



AFP

AUSTRALIAN FEDERAL POLICE



Parliamentary Joint Committee on Intelligence and Security

Review of the Australian
Citizenship Amendment
(Citizenship Cessation) Bill
2019

October 2019

Submission by the
Australian Federal Police

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Introduction

The AFP welcomes the invitation 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 Amendment (Citizenship Cessation) Bill 2019* (the Bill).

2. The threat of terrorism in Australia is continually evolving but remains a significant threat to Australia's national security and the safety of Australians.
3. The AFP's response to terrorism is multi-faceted: the prevention and disruption of terrorism, and protection of Australians at home and offshore, are our primary objectives.
4. As the terrorism threat environment evolves, laws must also adapt to allow Australian agencies, including law enforcement, to comprehensively address the threat. Citizenship cessation is one of a suite of existing measures which aims to mitigate the threat of terrorism within Australia and to the Australian people.
5. The AFP has already made a submission to the Committee in the context of its broader review of existing citizenship cessation provisions. This submission focuses on the amendments in Subdivision C of the Bill – citizenship cessation determinations. The amendments address and alleviate challenges identified by the AFP in various forums, including the recent review by the Independent National Security Legislation Monitor (INSLM) about the automaticity of the current citizenship cessation provisions.
6. The INSLM recommended repealing the uncontrolled and uncertain operation of the current provisions and replacing it with a Ministerial decision-making model that contains safeguards lacking in the current model.
 - The AFP considers that the measures in this Bill will enable citizenship cessation to be better fit for purpose and more effectively manage the threat of terrorism onshore.

Law enforcement benefits of citizenship cessation provisions

7. Citizenship cessation is a treatment mechanism that sits alongside a number of legislative and other measures to assist in addressing the risk of terrorism.
8. 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.
 - 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 fighters who want to return to Australia is not simple. There will never be a solution or treatment mechanism that fits all cases.

10. While the AFP's preferred approach is to bring foreign fighters before a court (where sufficient evidence exists) to face prosecution wherever possible, Australian authorities need to have a range of treatment mechanisms available. One of these is citizenship cessation, which restricts the ability of individuals to re-enter Australia and move within the community freely.

Challenges for law enforcement of current citizenship cessation provisions

11. Joint Counter-Terrorism Teams (JCTTs), comprising 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.
12. 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.
13. There are a broad suite of terrorism offences under Commonwealth law, and the fact that a person does not hold Australian citizenship does not prevent AFP investigation into actions that seek to threaten Australians or Australian interests.
 - Nor does it prevent Australia seeking the extradition of a person from a foreign country to face prosecution before Australian courts.
14. Australian citizenship or residency is an element of some terrorism-related offences. For example, foreign incursion and declared area offences only apply to Australian citizens and residents.
 - This can present challenges for law enforcement under the current 'operation of law' citizenship cessation model, as the citizenship status of a person may not be known at the time of investigation.
15. The amendments in the Bill to introduce a Ministerial determination model would make it clear whether (and if so, when) individuals under investigation have ceased to hold Australian citizenship.
 - This clarity will assist in ensuring that investigations and charges are appropriate to the individual circumstances.

Anticipated operational impact of amendments to the Bill

16. There are a number of outstanding arrest warrants involving foreign incursion and declared area offences under Division 119 of the *Criminal Code* (Cth). Any cessation of citizenship could potentially impact on future prosecutions if the person subject to the arrest warrant is a dual Australian citizen.
 - There may often be uncertainty around the exact timing of a person's criminal conduct as well as the exact timing of the conduct that results in a person's citizenship cessation under the current provisions of the *Australian Citizenship Act 2007*.
17. The AFP considers the benefits to a Ministerial determination model include:

- Greater flexibility in consideration of the cessation provisions alongside other legislative tools and treatment options for relevant individuals, on a case-by-case basis
 - Overcoming uncertainty in whether and when a person's citizenship has ceased.
18. The AFP notes that as part of the Ministerial determination model in the Bill, the Minister is required to consider whether it would be contrary to the public interest for the person to remain an Australian citizen (proposed section 36B(1)(c)). Matters of public interest include whether a person is 'being or likely to be prosecuted in relation to conduct to which the determination relates' (section 36E ((f))).
- As a member of the Citizenship Loss Board, the AFP will be able to advise the Board and the Minister on the likelihood that an individual may be charged with terrorism-related conduct.

Conclusion

19. Citizenship cessation for terrorism-related conduct contributes to mitigating risks posed to Australians. While there is no 'one size fits all' solution, citizenship cessation is one measure that can assist in enhancing the safety of Australians, including Australians overseas.
20. The AFP supports the amendments proposed in the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019, namely the Ministerial determination model, which will mitigate the existing challenges with the current automatic 'operation of law' model.