The Parliament of the Commonwealth of Australia

JOINT STANDING COMMITTEE ON MIGRATION

AUSTRALIANS ALL

Enhancing Australian Citizenship

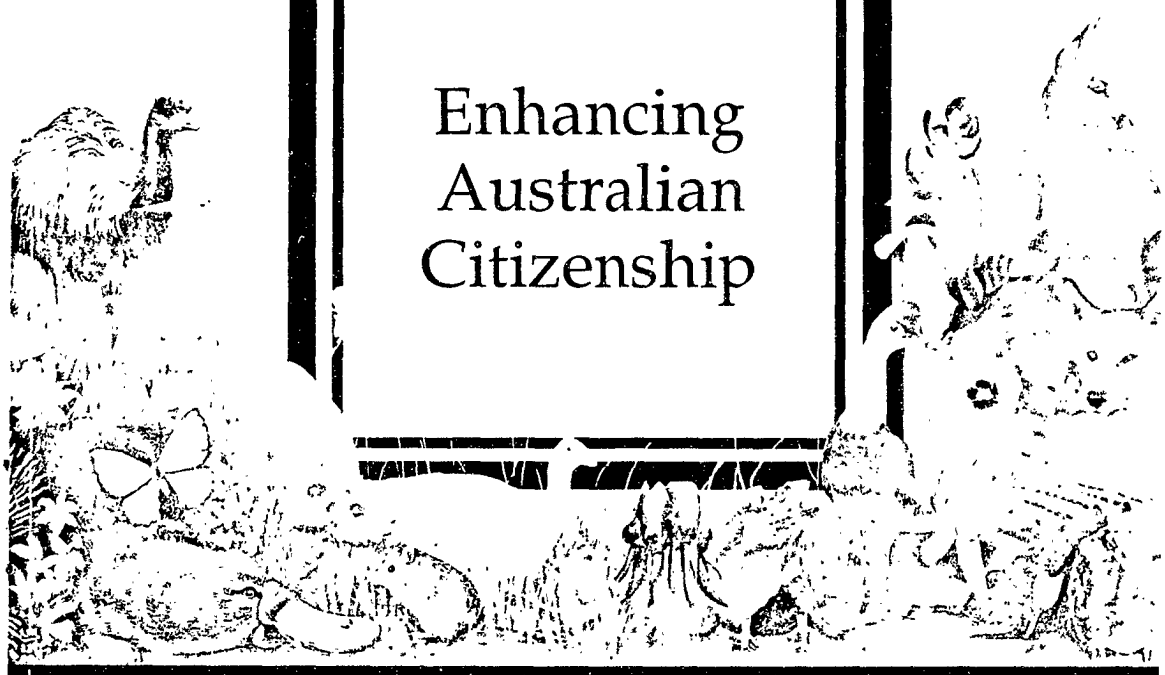
September 1994

Australian Government Publishing Service
Canberra

The Parliament of the Commonwealth of Australia

AUSTRALIANS ALL

Enhancing Australian Citizenship



September 1994

JOINT STANDING COMMITTEE ON MIGRATION

The Parliament of the Commonwealth of Australia

JOINT STANDING COMMITTEE ON MIGRATION

AUSTRALIANS ALL

Enhancing Australian Citizenship

September 1994

Australian Government Publishing Service
Canberra

ISBN 0 644 35382 1

Produced by the Australian Government Publishing Service

FOREWORD

On 1 January 2001, Australia will celebrate 100 years of nationhood with the centenary of Federation. In the lead up to this event, other significant milestones will be passed. In particular, we will celebrate the 50th anniversary of Australian citizenship on the eve of a new century.

As these milestones approach, Australians have focused their attention on what it means to be Australian. We have begun to debate and assess the institutions and symbols of Australian nationhood. The inquiry into enhancing the meaning of Australian citizenship by the Joint Standing Committee on Migration has been an important part of this process.

Citizenship is the cornerstone of national identity. It defines an individual's legal relationship with Australia, and signals an individual's membership of the Australian community. Through citizenship, individuals acquire rights and responsibilities as full participating members of the community. More importantly, citizenship represents an individual's commitment to Australia, including the principles on which Australian society is based.

During this inquiry, the Committee has considered what it means to be an Australian citizen, and how awareness and understanding of the unique nature of Australian citizenship can be enhanced. The Committee also has examined the rules governing Australian citizenship, and how those rules are administered.

Evidence received by the Committee indicated a strong sense of community pride in being Australian. At the same time, useful suggestions were made in submissions and at public hearings on how the meaning of Australian citizenship can be enhanced. The Committee appreciated the community input to the inquiry.

The Committee's recommendations seek to strengthen and revitalise Australian citizenship. In particular, the Committee considers that there should be a change of emphasis in Australia's approach to citizenship and the administration of the citizenship legislation. Citizenship should not be regarded simply as an issue for migrants, but should be of relevance to the entire Australian community. The Committee's recommendations are aimed at ensuring that all Australians have an awareness and appreciation of citizenship and its value within Australian society.

The history of Australian citizenship may be brief, but all Australians can be proud of that citizenship and what it represents. Australian citizenship is a symbol of unity in a multicultural society which draws strength from diversity. Adoption of the Committee's recommendations will enhance Australian citizenship as we, Australians all, prepare to meet the challenges of the new century.

SENATOR JIM McKIERNAN
CHAIRMAN

ACKNOWLEDGMENTS

The Committee expresses its appreciation to all those who contributed to the inquiry by providing submissions and attending public hearings. The Committee is grateful to its legal adviser, Dr Kathryn Cronin, for her valuable advice and support. Special thanks also are due to the Committee Secretary, Mr Andres Lomp, the inquiry staff, Mr Stephen Boyd, Mr Peter Tighe and Ms Dianne Fraser, as well as the Committee's parliamentary intern, Ms Rosemary Van Der Meer.

Cover: The cover design is based on the citizenship poster issued by the Department of Immigration and Ethnic Affairs.

CONTENTS

	Page
Foreword	iii
Acknowledgments	iv
Membership of the Joint Standing Committee on Migration	ix
Terms of reference	xi
Abbreviations	xiii
Conclusions and recommendations	xv
CHAPTER ONE THE INQUIRY	
Introduction	1
Background to the inquiry	2
Conduct of the inquiry	5
Report structure	7
CHAPTER TWO CITIZENSHIP IN THE MODERN WORLD	
Introduction	9
Origins of citizenship	9
Principles of citizenship	11
. Membership of a state	11
. Citizenship rights	13
. Citizenship obligations	14
The development of Australian citizenship	15
Principles of Australian citizenship	18
CHAPTER THREE ENHANCING AUSTRALIAN CITIZENSHIP	
Introduction	27
Australia's citizenship profile	28
The meaning of citizenship	37
Submissions on enhancing citizenship	41
Practical benefits of citizenship	41
. Conclusions	43

Community awareness about citizenship 44
. Citizenship education for migrants 46
. Citizenship education in schools 49
. Citizenship promotion 55
. Conclusions 63
. Recommendations 66
Citizenship ceremonies 67
. Conclusions 77
. Recommendations 78

CHAPTER FOUR AUSTRALIAN CITIZENSHIP LAW

Introduction 81
The constitutional framework 81
The legislative framework 84
International law considerations 86
Scope of the Citizenship Act 89
. Content and format of the Citizenship Act 89
. Definition of an Australian citizen 95
. Conclusions 96
. Recommendations 98
Legislative provisions 100
Citizenship by birth in Australia 100
. Conclusions 101
. Recommendation 101
Citizenship by adoption 102
Citizenship by descent 103
. Conclusions 110
. Recommendations 111
Grant of citizenship 112
. Residence requirement 117
. English language requirement 121
. Responsibilities and privileges of Australian citizenship 123
. Character checks 123
. Ministerial discretion 124
. Conclusions 126
. Recommendations 127
Child migrants 128
. Conclusions 129
. Recommendation 129
Defence force concession 129
. Conclusions 130
. Recommendation 130
Loss of citizenship 131
. Conclusions 135
. Recommendations 137
Resumption of citizenship 137

CHAPTER FIVE CITIZENSHIP PROCESSING AND PASSPORTS

Introduction 139
Citizenship processing 139
. Processing of citizenship applications 142
. Interviews 144
Assessment of citizenship criteria 147
. Understanding the nature of the application 147
. English language requirement 148
. Responsibilities and privileges of Australian citizenship 149
. Conclusions 153
. Recommendations 155
Immigration status, character and security checking 156
. Conclusions 158
. Recommendations 159
Deferral of citizenship applications 159
. Conclusions 161
From grant to conferral of citizenship 161
. Conclusions 164
. Recommendations 165
Enrolment of new citizens 165
. Conclusions 167
. Recommendation 167
Portfolio responsibility 167
. Conclusions 168
. Recommendation 169
Passports 169
. Conclusions 174
. Recommendations 175

CHAPTER SIX DUAL CITIZENSHIP

Introduction 177
International law 178
Overseas practice 181
. Canada 182
. United States of America 184
. Other countries 185
Australian law 189
Previous reviews of dual citizenship 193
Submissions on dual citizenship 197
Constitutional issues 204
Conclusions 205
Recommendations 207

Bibliography		209
Appendix One:	**Submissions**	213
Appendix Two:	**Exhibits**	221
Appendix Three:	**Witnesses at Public Hearings**	225
Appendix Four:	**Report on overseas citizenship practices: Executive Summary**	229

MEMBERSHIP OF THE JOINT STANDING COMMITTEE ON MIGRATION

Chairman:	Senator Jim McKiernan
Deputy Chairman:	Senator Jim Short
Members:	Senator Christabel Chamarette (to 3 March 1994) Senator Barney Cooney Mr Laurie Ferguson, MP Hon Clyde Holding, MP Mr Philip Ruddock, MP Rt Hon Ian Sinclair, MP Mrs Kathy Sullivan, MP Mr Harry Woods, MP
Secretary:	Mr Andres Lomp
Legal Adviser:	Dr Kathryn Cronin
Inquiry Staff:	Mr Stephen Boyd Ms Dianne Fraser (to 6 May 1994) Mr Pete Tighe (from 6 May 1994)
Parliamentary Intern:	Ms Rosemary Van Der Meer

TERMS OF REFERENCE

The Committee is to report on the *Australian Citizenship Act 1948*. In particular, the Committee is to report on:

(a) Australian citizenship, the place it should hold in Australian society, ways of making it carry more meaning for all Australians, and how the Act might be amended to enhance these objectives;

(b) the appropriateness of the present discretionary provisions for the grant of Australian citizenship (ss13(4)(b)(i)-(v), (9) of the Act);

(c) section 17 of the Act in relation to dual citizenship, any inconsistencies in the operation of this section and how such inconsistencies can be overcome;

(d) the appropriateness of the current provisions of the Act in relation to deferral and deprivation of citizenship; and

(e) the acquisition of citizenship by overseas-born children of Australian citizens.

