

FECCA responds to Intelligence Committee recommendations on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015

The Parliamentary Joint Committee on Intelligence and Security released its report on the *Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* today. FECCA made a submission to the inquiry and appeared before the Committee to discuss its concerns about the Bill, including the effect that the legislation, if passed, will have on social cohesion, its impact on children, and its compliance with fundamental rights.

The report sets out 27 recommendations, including that the Bill should be passed following the implementation of the recommendations in the report. It is encouraging to see that the Committee has included recommendations to limit the operation of the proposed provisions, strengthen the safeguards for children, and address some of the procedural concerns raised by FECCA.

Limiting the operation of the Bill

The Committee recommends that the Bill be amended to limit the operation of s 33AA, which provides that an individual renounces their Australian citizenship if they engage in certain conduct, to individuals who have engaged in relevant conduct offshore, or engaged in relevant conduct onshore and left Australia before being charged and brought to trial in respect of that conduct.

The Committee also recommends that for the conviction-based provision (s 35A) the Minister should be required to make a positive decision that a person's citizenship should be lost, taking into account allegiance and public interest factors. It further recommends that the list of relevant offences in the proposed s 35A be amended to exclude offences that carry a maximum penalty of less than 10 years imprisonment and certain Crimes Act offences that have never been used. The offence for 'destroying or damaging Commonwealth property' is among those that the Committee recommends should be removed from the Bill.

Addressing procedural concerns

The current Bill exempts the application of s 39 of the *ASIO Act*, potentially allowing the Minister for Immigration to use intelligence which does not amount to a security assessment to issue notice that an individual's Australian citizenship has been ceased. The Committee recommends that the Bill be amended so that s 39 *ASIO Act* is not exempted, and consequently, a security assessment would be required before the Minister can take prescribed administrative action.

Recommendations made by the Committee would also require the Minister for Immigration to provide, or make reasonable attempts to provide, the affected person with written notice that citizenship has been lost or revoked. If the Minister determines not to notify the affected person, this decision should be reviewed within 6 months and every 6 months thereafter. The Committee recommends that the notice include the reasons for the loss of citizenship and an explanation of the person's review rights.

The Committee also recommends that the Minister be required to consider exercising their discretion to exempt a person from the effects of the relevant provisions revoking or ceasing their Australian citizenship, including considering whether the affected person would be able to access the citizenship rights in their other country of citizenship or nationality, and the extent of their connection to that country.

Children

A number of recommendations recommend amendments to include consideration of the age of the person and, for a person under 18, the best interests of the child as a primary consideration when the Minister is exercising a number of discretions in the Bill. Further, the Committee recommends that no part of the Bill should apply to conduct by a child aged less than 10 years, and that the conduct-based provisions in sections 33AA and 35 should not apply to conduct by a child aged under 14 years. The Committee has also recommended that section 36 of the *Australian Citizenship Act*, which enables the Minister to revoke a child's citizenship following revocation of a parent's citizenship, should not apply to any of the proposed new sections in the Bill.

Retrospective operation

The Committee recommends that the conviction-based provision (s 35A) be applied retrospectively to convictions where sentence of ten years or more have been handed down by a court.

Accountability measures

A number of accountability measures are included in the Bill, including:

- That the Committee's functions be extended to include monitoring and reviewing the performance of the Department of Immigration and Border Protection of its functions under the provisions of the Bill;

- That the Minister be required to advise the Committee upon issuing a notice for the loss of citizenship under the Bill;
- That the Committee complete a review of the revocation of citizenship provisions by 1 December 2019.

Conclusion

FECCA is encouraged by the Committee's recommendations, however, the 'self-executing' nature of some parts of the Bill remains concerning. The revocation of an individual's citizenship is a significant consequence, and should be confined to those dual nationals who have been convicted of relevant offences by a court.

FECCA highlights the importance of citizenship policy to achieving and maintaining social cohesion in the Australian community by giving migrants a sense of belonging and acceptance.

To read the Committee's report [click here](#).

To read FECCA's submission to the inquiry [click here](#).

Media Comments: FECCA Office – (02) 6282 5755, media@fecca.org.au.