

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: Australian Human Rights Commission

Question No. BE16/008

Senator Hanson-Young asked the following question at the hearing on 5 May 2016:

Senator HANSON-YOUNG: My final question is in relation to a number of these children—38 of them are children that have been born in Australia, some to parents seeking asylum who are Rohingya, for example, who are stateless. What is the view of the commission about the status of children born in Australia to parents that the government wants to send back to Nauru? Are these children stateless now? Indeed, should they be afforded the opportunity to apply for citizenship here in Australia?

Prof. Triggs: My understanding is that they are at risk of becoming stateless. They may not get citizenship in Nauru—it is arguably even highly unlikely that they will. Australia, of course, is a party to the statelessness convention, and there are obligations that flow from that. Can I take that on notice to give you a fuller legal view, but we are deeply concerned. I think there are 156,000 stateless people in the Asian region and we are going to see the problem of statelessness arise more frequently, most particularly because the Rohingya people are not given citizenship by Myanmar. So they are a very special category.

Senator HANSON-YOUNG: So, of the 38 children that have been born here in Australia, you hold the view that they themselves may become stateless if Australia does not intervene?

Prof. Triggs: I believe there is a very severe risk that they will. As you will know, they are deemed to have arrived in Australia by sea under the terms of the Migration Act, which means that they will be deemed not to have been born in Australia. This makes their legal position extremely tenuous. But again, if I may, I would like to give you proper legal view of where we think the convention on statelessness would impinge or, rather, create an obligation for Australia with regard to the future of those children.

Senator HANSON-YOUNG: Thank you.

The answer to the honourable senator's question is as follows:

Under the *Convention on the Reduction of Statelessness*, the Commission considers that Australia is obliged to grant citizenship to a person born in its territory who would otherwise be stateless.ⁱ

This obligation is reflected in the *Australian Citizenship Act 2007* (Cth). Section 21(8) of the Act stipulates that a person born in Australia who is not (and never has been) a national or citizen of any country, and is not entitled to acquire the nationality or citizenship of a foreign country, is eligible to become an Australian citizen.ⁱⁱ The Commission considers that this provision applies to children born in Australia whose parents are seeking asylum, and who would otherwise be stateless.

ⁱ *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975), art 1. Article 1(2) permits certain conditions to be prescribed for an application for citizenship.

ⁱⁱ *Australian Citizenship Act 2007* (Cth), s 21(8).