

AUSTRALIAN 
 CENTRE
FOR INTERNATIONAL
JUSTICE 

Review of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

Supplementary Submission to the
Parliamentary Joint Committee on
Intelligence and Security

25 October 2019

About the Australian Centre for International Justice

The Australian Centre for International Justice is a newly established independent and not-for-profit legal centre working to develop Australia's universal jurisdiction practice by providing access to justice in Australia to survivors and victims of serious human rights violations which amount to the international crimes of torture, war crimes, crimes against humanity and genocide.

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1 Introduction

1. The Australian Centre for International Justice (**ACIJ**) welcomes the opportunity to provide this supplementary submission to the Parliamentary Joint Committee on Intelligence and Security's (the **Committee**) review of the *Australian Citizenship Amendment (Citizenship Cessation) Bill 2019* (the **Bill**).
2. On 14 October, the ACIJ provided a submission to the Committee's inquiry. We thank the Committee for accepting that submission in evidence to this review. The ACIJ provided a more detailed submission to the Committee's concurrent *Review of the Australian Citizenship renunciation by conduct and cessation provisions* on 19 July 2019.
3. We thank the Committee for inviting us to provide evidence at the hearing of the review the Bill on 18 October 2019.
4. This submission does not propose to repeat our earlier submissions but instead provides a recommendation and an update and addresses some of the concerns raised by the Committee.
5. The ACIJ supports the repeal of provisions ss 33AA, 35, 35AA and 36A of the *Australian Citizenship Act 2007*. Although the Bill improves the current model by moving to a ministerial decision-making model, the ACIJ nevertheless opposes the citizenship revocation provisions as it is an ineffective way of responding to the risks foreign fighters represent and is inconsistent with Australia's obligation and duty to prosecute international crimes.
6. The ACIJ supports recommendations to include that determinations resulting in the cessation of Australian citizenship to be subject to merits review before the Administrative Appeals Tribunal.

Recommendations

7. The ACIJ recommends amendments to proposed 36E of the Bill to include following provision:

in deciding whether to make a determination under s 36B(1) or revoke such a determination – whether the person is being or is likely to be prosecuted in relation to conduct pursuant to divisions 268, 270 or 274 of the *Criminal Code*.

8. This might require revision to the conduct listed in proposed s 36B(5) to include the above conduct but we make no submission in relation to this.

2 Investigations

9. Including a recommendation to the public interest considerations means that the Minister must have regard to whether genuine investigations into conduct amounting to international crimes, have been made and whether charges or prosecutions are likely. This would alleviate some of our concerns about the prosecutorial and investigative strategy which conveniences terrorism-related offences only.
10. This would require the Australian Federal Police (**AFP**) to engage and cooperate with other States and international partners, including the UN International, Impartial and Independent Mechanism on Syria, multi-state and non-governmental and civil society organisations who have been collecting, documenting and analysing the evidence. The UN Security Council has routinely recommended that States increase their international and judicial cooperation.¹
11. Where there is sufficient evidence to link a suspect to international crimes offences, Australia should not be limiting charges to terrorism offences only.
12. The Committee raised concerns in relation to the ability of obtaining admissible evidence in relation to international crimes before Australian courts. We acknowledge that this is a difficulty and a challenge, but one that the AFP is able to meet.
13. Australia is adept and successful in its investigations and cooperation efforts with other types of transnational crimes abroad, whether it for terrorism, drug or organised crimes offences, human trafficking, slavery or child exploitation offences. More relevantly Australia is an active participant in the investigative efforts of the downing of Flight MH17. The AFP provided significant personnel (more than 500)² and resources to the

¹ United Nations Security Council Counter-Terrorism Committee *Security Council Guiding Principles on Foreign Terrorist Fighters: The 2015 Madrid Guiding Principles + 2018 Addendum* (December 2018).

² Australian Federal Police, 'MH17 Five Year Anniversary' (Media Release, 17 July 2019) <<https://www.afp.gov.au/news-media/media-releases/mh17-five-year-anniversary>>.

investigation and Australia has contributed \$50 million to the efforts,³ which are ongoing. Earlier last month, the Joint Investigations Team announced a major breakthrough with charges being laid against four suspects alleged to have criminal liability who are now the subject of international arrest warrants.⁴ The team is being led by the Netherlands and involves Australia, Belgium, Malaysia and Ukraine.

14. This built-up experience together with the strong political will and dedicated resources provided is evidence of the specialised investigative training that Australia has already committed to and should expand to undertake investigations and prosecutions of international crimes more broadly so that it can better engage with its international obligations.

15. The ACIJ emphasises that national prosecutions are key to countering the prevailing climate of impunity and have previously noted the international crimes prosecutions being conducted abroad, particularly in Europe for returned foreign terrorist fighters including two recent trials in Germany and Finland.

16. The ACIJ is strongly encouraged to learn that the AFP are broadening their investigation into Australian foreign fighters to include investigation into international crimes offences committed abroad.⁵

³ Marty Silk, 'MH17 Charges Just the Beginning: AFP', *The Canberra Times* (online, 20 June 2019) <<https://www.canberratimes.com.au/story/6227380/mh17-charges-just-the-beginning-afp/?cs=14232>>.

⁴ Netherlands Public Prosecution Service, 'Prosecution of Four Suspects for Downing Flight MH17' (Media Release, 19 June 2019) <<https://www.om.nl/onderwerpen/mh17-crash/@106096/prosecution-four/>>.

⁵ Paul Maley 'AFP Probes Aussie Terror Fighters Over Islamic States Sex Slavery' *The Australian* 25 October 2019 < <https://www.theaustralian.com.au/nation/politics/afp-probes-aussie-terror-fighters-over-islamic-state-sex-slavery/news-story/fbc14f2ccd2f533f90dc0e3c4b2a616b>>.