ABBREVIATIONS

AAT	Administrative Appeals Tribunal
AEC	Australian Electoral Commission
CAAIP	Committee to Advise on Australia's Immigration Policies
Citizenship Act	*Australian Citizenship Act 1948*
Citizenship Regulations	*Australian Citizenship Regulations 1960*
Committee	Joint Standing Committee on Migration
DFAT	Department of Foreign Affairs and Trade
DIEA	Department of Immigration and Ethnic Affairs
Hague Convention	*Convention on Certain Questions Relating to the Conflict of Nationality Laws* (1930)
Minister	Minister for Immigration and Ethnic Affairs
Ombudsman	Commonwealth and Defence Forces Ombudsman
RSL	Returned and Services League of Australia Limited
United States	United States of America
VIARC	Victorian Immigration Advice and Rights Centre Incorporated

CONCLUSIONS AND RECOMMENDATIONS

CHAPTER THREE: ENHANCING AUSTRALIAN CITIZENSHIP

Practical benefits of citizenship

There was little support during the inquiry for increasing the practical benefits of citizenship. As noted in Chapter Two, successive governments have rejected the introduction of practical incentives for taking out citizenship. No substantive evidence was presented to indicate that the meaning of Australian citizenship would be enhanced if citizenship was of greater practical value. Indeed, the Committee is sympathetic to the view that an individual's decision to acquire citizenship should be based on a person's sense of commitment to Australia rather than a person's desire to secure particular benefits for himself/herself or his/her family.

Community awareness about citizenship

Much of the evidence to the inquiry indicated that increasing community awareness about citizenship is the best way to enhance the meaning of citizenship. In this regard, the Committee agrees with the sentiment expressed in a variety of submissions that those who are well informed about the meaning of citizenship are more likely to become citizens, and that well informed citizens are more likely to become active citizens who participate in and contribute effectively to the community.

The Committee welcomes recent initiatives aimed at increasing understanding of and promoting interest in the meaning of Australian citizenship. A number of these initiatives have been detailed by the Committee in this chapter. In particular, the Committee welcomes efforts by community based organisations which have sought to encourage debate about and generate pride in Australian citizenship.

Despite these initiatives, it is clear that much more could be done to enhance the knowledge about and awareness of Australian citizenship among all members of the Australian community, including non-citizens resident in Australia and Australian citizens by birth and grant. In the Committee's view, there is a need for a broadly based education and information program on Australian citizenship. Such a program should be coordinated as a partnership between government and private enterprise,

the public and private sector. The three main objectives of such a program should be:

- to encourage those non-citizens resident permanently in Australia, who are or may become eligible to seek Australian citizenship, to acquire an understanding of and commitment to the Australian community and Australian values;

- to increase among all Australians awareness of and understanding about the rights and responsibilities of citizenship, and the exercise of those rights and responsibilities for the benefit of the Australian community; and

- to foster among all Australians pride in Australian citizenship as a unifying symbol of a multicultural society.

As citizenship is a Commonwealth responsibility, the Commonwealth Government must assume primary responsibility for the development and implementation of the broad based citizenship education and information program. Any such program needs to be coordinated between various Commonwealth agencies, such as DIEA and the Office of Multicultural Affairs, in consultation with State agencies and community organisations.

A citizenship education and information program should focus on:

- citizenship education for migrants;

- citizenship education within the school system; and

- promotion of citizenship within the community.

With regard to migrant education, evidence available to the Committee indicated that, at present, the primary if not only focus of such education is the teaching of English to migrants from non-English speaking backgrounds. Citizenship education appears to be neglected. Even where some information on Australia and Australian citizenship is incorporated into English language courses conducted under the Adult Migrant English Program, such information is likely to be limited, is provided only to those who require English language tuition, and is not provided generally to prospective citizenship applicants. Indeed, migrants from English speaking backgrounds, who comprise a significant percentage of persons taking out citizenship, generally are not provided with any instruction on Australian citizenship or Australian institutions and society.

In the Committee's view, the lack of migrant education on citizenship should be rectified by DIEA arranging citizenship courses for migrants from both English and non-English speaking backgrounds. Such courses should include a curriculum which deals with Australian institutions, Australian history, the rights and responsibilities of citizenship, and the principles and values of Australian society. For migrants from

non-English speaking backgrounds, it may be appropriate for such citizenship education to be included within the present English language courses conducted under the Adult Migrant English Program. This will require the establishment of separate citizenship courses for migrants from English speaking backgrounds.

Citizenship courses should be publicised actively by DIEA so as to encourage non-citizens to attend such courses before they apply for citizenship. In this way, non-citizens will understand more clearly what Australian citizenship entails before they seek to acquire it. Proposals that such citizenship courses should be used as part of the process for granting citizenship are considered in Chapter Five, which deals with the arrangements for assessing and processing citizenship applications.

With regard to educating the general community about citizenship, the Committee considers that greater priority needs to be directed to citizenship education in the school system. In the past decade, a number of reports have addressed the need for greater emphasis on school based citizenship education. In addition, there have been attempts at a national level to raise the profile of citizenship education across all States and Territories. Despite this, evidence from organisations such as the Parliamentary Education Office and the Constitutional Centenary Foundation indicates that sufficient priority still is not directed to the provision of citizenship education across the school system.

The Committee recognises that education is a matter which comes under the jurisdiction of State governments. Nevertheless, if there is to be a genuine attempt to raise awareness and understanding about Australian citizenship among Australian youth, it is important that there be national agreement on the priority which should be directed to citizenship education. In the Committee's view, commitments made at the Australian Education Council meeting in 1989 to foster citizenship education in schools should be reaffirmed, and State and Territory governments should be encouraged to ensure the practical implementation of a comprehensive citizenship education program in schools. The Commonwealth Government, in consultation with State governments, should develop a national curriculum for citizenship education which is accepted and implemented as a national priority throughout the school system.

In relation to citizenship promotion, once again the Committee considers that this is primarily a Commonwealth responsibility towards which the Commonwealth Government should direct greater effort. A national strategy for citizenship promotion should be developed and coordinated by the Commonwealth Government, through key Commonwealth agencies such as DIEA and the Office of Multicultural Affairs. DIEA should have prime responsibility for such promotion. The renaming of DIEA to reflect its enhanced status in and responsibility for all issues relating to citizenship is discussed at paragraphs 5.101 to 5.105. The citizenship promotion strategy should involve the preparation and distribution of promotional material on citizenship, and the organisation of promotional activities and campaigns. Such promotion should serve the dual purpose of encouraging non-citizens to become Australian citizens and increasing awareness among all Australians about the meaning and value of Australian citizenship.

In this regard, the Committee is in favour of the suggestion to conduct a National Citizenship Week on an annual basis. This would provide an appropriate focal point for a range of community based promotional activities directed at raising general awareness about citizenship. A highlight of such a week should be the presentation of national citizenship awards, to be conferred by the Commonwealth Government in recognition of significant contributions to Australian citizenship.

Finally, given the success of the previous Year of Citizenship in 1989, the Committee considers that a Year of Australian Citizenship should be proclaimed in 1999 to celebrate the 50th anniversary of Australian citizenship. A range of promotional and educational activities could be arranged to signify the importance of Australian citizenship in its 50th year.

The Committee recommends that:

1. **the Commonwealth Government develop and implement a broad based education and information program on citizenship aimed at:**

   - **encouraging those non-citizens resident permanently in Australia, who are or may become eligible to seek Australian citizenship, to acquire an understanding of and commitment to the Australian community and Australian values;**

   - **increasing among all Australians awareness of and understanding about the rights and responsibilities of citizenship, and the exercise of those rights and responsibilities for the benefit of the Australian community; and**

   - **fostering among all Australians pride in Australian citizenship as a unifying symbol of a multicultural society;**

2. **courses on citizenship be provided for migrants of English and non-English speaking backgrounds, with the curriculum to include Australian institutions and history, the rights and responsibilities of Australian citizenship, and the principles and values of Australian society. For migrants of non-English speaking backgrounds, such citizenship education should be incorporated, where appropriate, as part of the English language tuition conducted under the Adult Migrant English Program;**

3. **the Department of Immigration and Ethnic Affairs actively publicise citizenship courses in order to encourage non-citizens to attend such courses before they apply for citizenship;**

4. **the Commonwealth Government, in consultation with State governments, develop a national curriculum for citizenship education to be implemented as a national priority throughout the school system;**

5. **the Commonwealth Government, through agencies such as the Department of Immigration and Ethnic Affairs and the Office of Multicultural Affairs, develop and implement a national strategy for citizenship promotion;**

6. **a National Citizenship Week be organised on an annual basis to promote awareness of and understanding about Australian citizenship;**

7. **national citizenship awards, in recognition of significant contributions to Australian citizenship, be presented by the Commonwealth Government during National Citizenship Week; and**

8. **1999 be proclaimed the Year of Australian Citizenship to celebrate the 50th anniversary of Australian citizenship, with appropriate events and campaigns to mark the occasion and promote awareness of and understanding about citizenship in the community.** (paragraph 3.118)

Citizenship ceremonies

Citizenship ceremonies are an important legal and symbolic step in the process of conferring Australian citizenship on non-citizens. As such, they should reflect the importance and solemnity of the occasion, while at the same time providing an opportunity to welcome new citizens to the Australian community.

In the Committee's view, the conferral of Australian citizenship should not be regarded as a private matter, but should be recognised as the public affirmation of a person's commitment to Australia. Accordingly, the Committee considers that, in the main, Australian citizenship should be conferred at public ceremonies. Private ceremonies should be held only where valid reasons are provided by the applicant as to why a public ceremony is not appropriate, for example, where there is a need for citizenship to be conferred urgently.

With regard to the conduct of citizenship ceremonies, the handbook issued by DIEA in January 1994 provides appropriate guidance regarding the nature and content of such ceremonies. Nevertheless, it is apparent that the quality of citizenship ceremonies is not uniform and depends to a large extent upon the particular local government authorities conducting the ceremony. From Committee members' own experience, some local government authorities treat the citizenship ceremonies purely as local government occasions, thereby overlooking the fact that the power to conduct citizenship ceremonies is delegated from the Commonwealth Minister. There have been instances where Commonwealth representatives, including Federal parliamentarians, have been excluded from citizenship ceremonies, contrary to the guidelines in DIEA's handbook.

To overcome such difficulties, the Committee considers that there should be prescribed minimum guidelines for citizenship ceremonies, which must be followed by the Minister's delegate conducting the ceremony. The minimum guidelines should include:

- the core elements of the ceremony, such as the making of the pledge of commitment and the singing of the national anthem;
- a minimum invitation list for the ceremony, including all State and Federal parliamentarians serving within the local council area, and, where it is necessary to achieve political balance, members of the Senate and State Upper House;
- provision for a Federal and State Member of Parliament to speak at the ceremony prior to the making of the pledge of commitment; and
- a requirement that State and Federal parliamentarians serving within the local council area in which the ceremony is held be provided with lists detailing the names of new citizens.

