

23 October 2019

Mr Andrew Hastie MP
Chair, Parliamentary Joint Committee on Intelligence and Security
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By email: pjicis@aph.gov.au

Dear Chair

Supplementary Submission to the Review of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

On 18 October 2019, the Law Council of Australia appeared before the Parliamentary Joint Committee on Intelligence and Security (**the Committee**) in relation to the review of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 (**the Review**).

In the course this public hearing, the Law Council took one matter on notice. Committee member Senator Keneally noted the Law Council's recommendation in its submission to the Review, dated 17 October 2019, that when the Minister or any other decision maker is exercising his or her powers under the *Australian Citizenship Act 2007* (Cth) (**the Act**), he or she should be required to consider the likely effects of citizenship cessation on any dependents and what, if any, alternative arrangements might apply.¹ Specifically, Senator Keneally asked the following question:

Under the laws proposed, somebody could have maintained their Australian citizenship up to now and given birth to children who they had passed on Australian citizenship to and, if there is retrospectivity in this, is it possible that those children could also lose their Australian citizenship if their parent were to lose it?

The Law Council notes that pursuant to proposed subsections 36B(3) and 36D(3), where a determination is made by the Minister that a person ceases to be an Australian citizen based on their conduct or conviction, the person ceases to be an Australian citizen at the time the determination is made.² In circumstances where a person ceases to be an Australian citizen due to the operation of proposed sections 36B or 36D, and the Australian citizenship of any of his or her dependents was acquired before the date of the determination, the Australian citizenship of that child is unlikely to be affected.

Further, under section 36 of the Act, the Minister may revoke a child's Australian citizenship where when the parent ceases to be an Australian citizen by operation of section 33 (renunciation), 34 (citizenship obtained by fraud) and 34A (breach of residence

¹ Law Council of Australia, Submission to the Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Review of the Citizenship Amendment (Citizenship Cessation) Bill 2019* (17 October 2019) 23 [89].

² Citizenship Amendment (Citizenship Cessation) Bill 2019 (Cth), 36B(3) and 36D(3).

requirement) of the Act. As section 36 is not sought to be amended by the Bill to include reference to either proposed sections 36B or 36D of the Bill, the Law Council does not consider dependent children to be at risk of losing their Australian citizenship as a result of the measures contained in the proposed Bill.

The Explanatory Memorandum supports this view, stating that the cessation of a parent's Australian citizenship under these provisions does not result in the cessation of the child's Australian citizenship.³

However, this does not account for a range of unintended consequences from a breakdown of the family unit resulting in children being separated from families, children being sent back to dangerous circumstances, or children being cared for by non-family members. With this in mind, the concern of the Law Council is that in considering whether to make a citizenship cessation determination under proposed sections 36B or 36D, there is no requirement for the Minister to consider the impact of such a determination on Australian children whose parent or primary caregiver may be subject to a citizenship cessation determination. The impacts on the Australian child who may be left vulnerable as a result of this process has not been taken into account in the current draft of the Bill.

The Law Council reiterates the position articulated in its submission to the Review that additional criteria should be added to proposed subsection 36E(2) to include a specific requirement that if the person has dependent children in Australia, consideration ought to be given to the rights of those children in any determination to be made in relation to the cessation of citizenship for their parent or primary caregiver. In this regard the INSLM was critical of section 35 of the Act as it 'makes no allowance for matters typically the subject of mitigation in criminal proceedings'.⁴

The Australian Human Rights Commission (**AHRC**) has also recommended amending proposed subsection 36E(2) to require consideration of a person's connection to Australia, which encompasses whether they have dependent children or other family who are Australian citizens.⁵ The AHRC states while it is a common law principle that legislative provisions should be interpreted consistently with Australia's international obligations, this does not afford the same level of protection as statutory decision-making criteria.⁶

We thank you once again for the opportunity to provide this supplementary submission to the Committee. If you have any further inquiries, please contact Dr Natasha Molt, Director of Policy, at natasha.molt@lawcouncil.asn.au or on (02) 6246 3754.

Yours sincerely



Arthur Moses SC
President

³ Explanatory Memorandum to the Citizenship Amendment (Citizenship Cessation) Bill 2019 (Cth), [66].

⁴ Independent National Security Legislation Monitor, *Report to the Attorney-General: Review of the Operation, Effectiveness and Implications of Terrorism-Related Citizenship Loss Provisions Contained in the Australian Citizenship Act 2007 (Cth)* (3rd INSLM, 7th Report, 2019) 48 [6.41].

⁵ Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Review of the Citizenship Amendment (Citizenship Cessation) Bill 2019* (17 October 2019) 20.

⁶ *Ibid* 19.