

Australian High Court overturns citizenship-stripping law but backs government power to do so

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Australia's supreme court last week ruled unconstitutional a law allowing the home affairs minister to personally "cease" the citizenship of someone accused of terrorist-related activities, but upheld the government's power to do so by other means.

While striking down one plank of the unprecedented citizenship-stripping laws imposed by the previous Liberal-National Coalition government with the then Labor Party opposition's support, the High Court left the way open for an ongoing attack on the fundamental right to citizenship.

The lead judgment by Chief Justice Kiefel and Justices Keane and Gleeson declared: "[A] person whose conduct is inimical to Australia's interests may, by a law of the Commonwealth, forfeit the rights of citizenship conferred by the Parliament, and thereby become an alien."

The court ruled that such a "forfeiture" must involve a court hearing, that is, a judicial process. That verdict is politically damning for both the Coalition and Labor, because the unconstitutional nature of the law was well known in legal circles when it was passed in 2015, yet they pushed ahead with the illegal provisions.

Despite warnings by prominent constitutional experts that it was most likely unlawful, Labor maintained its backing for the bill even after pages of complex last-minute amendments were tabled, primarily seeking to avoid a High Court challenge.

Last week, despite striking down the law, the court effectively rubber stamped the proposition that governments have the power to "cease" citizenships of people deemed to have, in the words of the struck-down law, "repudiated their allegiance to Australia."

Although the case concerned one person—Delil Alexander, an Australian-born citizen who was jailed in Syria after allegedly joining Islamic State—at least 20 other people have been stripped of their citizenship rights under the legislation. Moreover, the court ruling sets a precedent for wider use.

Like the invalidated section 36B of the Australian

Citizenship Act, the other provisions of the legislation apply only to dual citizens, or those deemed by the government to be entitled to citizenship of another country. Yet the court's ruling contains nothing to prevent the power being extended to all citizens.

The law could be used against Alexander because he had acquired Turkish citizenship by descent at birth under the law of the Republic of Turkey, as his parents were Turkish citizens.

All the allegations against Alexander were based on dubious claims by the US-linked internal spy agency, the Australian Security Intelligence Organisation (ASIO), and a confession obtained under torture by Kurdish and Syrian forces.

ASIO reported that Alexander had travelled to Syria with a group being helped by a supposedly "known" Australian Islamic State member. In November 2017, he was arrested by a Kurdish militia and in 2019 was jailed for 15 years by a Syrian court.

The Syrian government later pardoned him, however, after it became known that he was tortured to secure a confession. He remained in jail because he could not go back to Turkey, and Australia had cancelled his citizenship.

ASIO's advice to Home Affairs Minister Peter Dutton that it would serve "the security of Australia" to cancel Alexander's citizenship was based on unspecified "substantial classified reporting and some unclassified corroborating information." ASIO said it was "likely" that Alexander had joined Islamic State, a listed terrorist organisation.

Before it "ceased" Alexander's citizenship in July 2021, the government had already cancelled his passport in 2013 and issued a Temporary Exclusion Order banning him from returning to Australia. These measures, all instigated by ASIO, remain in place.

The High Court judges said governments could cancel citizenships under the "aliens" power of the 1901

Constitution. Citizenship was merely a “statutory concept,” not a constitutional right. It could be revoked if a person had displayed a lack of “loyalty” or “allegiance” to Australia, even though that meant being stripped of civil and political rights, including the right to vote.

The court’s sole objection was that a federal court must adjudicate a cancellation, in line with the Constitution’s separation of “judicial power” from executive and legislative power. Only a court had the power to “determine the facts” as to whether a person had “engaged in conduct that is so reprehensible as to be deserving of the dire consequence of deprivation of citizenship.”

In response, Labor Attorney-General Mark Dreyfus and Home Affairs Minister Clare O’Neil sprang to the defence of executive power to ban citizens from returning home. The pair said other measures, including Temporary Exclusion Orders, could prohibit citizens from re-entering Australia for up to two years.

With Labor’s help, the previous Coalition government also introduced an unprecedented series of laws allowing detention without trial, such as control orders, preventative detention orders and continued detention orders that can keep convicted prisoners in jail even after they have served their sentences.

This is consistent with Labor’s record of supporting every measure since 2001—more than 120 packages of legislation—to bolster the powers and resources of the state apparatus.

Alexander’s lawyer, Osman Samin, disputed ASIO’s assessment that Alexander had been involved with Islamic State, saying the conviction in Syria had been deeply flawed by “extreme torture.”

Samin told the Australian Broadcasting Corporation that “a fundamental issue with these laws is that they essentially allow punishment without even a finding of guilt.” Furthermore, citizenship could be repudiated by “disloyal conduct,” as defined by parliament, so “there is really no limitation on what the government in future could define as ‘disloyal conduct.’”

That observation bears out the warnings made by the WSWS that laws pushed through parliament with bipartisan support under the “war on terror” can be extended to other views and activities declared by governments and the intelligence agencies to be threats to “security.”

Under the surviving sections of the Citizenship Act, a person can still “cease” to be a citizen if jailed for more than six years for any of a long list of terrorism and politically-motivated offences. These include “advocating terrorism,” assisting an “enemy” of Australia, “foreign incursions and recruitment” and leaking security information. Also on the list, as amended in 2020, are offences that were expanded in

the 2018 “foreign interference” legislation—treason, treachery, sabotage and espionage.

Because of the sweeping definition of terrorism in the post-9/11 laws, a person could lose their citizenship, for example, for supporting the right of people, whether in Syria or any other country, to resist a US-led invasion. And the extended “foreign interference” crimes could affect anti-war and anti-government activists.

Similar powers have been introduced in other allied countries, including the US, Britain, Canada and New Zealand, that fuelled the rise of terrorism by invading and laying waste to Afghanistan, Iraq, Libya and Syria.

These laws constitute an historic assault on fundamental democratic rights, including freedom of speech and association. Far from being a mere “statutory concept,” citizenship rights are the result of centuries of political and social struggles. It took the American and French Revolutions of the eighteenth century to finally abolish the feudal relationship in which people were born as vassals—“subjects of the monarch.”

Once more, the “war on terror” has served as a cover for the development of police-state measures, as well as for US-led militarism around the globe.

Throughout the media coverage of the Alexander case there has been no mention of the fact that Islamic State is largely a creation of the US-led wars in the Middle East, the real aim of which was to assert US control over the resource-rich region and the entire Eurasian landmass, where Washington is aggressively confronting Russia and China.

Likewise, there has been no reference to the economic and social conditions that have enabled Islamic fundamentalists to recruit vulnerable youth. Throughout Australia’s working-class suburbs, young people from immigrant backgrounds face low wages and insecure employment, poor educational and social facilities and constant police harassment.



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