In the Committee's view, only those local government authorities which follow these prescribed minimum guidelines should be permitted to conduct citizenship ceremonies.

In proposing prescribed minimum standards for citizenship ceremonies, the Committee accepts that such ceremonies involve expense for local government authorities, particularly where larger ceremonies are conducted. In the Committee's view, the Commonwealth Government should provide a subsidy to local government authorities which conduct public ceremonies in accordance with the prescribed guidelines.

As for making the citizenship ceremonies more meaningful, the Committee is of the view that every effort should be made to give local publicity to the event and encourage local media to attend and report the ceremony.

The Committee also considered various proposals made in submissions for improving citizenship ceremonies. Some of those suggestions, such as showing a film about Australia, already are included within the handbook as optional extras for citizenship ceremonies. In the Committee's view, decisions about the use of such optional extras should be left to the local government authorities conducting the ceremony. Any such decisions will depend on the facilities available, the cost of including optional extras within the ceremony, and the size of the ceremony. From Committee members' own experience, the significance and meaning of the citizenship ceremony can decrease if the ceremony is too long.

One proposal with which the Committee does not agree is the suggestion that passports be given out at citizenship ceremonies. The administrative difficulties associated with such a proposition, as noted by DFAT, preclude adoption of this proposal.

Other proposals for enhancing the meaning of citizenship ceremonies, such as providing the opportunity for new citizens to speak at such ceremonies, can be added to the section of the handbook dealing with optional extras when it is next updated. In this regard, it is evident that the nature and content of citizenship ceremonies will change over time as community attitudes change. Accordingly, it is appropriate for DIEA to regularly update its guidelines on the conduct of citizenship ceremonies. It also would be worthwhile for the Bureau of Immigration and Population Research to conduct a survey as to the form and content of ceremonies conducted across Australia, including, where practicable, reactions to those ceremonies from participants.

The Committee recommends that:

9. **Australian citizenship be conferred at public ceremonies, except where the applicant can demonstrate valid reasons as to why a public ceremony is not appropriate;**

10. **the Minister for Immigration and Ethnic Affairs prescribe minimum guidelines for the conduct of citizenship ceremonies which must be followed by the Minister's delegate conducting the ceremonies. The minimum guidelines should include:**

    - **the core elements of the ceremony, such as the making of the pledge of commitment and the singing of the national anthem;**
    - **a minimum invitation list for the ceremony, including all State and Federal parliamentarians serving within the local council area, and, where it is necessary to achieve political balance, members of the Senate and State Upper House;**
    - **provision for a Federal and State Member of Parliament to speak at the ceremony prior to the making of the pledge of commitment; and**
    - **a requirement that State and Federal parliamentarians in the local council area in which the ceremonies are held be provided with lists of new citizens;**

11. **the Commonwealth Government provide a subsidy for citizenship ceremonies to those local government authorities which conduct public citizenship ceremonies in accordance with the prescribed guidelines;**

12. **local government authorities make every effort to publicise citizenship ceremonies in the community and encourage local media to attend and report the event;**

13. **the handbook on Australian citizenship ceremonies be updated regularly by the Department of Immigration and Ethnic Affairs, which should consider and include suggestions for making the ceremonies more meaningful;**

14. **the Bureau of Immigration and Population Research conduct a survey on the form and content of citizenship ceremonies held throughout Australia, as well as participant reactions to those ceremonies; and**

15. **in the next update of the handbook on Australian citizenship ceremonies, the list of optional extras for the ceremony be expanded to include the option of allowing new citizens to speak at ceremonies.** (paragraph 3.161)

CHAPTER FOUR: AUSTRALIAN CITIZENSHIP LAW

Scope of the Citizenship Act

Throughout the inquiry, the Committee perceived a genuine community interest in raising awareness of and understanding about Australian citizenship. In this regard, the Committee is sympathetic to the view expressed in a number of submissions that if Australian citizenship is to carry enhanced meaning, the foundation stone of that citizenship, namely the Australian Citizenship Act, should be accessible and easily understood by those who already are and those who aspire to be citizens.

In this regard, the Committee agrees with the often stated view in submissions that the Citizenship Act is cumbersome and dated. In the Committee's view, the Citizenship Act should be redrafted to simplify the language and adopt a modern legislative drafting style.

The Committee does not regard the redrafting of the Citizenship Act as the most pressing priority in terms of equipping both Australian citizens and prospective citizens with a better understanding of Australian citizenship. The Committee accepts the argument put by DIEA that the average person would not seek to determine his or her citizenship status by referring to legislation, but rather would seek out public information material written in non-legal everyday language. Accordingly, a redraft of the Citizenship Act should be a longer term undertaking which should be completed in time for the 50th anniversary of Australian citizenship in 1999.

The Committee, however, is concerned about the form and text of the Citizenship Regulations. In its view, priority should be directed to redrafting and redesigning the Citizenship Regulations to ensure that they are more comprehensive, informative and accessible. This would entail detailing within the Citizenship Regulations matters of substance which are notable omissions in the present Regulations. These include matters dealing with the grant of citizenship, namely the form of the English language test, the mode of administering that test, and criteria or guidelines indicative of a person's good character, that a person has adequate knowledge of the responsibilities and privileges of citizenship, and that a person is likely to reside in, to continue to reside in, or maintain a close and continuing association with Australia. The Citizenship Regulations also should contain principles which guide the exercise of the Minister's discretion for waiving certain of the criteria for citizenship, such as guidance on which activities outside of Australia are beneficial to the interests of Australia, and guidance concerning the exercise of the Minister's discretion in relation to revocation and resumption of citizenship.

In proposing these amendments, the Committee is concerned that the existing Citizenship Act and Regulations taken together do not comprehensively explain the requirements on grant, revocation and resumption of citizenship. The proposed amendments are designed to rectify these omissions.

Changes to the form and content of the Citizenship Act and Regulations, however, will not necessarily serve to explain to citizens and prospective citizens in easily understood terms the complete rules relating to citizenship. Inevitably, such rules must be couched in precise legal language. In addition, the provisions are not organised in such a way as to provide a logical explanation of citizenship requirements. For this reason, the Committee is of the view that another priority should be the production of a reader's guide to the Citizenship Act and Regulations, which, if appropriate, should be included with the Citizenship Regulations. Such a reader's guide should explain clearly and simply the terms, operation and requirements of the Citizenship Act and Regulations. The Committee notes that a reader's guide is contained within the 1994 Migration Regulations.

To complement the reader's guide, a booklet on Australian citizenship should be produced and made widely available to the public. This booklet should set down who is an Australian citizen, the rules for acquiring and losing citizenship, as well as the rights and responsibilities of Australian citizenship. The booklet should be regarded as an information source on Australian citizenship rules, and the values and meaning of Australian citizenship. It also should provide information on Australian institutions and history. The Canadian citizenship booklet entitled *The Canadian Citizen* could be used as a model in this regard.

In terms of defining the rights and responsibilities of Australian citizenship in such a booklet, the Committee endorses the principles enunciated in the National Agenda for a Multicultural Australia, namely:

- the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage, including their language and religion;
- the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth;
- the need to maintain, develop and utilise effectively the skills and talents of all Australians, regardless of background;
- the obligation that all Australians should have an overriding and unifying commitment to Australia, to its interests and future first and foremost;
- the obligation of all Australians to accept the basic structures and principles of Australian society–the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language, and equality of the sexes; and
- the obligation to accept that the right to express one's own culture and beliefs involves a reciprocal responsibility to accept the right of others to express their views and values.

To give enhanced meaning to the Citizenship Act, the Committee is of the view that the principles enunciated in the National Agenda for a Multicultural Australia should form the basis for a revised preamble to the Citizenship Act. While the insertion of a preamble in the Citizenship Act was a welcome initiative aimed at answering criticisms about the nature of the existing legislation, the Committee considers that a more comprehensive preamble, which reiterates widely accepted principles fundamental to Australian society, will assist in increasing the symbolic significance of the Citizenship Act.

The Committee recommends that:

16. **the *Australian Citizenship Act 1948* be redrafted using simple language and be recast in a modern legal drafting style. This rewrite of the Citizenship Act should be in place for the 50th anniversary of Australian citizenship in 1999;**

17. **the preamble to the *Australian Citizenship Act 1948* be revised and expanded so that it is based on the principles enunciated in the National Agenda for a Multicultural Australia, namely:**
    - **the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage, including their language and religion;**
    - **the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth;**
    - **the need to maintain, develop and utilise effectively the skills and talents of all Australians, regardless of background;**
    - **the obligation that all Australians should have an overriding and unifying commitment to Australia, to its interests and future first and foremost;**
    - **the obligation of all Australians to accept the basic structures and principles of Australian society–the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language, and equality of the sexes; and**
    - **the obligation to accept that the right to express one's own culture and beliefs involves a reciprocal responsibility to accept the right of others to express their views and values;**
18. **the *Australian Citizenship Regulations 1960* be redrafted and revamped so that they operate as a comprehensive, accessible and easily understood guide to the requirements for grant of citizenship and include guidance on the principles of discretion pertaining to the grant, revocation and resumption of citizenship;**
19. **a reader's guide to the *Australian Citizenship Act 1948* and *Australian Citizenship Regulations 1960* be prepared and, if appropriate, be included with the Citizenship Regulations;**
20. **the Department of Immigration and Ethnic Affairs produce and make widely available a booklet on Australian citizenship which outlines in clear and simple language who is an Australian citizen, the rules for acquiring and losing citizenship, the rights and responsibilities of Australian citizenship, as well as information on Australian institutions and history;**

21. **in defining the rights and responsibilities of citizenship for inclusion in the citizenship booklet, reference should be made to the Australian Constitution, to relevant domestic laws and international instruments, and to certain basic principles of Australian citizenship, as enunciated in the National Agenda for a Multicultural Australia and detailed in recommendation 17; and**

22. **the citizenship booklet be provided to all citizenship applicants on receipt of their citizenship applications, and be made available to all Australian embassies and consulates, and a range of other appropriate organisations, such as schools and local government associations.** (paragraph 4.61)

Citizenship by birth in Australia

No substantive evidence was provided to the Committee which demonstrated the need for changing the existing rules regarding citizenship by birth in Australia. Any change to the rules could provide opportunities for abusing Australia's migration processes. The Committee is strongly of the opinion that citizenship law should be drafted so that it is not able to be used by persons seeking to obtain an immigration advantage. The Citizenship Act should retain its own separate and distinguishable purpose associated with a person's allegiance or lack thereof to Australia. As such, the Committee supports the retention of the existing provisions for acquisition of citizenship on birth in Australia.

Relevant to this issue, the Committee notes that the principles on citizenship by birth contained in Australia's legislation are similar to those in British citizenship law.

