



Australian  
Human Rights  
Commission

# Review of the citizenship repudiation provisions of the *Australian Citizenship Act 2007 (Cth)*

Australian Human Rights Commission

Submission to the Parliamentary Joint Committee on Intelligence  
and Security

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# 1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission to the Parliamentary Joint Committee on Intelligence and Security (the PJCIS) in relation to its combined review into the operation, effectiveness and implications of both Subdivision C of Division 3 of Part 2 of the *Australian Citizenship Act 2007 (Cth)* (Citizenship Act) and the recent amendments made by the *Australian Citizenship Amendment (Citizenship Repudiation) Act 2023 (Cth)* (the Citizenship Repudiation Act), which commenced on 8 December 2023.
2. The review of Subdivision C of Division 3 of Part 2 the Australian Citizenship Act is a statutory review that s 29(1)(ca) of the *Intelligence Services Act 2001 (Cth)* requires the PJCIS to conduct by the third anniversary of the day on which the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020 (Cth)* (Citizenship Cessation Act) commenced. After that review had already commenced, the Citizenship Repudiation Act repealed and replaced the operative provisions of the Citizenship Act that were under review.
3. Under the now repealed provisions, the Minister had the power to make a determination that a dual citizen ceases to be an Australian citizen if the Minister was satisfied that the person engaged in certain terrorism-related conduct or had a conviction for a specified terrorism-related offence.
4. The Commission previously made submissions to the PJCIS when it was conducting an inquiry into the Australian Citizenship Amendments (Citizenship Cessation) Bill 2019 (Cth) prior to it being passed (2019 submission).<sup>1</sup> The Commission also made submissions to the Independent National Security Legislation Monitor (INSLM) review,<sup>2</sup> and the PJCIS, with respect to the Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018 (Cth),<sup>3</sup> which contained similar proposals to the Citizenship Cessation Act but lapsed with the prorogation of Parliament.
5. The Citizenship Repudiation Act repealed and replaced the operative provisions of Subdivision C of Division 3 of Part 2 of the Citizenship Act so that the Minister no longer has the power to make a determination that a dual citizen ceases to be an Australian citizen for terrorism-related conduct or convictions. Instead, the Minister can make an application to a court for a citizenship cessation order in certain circumstances.
6. The Citizenship Repudiation Act addressed several of the Commission's previously articulated concerns, in particular the Ministerial power to remove a person's Australian citizenship based on conduct without criminal

conviction, the impact on children as young as ten years old, and the inadequate procedural safeguards and review options.

7. The Commission welcomes amendments in the Citizenship Repudiation Act that give to the judiciary the power that the High Court held had invalidly been conferred on the Minister.
8. Despite improvements to the human rights compatibility of the new regime, the Commission considers that several aspects of the amendments made by the Citizenship Repudiation Act do not remedy previously identified human rights concerns.
9. The Commission is also concerned that the Citizenship Repudiation Act was introduced into Parliament and passed by both Houses without prior referral to a parliamentary committee inquiry to allow for proper scrutiny.
10. Involuntary removal of citizenship is an extremely serious matter, and the new regime would have benefited from careful examination and consideration before the amendments were passed. Inappropriate application of these provisions could mean that a person's right to enter and remain in their own country, Australia, is seriously and arbitrarily impaired,<sup>4</sup> having adverse consequences for numerous other human rights.
11. These powers can be applied to adults and to children as young as 14, whether their Australian citizenship was acquired by birth or otherwise conferred. As a result, the provisions may apply to people who have a strong and enduring connection to Australia.
12. The Commission acknowledges the critical importance of the protection of Australia's national security, and the Australian community from terrorism. However, international human rights law requires that any limitation on rights must be reasonable, necessary and proportionate to the achievement of a legitimate objective. The Commission is concerned that several amendments made by the Citizenship Repudiation Act do not satisfy these requirements.
13. The Commission makes eight recommendations to ameliorate some of the key human rights concerns identified.

## **2 Background**

### **2.1 Citizenship Cessation Act**

14. In 2015, the Citizenship Act was amended to introduce terrorism-related citizenship cessation provisions in Australia for the first time. According to

the Citizenship Repudiation Bill's Explanatory Memorandum, the 'intention of the legislation was to remove from the Australian community – or prevent the return to Australia from overseas – those dual Australian citizens who had, by their own intentional actions, engaged in terrorism-related conduct and as such repudiated their allegiance to Australia'.<sup>5</sup>

15. In 2020, the Citizenship Cessation Act amended the Citizenship Act, modifying the circumstances in which a dual citizen or national could have their Australian citizenship removed for terrorism-related conduct or convictions. It introduced a scheme where Australian citizenship could be removed by way of a determination made by the Minister for either engaging in proscribed conduct or committing a certain criminal offence.
16. In summary, Subdivision C of Division 3 of Part 2 of the Citizenship Act permitted the Minister to make a determination to remove a person's Australian citizenship in two kinds of cases.
17. The **first** kind of case applied only to people aged 14 years of age or older where the Minister was satisfied that they had engaged in terrorism-related conduct but where they had not been tried or convicted for that conduct. The Minister had to be satisfied that the person had engaged in the specified terrorism-related conduct while outside Australia or had engaged in that conduct while in Australia and had since left Australia and had not been tried for an offence in relation to the conduct (s 36B).
18. The **second** kind of case applied to any person above the age of criminal responsibility (currently ten years of age) who had been convicted of one or more specified terrorism-related offences and had been sentenced to a period of imprisonment of at least three years (or periods that total at least three years) (s 36D).
19. In either case, the Minister also had to be satisfied of all of the following:
  - a. that the person's conduct or conviction demonstrated that the person had repudiated their allegiance to Australia
  - b. that it would be contrary to the public interest for the person to remain an Australian citizen, with mandatory factors for consideration set out in s 36E
  - c. that the person would, if the Minister were to make the determination, not become a person who is not a national or citizen of any country.
20. In paragraph 22 of its 2019 submission, the Commission summarised its key concerns with that regime:

- a. the potential to remove a person's Australian citizenship based on administrative 'satisfaction' that they have engaged in certain conduct, without a criminal conviction
- b. the lowering of the threshold for ascertaining whether a person is a dual citizen before removing their Australian citizenship, increasing the risk of statelessness
- c. the lowering of the sentencing threshold for relevant convictions, from six years imprisonment to three years imprisonment
- d. the impacts on children, including children as young as ten years old, under the conviction-based loss regime, and children as young as 14 years old under the conduct-based loss regime
- e. inadequate procedural safeguards when a person's citizenship is removed, including no requirement to take into account all relevant circumstances, to afford natural justice, to provide reasons or to ensure effective service of a notice
- f. inadequate oversight due to the lack of merits review or review under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*
- g. extended retrospective application, potentially capturing conduct and convictions that occurred more than 16 years ago.

