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COMMITTEES

Intelligence and Security Committee

Report

SPEECH

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SPEECH

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Speaker Fawcett, Sen David	Question No.

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (17:42): I would like to make a few remarks about the Intelligence and Security Committee's report on the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015. The report goes into the purpose of the bill but also takes a detailed look at sections of the bill, particularly proposed section 33AA, which is renunciation by conduct; proposed section 35, which is service outside of Australia in armed forces of an enemy country or a declared terrorist organisation; and proposed section 35A, conviction for terrorism offences and certain other offences. There are also some proposed amendments to section 36 which deal with the children of responsible parents who cease to be citizens, and proposed section 36A, which highlights that there can be no resumption of citizenship if it ceases under any of the previous provisions.

The report follows on from the fact that the parliament has recognised that Australian citizenship is a common bond involving reciprocal rights and obligations and that citizens may, through certain conduct which is incompatible with the shared values of Australia or Australian interests or if they engage in acts that are intended to harm Australia or Australia's interests, sever that bond and repudiate their allegiance to Australia. This is historical. We see going right back to just after World War II that there were provisions put in law whereby somebody who served in the armed forces of a foreign nation that was at war with Australia by their conduct automatically lost their citizenship. What we are proposing here is that there are explicit powers for the cessation of Australian citizenship for dual citizens where they repudiate their allegiance to Australia by engaging in terrorism related conduct or through convictions for such conduct.

We had a number of recommendations in relation to this bill. The committee was seized of the fact that we have a balancing job to do. We need to provide our agencies—the people, particularly in the AFP, who literally sometimes put their lives on the line, and the people within agencies such as ASIO and ASIS who work hard to keep Australians safe—with the tools that they need to do their job. At the same time, we need to preserve those characteristics of our society that make us a liberal, plural secular democracy: freedom of speech and freedom of association. What the committee attempted to do during its consideration of this legislation was to make sure that these measures provided the outcome, or at least the majority of the outcome, that the agencies were after but at the same time protected those fundamental elements that we rightly say characterise Australian society.

In the six minutes I have I do not have time to run through all the recommendations, because there were quite a few, but I would just note that, despite the fact that there was a deal of dialogue within the committee, we have reached a bipartisan position. Particularly with the cooperation and detailed briefings by the agencies, committee members from both of the major parties reached an understanding and a position where we felt that we could bring before the parliament recommendations that will give us that balance that we need.

Particularly for section 33AA, we have limited that to people who have engaged in relevant conduct offshore or who have engaged in relevant conduct onshore but left Australia before being charged and brought to trial in respect of that conduct. The effect of that means that if you are onshore your conduct alone is not going to lead to automatic revocation, because the opportunity is there to bring you before a court to be tried and, as determined by the court, either found innocent or guilty. If found guilty, then clearly the revocation by conviction may apply, but the revocation by conduct will not.

For those people who travel overseas—and we have seen a number on social media and through television reports and other sources—where their conduct very clearly shows that they have joined a terrorist organisation and they have acted contrary to the interests of Australia and Australians, that conduct alone, if they are dual citizens, means that they will have their Australian citizenship revoked, which means they cannot come back. Likewise for those who have engaged in conduct onshore but have fled before they can be apprehended such that they are beyond the reasonable reach of our law enforcement agencies, they can also lose their citizenship, if they are dual nationals, on the basis of that conduct. We felt that it was an important protection that, where possible, people were brought before a judge, as opposed to just relying on their conduct, to lose their citizenship.

We also note that the declared terrorist organisation is an important element in this. This minister needs to declare organisations that would activate some of these measures if you were a member of them or join them or support them. The recommendation is that this should be a disallowable instrument, which means that, in addition to the briefs that are given to the minister, there is a broad group in the form of the Intelligence and Security Committee and ultimately the parliament who have the opportunity to say, 'Yes, we concur that group should be a declared organisation.' It is a safeguard and a protection—not that we realistically expect it in the current environment. But once something is law, who knows where that goes down the track? This is a way of providing that extra safeguard of both the committee, who can get the classified briefings, and the broader parliament having that disallowable instrument before them.

We also looked at a number of issues to do with retrospectivity. Retrospectivity is something that this parliament does not look at lightly, but we have decided that in the limited case where somebody has been convicted of a terrorism offence carrying a penalty of at least 10 years, and if that has occurred within the last 10 years, then this legislation will apply to them. That conviction will be sufficient for them to lose their Australian citizenship if they are a dual citizen. It is an unusual step, but we again feel as though that provides a check and a balance. By its very nature the recommendation means it is for a limited time frame. It does not extend into the future and it captures only the most serious of offences where people have threatened Australians or Australia's interest by their actions.

We have also looked particularly at the area of children. One of the unique characteristics of the threat that we are currently facing is that we are seeing an increasing number of young people caught up in this. In some cases, they are the children of people who have engaged in terrorist activities, and clearly—following from some of the precedents we have under the Criminal Code—children under 10 are not going to be held accountable for their actions nor necessarily should they lose their citizenship as a result of the conduct of the parent. However, again taking the provisions that already exist that categorise children between 10 to 14 and then above that up to 18, we have put in place some measures so that children under 14 years old cannot be subject to sections 33AA or 35. But capturing those children between 14 and 18 years of age is an important tool to allow the authorities because we are seeing so many in that age bracket, particularly at the older end, who are making very conscious, informed decisions about their actions.

As I said, I do not have time to run through all the other recommendations here. It is a good example, for those listening to this debate, of the Australian parliament working well, constructively and in a bipartisan manner for the national interest.