The Committee recommends that:

23. **the existing provisions for acquisition of citizenship by birth in Australia in section 10 of the *Australian Citizenship Act 1948* be retained.** (paragraph 4.70)

Citizenship by descent

The existing rules governing citizenship by descent are based on the premise that overseas born children of Australian citizens should acquire Australian citizenship only if there is an attachment to Australia. That attachment is demonstrated if one of the child's parents has acquired Australian citizenship other than by descent, or, where the parent has acquired citizenship by descent, the parent has had an appropriate period of residence in Australia.

As a general principle, the Committee supports the concept that there should be an attachment to Australia for citizenship to be passed on in situations where children are born overseas. Without requiring such an attachment, there is a real possibility that whole generations of a family residing overseas could acquire Australian citizenship without any of those persons having any specific connection to Australia, except through an Australian citizen ancestor. For this reason, the Committee does not support the suggestion that citizenship should be conferred automatically on overseas born children of Australian citizens. This principle is in line with international law provisions which seek to limit the automatic grant of citizenship to persons born outside a country of citizenship.

As for the registration process, the Committee did not receive any detailed empirical evidence to indicate a need for change. Nevertheless, some of the information brought to the Committee's attention indicated possible shortcomings in the registration process. While the Committee considers that the essentials of the registration process should remain unchanged, some attention may be required in relation to the administrative arrangements for registration. In particular, the Committee considers that there is a need to ensure that, as far as possible, all such registrations of citizenship by descent are recorded electronically, are maintained centrally by DIEA, and are accessible where appropriate to persons on the register and relevant Commonwealth agencies.

In addition, the Committee accepts that there are legitimate concerns that Australian citizens may not know about the registration process for their children born outside Australia. These concerns can best be addressed by ensuring that information on the registration process is included in the citizenship booklet which the Committee has recommended at recommendation 20. Additionally, DIEA should ensure that such information is readily available at Australian embassies and consulates, and that the information available to Australian travellers, such as the DFAT booklet 'Hints for Australian Travellers', contain specific reference to the registration process for citizenship.

The Committee, of course, accepts that there always will be some persons who are eligible to be registered as Australian citizens but who, for whatever reason, have not had that registration effected before they turn 18 years of age. In such cases, although the default lies with the parents or guardians of the child, it is the child who ultimately may be disadvantaged by not having Australian citizenship. While section 10C has introduced a ministerial discretion into the Citizenship Act to deal with such circumstances, the concession has a particular time limit. In the Committee's view, it should be the circumstances of a particular case which should be relevant, rather than whether a person was 18 years of age or older on a particular date. Accordingly, the Committee favours extending the section 10C concession to provide for an ongoing concession which would allow the Minister to grant citizenship to persons who are 18 years of age or over and have not been registered as Australian citizens for acceptable reasons. Those reasons are defined already in the legislation.

As for the suggestion by VIARC that consideration should be given to granting citizenship by descent to certain persons living on Pacific islands who claim Aboriginal descent, the Committee notes that problems in this regard were asserted by the witnesses but, when questioned on these matters, the claims were not substantiated.

In relation to the concerns expressed by the Immigration Advice and Rights Centre about difficulties with citizenship registrations being effected where Australian fathers refuse to make declarations of paternity, once again the Committee notes that problems in this regard were asserted by the witnesses but, when questioned on these matters, the claims were not substantiated.

With regard to the submissions received from certain Australians overseas concerning difficulties experienced by certain Australian citizen children resident in countries which do not permit dual citizenship, the Committee is not in a position to suggest a remedy to these problems. Any change to Australian law and practice would not alter the situation for such children, whose difficulties stem from the citizenship laws of the countries in which they reside. As such, the problems are not amenable to solutions by this Committee.

The Committee recommends that:

24. **the process for registration of Australian citizenship by descent for overseas born children of Australian citizens be retained essentially in its existing form;**

25. **the concession in section 10C of the *Australian Citizenship Act 1948* be amended to remove the limitation contained in section 10C(4)(c)(ii) restricting the applicability of the section to persons who were 18 years of age or older on 15 January 1992, and to provide instead that it is an ongoing concession for persons who for prescribed and acceptable reasons, as outlined in the existing legislation, were not registered as Australian citizens before they turned 18 years of age;**

26. **the Department of Immigration and Ethnic Affairs ensure that, as far as possible, all registrations of Australian citizenship by descent be recorded electronically and maintained on a central database which is accessible, where appropriate, to persons on the register and relevant Commonwealth agencies; and**

27. **information on the process for registration of overseas born children of Australian citizens be included in the citizenship booklet which the Committee has recommended at recommendation 20, be made widely available in Australian embassies and consulates, and be included in the present publication by the Department of Foreign Affairs and Trade entitled 'Hints for Australian Travellers' and any future such publications.** (paragraph 4.104)

Grant of citizenship

The core criteria for grant of citizenship were not given detailed consideration during the course of the inquiry. As noted in Chapter One, at the outset of the inquiry, the Minister advised the Committee that the 'Government considers that the core criteria in relation to acquisition of citizenship by birth (s10 of the Act) and descent (ss10B, 10C and 11 of the Act), and the core criteria in relation to grant of citizenship (s13(1) of the Act) and the new pledge, are appropriate and not in need of significant amendment'. In addition, only limited evidence was received on the criteria for grant of citizenship. That evidence did not allow for detailed investigation.

Despite the limited evidence, it is apparent that there are a range of views in the community about the existing citizenship criteria. Some of those views have been noted in this report. In this regard, the Committee considers that it would be appropriate to conduct a more detailed investigation of the citizenship criteria in the near future. Such a review should take place in the lead up to the 50th anniversary of Australian citizenship, which occurs in 1999.

Such a review requires sound empirical evidence. Better evidence is required than was available to the Committee during the present inquiry. In this regard, the Committee considers that there is a need for the Bureau of Immigration and Population Research to sponsor research which would assist in developing a profile of citizenship applicants. This profile should indicate the English language skills of citizenship applicants, including whether they have functional English, and should evaluate their knowledge of Australian life and institutions. The findings from such research would assist future government decision making in such matters.

While proposing a more detailed review of the citizenship criteria in the near future, the Committee has identified certain matters which require more immediate attention. In terms of the residence requirement, the Committee agrees with VIARC that the existing provisions can be confusing. The Committee supports a redraft of this section of the Citizenship Act to simplify and clarify the residence requirement.

In relation to the English language requirement, the Committee was sympathetic to the view expressed by the RSL that persons seeking to become Australian citizens should have a level of English language sufficient to satisfy their obligations as citizens. The Committee also acknowledges the view stated in various submissions that greater emphasis should be placed on prospective citizens acquiring practical knowledge about Australian society, values and institutions. In the Committee's view, the main problem is not with the existing criteria for grant of citizenship, but with the process for evaluating whether applicants meet that criteria. Recommendations in this regard are made in Chapter Five, dealing with citizenship processing.

With regard to the scope of ministerial discretion for grant of citizenship, once again there was a lack of detailed evidence indicating any significant difficulties in this regard. The Committee agrees that it is appropriate to have ministerial discretion attaching to the grant of citizenship, because of the difficulty in drafting rules which cover every situation. The Committee, however, does not support suggestions to broaden the scope of such discretion. In particular, the Committee sees no merit in providing the Minister with discretion to waive all of the legislative requirements for citizenship so as to grant citizenship in cases of significant hardship or disadvantage, or to the spouse, widow or widower of an Australian citizen.

As for the Ombudsman's proposal to provide a ministerial discretion to overcome administrative error, it appeared that the cases referred to by the Ombudsman concerned adults who would have been entitled to have been registered for citizenship, who were misled by DIEA and wrongly believed they were citizens, and who on subsequent discovery of the error had lost their right to register as citizens. The Committee's recommendation 25 would address this problem.

One anomaly which needs attention arises in relation to the Minister's discretion to waive certain criteria on the basis of age. In the Committee's view, it is anomalous that the discretion to waive the language requirement can be exercised when applicants turn 50 years of age, but the discretion to waive the requirement for applicants to have an adequate knowledge of the responsibilities and privileges of Australian citizenship can be waived only when the applicants turn 60 years of age. It is difficult to comprehend how someone at 50 years of age who does not have basic knowledge of English can demonstrate that he/she has adequate knowledge of the responsibilities and privileges of Australian citizenship. In the Committee's view, the age limit for the exercise of both waivers should be consistent and should be set at the higher limit of 60 years of age.

The Committee recommends that:

28. **a review of the core criteria for grant of citizenship be conducted in the lead up to the 50th anniversary of Australian citizenship, which occurs in 1999;**

29. **to assist in future decision making on citizenship matters, the Bureau of Immigration and Population Research sponsor research aimed at developing a profile on citizenship applicants, including data on such applicants' actual English language skills and knowledge of Australian life and institutions;**

30. **the provisions outlining the residence requirement in sections 13(1)(d) and (e) of the *Australian Citizenship Act 1948* be redrafted, simplified and clarified;**

31. **subject to recommendation 32, the provisions setting down the discretion of the Minister for Immigration and Ethnic Affairs for grant of citizenship be retained in their existing form; and**

32. **the age limit applying to the discretion of the Minister for Immigration and Ethnic Affairs to waive the English language requirement for grant of citizenship be increased to 60 years of age so that it is consistent with the existing age limit applying to the Minister's discretion to waive the requirement that applicants have adequate knowledge of the responsibilities and privileges of Australian citizenship.** (paragraph 4.152)

Child migrants

In relation to British child migrants brought out to Australia, the Committee considers that, given the circumstances of their removal to Australia and the confusion which in many instances has arisen in relation to their identity and citizenship status, the Minister should waive the fee in relation to their citizenship applications. The Committee does not favour automatic conferral of Australian citizenship because it may result in certain persons gaining Australian citizenship which they do not wish to acquire or for which they otherwise would not qualify. Rather, it is more appropriate that those who wish to take up Australian citizenship be able to do so by applying for that citizenship at no cost.

The Committee recommends that:

33. **the Minister for Immigration and Ethnic Affairs waive the citizenship application fee for citizenship applications lodged by persons brought to Australia under the British Child Migration Scheme.** (paragraph 4.156)

Defence force concession

The defence force concession in the Citizenship Act acknowledges the significant service provided to Australia by defence force personnel. On DIEA's advice, however, it would appear that the existing concession does not recognise the service of members of the reserve forces who serve on a full time basis. In the Committee's view, this anomaly should be rectified by extending the defence force concession to include such persons.

As for the suggestion put forward by the RSL, the Committee is not in a position to come to any conclusions or recommendations in this regard, as the matter of whether persons are given permanent residence is an immigration issue beyond the terms of reference for this inquiry.

