Submission to National Consultation on Australian Citizenship

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Key points:

- Australian citizenship has developed as an important and unifying national status based on the development of Australian society since 1949. Its future should not be defined by the activities of a transient Middle Eastern terrorist group.

- Use of citizenship revocation as a weapon against Australian dual national supporters of ISIS and other terrorist groups will be ineffective.

- Australian citizenship law should not be used either as a substitute for, or a supplement to, criminal law. Acts committed by an Australian after becoming a citizen should be punishable under criminal law. If the criminal law is not effective for the job, it should be strengthened.

- Australian citizenship is fundamentally weakened by making it easier to remove it; the certainty of Australian citizenship should be maintained.

- The government should not proceed with the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015.

- Some 4 million Australians are dual citizens; dual citizenship is a national asset rather than something to be feared.

- Revocation of citizenship of persons who are not dual nationals, but might have the right to another citizenship, will not only be ineffective, but also is a practical recipe for statelessness.

- The current Australian citizenship pledge is entirely appropriate for its role as the culmination of the citizenship process at ceremonies. It is not something that should be repeatedly changed to meet successive perceived external threats.

- A genuine strengthening of Australian citizenship should be evidence based; the government should conduct research into the significance of Australian citizenship amongst both Australian-born and migrants before deciding on measures. Citizenship education for all members of the community is most likely to be effective in strengthening citizenship.

- Measures which create additional hurdles for migrants in accessing Australian citizenship will simply exclude those people who are likely to live their entire lives in Australia anyway.

- Suspension of legal entitlements of those Australian citizens supporting ISIS and other terrorist organisations should not be in any way be connected to citizenship, but rather their effectiveness in blocking terrorist activity.
Context

This consultation has come about because of a decision by the Australian government to use Australian citizenship as a weapon against Australian Jihadists who support the so-called "Islamic State (ISIS)".

2. Although the announced policy has been broadened to cover terrorist acts in the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015, there is no doubt that this policy approach would not be pursued if it were not for the existence of ISIS.

3. Australian citizenship has been an important and unifying symbol of national identity since its commencement in 1949. Australian citizenship policy and law have developed in accordance with the evolution of Australian society since that time and its absorption of over 7 million migrants into a strong multicultural community.

4. The Australian government should not allow a transient Middle Eastern extremist group to define the meaning and certainty of Australian citizenship. History will not smile on those who do so.

Ineffectiveness of revocation of Australian citizenship as a weapon against terrorism.

5. The use of revocation of Australian citizenship as a weapon against ISIS and broader terrorism is an admission of failure – political and military failure to defeat ISIS on the battlefield, failure to sell democratic ideas, failure of counterterrorism communication strategies and failure of de-radicalisation policies domestically. If those policies were working, there would be no need to even consider use of Australian citizenship policy.

6. Use of Australian citizenship revocation is likely to be ineffective, while causing very significant collateral damage to the concept of Australian citizenship (see weakening Australian citizenship below).

7. None of the government’s envisaged Australian citizenship revocation policies prevent people who want to commit acts of terrorism domestically or internationally, in the course of assisting ISIS, from doing so.

8. On the government's own reported figures, at best revocation of the Australian citizenship of dual nationals might affect 40% to 50% of Australians overseas assisting the ISIS cause. The most it would do is stop them from returning to Australia, if they chose to do so. However, unlike tracking them and prosecuting them on return to Australia, revocation leaves Jihadists at large to do what they please. As far as those who might be subject to revocation of citizenship in Australia, no data has been provided on the numbers
who might be dual nationals. Even so, revocation of their citizenship would not necessarily result in their departure from Australia as some countries refuse to accept back their own nationals if they do not wish to return.

9. Prosecution and incarceration of people who break Australia's anti-terrorist laws either domestically or overseas is the only thing that will prevent those people from pursuing further terrorist activity. If Australia's criminal law system cannot accomplish that then it should be reviewed and restructured to strengthen it, rather than using Australian citizenship law as a weak "workaround".