## 2.2 Citizenship Repudiation Act

21. In 2022 and 2023, the High Court found in *Alexander v Minister for Home Affairs* [2022] HCA 19 (*Alexander*) and *Benbrika v Minister for Home Affairs* [2023] HCA 33 (*Benbrika*) respectively that ss 36B and 36D of the Citizenship Act were invalid. The High Court held that the provisions conferred on the Minister the power of adjudging and punishing criminal guilt – a power that Ch III of the Constitution requires to be exercised exclusively by the federal judiciary.
22. In response to the High Court's judgments, the Citizenship Repudiation Act repealed the provisions of the Citizenship Act that had been held to be invalid.
23. The Citizenship Repudiation Act also introduced a revised citizenship cessation regime that enables the Minister to make an application to a court for an order that a person (who is a dual national) ceases to be an Australian citizen where the person has been convicted of a relevant serious offence (s 36D). The Minister can only make the application before the person is sentenced by the court.

24. When the Minister has made such an application, the court may, when sentencing a person, make an order that the person ceases to be an Australian citizen if: the person is convicted of one or more relevant 'serious offences'; the court has decided to impose a period of imprisonment or total periods of imprisonment of at least three years; and the court is satisfied that the person is at least 14 years old, is an Australian citizen, will not be made stateless, and that their conduct is so serious and significant that it demonstrates a repudiation of their allegiance to Australia (s 36C).
25. The court must not make a citizenship cessation order if the court is satisfied that to do so would make the person stateless (s 36C(2)).
26. A list relevant serious offences is contained at s 36C(3) and includes offences in the *Criminal Code Act 1995 (Cth)* relating to explosives and lethal devices, treason, advocating mutiny, espionage, foreign interference, terrorism and foreign incursions and recruitment.
27. In deciding whether a person's conduct is so serious and significant that it demonstrates a repudiation of their allegiance to Australia, the court must have regard to (s 36C(5)):
  - a. whether the conduct demonstrates a repudiation of the values, democratic beliefs, rights and liberties that underpin Australian society
  - b. the degree, duration or scale of the person's commitment to or involvement in the relevant conduct
  - c. the intended scale of the conduct
  - d. the actual impact of the conduct
  - e. whether the conduct caused or was intended to cause harm to human life or loss of human life.
28. The court must also consider: the best interests of the child if the person is either a child or has dependent children in Australia; the person's connection to the other country of which they are a national or citizen; and the availability of the rights of citizenship of that country to the person (s 36C(6)).
29. There were a number of amendments proposed in the Senate before the Bill was passed that were not accepted and do not form part of the final Act. The Commission understands that these proposed amendments are also being considered by the PJCIS.

## 2.3 Summary of key concerns

30. The Commission is concerned by the following features of the new regime introduced by the Citizenship Repudiation Act:
  - a. the lower threshold for determining dual citizenship, increasing the risk of statelessness
  - b. the low three year sentencing threshold for relevant serious offences and the calculation of that threshold for concurrent sentences
  - c. the list of serious offences and proposed amendments that if accepted would significantly expand the list
  - d. the impacts on children as young as 14 years old
  - e. its retrospective application.
31. More generally, the Commission reiterates its previous view that it is questionable whether the stripping of citizenship will effectively enhance public safety and national security,<sup>6</sup> raising concerns about the reasonableness, necessity and proportionality of these powers.
32. The Commission's concerns are more acute with respect to the potential removal of a child's Australian citizenship, raising potential compliance issues with Australia's voluntarily adopted obligations under the *Convention on the Rights of the Child (CRC)*.<sup>7</sup>
33. Violent extremism is a complex and multi-causal phenomenon, and needs to be addressed in a multidisciplinary manner that heeds local and national drivers.<sup>8</sup> Expert commentary has suggested that stripping of citizenship serves a largely symbolic function, rather than any clear national security purpose.<sup>9</sup>
34. Citizenship cessation should also be considered in the context of the other powers already available to national security, intelligence and law enforcement agencies to address the threat of terrorism. This includes extensive powers of surveillance, a low threshold for arrest, the extended ability to conduct post-arrest questioning under Part IC of the *Crimes Act 1914 (Cth)*, and the broad range of preparatory and substantive offences.
35. The Commission considers that the further amendments should be made to the Citizenship Act in accordance with the recommendations below.

## 2.4 Recommendations

The Commission makes the following recommendations:



**Recommendation 1**

Section 36C(2) of the Citizenship Act be replaced with a requirement that a person must not be deprived of their Australian citizenship unless the person is a national or citizen of a country other than Australia.

**Recommendation 2**

Section 36C(6)(c) of the Citizenship Act be amended to include the requirement that the Court must have regard to the practical ability of a person effectively accessing their other nationality or citizenship so as to consider whether there is a risk of *de facto* statelessness.

**Recommendation 3**

Section 36C(1) of the Citizenship Act be amended, with the result that loss of citizenship is only possible in respect of relevant convictions where a person has been sentenced to a period of imprisonment of at least six years, or to periods of imprisonment that total at least six years.

**Recommendation 4**

Section 36C(8) of the Citizenship Act be amended so that when the total period of imprisonment is calculated, concurrent sentences are counted only once. For example, if a person is convicted of two serious offences and the court imposes two period of two years imprisonment to be served concurrently, the total period of imprisonment is two years.

**Recommendation 5**

The defined list of serious offences under s 36C(3) of the Citizenship Act be confined to only serious terrorism-related offences and any proposal to expand the application of citizenship cessation to non-terrorism related offences should not be accepted.

**Recommendation 6**

The Citizenship Act be amended so that children below the age of 18 years are exempt from the citizenship cessation provisions.

**Recommendation 7**

The Citizenship Act be amended so that the court can only make a citizenship cessation order for serious criminal offences where the conduct to which the conviction(s) relates occurred after the passing of the Citizenship Repudiation Act.

## Recommendation 8

If Recommendation 7 is not accepted, then the retrospective application of the Citizenship Repudiation Act should only extend to 17 September 2020, which is when the Citizenship Cessation Act received royal assent.