The Committee recommends that:

34. **the defence force concession provided for in section 13(3) of the *Australian Citizenship Act 1948* be extended so that it also applies to members of the reserve defence forces who have completed not less than three months full time defence service.**

Loss of citizenship

Most of the concerns expressed regarding deprivation of citizenship were based on a philosophical view that once persons acquire citizenship, it should be beyond the power of the state to take that citizenship away. The Committee rejects this view. In the Committee's opinion, if an individual's application for citizenship is granted on the basis of defined criteria, including the criteria of good character, then it is appropriate for the Minister to have the power to revoke that citizenship if it is discovered that the person obtained the citizenship by deceit or fraud, or if a crime committed by that person prior to the grant of citizenship is of such magnitude that it would have resulted in the refusal of the citizenship application because of failure to meet the criteria.

In the Committee's view, it is misleading to suggest that the revocation powers create two distinct classes of citizenship. Citizenship by grant is awarded at the discretion of the Minister. It is a privilege bestowed on the person. It is not a person's claim by right. For those persons who legitimately acquire citizenship by grant and who do not commit a serious offence before being granted citizenship, there is no possibility that they would be deprived of citizenship. The deprivation provisions are used rarely and sparingly. Nevertheless, they are an appropriate power complementing the Minister's discretion to grant citizenship.

In considering the revocation powers under section 21, the Committee first notes that the concerns expressed by VIARC, namely that section 21 presently gives the Minister an unsupervised power of revocation which is not subject to appeal, are entirely unfounded. The Citizenship Act clearly states in section 52A(1)(c) that decisions of the Minister under section 21 are reviewable before the AAT.

As to the substance of section 21, the Committee is of the view that these provisions should be extended to cover not only those cases where citizenship is obtained by fraud or is awarded inappropriately to persons of bad character, but also in those cases where the applicant's claim to citizenship was based on the applicant's residence in Australia and that residence was obtained by fraud. The Committee notes that Canada, New Zealand and the United States have provisions similar to this in their citizenship legislation. The Committee also notes the suggestion by Ms Kmiecic, former Registrar of Canadian Citizenship, made during a meeting with the Committee, that appropriate use of the revocation powers can be regarded as a mechanism for enhancing the value of citizenship. It makes clear that those who

were not entitled to citizenship, because they secured either their migration status or citizenship by fraud, should not retain the citizenship which was gained dishonestly.

The Australian provisions on deprivation of citizenship, where this was obtained by fraud, should be amended so as to bring them into line with the law and practice in comparable countries. The effect of such an amendment will be that the Minister no longer will be required to prosecute and secure conviction against the person committing the fraud. The new provision should allow revocation of citizenship in cases where the person knowingly obtained citizenship or permanent residence by fraud. Persons who are liable to lose their citizenship under these provisions should continue to have a right of review against the revocation provision to the AAT.

One other concern of the Committee relates to the revocation of the citizenship of children. While it appears that the existing provisions of section 23 accommodate the obligation in the *Convention on the Rights of the Child* to preserve and safeguard a child's right to a nationality, the Committee is of the opinion that this ought to be made explicit in relation to the exercise of the Minister's discretion to deprive a child of citizenship where that child's parent has lost citizenship under section 21. The Committee notes that there currently is no requirement in the Citizenship Act or Regulations for the Minister to consider whether the revocation of a child's citizenship in such circumstances would render the child stateless. This omission should be rectified. In addition, there ought to be a requirement that whenever a child loses citizenship under section 23, either by operation of the statute or direction of the Minister, the child's guardians be informed of the child's right under section 23B to resume that citizenship within one year of the child attaining the age of 18 years, or such further period as the Minister in special circumstances allows.

The Committee recommends that:

35. **section 21 of the *Australian Citizenship Act 1948* be amended to permit the Minister for Immigration and Ethnic Affairs to revoke citizenship not only in cases where persons knowingly committed fraud in relation to their citizenship applications, but also where such fraud was committed in order to obtain permanent residence in Australia and citizenship was acquired because that person was a permanent resident of Australia;**

36. **revocations under the amended section 21 of the *Australian Citizenship Act 1948* be required to be effected within ten years of the person acquiring citizenship. In addition, there should cease to be an obligation for the Minister for Immigration and Ethnic Affairs to prosecute and obtain a conviction for citizenship fraud under section 50 of the *Australian Citizenship Act 1948*, but there should continue to be a right of review to the Administrative Appeals Tribunal against a decision by the Minister to revoke citizenship in the circumstances outlined in recommendation 35;**

37. **section 23 of the *Australian Citizenship Act 1948* be amended to provide that the Minister for Immigration and Ethnic Affairs, in considering whether to revoke the citizenship of a child whose parent has had his or her Australian citizenship revoked under section 21, specifically consider whether the revocation would render the child stateless; and**

38. **the *Australian Citizenship Regulations 1960* be amended to provide that, as a matter of practice, whenever a child loses citizenship under section 23 of the *Australian Citizenship Act 1948*, the child's guardians be informed of the child's right under section 23B to resume that citizenship within one year of attaining 18 years of age, or such further period as the Minister for Immigration and Ethnic Affairs in special circumstances allows.** (paragraph 4.189)

CHAPTER FIVE: CITIZENSHIP PROCESSING AND PASSPORTS

Assessment of citizenship criteria

From the evidence available to the Committee, it is evident that the acquisition of citizenship by grant involves a streamlined administrative process aimed at producing a speedy determination with minimal inconvenience to the applicant. Clearly, given the volume of citizenship applications which DIEA is required to consider annually, an efficient and fast administrative process is of great importance to the management of the citizenship program. No doubt, a streamlined administrative process also is aimed at ensuring that the process for acquiring citizenship is not considered to be a barrier or disincentive for persons who are contemplating becoming Australian citizens.

While the Committee commends DIEA for establishing such a system for grant of citizenship, the Committee is concerned that the system may have become too focused on administrative processing, and insufficiently focused on the careful evaluation of applicants for citizenship. On the evidence available to the Committee, it would appear that the citizenship interview, as it currently is conducted, serves more as an administrative check than an opportunity for careful evaluation of applicants against the legislative criteria for grant of citizenship. DIEA generally conducts interviews at the same time that applicants lodge their applications. Applicants are required to answer simply 'yes' or 'no' when questioned on their personal particulars and the responsibilities and privileges of Australian citizenship. Information from one applicant even suggested that cursory attention is paid to this last criterion.

The Citizenship Instructions themselves provide limited information on how officers should assess criteria such as basic English language skills, an applicant's understanding of the nature of the application, and adequate knowledge of the responsibilities and privileges of Australian citizenship. The Committee doubts whether an appropriate evaluation of these criteria for citizenship can be made if an applicant merely states his or her name, responds 'yes' or 'no' when questioned on personal particulars, and acknowledges when an officer recites a list of responsibilities and privileges of Australian citizenship.

In Chapter Four of this report, the Committee has noted that the core criteria for grant of citizenship have not been considered in detail during the inquiry because of the Minister's advice that he considers those criteria are not in need of significant amendment. Indeed, the Committee received limited evidence on the criteria during the inquiry. Instead, the Committee has recommended a review of the core criteria in due course. In adopting this position, the Committee is of the view that immediate attention should be directed to ensuring that there is appropriate evaluation of the existing criteria for grant of citizenship, particularly during the citizenship interview.

The Committee considers that the interview should be a process which allows for appropriate and careful evaluation of an applicant's claims against the criteria for citizenship. In particular, greater attention should be directed to determining whether an applicant has basic knowledge of English and adequate knowledge of the responsibilities and privileges of Australian citizenship.

At recommendation 2, the Committee has proposed that citizenship courses be conducted for migrants of both English and non-English speaking backgrounds. In the Committee's view, satisfactory completion of a citizenship course should be regarded as evidence that a citizenship applicant satisfies the criteria of having an adequate knowledge of the responsibilities and privileges of citizenship.

In this regard, the Committee considers that when persons lodge a citizenship application, they should be told that they are required to satisfy an interviewing officer that they have adequate knowledge of the responsibilities and privileges of Australian citizenship. At that time, they should be provided with a citizenship booklet, as proposed at recommendation 20, and they should be encouraged, if they have not already done so, to attend a citizenship course, as proposed at recommendation 2. Applicants should be informed that satisfactory completion of a citizenship course will be regarded as the evidence necessary to satisfy the interviewing officer that the applicant has adequate knowledge of the responsibilities and privileges of citizenship. Applicants also should be advised that if they do not satisfactorily complete a citizenship course, they will be required, as part of a revamped citizenship interview, to answer questions on the responsibilities and privileges of Australian citizenship as outlined in the citizenship booklet.

To guide interviewing officers through an enhanced citizenship interview, more detailed guidelines on the assessment of some of the more subjective criteria, such as the responsibilities and privileges of citizenship, should be produced. In particular, such guidelines should incorporate more detailed indicators of the responsibilities and privileges of citizenship, as are contained in the National Agenda for a Multicultural Australia, which the Committee has recommended for incorporation in a revamped preamble to the Citizenship Act.

As for the role of postal officers in interviewing citizenship applicants, DIEA must continue to ensure that interviews are conducted by senior persons within the postal system, that is postal managers, who have received appropriate training in the requirements for grant of citizenship and the process for interviewing citizenship applicants.

The Committee recommends that:

39. **the practice in relation to citizenship interviews be upgraded to provide for careful and thorough evaluation of whether an applicant understands the nature of the application, has basic knowledge of English, tested objectively, and has adequate knowledge of the responsibilities and privileges of Australian citizenship;**

40. **satisfactory completion of a citizenship course be regarded as evidence that an applicant for grant of citizenship satisfies the criteria of having an adequate knowledge of the responsibilities and privileges of Australian citizenship;**

41. **on receipt of a citizenship application, the Department of Immigration and Ethnic Affairs recommend to all citizenship applicants that they attend a citizenship course, and advise applicants that satisfactory completion of a citizenship course will be taken as evidence that they satisfy the criteria of having adequate knowledge of the responsibilities and privileges of Australian citizenship. The Department also should advise citizenship applicants that if they do not satisfactorily complete a citizenship course, they will be required to demonstrate, as part of a more rigorous interview process, that they have adequate knowledge of the responsibilities and privileges of Australian citizenship, as outlined in the citizenship booklet proposed at recommendation 20;**

42. **to assist interviewing officers in conducting an upgraded interview, more detailed guidelines be produced and included in the Citizenship Instructions on the assessment of the existing criteria for grant of citizenship;**

43. **the guidelines in the Citizenship Instructions for the assessment of the citizenship criteria that an applicant have adequate knowledge of the responsibilities and privileges of Australian citizenship incorporate more detailed indicators of such responsibilities and privileges, including those listed in recommendation 17; and**

44. **where citizenship interviews are conducted by postal officers, the Department of Immigration and Ethnic Affairs ensure that such officers are of appropriate seniority, that is postal managers, and are trained adequately in the requirements for grant of citizenship and the process for interviewing citizenship applicants.** (paragraph 5.53)

Immigration status, character and security checking

In view of the significance of citizenship status and the rights it bestows on an individual, particularly the general right to enter, reside in and depart Australia freely, it is vital that vigorous checks on immigration status, character and security are undertaken during the processing of citizenship applications. While DIEA has expressed confidence in its system for conducting such checks, the Committee considers that certain matters require attention to ensure the thoroughness of that system.

