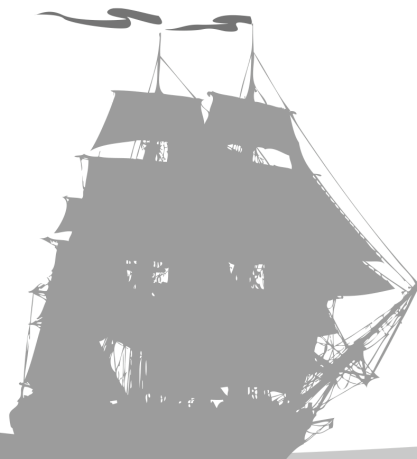




**Submission to the Parliamentary
Joint Committee on Intelligence
and Security Inquiry into the
Australian Citizenship
Amendment (Allegiance to
Australia) Bill 2015 (Cth)**

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1 Introduction

Pirate Party Australia thanks the Parliamentary Joint Committee on Intelligence and Security ('PJCIS') for the opportunity to submit its views on the important issues of national security and citizenship. While the Pirate Party is opposed to the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth) ('Allegiance to Australia Bill') in its present form, the Party does believe that the proposed legislation has some redeemable aspects. It is the Pirate Party's view that the Allegiance to Australia Bill is unnecessarily broad and goes beyond what is reasonable or necessary to achieve the Government's policy aims. The Pirate Party disagrees with the assertion made in the explanatory memorandum that citizenship is 'a privilege not a right'¹ and believes that mandatory renunciation (effectively revocation) of citizenship is not a penalty that should be applied lightly, especially as under the provisions of the Allegiance to Australia Bill a person would be prevented from ever re-obtaining Australian citizenship without clemency from the Minister. In that regard, the Pirate Party has additional concerns about the range of offences included that would lead to renunciation. Consequently, the Pirate Party recommends a number of amendments that restrict the operation of the legislation, while still allowing the policy aims to be achieved.

2 The purpose of the legislation

The Pirate Party would prefer a more candid and less jingoistic statement of the purpose of the legislation that specifically emphasises that the Parliament is enacting the legislation to

- discourage involvement in terrorist organisations and terrorist activities, and
- protect the Australian community from persons who wish to harm its members

by providing that certain conduct inconsistent with the obligations of Australian citizenship will constitute renunciation of that citizenship for persons who are also citizens or nationals of a foreign country.

¹Explanatory memorandum, Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 (Cth) 14

As currently worded, the purpose of the legislation as stated in the proposed s 4 reads as very patriotic, but is unhelpful in explaining why this legislation is necessary or appropriate, and what it aims to achieve apart from 'excluding the bad people' from Australian citizenship.

3 Renunciation by conduct

The Pirate Party believes that conduct without conviction should be grounds for renunciation in a very limited number of circumstances. It is the Party's opinion that the proposed s 33AA would confer an inappropriate ministerial discretion as to whether conduct was inconsistent with Australian citizenship. This is compounded by the proposed s 33AA(8) that does not require the Minister to consider a request to revoke a notice issued under the proposed s 33AA(6) when deciding whether or not to exercise their discretionary power under the proposed s 33AA(7), and is further aggravated by the exclusion of the operation of s 39 of the *Australian Security Intelligence Organisation Act 1979* (Cth) and the principles of natural justice.

Therefore, the Pirate Party submits that the Allegiance to Australia Bill be amended to remove the proposed s 33AA, on the grounds that it:

- places Australians' citizenship in jeopardy *without* conviction,
- confers unreasonable discretion on the Minister to decide who remains an Australian citizen,
- has a significantly reduced evidential threshold for decision-making by allowing a decision to be made on preliminary information, and
- deliberately excludes principles of fairness and justice from the decision-making process.

If the PJCIS and Parliament generally consider the proposed s 33AA appropriate, the Pirate Party submits that the Allegiance to Australia Bill be amended so that the proposed ss 33AA(10) and (12) be removed.

4 Service outside Australia in armed forces of an enemy country or a declared terrorist organisation

The Pirate Party generally supports the proposed replacement s 35 on the basis that there is only slight difference between fighting in the armed forces of an enemy country and fighting in the services of a declared terrorist organisation, but recommends amendment to require the Minister to take into account requests to revoke a notice that the Minister has become aware of conduct that will cease citizenship issued under the proposed s 35(5), and the removal of the proposed ss 35(9) and (11). The Pirate Party is satisfied that there are adequate checks and balances to ensure that only genuine terrorist organisation are listed, but prefers not to jeopardise Australians' citizenships lightly and unnecessarily.

5 Conviction for terrorism offences and certain other offences

The proposed s 35A presents a number of concerns, though the Pirate Party agrees with it in principle. As the Pirate Party has indicated when discussing other proposed amendments above, conviction should generally be prerequisite for revocation on grounds of conduct, except in the case of the proposed s 35. The Pirate Party disagrees with the inclusion of certain offences, especially as their maximum penalties are considerably lower than one would expect to carry automatic renunciation. The Pirate Party believes that renunciation on grounds of conviction should only apply where the sentence imposed is greater than 25 years imprisonment for a terrorism or relevant other offence. This approach would include all relevant offences where the sentence imposed upon conviction reflects the seriousness of the offence, and gives appropriate consideration to the public policy aim of criminal rehabilitation *as well as* punishment. The Pirate Party believes that renunciation of citizenship for offences that carry a penalty of five or seven years, for example, is inappropriate.

A second concern is the apparent erroneous inclusion of section 29 of the *Crimes Act 1914* (Cth), which provides that 'Any person who inten-

tionally destroys or damages any property, whether real or personal, belonging to the Commonwealth or to any public authority under the Commonwealth, shall be guilty of an offence.' Why s 29 has been included in the list of offences for which renunciation of citizenship applies upon conviction is not apparent, and is curiously not explained in the explanatory memorandum. This offence is particularly broad, and does not seem appropriate for inclusion among these other offences, given it would appear to include simple acts of vandalism. The Pirate Party submits that the legislation should be amended to remove this provision.