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Committee Secretary  
Parliamentary Joint Committee on Intelligence and Security  
PO Box 6021  
Parliament House  
Canberra ACT 2600

By email: [pjcis@aph.gov.au](mailto:pjcis@aph.gov.au)

Dear Committee Secretary,

**Proposed reforms to present to parliamentarians on the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019**

On behalf of Save the Children, I am writing to express concerns we have regarding the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 (**the Bill**).

We note that concept of citizenship cessation and the Bill itself have been subject to scrutiny in a number of different forums, including by the National Security Legislation Monitor (**INSLM**), the Parliamentary Joint Committee on Intelligence and Security (**PJCIS**) and the Parliamentary Joint Committee on Human Rights (**PJCHR**). A number of recommendations have been made to improve the operation of the Bill and its human rights safeguards through these forums. A summary of this background and the various recommendations is set out at Annexure A.

Notwithstanding these efforts, Save the Children is concerned that if the Bill passes in its current form it would:

- place the welfare of Australian children at greater risk, especially the 47 innocent children in Al-Hol camp in Syria, the majority of whom are under 5. These children could find their parents have their citizenship revoked without consideration for their safety and wellbeing; and
- impinge upon the rights of Australian children, given its failure to fully comply with the *Convention on the Rights of the Child*, including its insufficient consideration given to the best interests of the child or that it may effectively render a child stateless.

In response, Save the Children has developed proposals for amendment (the '**innocent child amendment**') that we are recommending should be given further consideration by the PJCIS before the Bill is passed.

The innocent child amendment would include three separate amendments to protect children's rights:

• **First amendment**

- **Problem:** s36E (2) of the Bill fails to reference the impact citizenship cessation may have upon children under 14 in effectively rendering that child stateless. While anyone aged 14 or over can be captured by citizenship cessation, the existing Act, as well as the Bill, can undermine rights of those under 14 if their guardian or parent has their citizenship revoked. There is a lack of information in the Bill or the existing Act on the steps that the Minister must take to prevent statelessness, including requirements for verification of citizenship, or immediate eligibility for citizenship, of another country. There is also a lack

of information on the impact that citizenship cessation would have on any person aged under 14.

- **Solution:** A new s36E(3) that provides that:
  - “The Minister shall not revoke the citizenship of any person aged 14 or older if they have any dependent children aged under 14 and cessation of citizenship would:*
  - (i) not be in the best interests of any dependent children under 14;*
  - (ii) render any dependent children under 14 stateless;*
  - (iii) deprive any dependent children under 14 temporarily or permanently of their family environment; or*
  - (iv) place the safety and protection of any dependent children under 14 at risk.*
  
- **Second amendment**
  - **Problem:** s36E(2)(e) in the Bill states that the best interests of the child are to be “a primary consideration” in any decisions relating to the removal of citizenship of a child. While Save the Children supports such reference, we are concerned that it does not require the Minister to take into consideration individual capacity, maturity and cognitive development to determine if a child is able to understand the consequences of their conduct or if they have otherwise been coerced by others. In that respect, the provision does not fully comply with the *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights*.
  - **Solution:** A new s36E(2)(ee) to ensure that the Minister must have regard to “full consideration of the child’s individual capacity, maturity and cognitive development, including any family connection the child may have to Australia” in revoking citizenship.
  
- **Third amendment**
  - **Problem:** s36E(2)(e) of the Bill does not adequately take account of the best interest assessments and determination as outlined in General Comment 14 of the *Convention of the Rights of the Child*, notably its omission with respect to the care, protection and safety of the child. Considering that many children affected by citizenship cessation could be affected due to innocent connection to an armed conflict, as noted with the children in Al-Hol, special regard should be given to these circumstances in s36E(2)(e).
  - **Solution:** A new s36E(2)(ef) to ensure that the Minister must have regard to “full consideration of the child’s care, protection and safety, especially in situations of armed conflict or displacement” in revoking citizenship.

Save the Children is also concerned that the Bill does not accurately reflected the INSLM report recommendations. There are a range of measures in the INSLM report that are not implemented in the Bill. In particular, there is a lack of merits review in the citizenship cessation decisions made by the Minister, and the Bill expands the retrospective effect of the citizenship cessation scheme. Save the Children supports the submissions of the Law Council of Australia and the Australian Human Rights Commission in this regard, and supports further amendments to rectify these deficiencies.

Save the Children would be happy to discuss these matters in detail with members of the PJCS.

Kind regards

  
**Mat Tinkler**  
Deputy CEO & Managing Director, International Programs

## **Annexure A – Summary of citizenship cessation scrutiny and recommendations**

### **Origin of citizenship cessation – Australian Citizenship Amendment (Allegiance to Australia) Act 2015**

The Government introduced the Australian Citizenship Amendment (Allegiance to Australia) Bill on 24 June 2015. It was substantially amended following an inquiry by the PJCS before being passed by both houses on 3 December 2015. The *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* amended the *Citizenship Act 2007* to include new grounds on which dual citizens could automatically lose their Australian citizenship, including children aged 14 years or over, through their actions. Save the Children understands that the amendments were enacted in the context of terrorism threats associated with Australians fighting with overseas terrorist and insurgent groups and different forms of home-grown terrorism.

