

28 October 2019

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security

Dear Secretary

Re: Review into the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

We welcome the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security, in relation to the Review into the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 ('the Bill').

The Bill in question would amend Division 3, Part 2 of the Act, amending the circumstances in which a dual citizen or national, or children entitled to Australian citizenship by virtue of their mother's citizenship, can have their Australian citizenship removed for terrorism-related conduct or convictions. The Bill would repeal the automatic citizenship loss regime in ss 33AA and 35. Further, the Bill would introduce a revised scheme, whereby Australian citizenship could be removed in relation to either engaging in proscribed conduct or committing a certain criminal offence, by way of a determination made by the Minister.

Save the Children understands this Review is running concurrently with the ongoing Review of the Australian Citizenship renunciation by conduct and cessation provisions of the *Australian Citizenship Act 2007* (Cth) ('the Act') which introduced provisions to govern certain circumstances in which dual citizens can lose their Australian citizenship for certain terrorism related conduct. On 19 July 2019, Save the Children provided a submission on that Review with the recommendations that the proposed amendments to section 35A of the Act should not be passed due to concerns regarding insufficient protections for the best interests of the child.¹

Impact of the Bill on children

Save the Children is primarily concerned with changes to the threshold for evaluating an individual's dual citizenship status and the expansion of the Minister's powers. In particular, the repeal of the citizenship cessation regime in ss33AA and 35 of the Act and insertion of s36B through the Bill. The current legislation requires that a person has nationality to a country other than Australia at the time that a decision is made to revoke their Australian citizenship. However, the proposed amendment would leave this to the discretion of the Minister, with the Minister needing only to be satisfied that the individual has nationality to another country.

The citizenship cessation provisions could apply to children:

- as young as 10 who have relevant criminal convictions as per s35A of the Act; and
- from the age of 14 if the Minister is 'satisfied' that the person has engaged in relevant proscribed conduct as per s36B(1) of the Bill.

The Bill could lead to children losing their citizenship by way of Ministerial determination in the same way as adults and children currently can have their citizenship revoked, potentially leading to children becoming effectively stateless. This could happen by virtue of the subjective satisfaction of

¹ Save the Children, Review of the Australian Citizenship renunciation by conduct and cessation provisions, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/Citizenship2019/Submissions

the Minister as outlined in the proposed ss36B(2) and 36D(2) of the Bill. Children are also impacted if their parents are subject to a citizenship cessation. The statement of compatibility with human rights states that “cessation of a parent’s Australian citizenship under these provisions does not result in the cessation of the child’s Australian citizenship”². If the citizenship of a child’s parent is revoked in these circumstances, then the child is left with an invidious choice: either remain with their parents, stripped of the Australian citizenship, in a war zone; or try to assert their citizenship in Australia and leave their parents behind.

Impact of the Bill on children’s rights

Proposed s36E(2)(e) in the Bill states that the best interests of the child are to be “a primary consideration” in any decisions relating to the removal of citizenship of a child (aged under 18). While supportive of this measure, Save the Children has concerns with the language in s36E(2)(e). Notably, there is no requirement on the Minister to take into consideration individual capacity, maturity and cognitive development to determine if a child is able to understand the consequences of their conduct or if have otherwise been coerced by others. This should be included in s36E(2)(e) of the Bill, alongside noting the child’s connection to Australia, including any family connection in accordance with Article 23(1) of the International Covenant on Civil and Political Rights.

Paragraph 65 of the statement of compatibility with human rights states that the reference in s36E(2)(e) of the Bill to incorporating the best interests of the child is intended to ensure that the decision to cease the citizenship of a child is consistent with Article 3(1) of the Convention on the Rights of the Child (‘the Convention’). Despite this, s36E(2)(e) of the Bill does not adequately take account of the best interest assessments and determination as outlined in General Comment 14 of the Convention, notably its omission with respect to the care, protection and safety of the child.³ Considering that many children affected are likely to be involved due to armed conflict situations, as noted in the current situation facing Australian children in Al-Hol, special regard should be given to these circumstances in s36E(2)(e).

Save the Children also notes the recent concluding observations from the United Nations Committee on the Rights of the Child (‘the Committee’) issued in September 2019 at paragraph 23(b), which state that Australia should:

Revoke the December 2015 amendments to the Citizenship Act which allow for children under 18 years to lose their Australian citizenship if they “engage in or are convicted of certain foreign fighting or terrorism related conduct”.

Save the Children is of the view that the measures proposed in the Bill do not address the Committee’s recommendation and retain the ability for citizenship to be ceased for a child under 18 years of age.

Save the Children is concerned that as drafted, the proposed Bill will lower the threshold for evaluating an individual’s dual citizenship status and expand the Minister’s powers, without sufficiently protecting the rights of children. Acknowledging that the Committee’s review of the Bill will be conducted concurrently with the Review of the Australian Citizenship renunciation by

² Paragraph 66, Statement of Compatibility with Human Rights, Explanatory Memorandum, Australian Citizenship Amendment (Citizenship Cessation) Bill 2019.

³ See pages 8-9, United Nations Committee on the Rights of the Child, ‘General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration’, CRC/C/GC/14, 29 May 2013.

conduct and cessation provisions, Save the Children requests these concerns, and our previous submission on the provisions to the *Australian Citizenship Act 2017* (Cth), be taken into account when conducting the Reviews.

Yours Sincerely,



Mat Tinkler
Director of Policy and International Programs

Attachment A: Save the Children, Submission to the Review of the Australian Citizenship renunciation by conduct and cessation provisions, 19 July 2019.