

**AUSTRALIAN CITIZENSHIP AMENDMENT
(ALLEGIANCE TO AUSTRALIA) BILL 2015**

SECOND READING SPEECH

I move that this Bill be now read a second time.

The *Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* implements the Prime Minister's commitment to address the challenges posed by dual citizens who betray Australia by participating in serious terrorism-related activities. This Bill emphasises the central importance of allegiance to Australia in the concept of citizenship.

Australian citizenship is something to be treasured. It is a common bond which unites us all, whether we were born here or chose to make Australia our home. Australian citizenship involves a commitment to this country, its people and its democratic rights and privileges. Australian citizenship should not be taken lightly.

We face a heightened and complex security environment. Regrettably, some of the most pressing threats to the security of the nation and the safety of the Australian community come from citizens engaged in terrorism. It is now appropriate to modernise provisions concerning loss of citizenship to respond to current terrorist threats. The world has changed so our laws should change accordingly.

To ensure clarity of these necessary changes, a purpose clause has been inserted into the Bill. It states that by these amendments, the Parliament recognises that Australian citizenship is a common bond, involving reciprocal rights and obligations, and that citizens may, through certain conduct incompatible with the safety and shared values of the Australian community, demonstrate that they have severed that bond and repudiated their allegiance to Australia. The intention of the changes is the protection of the community and the upholding of its values, rather than punishing people for terrorist or hostile acts. The purpose clause uses concepts from the existing Preamble in the Citizenship Act.

Allegiance is a duty owed by all citizens to their sovereign or state. A citizen's duty of allegiance to Australia is not created by the Citizenship Act, but is recognised by it.

The concept of allegiance is central to the constitutional term “alien” and to this Bill’s reliance upon the aliens power in the Constitution. The High Court has found that an alien is a person who does not owe allegiance to Australia¹. By acting in a manner contrary to their allegiance, the person has chosen to step outside of the formal Australian community.

The Bill proposes three mechanisms for automatic loss of citizenship:

- First, a new provision where a person renounces their citizenship if they act inconsistently with their allegiance to Australia by engaging in certain terrorist conduct.
- Second, an extension to the current loss of citizenship provision for a person fighting in the armed forces of the country at war with Australia. The extension provides that a person ceases to be a citizen if they fight on behalf of, or serve, a specified terrorist organisation overseas.
- Third, a new loss of citizenship provision if the person has been convicted of a specified terrorism offence by an Australian court.

In accordance with Australia’s international law obligations, no one will lose citizenship under any of these provisions unless they are a national of another country.

I now turn to examine the Bill in more detail.

New section 33AA is an extension of the current provision which allows a person to renounce their citizenship. The new section provides that a person who is a national or citizen of a country other than Australia renounces their Australian citizenship if they act inconsistently with their allegiance to Australia by engaging in specified conduct.

The relevant conduct is:

- engaging in international terrorist activities using explosive or lethal devices;
- engaging in a terrorist act;
- providing or receiving training connected with preparation for, engagement in, or assistance in a terrorist act;
- directing the activities of a terrorist organisation;
- recruiting for a terrorist organisation;

¹ *Koroitamana v Commonwealth* (2006) 227 CLR 31

- financing terrorism;
- financing a terrorist; and
- engaging in foreign incursions and recruitment.

Automatic loss of citizenship will be triggered whether the conduct takes place inside or outside Australia.

The loss of citizenship will be immediate upon the person engaging in the relevant conduct. The Minister can give notice that a person has renounced their citizenship if the Minister becomes aware of it, but this notice does not affect when the loss of citizenship takes place.

New section 35 provides for automatic cessation of citizenship if a person is a citizen of another country, is overseas and fights on behalf of, or serves, a declared terrorist organisation. A declared terrorist organisation will be a subset of those which are prescribed for the purposes of the Criminal Code. The Minister will declare those organisations that are opposed to Australia or Australia's values, democratic beliefs, rights and liberties.

New section 35A provides that a person automatically ceases to be a citizen if they are convicted of a specified offence. This provision relies on a court having determined criminal guilt. The relevant offences include treason, espionage, terrorism and foreign incursions.

The Bill provides the Minister with a personal power to rescind a notice advising a person that they ceased to be an Australian citizen and exempt a person from loss of citizenship under these provisions if the Minister considers it appropriate to do so in the public interest. If the Minister rescinds a notice and exempts the person then they do not lose their citizenship. The Minister does not have a duty to consider whether to rescind a notice and exempt the person from the loss of citizenship.

The Bill makes it clear that the new loss provisions apply to all Australian citizens, regardless of how they acquired that citizenship. There is no concept of "constitutional citizenship" in Australia and legislation has long provided that Australian citizens by birth can lose their citizenship in certain circumstances, such as fighting a war against Australia or, prior to 2002, becoming a citizen of another country.

The Bill also limits section 39 of the *Australian Security Intelligence Organisation Act 1979* in relation to these provisions, such as giving notice of a loss of citizenship or rescinding a notice and exempting a person from loss. This means that the Minister may rely on any information provided by ASIO, whether it is preliminary information or whether it amounts to a security assessment or qualified security assessment.

It is intended to rely on the common law doctrine of Public Interest Immunity and the *National Security Information (Criminal and Civil Proceedings) Act 2004* (known as the NSI Act) Act to protect such national security information in any subsequent litigation. The NSI Act protects information whose disclosure is likely to prejudice Australia's defence, security, international relations, law enforcement interests or national interests. The compromise of this information could possibly affect the security of the nation.

The Bill provides that a person who loses their citizenship for terrorist-related activities which demonstrate a breach of allegiance is not able to reacquire Australian citizenship in the future. This is entirely appropriate because such a person has shown that they are not capable of upholding their commitment to Australia and are not worthy of the honour of Australian citizenship.

I now turn to the issue of review rights. These provisions operate automatically, without a decision from the Minister. A person who loses their citizenship under these provisions would be able to seek a declaration from a court that they have not in fact lost their citizenship. Members would be aware that there is no need to mention this explicitly in the Bill because the Federal Court and High Court both have original jurisdiction over such matters.

The loss of citizenship provisions in the Bill will not be retrospective. However, the Parliamentary Joint Committee on Intelligence and Security will inquire into this and other aspects of the Bill. The renunciation provision in section 33AA and the fighting or serving a terrorist organisation provision in section 35 will only apply to conduct after the Bill commences. The loss of citizenship following a conviction in section 35A will apply to convictions after commencement, although the conduct which forms the basis of the conviction could have occurred before commencement.

Conclusion

In conclusion, this Bill deals with the threat caused by those who have engaged in terrorist-related conduct that is contrary to their allegiance to Australia. It formally removes a person from the Australian community when they themselves have breached their allegiance to Australia.

I commend this Bill to the Chamber.