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Proposed citizenship stripping laws undermine national security, go ‘against grain of our justice system’

The Law Council of Australia has urged the Australian Government to reconsider proposed citizenship stripping laws which may undermine, not strengthen, national security.

Law Council President, Arthur Moses SC, told the Independent National Security Legislation Monitor’s public review hearing yesterday the proposed amendments to the *Australian Citizenship Act 2007* (Cth) were not necessary or proportionate, may leave individuals stateless and inadvertently weaken national security.

“Promoting the safety and security of the Australian community and protecting Australian citizens from terrorism-related activities must always be a paramount concern,” Mr Moses said.

“However, there is a real risk that despite best intentions, the proposed legislation could undermine, not protect, the national interest. For example, some foreign incursions offences under Part 5.5. of the *Criminal Code Act 1995* (Cth) require that in order for a person to be charged, the person must have been an Australian citizen at the time of the alleged offence. Taking citizenship away may remove Australia’s ability to subsequently prosecute these individuals for serious offences. This is not in the national interest.”

Mr Moses also expressed concern that the proposed legislation set a low threshold for citizenship loss, was not aligned with the principles of natural justice and could face constitutional challenge if the power to revoke citizenship was exercised by a Minister rather than a Court.

“We shouldn’t be on a race to the bottom to see which nation can first offload a person who is a dual citizen. The government should not pursue a policy that ships citizens, who are our responsibility, to another jurisdiction, which may not have a strong security infrastructure and respect for the rule of law, and where they could do further harm to Australian citizens,” Mr Moses said.

“These individuals should be tried before Australian Courts and, if found guilty, detained in Australian jails. If and when released they should be monitored, if appropriate, by our security agencies. Once they are out of Australia, we lose control of these individuals. Our allies such as the United States and Canada have not embraced this misguided approach.

“In addition, the proposed legislation would mean a person could be stripped of Australian citizenship without being convicted of terrorism-related offences by an independent, impartial and competent court. This goes against the grain of our justice system. The simple belief a person has engaged in terrorism-related offences alone is, in our view, not grounds for citizenship revocation. There needs to be evidence and an appropriate standard of proof in order to bring discipline and rigour to any decision-making process to minimise errors.”

Under the proposed legislation, a person aged 14 or over may be stripped of their citizenship if there is a reasonable belief they have engaged in terrorism-related conduct. There is no requirement for the establishment of guilt via a court process, with the practical effect that a determination is made by a government-appointed Citizenship Loss Board.

“A person’s innocence or guilt when it comes to criminal offences must be established by a court and consistent with the rule of law. This legislation also flies in the face of our international obligations that require we render no person stateless. There is no guarantee a person would acquire citizenship of another country and if the belief they would is erroneous, a person could be left stateless,” Mr Moses said.

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