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3 July 2019

**Submission to the Joint Parliamentary Committee on Intelligence and Security
in respect to a review of the operation, effectiveness and implications of sections
33AA, 35, 35AA and 35A of the Australian Citizenship Act (ACA) 2007**

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This submission does not reflect the Australian Strategic Policy Institute perspective.
It is the opinion of the authors Dr John Coyne, Head of the Strategic Policing and
Law Enforcement Program and Dr Isaac Kfir Director National Security, ASPI.

1. The Parliamentary Joint Committee on Intelligence and Security is conducting a review of the operation, effectiveness and implications of sections 33AA, 35, 35AA and 35A of the *Australian Citizenship Act (ACA) 2007* and any other provision of that Act. The purpose of Division 3 of the ACA is to permit the Minister to revoke citizenship in circumstances involving offences or fraud or if the individual is assessed to have engaged in various kinds of conduct inconsistent with allegiance to Australia.
2. We understand that a core argument for citizenship revocation is that the individual is deemed to have breached their social contract. The logic here being that a foreign fighter, terrorist or member of a declared terrorist organisation has rejected the values, rules and norms of Australia, and therefore should not benefit from membership.
3. Three key arguments have been provided to defend the measure. First, citizenship revocation punishes those that have travelled to Iraq and Syria. Second, such legislation would deter Australians who may consider travelling to Iraq and Syria. Third, it helps protect Australians from the threat of terror as it means that those that had gone to Iraq and Syria can't return to Australia to commit terror acts. Nevertheless, in making this submission we argue the following
 - a. There is no substantive empirical evidence to prove, or even suggest, that citizenship revocation works as a deterrent
 - b. The threat of citizenship revocation undermines the Australia's counterterrorism regime which is design to prevent and counter the

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commission of terrorist acts. Specifically, the measure prevents the application of the disengagement and deradicalization programs introduced by the Commonwealth and the State and Territories over the last decade

- c. The threat of citizenship revocation may in fact be counterproductive because
 - i. members of the community may choose not to inform the security establishment that an individual is on the path of violent extremism because they would fear that the person would be deported
 - ii. it may mean that the authorities would struggle to have an Australian accused of membership of a proscribed group return to Australia
 - iii. an Australian who is already off-country who is accused of violent extremism would travel to a foreign land from where they can continue to promote their violent extremist message instead of undergoing disengagement and deradicalization programs
- 4. A core assumption that underpins our submission is the recognition and acceptance that the motivation that drove 200 or so Australians to travel to Iraq and Syria to join either ISIL or al-Qaeda was not homogenous. Anecdotal and case study analysis have shown that the 30,000 plus individuals that travelled to join the ISIL did so for many different reasons.¹
- 5. The lack of empirical evidence supporting citizenship revocation as a deterrence

Since the emergence of the territorial caliphate in June 2014, several countries introduced administrative measures stripping those that had travel to Iraq and Syria of their citizenship (if the revocation did not amount to making the person stateless).²

We have struggled to find any publicly available empirical evidence supporting the idea that citizenship revocation played a factor in dissuading individuals from not travelling to Iraq and Syria to join the various Salafi-jihadi groups. This suggests that this policy isn't rooted in empirical assessments. If the government has such information, we urge it to share it with the public.

Intuitively, we argue that those that are interested in joining violent extremist groups are unlikely to be deterred by the threat of having their citizenship revoked. We also point out that the latest cohort of Australians who have shown

¹ The three most common explanations given to support travel to Iraq and Syria are a sense of religious solidarity, particularly in lieu of the actions of the Assad regime towards his own people; religious naivety, which includes a fundamental misunderstanding of the religious utopia promised by ISIL and its recruiters; and, a desire for an adventure.

² We recognize that government has a statutory right to refuse to issue a passport or to cancel a passport under specific circumstances. We further accept that passport cancellation has become an important tool in preventing individuals from travelling to Iraq and Syria to join such groups as ISIL and al-Qaeda.

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an interest in violent extremism are young (either in their teens or early 20s) and therefore they are no likely to consider citizenship revocation as a deterrence.

We note that cases of returning foreign fighters engaging in terrorist activities are very limited. One such case is Mehdi Nemmouche, a French national killed four people in Belgium's Jewish Museum in Brussels. Mehdi had spent a year fighting in Syria with a group affiliated with ISIL.³ We argue however that with the current checks and balances such activities are highly unlikely.

6. The threat of citizenship revocation undermines the counterterrorism regime

Since 9/11, Australia has developed a robust counterterrorism regime.⁴ A central component within this expansive regime are P/CVE programs and initiatives, which take place on a federal and State and Territories levels such as Multicultural NSW's *The Point Magazine*, the Australian Multicultural Foundation's (AMF's) Community Awareness Training Manual—Building Resilience in the Community program or the Proactive Integrated Support Model (PRISM) and other programs. We also note the role of the CVE Centre located with the Department of Home Affairs. The Centre coordinates and manages several domestic partnerships across multiple levels of government to carry out CVE and PVE programs.

