be retrospective. In response, the amended Bill would apply to dual citizens who have already been convicted of a specified offence with a sentence of ten years or more, handed down within the last ten years.

Other amendments made to the Bill include:

- Clarifying the intention required to accompany the conduct that, if engaged in, leads to automatic loss of citizenship;
- Providing criteria for the Minister to consider when declaring an organisation to be a declared terrorist organisation for the purposes of this legislation;
- Providing that the Minister must consider exempting the effect of the legislation in each case where conduct has led to automatic loss of citizenship of a dual citizen, and providing for relevant factors in that consideration;
- Changing the loss of citizenship for a dual citizen following conviction to a discretionary decision of the Minister upon consideration of relevant factors, rather than an automatically occurring upon conviction;
- Limiting the application of the conduct-based provisions to persons 14 years of age or over; and removing the application of any potential discretionary loss of citizenship for children of persons to whom the provisions have otherwise applied;
- Providing for scrutiny and oversight of the how the legislation is operating by the Parliamentary Joint Committee on Intelligence and Security and the Independent National Security Legislation Monitor.

The Government thanks the Committee, and in particular its Chair, Mr Dan Tehan MP, and Deputy Chair, The Hon Anthony Byrne MP, for its important work on this legislation. We also thank those who participated in its inquiry for their contribution.

No.	Recommendation	Provision implementing	Manner of implementation
1	Section 33AA is limited to individuals who have: <ul style="list-style-type: none"> • Engaged in relevant conduct offshore; • Engaged in relevant conduct offshore and left Australia before being charged and brought to trial in respect of that conduct. 	33AA	Implemented
2	Section 33AA is amended to clarify that the conduct leading to loss of citizenship is intended to be considered in light of the meaning of the equivalent provisions in the <i>Criminal Code</i> , and is not intended to be restricted to the physical elements.	33AA	Implemented

3	Section 35 is amended to include explicit criteria that the Minister must be satisfied of before declaring a terrorist organisation. The criteria should make clear the connection between section 35 and the purpose of the Bill.	new section 35AA	Implemented
4	The Minister's declaration of a 'declared terrorist organisation' in section 35 be disallowable. The Bill is amended to enable the PJCIS to conduct a review of each declaration and report to the Parliament within the 15 sitting day disallowance period.	new section 35AA	Implemented
5	Section 35 is amended to make explicit that the provisions of neutral and independent humanitarian assistance, and acts done unintentionally and under duress, are not considered to be 'in the service of' a declared terrorist organisation.	35	Implemented
6	Section 33AA and 35 are amended to exempt staff members or agents of Australian law enforcement or intelligence agencies from its application	new section 35AB	Implemented
7	Section 35A be amended to give Minister discretion to revoke a person's citizenship following conviction for a relevant offence with a sentence applied of at least 6 years imprisonment or multiple sentences totalling at least 6 years imprisonment. In exercising this discretion, the Minister must be satisfied that: <ul style="list-style-type: none"> • The person's conviction demonstrates that they have repudiated their allegiance to Australia; • It is not in the public interest for the person to remain an Australian citizen, taking into account the following: <ul style="list-style-type: none"> ◦ the seriousness of the conduct that was the basis of the conviction and the severity of the sentence/s, ◦ the degree of threat to the Australian community, ◦ the age of the person and, for a person under 18, the best ◦ interests of the child as a primary 	35A 35A 35A 35A	Implemented, noting that the key obligations are already specifically addressed by the provisions of the bill that prevent statelessness and that provide protections for children.

	<p>consideration,</p> <ul style="list-style-type: none"> o whether the affected person would be able to access citizenship o rights in their other country of citizenship or nationality, and the o extent of their connection to that country, o Australia international obligations and relations, and o any other factors in the public interest. <p>The rules of natural justice should apply to the Minister’s discretion under section 35A</p>		
8	Section 29 of the Crimes Act 1914 is removed from the list of offences in section 35A.	35A	Implemented
9	<p>The list of offences in section 35A be amended to exclude offences that a carry a maximum penalty of less than 10 years imprisonment and certain Crimes Act offences that have never been used:</p> <ul style="list-style-type: none"> • Section 80.2, <i>Criminal Code Act 1995</i>, Urging violence against the Constitution, the Government, a lawful authority of the Government, an election, or a referendum, • Section 80.2A(1) <i>Criminal Code Act 1995</i>, Urging violence against groups, • Section 80.2B(1) <i>Criminal Code Act 1995</i>, Urging violence against members of groups, • Section 80.2C, <i>Criminal Code Act 1995</i>, Advocating terrorism, • Section 25 <i>Crimes Act 1914</i>, Inciting mutiny against the Queen’s Forces, • Section 26 <i>Crimes Act 1914</i>, Assisting prisoners of war to escape, and • Section 27(1) <i>Crimes Act 1914</i>, Unlawful drilling. 	35A	Implemented
10	<p>Section 35A be applied retrospectively to convictions for relevant offences where sentences of 10 years or more have been handed down by a court.</p> <p>The Ministerial discretion to revoke citizenship must not apply to convictions that have been handed down more than 10 years before the Bill</p>	Application provisions (at end of Schedule 1)	Implemented