# 3 Relevant human rights

## 3.1 The right to enter and remain in one's own country

36. Article 12(4) of the *International Covenant on Civil and Political Rights* (ICCPR) provides that 'no one shall be arbitrarily deprived of the right to enter his own country'.<sup>10</sup>
37. In its General Comment No 27, the United Nations Human Rights Committee (UN HR Committee) has stated that article 12(4) includes an implied right to *remain in one's own country*.<sup>11</sup>
38. General Comment No 27 further provides that the concept of one's 'own country' is broader than that of nationality.<sup>12</sup> The concept includes non-nationals who have special ties or an enduring connection to a particular country. Relevant factors will include a person's length of residence, personal and family ties, intention to remain, and lack of these ties to other countries.<sup>13</sup>
39. Deprivation of Australian citizenship does not sever a person's connection with Australia as their 'own country' and there are many circumstances in which citizenship cessation will not sever a person's connection with Australia as their 'own country'.
40. Furthermore, a person who loses their Australian citizenship while in Australia will be granted an ex-citizen visa<sup>14</sup> that will allow them to remain in Australia but not re-enter Australia. It is likely, however, that their ex-citizen visa will be subject to cancellation under the *Migration Act 1958 (Cth)* on character grounds. They would then face immigration consequences, including becoming liable for removal from Australia and mandatory detention pending removal.<sup>15</sup>
41. These provisions therefore clearly interfere with the right of an affected person to enter and remain in their own country, Australia. The critical question then becomes whether the limitation is an arbitrary interference.
42. The UN HR Committee has stated in relation to article 12(4):
 

[A]rbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even

interferences provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable.<sup>16</sup>

### 3.2 Children's rights

43. Children enjoy all the same human rights protections as adults under key international human rights conventions such as the ICCPR, as well as particular and special protections under the CRC.
44. International human rights law recognises that, in light of their evolving physical and mental capacities, and developing neurological makeup, children have a special need of safeguards, care and protection and should therefore be treated differently from adults.<sup>17</sup>
45. Relevantly, article 3 of the CRC requires the government to consider the best interests of the child as a primary consideration in decision-making:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
46. Article 8(1) of the CRC protects the right of children to preserve their identity, which includes their nationality and family relations:

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
47. Children are also protected against arbitrary or unlawful interferences with their privacy, family and home under article 16(1) of the CRC.
48. With respect to children who may have been involved in armed conflict and have returned to Australia, the Commission has also previously recommended that the Australian Government ensure the provision of appropriate and specific physical and psychological rehabilitation.<sup>18</sup>

### 3.3 Statelessness and other human rights

49. Australia has voluntarily assumed obligations under the *Convention on the Reduction of Statelessness* (Statelessness Convention).<sup>19</sup> Article 8(1) of the Statelessness Convention provides that a state 'shall not deprive a person of its nationality if such deprivation would render him stateless'.<sup>20</sup>

50. Article 15(2) of the *Universal Declaration of Human Rights* (UDHR) further provides that 'no one shall be arbitrarily deprived of his nationality'.<sup>21</sup> This prohibition is considered to be a rule of customary international law.<sup>22</sup>
51. If a person's Australian citizenship is removed on the incorrect understanding that they are the citizen or national of another country, they may be made stateless in contravention of these obligations.
52. Removal of citizenship is likely to significantly limit numerous other human rights in ways that may be extensive and not immediately apparent. For example, removal of citizenship may lead to loss of a passport,<sup>23</sup> removal from the electoral roll,<sup>24</sup> and loss of entitlement to social security benefits.<sup>25</sup> It would change the activities that intelligence organisations such as the Australian Secret Intelligence Service and the Australian Signals Directorate can undertake with respect to a person.<sup>26</sup>
53. It may also lead to mandatory (and lengthy) immigration detention and/or involuntary deportation. Immigration detention, or an inability to re-enter Australia, may in turn interfere with a person's family life contrary to articles 17 and 23 of the ICCPR. Removal of a person who was born, raised, or who has spent a long period of their life in Australia could result in forced relocation to a country where they have no family or social connections and that is entirely culturally or otherwise unfamiliar.

## 4 Key human rights issues

### 4.1 Risk of statelessness

#### (a) *Lower threshold of 'satisfaction'*

54. In its 2019 submission, the Commission expressed the concern at [125] that the Citizenship Cessation Act would weaken the safeguard in the Citizenship Act that protects against a person being made stateless.
55. Prior to the amendments made in 2020 by the Citizenship Cessation Act, the Citizenship Act only permitted Australian citizenship to be removed if the person was a national or citizen of a country other than Australia at the time of removal. The test was a question of fact that required that a person *be* a dual citizen. This was consistent with Australia's obligations under article 8(1) of the Statelessness Convention.
56. The Citizenship Cessation Act amended the Citizenship Act so that it changed the test of whether a person would be rendered stateless from a question of fact to a subjective threshold of 'satisfaction' of the Minister.

57. The new s 36C(2) under the Citizenship Repudiation Act provides that the Court must not make a citizenship cessation order if ‘the court is satisfied that the person would, if the court were to make the order, become a person who is not a national or citizen of any country’. While the threshold of ‘satisfaction’ has transferred from the Executive to the judiciary, this provision maintains the lowered threshold of determining dual nationality and leaves open the possibility that a person could have their Australian citizenship cancelled on the basis of a mistaken satisfaction by the court that they had citizenship of another country.
58. When the Citizenship Cessation Act was first introduced, the Explanatory Memorandum justified shifting the question of dual nationality to a threshold of ‘satisfaction’ by stating that:
60. The operation of new section 36B is limited to persons that the Minister is satisfied are nationals or citizens of a country other than Australia. The purpose of this amendment is to ensure that the application of this provision **will not result in a person becoming stateless.**
- ...
62. The requirement that the Minister be satisfied that a person would not become a person who is not a national or citizen of any country differs slightly from the formulation in the provision in existing sections 33AA and 35 of the Citizenship Act. Currently, a person’s citizenship can only cease under section 33AA or 35 of the Citizenship Act if, as a matter of fact, they are a national or citizen of another country.
63. In order to facilitate the Minister’s power to make a determination with regard to cessation of citizenship under new section 36B(1), the Minister needs to be satisfied that the person would not become a person who is not a national or citizen of any country. The Minister will be required to turn his or her mind to the issue, using the materials available to him or her at the time. This adjusts the current threshold in relation to this issue, and adds additional safeguards, namely:
- the Minister must revoke his decision on application by a person, under new subparagraph 36H(3)(a)(i) if he is satisfied that a person is not a national or citizen of any country.
  - the determination will be automatically revoked under new paragraph 36K(1)(c) if a court finds that the person was not a national or citizen of any country other than Australia at the time the determination was made.