The Committee is of the view that there should be appropriate liaison between DIEA's citizenship and compliance sections. Limited evidence about lack of information sharing between the two sections was available to the Committee, and that evidence related to incidents over two years ago. Even so, the Committee is keen to ensure that the citizenship section is fully informed about the immigration status of all persons who have applied for citizenship, some of whom could be under investigation by other areas of DIEA. In this regard, the Committee notes that the Citizenship Instructions contain limited guidance on the checks which need to be carried out by DIEA officers in making decisions on citizenship applications. The Committee considers that the Citizenship Instructions explicitly should alert DIEA officers to the need for appropriate checks of immigration status, including data matching with the compliance section.

On a separate point, the Committee agrees that DIEA requires access to a comprehensive and up to date national index of criminal activities in Australia. It is clearly unsatisfactory that, for citizenship purposes, DIEA is, to a large degree, reliant on police checks from a database which is current only for New South Wales.

The Committee recommends that:

45. **the Citizenship Instructions include more detailed guidance on the immigration status, character and police checks to be undertaken in relation to citizenship applicants, and specifically alert departmental officers assessing citizenship applications to the need for appropriate liaison and information checking with the compliance section of the Department of Immigration and Ethnic Affairs; and**

46. **priority be directed to ensuring that the Department of Immigration and Ethnic Affairs has access to a comprehensive and up to date national index of criminal activities in Australia.** (paragraph 5.66)

Deferral of citizenship applications

The Committee welcomes the decision to extend the deferral power in relation to citizenship applications, so that it can be used to defer applications not just from those who in time may qualify for citizenship, but also from persons who, following further investigation, may be shown to be ineligible for citizenship. It is an appropriate power which will enable DIEA to undertake further investigation of applicants where that is considered warranted, and will enable the citizenship section to await the outcome of investigations by other sections of DIEA.

In the Committee's view, a particular advantage of the deferral power is that it allows DIEA to continue its expeditious and efficient processing of cases which are not problematic, and, under the deferral power, to reserve those cases which require more careful scrutiny, or in which an applicant would be assisted if given additional time to satisfy certain citizenship criteria.

From grant to conferral of citizenship

The current provisions of the Citizenship Act relevant to grant and conferral of citizenship can create anomalous situations where a person who is granted Australian citizenship may cease to satisfy certain criteria for grant before the citizenship is conferred. As explained by DIEA, this can occur where a person's circumstances change between the grant and the conferral. It is most likely to occur if there is a significant duration of time from the grant of citizenship to the conferral of that citizenship. To reduce the possibility of such cases arising, the Committee considers that there should be a time limit of six months during which an applicant granted citizenship must have citizenship conferred by making the pledge of commitment. After six months, the validity of the certificate of grant of citizenship should lapse and the certificate should no longer be valid for the purposes of conferring citizenship.

In addition, the Committee is of the view that the Citizenship Act should be amended to provide the Minister with an explicit power to revoke certificates of citizenship before citizenship is conferred. A specific power is necessary to overcome the difficulties alluded to by Justice Lee of the Federal Court in the *Smith-Davidson* case.

The Committee recommends that:

47. **the *Australian Citizenship Act 1948* be amended to provide for a time limit of six months from the time a certificate of Australian citizenship is granted to the time that an applicant must make the pledge of commitment at a ceremony for conferral of citizenship;**

48. **the *Australian Citizenship Act 1948* be amended to provide the Minister of Immigration and Ethnic Affairs with the explicit power to revoke certificates of Australian citizenship before citizenship is conferred; and**

49. **there be a right of review to the Administrative Appeals Tribunal in relation to decisions by the Minister for Immigration and Ethnic Affairs to revoke citizenship certificates.** (paragraph 5.90)

Enrolment of new citizens

One of the specific and important rights and responsibilities of Australian citizenship is to vote in elections and referendums. As such, it is of concern to the Committee that new citizens may be disenfranchised for periods ranging from two to five months as the AEC awaits advice from local government associations, through DIEA, that persons who have nominated for enrolment have become citizens. What should be a simple administrative process clearly is not working as it was intended. Accordingly, the Committee is of the view that the AEC should return to its previous practice of sending AEC officers to citizenship ceremonies for the purpose of enrolling new citizens on the electoral roll. The Committee notes the advice of the AEC that this practice generally resulted in new citizens being enrolled to vote within 24 hours of becoming citizens.

The Committee recommends that:

50. **the Australian Electoral Commission revert to its previous practice of sending officers to citizenship ceremonies to facilitate the enrolment of new citizens on the electoral roll.** (paragraph 5.98)

Portfolio responsibility

No convincing evidence was provided to the Committee as to why there is a need to transfer responsibility for citizenship from the Immigration and Ethnic Affairs portfolio to the Attorney-General's portfolio. As such, the Committee rejects this suggestion.

The Committee, however, considers that greater prominence should be given to citizenship within the existing portfolio arrangements. As noted in Chapter Three, DIEA itself indicated that we should stop thinking about citizenship as something that migrants get. If this is to be achieved, then appropriate recognition should be given to the status of citizenship within the Immigration and Ethnic Affairs portfolio. In the Committee's view, to enhance the status of citizenship among all Australians, the department responsible for administering the Citizenship Act should be renamed the Department of Citizenship, Immigration and Ethnic Affairs. This will help all Australians to recognise that citizenship is a matter of significance to the Commonwealth. It also will ensure that Australians are readily able to identify which Commonwealth agency is responsible for citizenship matters.

As for the suggestion that the passport function be transferred to DIEA, this proposal is considered in the next section of this chapter dealing with passports.

The Committee recommends that:

51. **the Department of Immigration and Ethnic Affairs be renamed the Department of Citizenship, Immigration and Ethnic Affairs.** (paragraph 5.105)

Passports

Limited evidence was provided to the Committee about the passport function and its relationship with the administration of the citizenship program. The Committee notes the advice of DFAT that no inconsistencies or difficulties have been detected in this regard.

Nevertheless, given the significance of a passport as an internationally recognised identity document, the Committee was eager to ensure that appropriate measures exist to protect against potential fraud. While DFAT advised the Committee about increased evidentiary checks relevant to the issuing of passports implemented following the 1982 report of the Royal Commission of Inquiry into Drug Trafficking, DFAT's evidence about a major fraudulent passport racket in 1993 alerted the Committee to the risks which remain in the issuing of passports. The comments from DFAT that verification can never be said to be without risk confirmed the need for stringent procedures to safeguard against passport fraud.

While the existing verification procedures for issuing of passports are detailed, the Committee notes DFAT's concerns about lack of on-line access to the records of State Registrars of Births, Deaths and Marriages. The Committee considers that, despite the initiatives being taken by State Registrars to improve security of documentation used in gaining a passport, DFAT's lack of on-line access to current records held by State Registrars of Births, Deaths and Marriages increases the potential for fraud in the issuing of passports. In the Committee's view, the Commonwealth Government should pursue, as a priority, the issue of on-line access to such records for the purposes of passport issue.

As for the suggestion that the passport function should be transferred from DFAT to DIEA, the Committee considers that there is merit in the proposal, given that information on citizenship, which is the basis for acquiring a passport, is in the domain of DIEA. The Committee recognises the important role of DFAT in providing passport services in overseas countries. On balance, however, the Committee is of the view that it would be more appropriate for all the functions associated with citizenship to be controlled by one Commonwealth department. That department should be DIEA, which processes citizenship applications and revocations, and which, under the Committee's recommendation 51, should be renamed the Department of Citizenship, Immigration and Ethnic Affairs. As limited evidence was provided to the Committee on the implications of transferring the function of issuing passports to DIEA, the Government should investigate the implications and viability of this proposal.

Another proposal which the Committee supports is the inclusion of a statement within the Australian passport that the bearer of the passport is an Australian citizen. In view of the Committee's other recommendations about enhancing the symbolic meaning of Australian citizenship, this is an appropriate additional measure to adopt.

The Committee recommends that:

52. **to further safeguard against fraud in the issuing of Australian passports, the Commonwealth Government, as a priority, actively pursue efforts to gain on-line access to the records of State Registrars of Births, Deaths and Marriages for the purposes of passport issue;**

53. **Australian passports incorporate a statement that the bearer of the passport is an Australian citizen; and**

54. **the Commonwealth Government consider transferring responsibility for administration of the passport function, including issuing of passports, to a renamed Department of Citizenship, Immigration and Ethnic Affairs.** (paragraph 5.130)

CHAPTER SIX: DUAL CITIZENSHIP

The debate on dual citizenship during this inquiry encompassed a number of important themes germane to the general concept of citizenship, including issues of allegiance and commitment, as well as questions of rights and obligations. As part of that debate, and in considering these themes, the Committee focused on whether Australia's existing approach to dual citizenship best serves the needs of contemporary Australian society.

The overwhelming view in submissions was that Australia's insistence on single citizenship for those born in Australia is outmoded and discriminatory. In a world of increasing mobility, it was considered anachronistic that one section of the Australian population should be disadvantaged by a prohibition on accessing more than one citizenship.

In keeping with Australia's non-discriminatory and inclusive approach to citizenship, the Committee considers that it is timely to allow dual citizenship for all Australians by repealing section 17 of the Citizenship Act. The existing legislation has long tolerated dual citizenship for those who are naturalised Australians. It is only fair and equitable that the opportunity to acquire the citizenship of another country should be extended to Australian citizens at birth.

The Committee rejects the argument that one cannot owe allegiance or commitment to more than one country. It is estimated that three million Australians currently possess dual citizenship. There is no evidence to suggest that these persons are disloyal or lack a commitment to Australia simply because they have chosen not to relinquish their former ties and heritage.

Tolerance of diversity is a cornerstone of multicultural Australian society. The ultimate expression of such tolerance would be the recognition that while Australian citizens owe their primary allegiance to Australia, they also can show a commitment to their country of origin or the country in which they are resident.

In a number of submissions, it was suggested that dual citizenship would enhance employment and business opportunities overseas for Australians, and would allow Australian citizens resident overseas to overcome various disadvantages stemming from the laws of different countries. The Committee agrees that economic benefit and personal gain should not be the principal factors influencing citizenship policy. However, it would be inappropriate to ignore international trends in citizenship law, including the growing international trend towards dual citizenship, and their implications for issues such as trade and travel. Australia cannot afford to be isolated from such developments.

It also is evident that the existing system of revoking Australian citizenship places an administrative burden on Australian embassies and consulates around the world. Again, while this was not a primary factor in the Committee's deliberations, it was a relevant consideration which, the Committee notes, also featured in Canada's decision to accept dual citizenship.