	receives Royal Assent		
11	Section 39 of the ASIO Act is not exempted, and a security assessment would be required before the Minister can take prescribed action	Removed	Implemented
12	<p>Where citizenship is lost, the Minister must take reasonable attempts to provide the affected person with written notice that citizenship has been lost or revoked.</p> <p>Notice should be given as soon as possible, except in cases where notification would compromise ongoing operations or otherwise compromise national security.</p> <p>If the Minister has determined not to notify the affected person, this must be reviewed within 6 months and every 6 months thereafter.</p>	<p>33AA 35 35A</p> <p>33AA 35 35A</p> <p>33AA 35 35A</p>	Implemented
13	<p>Where a notice is issued, it must include:</p> <ul style="list-style-type: none"> • the reasons for the loss of citizenship; and • an explanation of the person's review rights 	<p>33AA 35 35A</p> <p>new section 35B</p>	Implemented
14	Sections 35AA, 35 and 35A be amended to include the rights of review available to a person who has lost their citizenship.	Note at end of 33AA 35 35A	Implemented
15	<p>The Committee recommends that proposed sections 33AA(7) and 35(6) of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to require the Minister,</p> <ul style="list-style-type: none"> • to give consideration to exercising the discretion to exempt a person from the effects of the relevant provisions upon signing the relevant notice, and • when considering whether to exercise the discretion to exempt, to take into account the following factors: 	33AA 35	Implemented

	<ul style="list-style-type: none"> • the severity of the conduct that was the basis for the notice to be issued, • the degree of the threat posed by the person to the Australian community, • the age of the person, and for persons under 18 years of age, the best interests of the child as a primary consideration, • whether a prosecution is underway, or whether the person is likely to face prosecution for the relevant conduct, • whether the affected person would be able to access the citizenship rights in their other country of citizenship or nationality, • and the extent of their connection to that country, Australia's international obligations and relations, and • any other factors in the public interest. 		
16	The Committee recommends that proposed sections 33AA and 35 of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to clarify that citizenship is taken never to have been lost if the facts said to ground a finding of fact concerning loss of citizenship are subsequently found to have been incorrect.	33AA 35	Implemented
17	The Committee recommends that proposed section 35A of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to give the Minister power to annul a revocation decision if the relevant conviction is later overturned on appeal or quashed, such that the person's citizenship is taken never to have been lost.	35A	Implemented
18	The Committee recommends that the Explanatory Memorandum to the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to clarify that: <ul style="list-style-type: none"> • the giving of notice under proposed sections 33AA and 35 is intended to constitute official recognition that a person's citizenship has ceased by operation of one of the provisions, and 	Ex Mem	Implemented in the Supplementary Explanatory Memorandum.

	<ul style="list-style-type: none"> any consequential action by Government agencies will only take place after the notice has been issued pursuant to the Bill's provisions. 		
19	<p>The Committee recommends that the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to clarify that if the Minister exempts a person from the effect of proposed sections 33AA or 35, the person is taken never to have lost their citizenship.</p>	33AA 35	Implemented
20	<p>The Committee recommends that the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to limit the extent of its application to children. The amendments should provide:</p> <ul style="list-style-type: none"> that no part of the Bill applies to conduct by a child aged less than 10 years, and that proposed sections 33AA and 35 do not apply to conduct by a child aged under 14 years. <p>The amendments should make the Bill's application to children explicit on the face of the legislation.</p> <p>The Committee notes that in relation to proposed section 35A, section 7.2 of the <i>Criminal Code Act 1995</i> or section 4N of the <i>Crimes Act 1914</i> will apply to a child aged 10 to 14 years.</p>	33AA 35 35A – Criminal Code	Implemented
21	<p>The Committee recommends that the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended so that section 36 of the <i>Australian Citizenship Act 2007</i> (which enables the Minister to revoke a child's citizenship following revocation of a parent's citizenship) does not apply to proposed sections 33AA, 35 and 35A.</p>	36(1)(a)	Implemented
22	<p>The Committee recommends that the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to require the Government to publicly report, every six months, the number of times a notice for loss or revocation of citizenship has been issued under each of the grounds</p>	Schedule 2 new section 51B	Implemented

	contained in Bill, and provide a brief statement of reasons.		
23	<p>The Committee recommends that <i>Intelligence Services Act 2001</i> (IS Act) be amended to extend the functions of the Parliamentary Joint Committee on Intelligence and Security to include monitoring and reviewing the performance by the Department of Immigration and Border Protection of its functions under the provisions of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015. The extended functions should be consistent with the Committee's current remit under the IS Act.</p> <p>The IS Act should also be amended to enable relevant agency heads to brief the Committee for the purpose of this new function.</p>	Schedule 2 ISA Items 4 to 9	Implemented
24	<p>The Committee recommends that the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be amended to require the Minister to advise the Parliamentary Joint Committee on Intelligence and Security upon issuing a notice for the loss of citizenship under the Bill. A subsequent briefing should be offered to the Committee within 20 sitting days of the initial notice being issued. The advice given to the Committee should detail whether notice has been provided to the person, the conduct that engaged the Bill's provisions and whether an exemption has been given by the Minister.</p>	Schedule 2 new section 51C	Implemented
25	<p>The Committee recommends that the <i>Independent National Security Legislation Monitor Act 2010</i> be amended to require the Independent National Security Legislation Monitor to finalise a review of the revocation of citizenship provisions in the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 by 1 December 2018.</p>	Schedule 2 INSLMA Item 3	Implemented, noting that the Explanatory Memorandum will clarify the role of the Prime Minister to refer to the Monitor a request to complete a review of the relevant new provisions of the

Citizenship Act
by 1 December
2018.

26	The Committee recommends that the <i>Intelligence Services Act 2001</i> be amended to require the Parliamentary Joint Committee on Intelligence and Security to complete a review of the revocation of citizenship provisions in the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 by 1 December 2019.	Schedule 2 ISA Items 4 to 9	Implemented
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URL: <http://www.minister.border.gov.au/peterdutton/2015/Pages/response-citizenship-amendment-bill.aspx>

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