[emphasis added]

59. The Explanatory Memorandum to the Citizenship Repudiation Bill provided no further explanation for maintaining the threshold of 'satisfaction' and not returning to the stronger safeguard where the question of the person's dual nationality or citizenship was a jurisdictional fact. It states only that the court's decision to make the order 'must be informed further by its consideration of the person's connection to their other country of citizenship'.<sup>27</sup> Nor do the current provisions contain safeguards in the nature of the previous ss 36H(3)(a)(i) or 36K(1)(c) against a wrong decision on dual nationality being made.
60. Changing the identity of the person who must be 'satisfied' of the dual nationality from the Minister to the court provides some additional protection against statelessness, but it still carries with it the risk of a binding decision on mistaken premise.
61. The 'satisfaction' threshold removes the need for a person to be a national or citizen of a country other than Australia, as a *precondition* or jurisdictional fact that enlivens the ability of the court to exercise the power to remove a person's citizenship. This test provides less rigorous protection against the risk of statelessness for two reasons.
62. First, as mentioned above, the test of satisfaction itself is a lower threshold as the court is only required to be satisfied of a particular matter, which is not the same as requiring that the particular matter actually exists.
63. Secondly, because s 36(2) operates as an exception, there is a risk that the onus may be placed on the person whose Australian citizenship is proposed to be cancelled to demonstrate that they do not have another citizenship.
64. The question of a person's foreign citizenship status can be highly complex and involve technical considerations of foreign law and practice. It is not something that can be decided solely by reference to Australian law. Section 36D(4)(c) of the Citizenship Act requires the Minister to provide to the court information about a person's nationality or citizenship of other countries. The Explanatory Memorandum states at [55] that this ensures that 'the Minister is provided with an opportunity to put before the court that the person is a national or citizen of another country, as well as Australia, and therefore in scope of the court's power to order citizenship cessation on conviction for one or more "serious offences"'.<sup>28</sup>
65. Conversely, the person at risk of losing their Australian citizenship will bear the burden of putting evidence before the court that they are not a national or citizen of another country and will become stateless. This requires proof of a negative which will leave the person with little to no documentary evidence.<sup>28</sup> There are inherent difficulties in proving statelessness and the

UNHCR recommends that a finding of statelessness is warranted ‘where it is established to a “reasonable degree” that an individual is not considered as a national by any State under the operation of its law’.<sup>29</sup> This is a substantially different threshold to the one contained in the Citizenship Act.

66. It is the Commission’s assessment that the current amendments under the Citizenship Repudiation Act raises a serious risk of conflict with article 15(2) of the UDHR, the Statelessness Convention and the CRC.
67. The consequences of statelessness are severe. A stateless person is denied all the privileges and protections of citizenship. They face marginalisation, disempowerment and limitations upon many of their civil, political, economic and social rights, including the right to vote, freedom of movement, property ownership, healthcare, work and education. The family of a stateless person, and especially any dependants, will likely also be subject to diminution of their human rights.
68. The Commission considers that, given the severe consequences, the appropriate threshold for assessing dual nationality is as a question of fact, not the lower threshold of ‘satisfaction’. This was also the recommendation of Labor members the Hon Anthony Byrne MP, the Hon Mark Dreyfus QC MP, Senator Jenny McAllister and Senator the Hon Kristina Keneally, in their additional comments to the Committee in its inquiry into the Citizenship Cessation Bill.<sup>30</sup> This test would provide stronger legislative protection against statelessness, by preventing a loss of citizenship if the person does not in fact have citizenship of another country.

### **Recommendation 1**

Section 36C(2) of the Citizenship Act be replaced with a requirement that a person must not be deprived of their Australian citizenship unless the person is a national or citizen of a country other than Australia.

#### *(b) De facto statelessness*

69. The current test for determining whether a person is or is not a national or citizen of another country under the Citizenship Act does not allow for adequate consideration of the potential for *de facto* statelessness. *De facto* statelessness is when a person may be a national or citizen of a country in name, but they cannot in reality effectively access their nationality or citizenship. For example, Faili Kurd refugees with paternal Iranian ancestry are considered Iranian nationals yet only a small number have succeeded in obtaining evidence of their Iranian citizenship.<sup>31</sup>

70. Section 36C(6)(c) of the Citizenship Act requires the court to have regard to 'the person's connection to the other country of which the person is a national or citizen and the availability of the rights of citizenship of that country to the person'. According to the Explanatory Memorandum, this inclusion 'reflects appropriate safeguards in terms of human rights and compliance with Australia's international obligations, and ensures these safeguards apply to the exercise of the court's discretion'.<sup>32</sup>
71. The Commission is not convinced, however, that this requirement provides a particularly robust safeguard as it does not explicitly require the court to consider the practical difficulties a person may have in obtaining evidence of their nationality or citizenship of the other country or being able to return and live in that country.

### **Recommendation 2**

Section 36C(6)(c) of the Citizenship Act be amended to include the requirement that the Court must have regard to the practical ability of a person effectively accessing their other nationality or citizenship so as to consider whether there is a risk of *de facto* statelessness.

## **4.2 Low three year threshold for period of imprisonment to make a citizenship cessation order**

72. The Commission welcomes the repeal of the previous ss 36B and 36D and the removal from the Minister the power to make determinations to cease Australian citizenship of dual citizens for terrorism-related conduct or convictions. The Commission considers that the criminal justice system is best placed to establish that criminal conduct has occurred and to assess its seriousness, applying prospective and clear legislative requirements.
73. However, in line with Recommendation 2 made by the Commission to the Committee in our 2019 submission, the Commission considers that the threshold for period of imprisonment required before a court can make a citizenship cessation order should be at least six years, not three years.
74. The Commission also considers that the calculation of the total period of imprisonment when a person has been convicted of two or more serious offences and the court has imposed concurrent sentences is inappropriate.
75. Under the original citizenship cessation provisions enacted in 2015, a person with a relevant terrorism conviction was only eligible for removal of citizenship when they had been sentenced to a period of imprisonment of at least six years or to periods that total at least six years (for convictions from 12 December 2015), or to a period of imprisonment of at least ten



years or to periods that total at least ten years (for convictions from 12 December 2005 to 12 December 2015).

76. In 2020, the Citizenship Cessation Act lowered the threshold to a sentence of a period of imprisonment of at least three years, or to periods of imprisonment that total at least three years.
77. The Citizenship Repudiation Bill maintains this lowered threshold and calculates the total period of imprisonment for two or more convictions for serious offences by adding the periods of imprisonment even if the court imposed concurrent sentences. For example, if a person is convicted of two serious offences and the court has decided to impose on the person two periods of two years imprisonment to be served concurrently, the total period of imprisonment is calculated as four years, not two. This means that a person who in practice will only be imprisoned for two years, will still be eligible for citizenship cessation should the Minister apply for, and the court decide to make, the order.
78. The Explanatory Memorandum to the Bill provides at [26] that the three year threshold reflects the ‘seriousness and significance of offences to which citizenship cessation would apply’ and that ‘it is necessary to ensure the safety of the Australian community, and ensure people who have repudiated their allegiance to Australia through their actions no longer remain part of the Australian community’.
79. The Commission considers that this explanation provides no cogent justification for again lowering the sentencing threshold and the method of calculation, which subjects a greater number of people to potential loss of citizenship.
80. Senator Thorpe proposed amending the Citizenship Repudiation Bill by increasing the threshold for minimum period of imprisonment to five years<sup>33</sup> and amending the calculation of the total period of imprisonment so that concurrent sentences are counted only once.<sup>34</sup> The Commission agrees with Senator Thorpe’s latter amendment but considers that there has not been any sufficient justification provided for departing from the previous threshold of a six year minimum sentence.
81. The 2015 six year threshold was originally implemented in accordance with a previous recommendation of the PJCIS with respect to the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth) (the Allegiance to Australia Bill). This recommendation by the Committee was made on the basis that, even following a conviction for a relevant offence:

[T]here will still be degrees of seriousness of conduct and degrees to which conduct demonstrates a repudiation of allegiance to Australia ... loss of

citizenship should be attached to more serious conduct and a greater severity of sentence, and it was considered that a six year sentence would appropriately reflect this.<sup>35</sup>

82. Further, the INSLM's report states that a key aspect of his finding that the conviction-based regime is necessary and proportionate is that there are appropriate safeguards to protect the rights of individuals, and to ensure an appropriate and flexible response to the circumstances of each individual, including that:
 

[T]here is a substantial sentence of imprisonment of six years or more, imposed by a judge, which shows the level of seriousness of the conduct ...<sup>36</sup>
83. The Commission reiterates the concern that citizenship stripping does not effectively enhance public safety and national security and serves a largely symbolic function. The power to make a citizenship cessation order should therefore only occur in the most exceptional circumstances, where the gravest criminal conduct also repudiates one's allegiance to Australia.
84. The seriousness of the degree of conduct can be determined by reference to the criminal sentence imposed by a court as a court imposing a sentence is expressly required, and uniquely well placed, to assess the risk posed by an individual to the Australian community.
85. Where a court imposes a heavy sentence, this signals, among other things, that the conduct is serious and that the person is a risk to the community. By contrast, a lighter sentence can signify a lower risk to the community, or even that the individual may have committed a technical or otherwise less culpable contravention of the criminal law.
86. Under the provisions of the Citizenship Act as recently amended, cessation of Australian citizenship would be available for someone in the circumstances of Ms Zainab Abdirahman-Khalif. The background to her case was described in a submission from the Commission to the PJCIS on 10 September 2020.<sup>37</sup> This 21 year old woman was convicted of having taken an active step to become a member of a terrorist organisation and sentenced to a term of imprisonment for 3 years, however the prosecution made clear at her trial that it was not any part of their case that she was involved in any way in any act of violence, or that she was planning or intending to commit any act of violence.
87. Reinstating the six year imprisonment requirement would help ensure that only conduct with a higher degree of culpability, and therefore also a likely closer nexus to conduct that repudiates allegiance to Australia, is eligible for removal of citizenship.

### Recommendation 3

Section 36C(1) of the Citizenship Act be amended, with the result that loss of citizenship is only possible in respect of relevant convictions where a person has been sentenced to a period of imprisonment of at least six years, or to periods of imprisonment that total at least six years.

### Recommendation 4

Section 36C(8) of the Citizenship Act be amended so that when the total period of imprisonment is calculated, concurrent sentences are counted only once. For example, if a person is convicted of two serious offences and the court imposes two period of two years imprisonment to be served concurrently, the total period of imprisonment is two years.

## 4.3 List of serious offences

88. Section 36C(3) of the Citizenship Act defines 'serious offence' and it includes offences that are similar, but not identical, to the terrorism-related offences that could trigger loss of citizenship under the repealed s 36D. The serious offences include:
- a. international terrorist activities using explosive or lethal devices
  - b. treason
  - c. advocating mutiny
  - d. espionage
  - e. foreign interference
  - f. terrorism and terrorism related activities, such as engaging in a terrorist act, providing or receiving training connected with terrorist acts or organisations, any act in preparation for, or planning, a terrorist act, membership of or directing activities of a terrorist organisation, recruiting for a terrorist organisation, financing terrorism or providing support to a terrorist organisation
  - g. foreign incursions and recruitment.
89. The offence of advocating mutiny (s 83.1 of the Criminal Code) is a new addition that did not form part of the repealed s 36D. Unlike the other serious offences included in the definition (which attract a maximum penalty for at least 10 years imprisonment or more), advocating mutiny attracts a maximum penalty of imprisonment for 7 years.
90. The Commission is concerned about the addition of a new offence that imposes a maximum penalty of imprisonment of less than 10 years. This is

counter to the PJCIS' recommendation in its advisory report on the Allegiance to Australia Bill, in which it considered that the list of offences should 'more appropriately target the most serious conduct that is closely linked to a terrorist threat' and recommended 'removal of offences with a maximum penalty of less than 10 years imprisonment'.<sup>38</sup>

91. Furthermore, prior to the Citizenship Repudiation Bill passing, Senator Cash introduced amendments that would have significantly expanded the list of serious offences as defined by s 36C(3) to include non-terrorism related offences.<sup>39</sup> While Senator Cash's suggested amendments were not accepted and do not form part of the final Act passed, the Commission understands that the PJCIS will be reviewing the amendments that were introduced into Parliament but did not pass.
92. Senator Cash's amendments include offences such as slavery and slavery-like offences, harm to Australian citizens or residents outside Australia, torture, child sex offences outside Australia, and use of carriage service for child sex offences.
93. Prior to amendments introduced to the Citizenship Act by the Allegiance to Australia Bill in 2015, conduct that demonstrated repudiation of citizenship was limited to when a person was a national or citizen of another country and served in the armed forces of a country at war with Australia.<sup>40</sup> This is the kind of conduct to which any citizenship cessation regime should be directed. The introduction of a citizenship cessation regime in 2015 by the Allegiance to Australia Bill was thought necessary only in 'specified circumstances where a dual citizen repudiates their allegiance to Australia by engaging in terrorism-related conduct'.<sup>41</sup> The Commission does not support a more general regime of exile for serious offences condemned by Australia. Those committing such offences should be punished in accordance with longstanding provisions of the criminal justice system.
94. The Commission is of the view that expanding the citizenship cessation provisions to encompass a broad range of offences unrelated to terrorism or terrorist-related activity should not be done. The proposed amendments blur the line between serious offences that rightly attract harsh punishment and societal opprobrium, from offences that demonstrate that a person has *themselves* renounced their allegiance to Australia.
95. Section 36A of the Citizenship Act states in relation to the citizenship cessation provisions:

This Subdivision is enacted because 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 shared values of the Australian community, demonstrate that they have severed that bond and repudiated their allegiance to Australia.