The Committee, of course, accepts that, apart from the benefits, dual citizenship carries with it certain potential difficulties for Australians travelling overseas. There may be limitations on the diplomatic protection Australia is able to afford to its citizens in those countries where the Australian citizens hold dual nationality. In addition, Australians travelling to a country where they hold dual nationality may be required to undertake national service. These potential difficulties already exist for the three million Australians who hold dual nationality by virtue of not having relinquished their former nationality. The Committee was not given any evidence to indicate that these problems are of any great magnitude. In the Committee's view, the best solution to such potential difficulties is to ensure that Australian travellers are able to access adequate information on the problems which can arise for dual citizens overseas. Such information is available through publications such as the DFAT booklet 'Hints for Australian Travellers', which already contains a section on dual nationality.

The Committee also notes the restrictions within Australia's Constitution which prevent dual citizens from holding public office. In this regard, Committee members consider that there is merit in the argument canvassed by the framers of the Constitution and by the High Court in the case of *Sykes v Cleary*, that Australia's elected representatives should owe undivided loyalty to Australia, and have a disposition to maintain this requirement. Any amendment to section 44 can occur only through referendum. Resolution of this particular issue is beyond the terms of reference for this inquiry.

The Committee recommends that:

55. section 17 of the *Australian Citizenship Act 1948* be repealed, thereby allowing Australian citizens to acquire dual citizenship; and

56. former Australian citizens who have lost Australian citizenship under section 17 of the *Australian Citizenship Act 1948* have the unqualified right to apply for the resumption of their Australian citizenship. (paragraph 6.98)

Chapter One

THE INQUIRY

Introduction

1.1 On 26 November 1993, the Minister for Immigration and Ethnic Affairs (the Minister), Senator the Hon Nick Bolkus, referred to the Joint Standing Committee on Migration (the Committee) terms of reference for an inquiry into the *Australian Citizenship Act 1948* (the Citizenship Act). The terms of reference are at page xi.

1.2 In his letter referring the inquiry to the Committee, the Minister stated:

> The Government considers that Australian citizenship is an important and unifying symbol in Australian society, and a defining element in our national identity . . . the Government considers it important that there be a clear articulation of the place of Australian citizenship in Australian society, that the *Australian Citizenship Act 1948* reflects this and that its detailed provisions provide adequate support to this policy.[1]

1.3 The Committee decided that its review of the Citizenship Act should be entitled *Inquiry into Enhancing the Meaning of Australian Citizenship*. The title of the inquiry aimed to reflect the desired outcome of the Committee's examination.

1.4 The inquiry involved an analysis of the structure and provisions of the Citizenship Act, including the relationship between the Citizenship Act, the *Migration Act 1958* and the *Passports Act 1938*. The Minister requested the Committee to consider whether these Acts are complementary and consistent.[2]

1.5 At the same time, the inquiry focused on what it means to be Australian. This involved a broad examination of the rights and responsibilities of Australian citizenship, and whether these are defined appropriately within Australia's legislative framework.

---

1 Letter from the Minister for Immigration and Ethnic Affairs dated 26 November 1993.

2 ibid.

1.6 In the formulation of its recommendations, the Committee was requested by the Minister to have regard to:

> . . . the fact that the Government's citizenship policy is based on an inclusive approach to Australian society which seeks to encourage people with permanent residence in Australia to take up citizenship and formally become members of the Australian community.[3]

1.7 At the same time, the Minister indicated that there were certain matters which did not require attention. The Minister stated:

> In conducting its examination, the Committee shall have regard to the fact that the Government considers that the core criteria in relation to acquisition of citizenship by birth (s10 of the Act) and descent (ss10B, 10C and 11 of the Act), and the core criteria in relation to grant of citizenship (s13(1) of the Act) and the new pledge, are appropriate and not in need of significant amendment.[4]

Background to the inquiry

1.8 The Committee's inquiry was established at a time of increasing public debate about the structures, institutions and symbols of Australian nationhood. The approaching centenary of Australian Federation, which will occur on 1 January 2001, has become a focal point for debate on whether the political and social structures which exist in Australia today remain appropriate for Australian society in the twenty-first century.

1.9 Much of that debate has focused on the Australian Constitution and the system of government which it provides. At the same time, there has been considerable discussion about Australia's identity and place within the international community.

1.10 The debate on identity necessarily involves consideration of what it means to be an Australian citizen. In recent years, there has been an increased focus on and publicity given to citizenship issues.

3 ibid.

4 ibid.

1.11 Arising out of the 1988 report of the Committee to Advise on Australia's Immigration Policies (CAAIP),[5] a Year of Citizenship was conducted from September 1988 to September 1989. This included a major campaign promoting citizenship, which aimed to 'encourage all who are eligible to acquire it . . . and to promote awareness of and pride in what being an Australian citizen means'.[6] This campaign resulted in a 40 to 50 percent increase in citizenship applications during that year.[7]

1.12 In 1993, amendments were made to the Citizenship Act incorporating a preamble in the Act and introducing a new pledge of commitment. Those changes came into effect on 24 January 1994.

1.13 During the debate on the *Australian Citizenship Amendment Bill 1993*, which was the legislation introducing these changes, Senator the Hon Michael Tate, the previous Minister for Justice, acknowledged that the adequacy of the Citizenship Act had been the subject of on-going debate. Senator Tate concurred with the repeated criticisms of the Citizenship Act made by the then Shadow Minister for Immigration and Ethnic Affairs, and current Committee member, Mr Philip Ruddock, MP, that:

> . . . the Act did not in itself signify any unifying commitment to Australia, and that it was just a technical outline of steps that would be taken to acquire, to relinquish or to have stripped from one the status of citizenship. There was no sense of what it meant to be a citizen or any great sense of the meaning to be acquired through the citizenship ceremony.[8]

1.14 Senator Tate, in explaining the reasoning behind the introduction of the preamble to the Citizenship Act, also stated:

> I wanted a person to be able to go to the Act and get a sense of what citizenship involved.[9]

5 Committee to Advise on Australia's Immigration Policies, *Immigration, A Commitment to Australia*, AGPS, Canberra, 1988.

6 Evidence, p. 45.

7 Evidence, p. 46.

8 Parliamentary Debates (Hansard), Senate Standing Committee on Legal and Constitutional Affairs, 23 June 1993, p. 1.

9 ibid.

1.15 As these changes were being debated, a former Governor-General and current Chairman of the Constitutional Centenary Foundation Incorporated,[10] the Rt Hon Sir Ninian Stephen, criticised the existing Citizenship Act for being a 'masterpiece of legislative incoherence'.[11] He called for the introduction of a new Citizenship Act, stating:

> What is needed here, clearly enough and as a first step, is a new Citizenship Act which at least sets out on its face who are the citizens of this nation, as well as how those aspiring to become citizens may do so.[12]

1.16 Sir Ninian Stephen linked his call for a new Citizenship Act to the wider debate on Australia's constitutional arrangements. He stated:

> We hear calls today for our Constitution to be redrawn so that citizens may learn from it the real nature of our structure of government, where power lies and who exercises it, so that it will describe the true character of our democracy. But scarcely, if at all, less important must be the explicit definition of the very font of power and bearer of rights in our democracy: we, its citizens. What we need is an Australian Citizenship Act which does just that, and it needs no referendum to produce it, merely a new Citizenship Act.[13]

1.17 The call for renewal of Australia's Citizenship Act was echoed by the Minister when announcing the Committee's inquiry on 26 November 1993. The Minister stated:

> I have asked the Joint Standing Committee on Migration to conduct a wide ranging review of the Act, to ensure that its provisions are consistent with the needs of our multicultural society. The Act will be 45 years old next year and has remained largely unchanged since 1984. As we approach the centenary of Federation, there is a renewed interest in what it means to be an Australian citizen in our multicultural society. A first step has already been taken towards modernising the Act with amendments this year introducing a new Pledge of Commitment–which will be in use by late January next year–as well as a preamble to the Act. Both have had very positive community response. At the same time, other factors have emerged in the last 10 years which point to the need for a broad review–such as increasing international mobility of Australians, changes in migration law, and recent changes in foreign citizenship laws. I have been concerned that as a result, the Citizenship Act has become too cumbersome and too restrictive in its application.[14]

1.18 Announcing the inquiry, the Minister acknowledged the recent developments in citizenship law and practice in a variety of overseas countries. In particular, as this Committee was commencing its inquiry, Canada was undertaking a comprehensive review of its citizenship legislation. The report of that review was published shortly before this Committee finalised its report. In addition, European countries were considering the effect of European Union on their own citizenship laws. Australia's review thus reflected the worldwide interest in issues of national identity and citizenship.

Conduct of the inquiry

1.19 The inquiry was advertised nationally in capital city newspapers on 8 December 1993. In addition, the Committee wrote to a range of individuals and organisations seeking submissions, including Commonwealth Government agencies, State governments and community representative organisations.

1.20 In April 1994, the Committee published an issues paper on the inquiry and sought written comments on the paper from interested individuals and organisations.

1.21 There were 139 submissions to the inquiry, which are listed at Appendix One. These include submissions addressing the terms of reference and submissions responding to the issues paper. The Committee also received 32 exhibits, which are listed at Appendix Two.

1.22 Evidence was taken at public hearings held in Canberra, Melbourne and Sydney in April, May and June of 1994. A list of witnesses who gave evidence at those hearings is provided at Appendix Three.

---

10 The Constitutional Centenary Foundation Incorporated is an independent organisation drawing membership from a wide range of Australian society, including representatives of all political parties. It encourages debate about Australia's institutions and system of government (Evidence, p. S629).

11 Rt Hon Sir Ninian Stephen, Alfred Deakin Lecture, University of Melbourne, 26 August 1993, p. 3.

12 ibid., p. 23.

13 ibid., p. 24.

14 Minister for Immigration and Ethnic Affairs, Media Release B42/93, 26 November 1993.

1.23 Copies of the transcripts of evidence from the public hearings and the volumes of submissions are available from the Committee secretariat and for perusal at the National Library of Australia. References to evidence in the text of this report relate to page numbers in the transcripts and the volumes of submissions. Where the letter 'S' precedes a page number, this signifies evidence from the volumes of submissions.

1.24 In addition to the above evidence, the Committee commissioned a research paper on international law and practice regarding citizenship. The research paper was prepared by the Committee's parliamentary intern, Ms Rosemary Van Der Meer, who participated in the student intern program at the Australian National University. The research paper forms part of the inquiry evidence tabled in the Parliament in conjunction with this report. A summary of that research paper is provided at Appendix Four. The Committee is grateful to Ms Van Der Meer for her research work and the paper she prepared. Her research and paper have been drawn on particularly in relation to the Committee's consideration of dual citizenship in Chapter Six.

