

APPENDIX EIGHT

DEPORTATION OF AUSTRALIAN CITIZENS

This appendix addresses two issues concerning the deportation of Australian citizens. These issues were outside the Committee's terms of reference but raised important matters of public interest requiring further investigation.

Context

8.1 As part of the process of gathering evidence for its criminal deportation inquiry, the Committee received evidence concerning the deportation or removal of certain Australian citizens who had committed crimes in this country or overseas. This evidence identified two issues:

- the possible deportation of Australian citizens who had been convicted of criminal offences while in Australia, thereby breaking their citizenship oaths; and
- the deprivation of citizenship of those persons who had become Australian citizens but had failed to advise of their involvement in crimes against humanity.

Possible deportation of Australian citizens convicted of criminal offences in Australia

8.2 The Hon. Mr Clyde Holding, MP, canvassed the possibility of deporting or removing certain Australian citizens for breach of their citizenship oath. He considered that persons who had violated the citizenship oath to uphold Australia's laws by repeatedly committing serious crimes should lose citizenship and be liable to deportation or removal:¹

It seems to me that, if we take citizenship as a serious responsibility, if somebody takes an oath to uphold our laws - I am not talking about traffic fines; I am talking about felonies - and continuously breaks the law in a way that can do damage to other Australian citizens, why shouldn't they be charged with breaking their oath? That would be serious. It would then be a matter of discretion, I suppose, for the minister as to whether a conviction would necessarily carry with it the cancellation of citizenship...But, if there is a continuum of criminal activity and a series of convictions, why isn't it open to the minister, if the Commonwealth gave him powers, to say, "This person never intended to maintain his oath. He continually involves himself in serious breaches of the law. Out.?"

8.3 One witness suggested that the proposal might breach Australia's international human rights obligations in two ways:²

1 Holding, *Transcript*, p. 27.

2 HREOC, *Transcript*, pp. 69-71.

- depriving some people of Australian citizenship might leave them stateless; and
- having one set of rules for natural born citizens and another for those who acquired citizenship might be discriminatory.

8.4 Other witnesses suggested that it might be very difficult to prove an initial intention to flout the citizenship oath.³

Possible deportation of Australian citizens who had been involved in crimes against humanity

8.5 The Executive Council of Australian Jewry, in their submission and oral evidence, argued that Australian citizens who had been involved in crimes against humanity should be capable of being stripped of their citizenship under the Australian Citizenship Act and deported or removed to face justice. The Council cited the efforts being made by the government of Canada to revoke citizenship after a civil hearing, and urged the Australian government to adopt similar measures:

What Canada has done in the last two years is to say, 'Well, there are serious cases here with prima facie evidence. We cannot get a conviction on criminal grounds but we are going to do something about it,' and they turned to this very process that we are outlining today: that is, revoking citizenship for individuals involved in crimes against humanity.⁴

8.6 The Hon. Clyde Holding strongly supported aspects of their submission. He argued that more stringent measures should be directed against those involved in crimes against humanity, as in the case of Konrad Kaleijis, where there was prima facie evidence that he failed to disclose his involvement in war crimes to the immigration authorities at the time of his admission to Australia.

8.7 In Mr Holding's opinion, an applicant who had been involved in crimes against humanity and who had failed to disclose this fact when seeking admission to Australia should face prosecution. To conceal such a fact should be regarded as a serious offence in its own right, and the effluxion of time should not operate to mitigate the seriousness of the offence. The offender should be subject to criminal charges to be dealt with by the courts, and if the person were found guilty, the grant of citizenship should be regarded as void and the Minister should have a discretion to institute deportation proceedings.

8.8 Other members raised a number of concerns about other aspects of the Executive Council's proposal. Senator Judith Troeth highlighted problems that could arise from the issue of statelessness.⁵ The Right Hon. Mr Ian Sinclair, MP, identified problems for those who had already taken out citizenship if the system were to be changed:

[T]here is a problem for a country like Australia if we, as a country of migrant destination, create uncertainty about the nature and status of

3 Law Society of NSW, *Transcript*, p. 27.

4 Executive Council of Jewry, *Transcript*, p. 234.

5 Troeth, *Transcript*, pp. 224-225.

our citizenship beyond that which was there when they were first admitted as citizens.⁶

He also expressed concern that a person might be deprived of citizenship without being convicted of a criminal offence.

Outcome

8.9 The Committee resolved that these citizenship matters lie outside its terms of reference into criminal deportation of non-citizens. Because of the public interest in these matters, however, the Committee resolved to outline how these important matters were raised and to report the contents of the submissions and exchanges.

8.10 The Committee advised the Minister for Immigration and Multicultural Affairs of the issues. The Minister indicated that he had noted the comments relating to Australian citizenship, particularly those made by the Hon. Clyde Holding, MP. He advised that he had asked that these issues be brought to the attention of the Australian Citizenship Council for more detailed consideration.⁷

6 Sinclair, *Transcript*, p. 226.

7 Letter by the Honourable Mr Philip Ruddock, MP, to the Chair of the Joint Standing Committee on Migration, dated 21 January 1998.