96. The Explanatory Memorandum for the Citizenship Repudiation Bill states:

This provision expressly addresses the individual who, though previously a citizen, has acted so inimically to Australia's interests as to repudiate the obligations of citizenship on which membership of the people of the Commonwealth depends. Such conduct voluntarily undertaken might be so incompatible with the values of the Australian people as to be seen to be incompatible with continued membership of the Australian body politic, and therefore be interpreted as repudiating that membership.

Repudiation is characterised by conduct, voluntarily undertaken, that is serious and significant, such as fighting for, or being in the service of, a declared terrorist organisation, or serving in the armed forces of a country at war with Australia (referred above in the description of serious offences).

97. The additional offences suggested by Senator Cash, while no doubt serious offences, do not involve conduct that can be characterised as repudiating their allegiance to Australia. Their inclusion Australia's citizenship cessation regime is not appropriate.

### **Recommendation 5**

The defined list of serious offences under s 36C(3) of the Citizenship Act be confined to only serious terrorism-related offences and any proposal to expand the application of citizenship cessation to non-terrorism related offences should not be accepted.

## **4.4 Impact on children**

98. The Commission is particularly concerned about the potential human rights impact of citizenship loss on children.
99. While the Commission welcomes the fact that the recent amendments to the Citizenship Act have raised the age at which a child can lose their Australian citizenship for relevant criminal conviction from ten years of age to fourteen years of age, the Commission does not consider that children of any age should have their citizenship removed.
100. As mentioned above, international human rights law recognises that children have special need of safeguards, care and protection and should be treated differently from adults.<sup>42</sup> In recognition of that fact, Australia has ratified the CRC, which requires primary consideration to be given to the best interests of the child (article 3) and guarantees the right of children to preserve their identity including their nationality (article 8(1)).

101. Removal of a child’s citizenship, and consequent loss of their right to enter or remain in Australia, is even more likely to be arbitrary in contravention of article 12(4) of the ICCPR than in the case of an adult. That is so for a range of reasons, including that a child is less culpable for wrongdoing, is more vulnerable to any adverse consequences, and is at risk of exploitation or manipulation by adults.
102. The Commission supports the decision-making criteria in s 36C(6) of the Citizenship Act, that requires the court to consider the best interests of the child before making a determination to either remove the citizenship of a person aged under 18 or remove the citizenship of a person who has dependent children in Australia.
103. In assessing the best interests of a child under article 3 of the CRC, the Commission notes that it is necessary to take into account all of the circumstances of the particular child and the particular action.<sup>43</sup> Article 3 also requires that procedural safeguards are implemented that allow children to express their views,<sup>44</sup> to ensure that decisions and decision-making processes are transparent,<sup>45</sup> and that provide mechanisms to review decisions.<sup>46</sup>
104. Overall, removal of a child’s citizenship is extremely difficult to justify under international law. The Committee on the Rights of the Child, in concluding observations made with respect to Australia, has stated:
- With reference to article 8 of the Convention, the Committee further recommends that the State party undertake measures to ensure that no child is deprived of citizenship *on any ground* regardless of the status of his/her parents.<sup>47</sup> [emphasis added]
105. Currently, the minimum age of responsibility for commonwealth offences is ten years of age, mitigated by the principle of *doli incapax*. This age is comparatively low compared with many other countries.<sup>48</sup> There have been increasing and repeated calls for raising this age, including by expert bodies. In recent years, some states and territories in Australia have raised the age to between 12 and 14, including the ACT and Victoria.
106. The United Nations Committee on the Rights of the Child, in its Draft General Comment No 24, has stated that the desirable minimum age of criminal responsibility is at least 14 years old. However, it has commended states to adopt a higher minimum age, for instance at least 15 or 16 years old. The Commission has previously expressed its support for this position,<sup>49</sup> and the availability of appropriate diversionary programs for children.

107. Research into brain development shows that children have not developed the requisite level of maturity to form the necessary intent for full criminal responsibility, and that ‘maturation of the prefrontal cortex occurs gradually over adolescence and is near completion by 18 years’.<sup>50</sup>
108. While the Commission supports raising the age of criminal responsibility to at least 14 years of age, we consider that, given the profound impact and severity of citizenship stripping, no children, regardless of age, should be subject to citizenship cessation or the related result and adverse impact of citizenship removal.
109. The Commission considers that the citizenship loss provisions do not adequately protect the best interests and right to nationality of Australian children.

### **Recommendation 6**

The Citizenship Act be amended so that children below the age of 18 years are exempt from the citizenship cessation provisions.

## **4.5 Retrospectivity**

110. Article 15(1) of the ICCPR prohibits retrospective criminal laws, including the imposition of heavier penalties than the one applicable at the time the offence was committed.
111. The Commission welcomes the fact that the court’s powers to make a citizenship cessation order is only available to *sentencing* that occurs after this Citizenship Repudiation Act passed and to this extent is not retrospective.
112. However, the Minister can apply for a citizenship cessation order for relevant serious offences that relate to *conduct* that occurred at any time on or after 12 December 2015. The effect is retrospective application of citizenship removal, capturing conduct that occurred up to 8 years before the passage of the Citizenship Repudiation Act.
113. The practical effect is that dual citizens who engaged in relevant criminal conduct up to 8 years ago and are now facing a sentence of imprisonment for at least three years in total could have their citizenship removed as part of any sentencing that occurs from now for that criminal conduct.
114. Prior to the Citizenship Cessation Act, only convictions that resulted in a sentence of six years or more could be considered for citizenship cessation. The Citizenship Cessation Act in 2020, reduced that threshold to three years.

115. To deprive a person of their citizenship ‘imposes profound detriment on the individual’, ‘is a permanent rupture in the relationship between the individual and the State’ and ‘involves loss of fundamental rights of nationality and citizenship with immediate effect and permanently’.<sup>51</sup> The Commission considers that any retrospective application of such laws must be sufficiently explained or justified by the Government.
116. The Statement of Compatibility with Human Rights to the Citizenship Repudiation Bill states that:
- It is necessary to extend this ability to ensure the safety of the Australian community, and to ensure people who have repudiated their allegiance to Australia through their actions no longer remain part of the Australian community ...
- The measures do not introduce any new criminal offences. However extending the ability to cease a person’s citizenship for criminal offences dating back to 12 December 2015 where the person may be sentenced to a term of imprisonment of at least three years, or a total of three years, where the conviction occurs after the commencement of this Bill, also recognises that past terrorist conduct is conduct that all Australians view as repugnant and in contradiction with the values that define our society. The measure is also proportionate as suspended sentences are specifically excluded.<sup>52</sup>
117. The Commission has previously articulated in detail why it considers that, in the present context, the removal of citizenship constitutes a penalty in a manner that is inconsistent with article 15(1) of the ICCPR.<sup>53</sup> The punitive nature of citizenship cessation has been upheld by the High Court in a number of recent cases, including *Alexander* and *Benbrika*. That the amendments introduced by the Citizenship Repudiation Act provide for citizenship cessation orders to be imposed only by a court as part of sentencing so that it is imposed as ‘a consequence at the court’s discretion’, further emphasises its characteristic as a penalty.<sup>54</sup>
118. Retrospective laws, and in particular criminal laws, are generally contrary to the rule of law. It is a fundamental principle that the existence of an offence and penalty be established prospectively, as reflected in the common law presumption against retrospectivity.<sup>55</sup>
119. The Commission notes that the retrospectivity of the originally introduced citizenship removal powers in the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015 (Cth)* was restricted to individuals convicted of a relevant offence with a term of at least ten years imprisonment, within ten years prior to the passage of that Act.



