

Friday, 4 January 2019

Law Council of Australia's statement regarding Neil Prakash's citizenship status

Please attribute to Law Council of Australia President Arthur Moses SC:

"The uncertainty regarding Neil Prakash's citizenship status has arisen from concerns the Law Council first raised in 2015 when the relevant legislation was introduced - that loss of citizenship should not occur automatically.

The current legislative regime creates uncertainty and a high risk that a person may be left stateless.

Rather, loss of citizenship should only occur after a criminal conviction by an independent, impartial and competent court or tribunal, particularly where the conduct in question has occurred within Australia.

Furthermore, after a conviction, automatic citizenship cessation should not occur.

This should require a ministerial decision that considers whether the offender poses a substantial risk to Australia's national security, as well as our international legal obligations.

The Minister's decision should afford procedural fairness and be subject to judicial review.

When it comes to the loss of citizenship linked to national security, the Federal Government needs to ensure there is proper basis for it, which does not lead to uncertainty or disputes with our allies. When an announcement of international and national importance is made, the Government must ensure it is not premature and is verified.

When these types of issues arise, it undermines confidence in our national security and damages the reputation of Australia. We are better than this.

The Independent National Security Legislation Monitor should be tasked and appropriately resourced to review the legislation to avoid the undesirable consequences that a person may be left stateless.

It is presently unclear whether Prakash may hold Fijian citizenship.

If Prakash is in fact not a Fijian citizen, this raises serious questions regarding the automatic loss of citizenship under Australian law which requires a person to be a national or citizen of a country other than Australia. This is an issue that needs to be properly investigated and respectfully discussed with Fiji.

I am troubled that this potentially premature announcement by the Minister could jeopardise future extradition proceedings to bring Prakash back to Australia to face our justice system for his alleged crimes."

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