### **Background to introducing the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019**

The Independent National Security Legislation Monitor (INSLM) reviewed the operation, effectiveness and implications of the national security-related citizenship loss provisions enacted in 2015. The INSLM's report was provided to the Government in August 2019. It recommended the urgent repeal of the automatic citizenship loss provisions and introduction of a model in which citizenship cessation is determined by the Minister for Home Affairs, with a range of safeguards. The Bill implements some, but not all, of these recommendations.

### **Overview of Australian Citizenship Amendment (Citizenship Cessation) Bill 2019**

The Bill was introduced on 19 September 2019. It was referred to the Joint Standing Committee on Intelligence and Scrutiny for reporting by 1 December 2019. The Bill amends the *Australian Citizenship Act 2007* and amendments introduced via *the Australian Citizenship Amendment (Allegiance to Australia) Act 2015* to:

- replace 'operation of law' provisions in which Australian citizenship is automatically renounced on the basis of certain conduct, with a ministerial-decision model for citizenship cessation;
- reduce the sentence threshold for cessation based on conviction for certain offences, from a sentence of at least six or ten years imprisonment (depending on when the sentence was imposed), to a sentence of at least three years imprisonment;
- change the 'statelessness test' by removing the precondition that the person is a citizen of another country and substituting a prohibition on the Minister making a determination;
- where the Minister is satisfied that a person will be made stateless by the determination
- amend the procedures for the giving of notice of a citizenship cessation; and
- introduce procedures by which a person whose citizenship ceases may apply to the Minister for revocation.

These amendments will apply retrospectively.

### **Consideration of Australian citizenship cessation provisions and the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 by the PJCS**

On 4 April 2019, the PJCS announced they will hold a Review of the Australian Citizenship renunciation by conduct and cessation provisions. Save the Children made a submission to this review on 19 July 2019. The submission noted our concerns that the citizenship loss provisions may breach Australia's obligations under international human rights law treaties to which Australia is a party, including the Convention on the Rights of the Child, among other treaties, and the lack of procedural safeguards. On 4 December 2019, the PJCS tabled its report, stating that the current 'operation of law' model, whereby a dual-national's Australian citizenship is automatically renounced

through their actions, should be replaced by a ministerial decision-making model. This is the model is proposed in the new Bill. Save the Children's submission was referred to several times in the PJCIS report, with our concerns with the lack of protection for children quoted in the report, especially with the failure to sufficiently comply with the Convention on the Rights of the Child.

Additionally, the PJCIS separately announced a review of the Bill on 19 September 2019. It was noted that the review would be conducted concurrently with the Review of the Australian Citizenship renunciation by conduct and cessation provisions. Save the Children also made a submission to this review on 28 October 2019. In that submission, Save the Children repeated similar points again, noting concerns with the expansion of powers granted to the Minister for Immigration, without sufficiently protecting the rights of children under the *Convention on the Rights of the Child*. We understand that PJCIS is still finalising its report on the Bill.

### **Scrutiny report by the Parliamentary Joint Committee on Human Rights into the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019**

On 5 February 2020, the Parliamentary Joint Committee on Human Rights (PJCHR) released its first report of 2020, which included concluded matters with respect to the Bill. The PJCHR sought advice from the Minister for Home Affairs with respect to a range of issues, including:

- why proposed section 36E does not include an express requirement for the minister to consider a person's connection to Australia, including any impact on family members, before making a citizenship cessation determination;
- when consideration is given to making a determination in relation to a person under 18, why the best interests of the child is to be considered alongside a range of other factors and what 'as a primary consideration' means in this context;
- why there is no independent merits review of the minister's discretionary powers; and
- why the discretionary powers apply to conduct or convictions up to 16 years ago; why this date was chosen, and why the period in the existing provisions is insufficient.

Save the Children notes that the PJCHR report found that the legal advice provided by the Minister for Home Affairs would engage and limit a number of human rights, including the rights to freedom of movement and liberty, and the rights of the child and protection of the family, but that they still met the quality of law test, legitimate objectives, rational connection and proportionality. However, the questions that the PJCHR asked and received responses back from the Minister for Home Affairs did not directly attend to relevant child rights concerns which Save the Children has raised, notably:

- the impact citizenship cessation would have upon dependent children if a parent or guardian has their citizenship cancelled; and
- the best interests assessment of the child as contained in the *Convention on the Rights of the Child* was not addressed in its totality, including consideration of a child's individual capacity and their personal safety, including how that intersects with rights of a child not to be deprived of his or her family environment.