120. The ten year limit on retrospective application implemented a recommendation previously made by the PJCIS. In this respect, the PJCIS stated:

6.85 The Committee acknowledges the concerns raised by stakeholders. The Committee acknowledges that retrospectivity should only be applied with great caution and following careful deliberation, with regard to the nation as a whole.

6.86 While some members of the Committee expressed concern regarding the principle of retrospective application, on balance the Committee determined these to be special circumstances. The Committee formed the view that past terrorist-related conduct, to which persons have been convicted under Australian law, is conduct that all members of the Australian community would view as repugnant and a deliberate step outside of the values that define our society.

...

Recommendation 10: The Committee recommends that proposed section 35A of the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 be applied retrospectively to convictions for relevant offences where sentences of ten years or more have been handed down by a court.

The Ministerial discretion to revoke citizenship must not apply to convictions that have been handed down more than ten years before the Bill receives Royal Assent.<sup>56</sup>

121. It is significant that when this Committee considered the retrospective application of the 2015 amending Act, it recommended that offences in the past be *more* serious than those provided for in the amendments, bearing in mind the serious consequences of retrospective legislation. While the Act provided for citizenship cancellation upon being sentenced to at least six years for specified offences a person was convicted of in the future, the Act would only apply to offences a person had previously been convicted of if the sentence imposed was at least ten years.

122. In 2020, the Citizenship Cessation Act simultaneously extended the period of retrospectivity even further while also significantly decreasing the seriousness of the conduct to which the provisions would have retrospective application. In the case of conduct resulting in a conviction, the Act applied retrospectively if the person was sentenced to only three years imprisonment. That this was directly inconsistent with the PJCIS' recommendations in 2015 was noted by Labor members the Hon Anthony Byrne MP, the Hon Mark Dreyfus QC MP, Senator Jenny McAllister and Senator the Hon Kristina Keneally, in their additional comments to the Committee in its inquiry into the Citizenship Cessation Bill before it was

passed.<sup>57</sup> Their comments included an observation that ‘retrospective laws that affect fundamental rights – may be warranted in a democracy’ but ‘the circumstances will be very rare and must always be clearly justified’. The Labor members recommended that the Citizenship Cessation Act should not have any retrospective application.<sup>58</sup>

123. The Commission queries why retrospective application was proposed for the Citizenship Repudiation Bill without any compelling justification, in a manner so out of step with the previous recommendation of this Committee.
124. The Commission considers that extending retrospectivity generally reduces the proportionality of the Bill with respect to its purported goals. Further, affected persons would not have known at the earlier time that they may be liable to Australian citizenship removal and the severe human rights consequences that flow from it.
125. The Commission notes that the court will be required to consider factors including the severity of the conduct, the degree, duration or scale of the person’s commitment to or involvement in the conduct, intended and actual impact of the conduct and whether the conduct caused or was intended to cause harm to or loss of human life. The Commission, however, holds concerns that the decision-making criteria and other safeguards are inadequate to properly protect human rights, as discussed above.
126. The Commission opposes any retrospective application of the citizenship cessation power.

### **Recommendation 7**

The Citizenship Act be amended so that the court can only make a citizenship cessation order for serious criminal offences where the conduct to which the conviction(s) relates occurred after the passing of the Citizenship Repudiation Act.

### **Recommendation 8**

If Recommendation 7 is not accepted, then the retrospective application of the Citizenship Repudiation Act should only extend to 17 September 2020, which is when the Citizenship Cessation Act received royal assent.

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- <sup>1</sup> Australian Human Rights Commission, *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 (Cth)*, submission to the Parliamentary Joint Committee on Intelligence and Security, 14 October 2019 at <https://www.aph.gov.au/DocumentStore.ashx?id=3264b3cf-063d-48b1-8668-39d76111ec2a&subId=671324> and Australian Human Rights Commission, *7.1 Supplementary to submission 7* at <https://www.aph.gov.au/DocumentStore.ashx?id=baa6f0da-7a97-49c2-bf63-92e1829f1804&subId=671324>.
- <sup>2</sup> Australian Human Rights Commission, Submission to the Independent National Security Legislation Monitor, *Review of citizenship loss provisions in the Australian Citizenship Act 2007 (Cth)*. At <https://humanrights.gov.au/our-work/legal/submission/review-citizenship-loss-provisions-australian-citizenship-act-2007-cth>.
- <sup>3</sup> Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Intelligence and Security, *Australian Citizenship Amendments (Strengthening the Citizenship Loss Provisions) Bill 2018 (Cth)*. At <https://www.aph.gov.au/DocumentStore.ashx?id=804cc1f2-83bc-49ba-bd3e-d48b44b4da70&subId=664696>.
- <sup>4</sup> *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 12(4).
- <sup>5</sup> Explanatory Memorandum, Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 (Cth) 2.
- <sup>6</sup> Statement of Compatibility with Human Rights, Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 (Cth) 1-3.
- <sup>7</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, [1991] ATS 4 (entered into force 2 September 1990) arts 3, 8(1).
- <sup>8</sup> See for example UN Secretary-General, *Plan of Action to Prevent Violent Extremism*, UN Doc A/70/674 (24 December 2015).
- <sup>9</sup> Sangeetha Pillai and George Williams, 'The Utility of Citizenship Stripping Laws in the UK, Canada and Australia' (2017) 41(2) *Melbourne University Law Review* 845, 881; 885.
- <sup>10</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
- <sup>11</sup> United Nations Human Rights Committee, *General Comment No 27: Article 12 (Freedom of Movement)* 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999) 5 [19].
- <sup>12</sup> United Nations Human Rights Committee, *General Comment No 27: Article 12 (Freedom of Movement)* 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999) 5 [20].
- <sup>13</sup> See for example United Nations Human Rights Committee, *Views: Communication No. 1557/2007*, 102<sup>nd</sup> sess, UN Doc CCPR/C/102/D/1557/2007 (1 September 2011) 18 [7.4] ('Nystrom v Australia').
- <sup>14</sup> *Migration Act 1958 (Cth)* s 35.
- <sup>15</sup> *Migration Act 1958 (Cth)* ss 189, 198.
- <sup>16</sup> United Nations Human Rights Committee, *General Comment No 27: Article 12 (Freedom of Movement)* 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999) 5 [21].
- <sup>17</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, [1991] ATS 4 (entered into force 2 September 1990) preamble; *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg UN Doc A/810 (10 December 1948) article 25(2).
- <sup>18</sup> Australian Human Rights Commission, Submission to the United Nations Committee on the Rights of the Child, *Information relating to Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of*

