

14 February 2024

# **Review of the amendments made by the *Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023***

## **Submission by the Australian Federal Police**

Parliamentary Joint Committee on Intelligence and Security



# **AFP**

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## Introduction

1. The Australian Federal Police (AFP) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) review of the *Australian Citizenship Amendment (Citizenship Repudiation) Act 2023* (Cth) (the Act).
2. The terrorism-related citizenship cessation powers introduced within the *Australian Citizenship Act 2007* (Cth) in 2015 formed part of the AFP's operational strategy in responding to and managing the threat Foreign Terrorist Fighters pose to the Australian community, both domestically and overseas.
3. The amendments in the Act repeal those provisions deemed invalid by the High Court in the judgements of *Alexander* and *Benbrika*<sup>1</sup> and establishes a revised citizenship repudiation regime. The Act allows the Minister to make an application to a court to consider a citizenship cessation order where the person has been convicted of a serious offence or offences.
4. The AFP's submission concentrates on the AFP's operational experience and impact of the Act within the national security environment.

## Threat Environment

5. National security threats to Australia remain enduring, increasingly complex, and diverse. The AFP is witnessing the persistent threat of terrorism, espionage and foreign interference in Australia, with the AFP and partner agencies continuing to place significant effort and resourcing to combat these threats.

### Terrorism

6. Since September 2014, 161 people have been charged as a result of 87 counter terrorism related operations around Australia. These charges demonstrate that, although the National Threat Level was lowered to POSSIBLE in November 2022, the threat of terrorism remains, and AFP caseloads endure.
7. The AFP continues to see the predominant terrorism threat as Religiously Motivated Violent Extremism (RMVE), primarily in the form of Islamic extremism. However, the number of individuals who adhere to an Ideologically Motivated Violent Extremist (IMVE) ideology continues to grow and spread across the country. Extremist groups are deliberately targeting young and vulnerable individuals for radicalisation. The AFP, with its Joint Counter Terrorism Team partners, continues to respond to an increasing prevalence of young people being targeted online, with individuals as young as 12 years of age adopting violent extremist ideologies. These ideologies include RMVE, IMVE, and mixed or unclear ideologies.
8. The threat posed by the return to Australia of foreign terrorist fighters endures. The AFP remains concerned that individuals who have travelled to a conflict zone and engaged in terrorist activity and/or supported extremist groups, may present a level of threat to Australia, while they are overseas and should they return.

<sup>1</sup> *Alexander v Minister for Home Affairs* [2022] HCA 19 and *Benbrika v Minister for Home Affairs* [2023] HCA 33

### ***Espionage and foreign interference***

9. Espionage and foreign interference represent a serious threat to Australia's people, sovereignty and security, and the integrity of our national institutions. Threats of espionage and foreign interference are not constrained to one sector of the Australian community or perpetrated by a single nation-state.
10. Hostile foreign state actors (countries that undertake hostile activity against other countries) are creating and pursuing opportunities to interfere with Australian decision-makers at all levels of government and across a range of sectors, including democratic institutions; education and research; media and communications; critical infrastructure; and importantly, our culturally and linguistically diverse (CALD) communities.

### **Operational experience**

11. Australia has strong national security laws aimed at protecting Australians from terrorism, espionage and foreign interference. The AFP's role in this threat environment is the multi-faceted approach of detection, prevention, disruption and investigation of Commonwealth offences implemented to protect Australians and Australia's interests.
12. The citizenship cessation provisions in Subdivision C of Division 3 of the *Australian Citizenship Act 2007* (Cth) introduced in 2015 formed part of the whole of Australian Government approach to manage the threat Foreign Terrorist Fighters pose to the Australian community, both domestically and overseas.
13. The new provisions in the Act operate in the post-conviction phase of a matter. New subsection 36C(3) specifies that a serious offence is an offence against any of the following provisions in the *Criminal Code Act 1995* (Cth) for:
  - Explosives and lethal device (Subdivision A of Division 72),
  - Treason (Subdivision B of Division 80),
  - Advocating mutiny (Subdivision B of Division 83),
  - Espionage (Division 91),
  - Foreign Interference (Division 92),
  - Terrorism offences in Part 5.3 (barring specified offences), and
  - Foreign incursion and recruitment (Part 5.5).
14. The AFP has responsibility for investigating these serious offences. These investigations are typically conducted in close consultation with domestic and/or international partners such as the Attorney-General's Department, Department of Home Affairs, Australian Security Intelligence Organisation, and Department of Foreign Affairs and Trade, or through established joint frameworks such as the Countering Foreign Interference Taskforce or Joint Counter Terrorism Teams.
15. It is anticipated the AFP's role in the citizenship cessation scheme will be to provide relevant information and material to the Department of Home Affairs, whose role will be to support the

Minister for Home Affairs in making potential citizenship cessation order applications to the court.

16. The matters to which the court must be satisfied are set out in subsection 36C(4) of the Act, and include that the person's conduct was so serious and significant that it demonstrates the person has repudiated their allegiance to Australia. The AFP anticipates that it may hold relevant information to this matter, collected in the course of the AFP's criminal investigation. There are existing and well understood processes between agencies to facilitate the sharing of material and information for such processes.

## Conclusion

17. The previous citizenship cessation powers in the *Australian Citizenship Act 2007* (Cth) formed part of the whole of government strategy in responding to terrorism. With the amendments and expansion to other serious offences, the AFP will work with the Department of Home Affairs to provide appropriate material to inform the Minister's decision-making.