**Submission by the**

**Anti-Discrimination Commission Queensland**

**on the issues paper:**

***Australian Citizenship — your right, your responsibility***

**to the**

**Department of Immigration and Border Protection**

**30 June 2015**

**Contents**

[Introduction 2](#_Toc423440502)

[Human rights principles 2](#_Toc423440503)

[The rule of law and the Constitution 3](#_Toc423440504)

[Commission’s submissions 4](#_Toc423440505)

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# Introduction

The Anti-Discrimination Commission Queensland (Commission) is an independent statutory authority established under the Queensland Anti-Discrimination Act 1991.

The functions of the Commission include promoting an understanding, acceptance and public discussion of human rights in Queensland.

The Australian Government has started a national conversation about how we might all develop a greater appreciation of Australian citizenship, and its privileges and obligations.

In May 2015 the government prepared a discussion paper and has invited the public to submit their views on the issues raised in the paper.

This submission is confined to two proposals in the ‘Revocation of citizenship for dual nationals engaged in terrorism’ section of the discussion paper that:

The Government intends to modernise the Australian Citizenship Act to enable the Minister for Immigration and Border Protection to take action in the national interest to revoke the Australian citizenship of dual citizens who engage in terrorism that betrays their allegiance to Australia. and

The Government is also considering enabling the Minister to revoke Australian citizenship 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, as is the case in UK law.

In relation to these two proposals, two questions raised in the discussion paper are:

* Should the powers of revocation apply to citizens when the Minister has reasonable grounds to believe that the person is able to become a national of another country or territory under their laws and where it would not leave that person stateless? and
* What limitations and safeguards should apply to laws enabling the revocation of the citizenship of Australians engaged in terrorism?

# Human rights principles

The *Universal Declaration of Human Rights* , adopted by the United Nations in 1948, sets out the basic rights and freedoms that apply to all people.

The Declaration was drafted in the aftermath of World War II and arose directly from the experience of that devastating global conflict.

The Australian Government has agreed to respect, protect and ensure the human rights recognised in the Declaration and a number of human rights treaties which have followed from it.

These human rights include: life, liberty and security of persons; equality before the law; freedom of thought, conscience and religion; freedom of opinion and expression; the right to work and to free choice of employment; the right to a standard of living adequate for health and well-being; the right to education; and the right to participate in the cultural life of one's community.

In this discussion, articles 13 and 15 of the Declaration are most relevant.

Article 13 states:

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 15 states:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The concepts contained in the Declaration have been further developed by a number of core international human rights treaties to which Australia is a party, including the *International Covenant on Civil and Political Rights.*

Article 12 of that Covenant states:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

# The rule of law and the Constitution

Australia’s Constitution requires a clear separation between the independent judiciary, the Executive, and the Legislature. The Law Council of Australia has recently spoken about these principles as follows:

Any new laws aimed at revoking citizenship for individuals engaged in terrorism or suspending citizenship rights must be consistent with the rule of law and the separation of powers in the Australian Constitution. The separation of powers means that a Minister cannot exercise a judicial role to decide criminal guilt. A critical aspect of the rule of law means no one is above the law and that no one should be subject to punishment by the state unless he or she has first been found guilty of a criminal offence by an independent, impartial and competent court or tribunal.[[1]](#footnote-1)

# Commission’s submissions

The Commission supports the critical role of the government to protect national security and the public order in Australia. It is the primary responsibility of the Parliament to protect Australians from those who seek to do them harm; but protective measures that interfere with fundamental individual rights need to be necessary, and proportionate.

In order to comply with Australia’s international human rights obligations, the Commission submits that any proposal by the Australian Government to remove the right of citizenship from citizens who are alleged to have been involved in terrorism must not:

* arbitrarily deny an Australian citizen of their right to return to Australia; or
* arbitrarily deprive a person of his or her Australian nationality.

In relation to dual citizens, it is important that any decision by Australian authorities should not leave any individual without a nationality. In relation to sole Australian citizens, no decision by Australian authorities should leave any individual stateless.

Further, in order to comply with the rule of law and the Constitution, the Commission submits that any proposal to remove citizenship is a judicial power of the Commonwealth, which should be exercised solely by constitutionally recognised courts, and not the Minister.

The Commission thanks the Department of Immigration and Border Protection for the opportunity to make this submission.

1. Law Council of Australia, [‘Proposed citizenship revocation laws must abide with the Constitution and rule of law’](http://www.lawcouncil.asn.au/lawcouncil/images/1529_Proposed_citizenship_revocation_laws_must_abide_with_the_Constitution_and_rule_of_law_Final_2.pdf) (Media release, #1529, 18 June 2015). <http://www.lawcouncil.asn.au/lawcouncil/images/1529\_Proposed\_citizenship\_revocation\_laws\_must\_abide\_with\_the\_Constitution\_and\_rule\_of\_law\_Final\_2.pdf>. [↑](#footnote-ref-1)