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- children, child prostitution and child pornography, and second report on the Optional Protocol on the involvement of children in armed conflict (1 November 2018).
- <sup>19</sup> *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).
- <sup>20</sup> Relevant exceptions to article 8(1) of the *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975) include where a person has conducted himself in a manner seriously prejudicial to the vital interests of the State, or where the person has given definite evidence of his determination to repudiate his allegiance. However, for a state to rely on these exceptions, article 8(3) provides that the State must specify that it retains the right to deprive a person of his nationality on those grounds, as at the time of signature, ratification or accession of the Convention, and that the grounds need to exist in domestic law at the relevant time. Australia has made no such declaration.
- <sup>21</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg UN Doc A/810 (10 December 1948) art 15.
- <sup>22</sup> See for example Michelle Foster and H  l  ne Lambert, 'Statelessness as a human rights issue: a concept whose time has come' (2016) 28(4) *International Journal of Refugee Law* 564, 578; United Nations Human Rights Council, Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General, 13th sess, Agenda item 3, UN Doc A/HRC/13/34, (14 December 2009) 5–6 [19–22].
- <sup>23</sup> *Australian Passports Act 2005 (Cth)* ss 8, 22.
- <sup>24</sup> *Commonwealth Electoral Act 1918 (Cth)* ss 93, Parts VI-X.
- <sup>25</sup> *Social Security Act 1991 (Cth)* s 7 and various other provisions. Australian residence is generally a precondition of receipt of social security payments.
- <sup>26</sup> See for example *Intelligence Services Act 2001 (Cth)* s 15.
- <sup>27</sup> Explanatory Memorandum, Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 (Cth) 4.
- <sup>28</sup> UNHCR, *Handbook on the Protection of Stateless Persons* (2014) 34.
- <sup>29</sup> UNHCR, *Handbook on the Protection of Stateless Persons* (2014) 34-35.
- <sup>30</sup> Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (September 2015) 74.
- <sup>31</sup> Department of Foreign Affairs and Trade, *DFAT Country Information Report Iran*, 24 July 2023 at [2.60].
- <sup>32</sup> Explanatory Memorandum, Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 (Cth) [42].
- <sup>33</sup> Amendment 2323 to the Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 to be moved by Senator Thorpe, 6 December 2023, at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/CitizenshipRepudiation23](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/CitizenshipRepudiation23).
- <sup>34</sup> Amendment 2318 to the Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 to be moved by Senator Thorpe, 6 December 2023, at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/CitizenshipRepudiation23](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/CitizenshipRepudiation23).
- <sup>35</sup> Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* (September 2015) 115–116.
- <sup>36</sup> Independent National Security Legislation Monitor, *Review of the operation, effectiveness and implications of terrorism-related citizenship loss provisions contained in the Australian Citizenship Act 2007* (15 August 2019) [6.17].

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- <sup>37</sup> Australian Human Rights Commission, *Review of AFP Powers*, submission to the PJCIS, 10 September 2020 at [170]–[172], at <https://www.aph.gov.au/DocumentStore.ashx?id=b2a784cc-435f-4cbd-b5c7-6831eeb05e81&subId=691580>.
- <sup>38</sup> Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* (September 2015) 115.
- <sup>39</sup> Amendment 2282 to the Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 to be moved by Senator Cash, 30 November 2023, at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Intelligence\\_and\\_Security/CitizenshipRepudiation23](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/CitizenshipRepudiation23).
- <sup>40</sup> *Australian Citizenship Act 2007 (Cth)* s 35, repealed by *Australian Citizenship Amendment (Allegiance to Australia) Act 2015 (Cth)*.
- <sup>41</sup> Revised Explanatory Memorandum, Australian Citizenship Amendment (Allegiance to Australia) Bill 2015, 1-2.
- <sup>42</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, [1991] ATS 4 (entered into force 2 September 1990) preamble; *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg UN Doc A/810 (10 December 1948) article 25(2).
- <sup>43</sup> United Nations Committee on the Rights of the Child, *General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, 62<sup>nd</sup> sess, UN Doc. CRC/C/GC/14 (29 May 2013) 12 [46]–[51].
- <sup>44</sup> United Nations Committee on the Rights of the Child, *General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, 62<sup>nd</sup> sess, UN Doc. CRC/C/GC/14 (29 May 2013) 18–19 [89]–[91].
- <sup>45</sup> United Nations Committee on the Rights of the Child, *General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, 62<sup>nd</sup> sess, UN Doc. CRC/C/GC/14 (29 May 2013) 18 [87].
- <sup>46</sup> United Nations Committee on the Rights of the Child, *General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)*, 62<sup>nd</sup> sess, UN Doc. CRC/C/GC/14 (29 May 2013) 20 [98].
- <sup>47</sup> United Nations Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention*, 60<sup>th</sup> sess, UN Doc. CRC/C/AUS/CO/4 (28 August 2012) 9 [38].
- <sup>48</sup> Australian Human Rights Commission, *Children's Rights Report 2016* (2016) 189 <<https://www.humanrights.gov.au/our-work/childrens-rights/projects/childrens-rights-reports>>.
- <sup>49</sup> Australian Human Rights Commission (National Children's Commissioner), Letter to the United Nations Committee on the Rights of the Child, *Call for comments on Draft Revised General Comment No 10 (2007)* (7 January 2019) 3.
- <sup>50</sup> Elly Farmer, 'The age of criminal responsibility: developmental science and human rights perspectives' (2011) 6(2) *Journal of Children's Services*, 86, 87.
- <sup>51</sup> *Benbrika v Minister for Home Affairs* [2023] HCA 33, [63].
- <sup>52</sup> Statement of Compatibility with Human Rights, Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 (Cth) 34-35.
- <sup>53</sup> Australian Human Rights Commission, *Strengthening the Citizenship Loss Provisions Bill 2018*, Submission to the Parliamentary Joint Committee on Intelligence and Security (10 January 2019) [4.3].

- <sup>54</sup> Statement of Compatibility with Human Rights, Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023 (Cth) 34.
- <sup>55</sup> Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*, Report No 129 (2016) 362.
- <sup>56</sup> Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015* (2015) 128.
- <sup>57</sup> Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (September 2015) 73.
- <sup>58</sup> Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (September 2015) 73.