We argue that in 2019, Australians working in the P/CVE space have become global leaders.⁵ Consequently, of the 80 or so remaining Australians known to have travelled to Iraq and Syria, local, state and federal authorities have the necessary tools, be they legislative, operational, or practical to work with the individual either to help them disengage from violent extremism or to ensure that they don't pose a threat to Australians and Australian interests.

7. Citizenship revocation and the community

We would suggest that one unintended consequence of citizenship revocation is that it may make individuals less likely to cooperate with the authorities. We are concerned that among certain minority communities, primarily the Muslim

³ 'Brussels Jewish Museum murders: Mehdi Nemmouche jailed for life' *BBC News*, [online](#).

⁴ Isaac Kfir, '18 Years and counting: Australian counterterrorism, threats and responses,' Special Report, Canberra: ASPI, April 2019, [online](#); George Williams, 'A Decade of Australian Anti-Terror Laws', *Melbourne University Law Review*, 2011, 35(3): 1136-1176, [online](#).

⁵ In 2014, the Abbott government allocated \$64 million for CVE programs. In 2016, the Turnbull government invested a further \$5 million to support communities affected by violent extremism. The funds were also meant to help prevent young people from succumbing to the allure of violent extremists online. For studies highlighting the value of local service provision in countering violent extremism see for example, Hussein Tahiri, Michelle Grossman, *Community and radicalisation: An examination of perceptions, ideas, beliefs and solutions throughout Australia*, Melbourne: Counter-Terrorism Coordination Unit, Victoria Police/Canberra: Australia-New Zealand Counter-Terrorism Committee, [online](#); Adrian Cherney, et al. Local service provision to counter violent extremism: perspectives, capabilities and challenges arising from an Australian service mapping project, *Behavioral Sciences of Terrorism and Political Aggression*, 2018, 10(3):187-206, doi: 10.1080/19434472.2017.1350735; Adrian Cherney, Emma Belton, 'Evaluating Case-Managed Approaches to Counter Radicalization and Violent Extremism: An Example of the Proactive Integrated Support Model (PRISM) Intervention', *Studies in Conflict & Terrorism* (2019): 1-21, doi: 10.1080/1057610X.2019.1577016

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community, there is growing distrust of the authorities, a sense of structural discrimination and Islamophobia.⁶ Local authorities, police and community activists have worked tirelessly to address concern that many within minority communities have, which has led to improved cooperation, which may have led individuals to feel confident to discuss certain issues and individuals of concern with the authorities. However, if there is a fear that should someone lose their citizenship and get deported, individuals are less likely to cooperate.

8. Difficulty in having Australians who have travelled to Iraq and Syria return to Australia

In making this submission we are restricted by the limits on publicly available information regarding requests for extradition and we recognise that officials are confident that they can extradite Australians who have had their citizenship revoke for terrorism-related offence. Nevertheless, we would argue that it is a truism that it is much easier to extradite a national than someone that does not have a citizenship. We are concerned that should citizenship revocation take place; Australian authorities would find it difficult to make extradition requests.

Conversely, we also argue that it sends a confusion message if the Minister was to revoke someone's citizenship and then demand their extradition.

9. Concerns that the Australians involved in violent extremism would find new safe havens

We also argue that, the measure applies a geographically limited conceptualization of the terror threat. At best, citizenship loss provisions mitigate the risk of terrorism in Australia. But as the tragedies of the Bali Bombings or the 2017 London Bridge attack or 2019 Barcelona attack illustrated, terrorism threatens Australians and Australian interests (a key aspect in the legislation) beyond our shores.

A key concern we have is that if Australians who travelled to Iraq and Syria are unable to return to Australia, they would seek new locations from which they could continue to propagate their violent extremist ideas. History has shown that terrorists tend to establish a presence in fragile/weak states where they can exploit local conditions, lack of government writ, corruption, etc. Given that ISIL has franchises and affiliates around the world, there are many locations that fighters fleeing the Iraq and Syria can seek sanctuary from where they can continue to propagate their ideas and incite others to commit violence.⁷

⁶ Linda Briskman, 'The Creeping Blight of Islamophobia in Australia', *International Journal for Crime, Justice and Social Democracy*, 2015, 4(5):112-121; Conor McLaughlin, 'The Islamophobia Epidemic in Australia', *The Diplomat*, 29 March 2019, [online](#); International Centre for Muslim and non-Muslim Understanding. 'Australian Muslims: The Challenge of Islamophobia and Social Distance 2018', University of Southern Australia, 2018, [online](#).

⁷ It was noted in the 2018 US National Strategy for Counterterrorism that ISIL's global reach remains 'robust' as it 'has eight official branches and more than two dozen networks regularly conducting terrorist and insurgent operations across Africa, Asia, Europe, and the Middle East.' National Strategy for Counterterrorism, President of the United States, The White House, October 2018, [online](#).

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We maintain that by having these individuals return to Australia, our security services can debrief them; these individuals can face prosecutions; and, they could benefit from the many disengagement and deradicalization programs that have been developed in Australia.

10. We thank the Committee and the Secretary for allowing us to make this submission.