10. The fact that some other countries have gone down this pathway to a greater or lesser extent, does not mean it is sound policy in the Australian context. The United Kingdom revocation legislation has been cited as a model by some. The United Kingdom is not a country built on migration and its citizenship status has a very different national meaning to that in Australia. There is no evidence that its use of such legislation has made a material difference to terrorism.

**Weakening Australian citizenship**

11. By definition, making something easier to take away does not strengthen it. The same goes for Australian citizenship.

12. Australian citizenship has many strengths. One of them is certainty - certainty that a person who is an Australian citizen, whether by birth, descent or conferral, remains an Australian and no one can easily take that Australian status away. The *Australian Citizenship Act 2007* enshrines that certainty by providing, broadly speaking, that an Australian can only lose their citizenship if it was obtained by fraud and the fact of that fraud is verified before the courts by a conviction.

13. Offences committed *after* becoming a citizen are, rightly, a matter for the criminal law.

14. Without going into every detail of the *Australian Citizenship Amendment (Allegiance to Australia) Bill 2015*, the policy contained in it is a massive overreach. The fact that it is styled as a kind of self-revocation, through "repudiation of allegiance to Australia" does not alter the substance of that overreach.

15. It is not correct to portray the legislation as "modernising" the provision in the *Australian Citizenship Act 2007* which mandates automatic loss of citizenship when an Australian dual citizen serves in the armed forces of a country at war with Australia. The test in the existing legislation is crystal clear and relates to facts which are objectively verifiable. Many of the revocation provisions in the new Bill involve a highly subjective judgement, based on undisclosed intelligence, about whether or not a particular set of facts exist.
16. The effect of these provisions in the Bill is to reduce the status and certainty of Australian citizenship to something akin to a Visitor Visa. If the legislation is passed, Australian citizenship can be extinguished with similar ease.

17. Clearly, there is also a significant risk that some communities will see the new citizenship laws as targeting them. Increasing their alienation is likely to increase the risk of radicalisation in those communities.

18. The net effect of the government's approach is to weaken the status of Australian citizenship without any significant corresponding gain in defeating ISIS or those involved in broader terrorist activities. Accordingly, the Bill should be withdrawn.

**Dual citizenship**

19. Some of the public debate surrounding the government's citizenship revocation policy has portrayed dual citizenship as if it were a problem or threat – based on concern that such status results in an unacceptable split of loyalties.

20. There has been no evidence whatsoever put forward to back up this claim. To my knowledge, not one case has been publicly cited where the existence of dual citizenship has resulted in an Australian acting in a significant way against Australia's interests. Ironically, in the context of a policy debate on how to deal with Australians assisting ISIS, not one Australian is a dual national of ISIS, since it is not a recognised state.

21. There are an estimated 4 million Australians who are dual nationals. Most of them are dual Australia-United Kingdom nationals.

22. Clearly, most Australian dual nationals are people who migrated to Australia and then acquired Australian citizenship. Retention of their first citizenship has been, in practice, a matter between them and their country of birth. There is nothing the Australian government can, or should, do to affect this.

23. In 2002, the Australian government very wisely permitted adult Australians to retain their Australian citizenship if they acquire another citizenship. This was to remove a ridiculous anomaly whereby migrants to Australia could have dual citizenship, but an Australian-born person who was part of its growing diaspora could not. The main beneficiaries of this change are the many Australians living in the United States and United Kingdom for whom the citizenship of those countries is vital for employment and other purposes. It is clearly in Australia’s interests to maintain ongoing linkages with its diaspora and to keep open the option of those people and their children returning to contribute their experience, skills and linkages to Australia’s benefit.

24. Any attempt to introduce more restrictive policies on dual nationality will damage the national interest without any effect on the involvement of Australians in terrorism.
Extending Australian citizenship revocation policy to single nationals with the possibility of another citizenship

25. The Bill before Parliament extending citizenship revocation provisions stops short of permitting revocation where it would make an Australian citizen stateless.

26. The discussion paper states in a single paragraph that the government is considering extending the provisions to cover an Australian citizen where there are "reasonable grounds to believe the person is able to become a national of another country under their laws and would not be made stateless". There is no elaboration of which countries the government has in mind and how such an extended process would work.

27. This proposal is likely to be even more problematic than those already in the Bill before Parliament. It is difficult to see how a person can be forced to access another citizenship and another country forced to give it to them, without making the person stateless in the process. Australia's complex experience in trying to get East Timorese who had fled to Australia, in a past era, to access Portuguese citizenship might make a useful case study on how hard it is to coerce people into accessing a foreign citizenship.

28. This proposal is a recipe for statelessness and should not be pursued. Apart from the need for Australia to meet its obligations under the UN Conventions on Statelessness, if such provisions are ever introduced, the Australian government is likely to end up with many messy and litigated cases on its hands, but with no corresponding impact on terrorist activity.

Strengthening Australian citizenship

29. It is appropriate for Australian governments to constantly review ways in which Australian citizenship can be genuinely strengthened.

30. However, any actions in this area should be evidence based. Measures chosen from a random list of actions and inputs may well be ineffectual or counter-productive.

31. As a starting point, the government should conduct research into attitudes to Australian citizenship amongst both Australian-born and migrants, including factors which strengthen commitment to the basic structures and principles common to Australian society – the Constitution, Parliamentary democracy, freedom of speech and religion, English as the national language, the rule of law, tolerance and equality, including equality of the sexes. This should help to provide a sound evidence base for policy actions in the medium term.

32. In determining ways to strengthen Australian citizenship, the government should focus on measures which are directed at both Australian-born citizens and citizens by conferral. There is no evidence that citizens by conferral value Australian citizenship any less than
citizens by birth. In fact, the contrary is likely to be true given the positive efforts they have
to make to acquire it.

33. Ultimately, the strength of Australian citizenship is what people think and what they
value about Australia and its institutions. Therefore citizenship education is at the core of
strengthening Australian citizenship.

34. The best thing that the Australian government can do is focus its efforts on citizenship
education in schools (including the Parliament and Civics Education Rebate Program),
citizenship education for adults and citizenship education for migrants (including through
the Adult Migrant English Program).

35. Measures which focus on placing increased barriers to migrants seeking citizenship by
conferral are simply counter-productive. As permanent residents they are able to live the
rest of their lives in Australia. There is no significant policy gain in further extending
residence requirements, tweaking the citizenship test to ask more questions about
allegiance (Australian-born citizens don't have to do this), limiting the number of times a
person can sit the test or toughening English-language requirements. The most that these
things are likely to do is unnecessarily exclude more people from citizenship who are likely
to spend the rest of their lives in the country anyway.

36. Similarly, there is nothing to be gained from amending the words of the Citizenship
Pledge. The pledge is an important symbolic statement that concludes the citizenship
acquisition process. Its brief, simple and evocative wording (drawing on words from the
poet Les Murray) has achieved strong acceptance since its introduction in the 1990s.

37. The UK has adopted a Citizenship Pledge drawing on the Australian wording and
Canada came very close to adopting wording inspired by the Australian Pledge, before a
change of government meant that an implementing Bill in its Parliament was not pursued
to fruition.

38. The pledge already requires a citizenship candidate to pledge loyalty to Australia and its
people. Loading it up with additional contentious wording would achieve nothing, apart
from changing the tone of citizenship ceremonies from something positive to something
negative. It would be patently ridiculous to have a threat-based Pledge being constantly
adjusted to meet the latest perceived threat to Australia's interests.

39. Requiring a separate signed undertaking to abide by the pledge if approved for
citizenship may have some merit.

**Suspension of legal entitlements of Australian citizens engaged in terrorism**

40. At the outset, matters put forward in the discussion paper which might be affected are
entitlements under Australian law. They are not in any sense privileges.
41. There is a much stronger case for suspending legal entitlements for people engaged in terrorism than there is for revoking their Australian citizenship.

42. However, it is entirely inappropriate and incorrect to link such a policy to Australian citizenship status. For example, access to Medicare and social security payments is attached to permanent residence and has nothing at all to do with Australian citizenship.

43. The focus of any government measures should be on suspending legal entitlements (apart from Australian citizenship itself), the existence of which might facilitate a person in pursuing terrorist activities. The suspension of welfare payments for someone fighting abroad or the suspension of a Passport of a person trying to go abroad to fight are positive examples in this area.