1.25 During the inquiry, the Committee also met with the following persons for informal discussions on overseas practice relating to citizenship:

- Mr Tom Ryan
  Counsellor (Immigration)
  Canadian High Commission, Canberra

- Ms Eva Kmiecic
  former Registrar of Canadian Citizenship

- Mr Willem de Bruin
  Attache, Administrative and Consular Affairs
  Royal Netherlands Embassy, Canberra

- Mr Willem van Arnhem
  Division Head
  Ministry of Foreign Affairs, Netherlands.

1.26 The Committee is grateful to Mr Ryan, Ms Kmiecic, Mr de Bruin and Mr van Arnhem for meeting with the Committee to discuss citizenship law and practice in Canada and the Netherlands. The Committee is particularly grateful to Mr Ryan for providing much useful information on Canadian citizenship.

Report structure

In the report, the Committee has focused on:

- the principles of citizenship and their development in an international and Australian context (Chapter Two);
- enhancing Australian citizenship (Chapter Three);
- Australia's citizenship law (Chapter Four);
- citizenship processing and passports (Chapter Five); and
- dual citizenship (Chapter Six).

Chapter Two

CITIZENSHIP IN THE MODERN WORLD

Introduction

2.1 A citizen is a person who by birth, naturalisation or otherwise is a member of an independent political society, called a state, kingdom or empire, and as such is subject to its laws and entitled to its protection in all of his/her rights incident to that relationship.[1]

2.2 The concept of citizenship originates from the ancient Greek and Roman worlds. Its expansion and development is linked to the emergence of the modern nation state, with modern concepts of citizenship reflecting the political, legal and social complexities of the modern age.

2.3 In Australia, the emergence of a distinct nationality or citizenship is a relatively recent occurrence. The status of Australian citizen was created in 1949. The enactment of Australia's citizenship laws reflects Australia's emergence as an independent nation with its own national identity.

2.4 In establishing a distinctive Australian identity, Australian citizenship law reflected modern concepts of citizenship. As a commencement point for its inquiry, therefore, the Committee decided to examine the origins and principles of citizenship, and to consider how those principles have been applied in an Australian context.

Origins of citizenship

2.5 As noted, the concept of citizenship derives from the classical Greek and Roman worlds. The Greek city-state was a small, self-sufficient association in which a citizen was one who had a permanent share in the administration of justice and the holding of office. The citizens themselves formed the state.[2] Aristotle described citizens as 'all who share in the civic life of ruling and being ruled in turn'.[3]

---

1 *The Cyclopedic Law Dictionary*, (3rd edition), Callaghan & Company, Chicago, 1940, p. 177.

2 A. Dummett and A. Nicol, *Citizens, Aliens and Others, Nationality and Immigration Law*, Weidenfeld and Nicolson, London, 1990, p. 9.

3 Aristotle, *Politics* (ed. E Barker), Clarendon Press, 1946, p. 134.

2.6 Aristotle considered that, in order to discharge their functions effectively, citizens must inhabit a city-state that is exceedingly compact and close-knit.[4] He argued:

> Both in order to give decisions in matters of disputed rights, and to distribute the offices of government according to the merits of candidates, the citizens of the state must know one another's characters.[5]

2.7 Aristotle also indicated that a good citizen 'must possess the knowledge and the capacity requisite for ruling as well as for being ruled'.[6]

2.8 In the Greek city-state, citizenship was a privilege. It was neither a right to be claimed by nor a status to be conferred on anybody outside the established ranks of the privileged class. Generally speaking, it was a status which was inherited. Resident foreigners, women, slaves and peasants were excluded.[7]

2.9 In the Roman empire, citizenship was important for allowing its holder to play some part in public life and in determining private law, for example in matters such as inheritance. Roman citizenship was not restricted to members of any particular ethnic group. Persons of varying ethnicity were considered citizens of Rome. Roman citizenship could be conferred in recognition of services.[8]

2.10 The emergence of the modern nation state in the eighteenth and nineteenth centuries brought with it a revival and expansion of the concept of citizenship.[9] In the aftermath of the French Revolution, the idea of citizenship was an integral part of the impetus to create separate nation states. Citizenship conferred the franchise on free and equal citizens.[10]

---

4 D. Heater, *Citizenship: The Civic Ideal in World History, Politics and Education*, Longman, London, 1990, p. 3.

5 Aristotle, op. cit., p. 292.

6 ibid., p. 105.

7 Heater, op. cit., p. 4.

8 ibid.

9 The medieval world was divided into empires, principates and emirates. The personal bonds of subject to ruler, tribesman to chief, vassal to lord, or subject to monarch, were the ties which commonly held communities together. Loyalty to a ruler was understood easily and exacted readily. (Heater, op. cit., p. 2)

10 Dummett and Nicol, op. cit., p. 10.

2.11 The modern concept of citizenship retains the principle of bestowing membership to a community, but differs from the classical concept of citizenship by virtue of the different community in which it applies. In Aristotle's time, citizenship was the privileged status of the ruling group in the Greek city-state. In the modern nation state, citizenship entails legal membership of a community based on the principles of universal suffrage and the rule of law. While in the ancient world citizenship was confined to the participants who deliberated upon and exercised power, in the modern world citizenship extends across society.[11]

Principles of citizenship

2.12 The meaning and ideals of citizenship have been the subject of much debate. Aristotle argued that citizenship is a relative term, depending on the features of any constitution.[12] As a general rule, he defined a citizen as someone who 'enjoys the right of sharing in deliberative or judicial office'.[13] Citizenship in the classical world was focused not so much on rights which could be claimed, but on responsibilities which had to be met.[14]

2.13 In the revolutionary movements of the eighteenth and nineteenth centuries, citizenship became associated with the belief in equality, freedom and self-government. During the French Revolution, for example, the term citizen ('citoyen') was given to those loyal to the liberal ideals of the Revolution.

2.14 In contemporary society, the concept of citizenship encompasses three broad themes or principles:

- membership of a nation state;
- the rights derived from membership of a nation state; and
- the obligations arising from membership of a nation state.

Membership of a state

2.15 Citizenship is the legal bond between an individual and a state which establishes that the individual legally is a member of a state. Citizenship is conferred on an individual by a state.

---

11 J.M. Barbalet, *Citizenship*, University of Minnesota Press, Minneapolis, 1988, p. 3.

12 Heater, op. cit., p. 3.

13 Aristotle, op. cit., p. 95.

14 Heater, op. cit., p. 4.

2.16 Citizenship and nationality often are used as interchangeable terms. They emphasise two different aspects of the same concept. As noted by Weis:

> 'Nationality' stresses the international, 'citizenship' the national, municipal aspect.[15]

2.17 The International Court has defined nationality as:

> . . . a legal bond having as its basis a social fact of attachment, a genuine connection of existence and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute a judicial expression of the fact that the individual upon whom it is conferred, either directly by law or as a result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State.[16]

2.18 Citizenship entails full membership of a state. That status brings with it rights which can be enjoyed and obligations which need to be fulfilled. As noted by the sociologist T.H. Marshall:

> Citizenship is a status bestowed on all those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.[17]

2.19 For non-citizens, citizenship, and the rights and obligations which it entails, can be obtained through the process of naturalisation. The United States Supreme Court, in the case of *Boyd v Thayer*, described naturalisation as:

> . . . the act of adopting a foreigner, and clothing him with the privileges of a native citizen.[18]

15 P. Weis, *Nationality and Statelessness in International Law*, Sijthoff & Noordhoff, The Netherlands, 1979, p. 4.

16 *Nottebohm case* (*Liechtenstein v Guatemala*)–Second Phase, I.C.J. Reports, 1955, p. 23.

17 T.H. Marshall, *Sociology at the Crossroads*, Heinemann, London, 1963, p. 87.

18 *Boyd v Thayer* (1892) 143 U.S. 135 at 162.

Citizenship rights

2.20 Citizenship is the mechanism by which states differentiate between those who acquire rights as a citizen and those who are treated as aliens. Citizenship rights encompass three broad elements–political, civil and social.[19]

2.21 Citizenship rights have evolved through successive centuries.[20] First and foremost, as citizenship bestows membership to a political entity, that is the nation state, it endows individuals with the right to participate in the exercise of political power. This includes the right to participate as a member of a body vested with political authority and to participate as an elector of the members to such a body. As noted by Derek Heater in his historical analysis of citizenship:

> Citizens are equal before the law, their votes are equal and they have equal opportunities for political office.[21]

2.22 Citizenship, by defining the relationship between the individual and the state, also embraces the rights of an individual to certain basic freedoms. These include the right to liberty of person, freedom of speech, thought and faith, equal protection of the law, and the right to own property.

2.23 Modern concepts of citizenship also reflect the view that membership of a community entails social rights, particularly the right to a basic standard of living, which should be available to all. As noted by Heater:

> The concept of social citizenship presupposes at least a 'floor' of living standards, including health care and education, below which no one should be allowed to fall.[22]

2.24 Marshall suggested that the social element of citizenship includes rights ranging from 'the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society'.[23]

19 Marshall, op. cit., p. 76.

20 ibid., p. 90, and Barbalet, op. cit., p. 29.

21 Heater, op. cit., p. 285.

22 ibid.

23 Marshall, op. cit., p. 74.

2.25 Increasingly, in the modern world, citizenship is associated with the freedom to enter, remain in and/or leave the country of one's nationality. Citizens of a country are distinguished from non-citizens, who are subject to immigration control.

2.26 While civil and social rights often are ascribed to citizens, it is important to note that recent developments in international human rights law have meant that many of the rights acquired by citizens also extend to aliens within a state's territory (see paragraph 2.57).

Citizenship obligations

2.27 An individual citizen's relationship with a state not only includes rights acquired by the individual, but also presupposes obligations owing to the state. In general terms, such obligations stem from the fact that citizenship, or nationality, indicates an allegiance to one state. As noted in *Oppenheim's International Law*:

> Nationality of an individual is his quality of being a subject of a certain state. It has its origins in the notion of allegiance owed by the subject to his king, and traces of that underlying notion remain.[24]

2.28 A fundamental responsibility of a citizen is to respect the laws of the state. As indicated by the United Kingdom Commission on Citizenship:

> . . . one of the most important aspects of citizenship is that it involves the maintenance of an agreed framework of rules governing the relationships of individuals to the State and to one another . . . an agreed framework of rules provides the shared basis whereby individuals relate day to day to the 'fellow strangers' of their community.[25]

2.29 In order to fulfil this requirement, a citizen needs a basic understanding of the framework of rules and the guiding principles which govern the operation of the state or community. This was recognised by the United Kingdom Commission on Citizenship, which stated:

> Lack of knowledge is a serious impediment to full citizenship.[26]

---

24 Sir R. Jennings and Sir A. Watts (eds.), *Oppenheim's International Law* (9th edition), vol. 1, Longman, United Kingdom, 1992, pp. 851-852.

25 United Kingdom Commission on Citizenship, *Encouraging Citizenship*, HMSO, 1990, p. 12.

26 ibid, p. 13.

2.30 Citizenship also anticipates active participation in the community. In particular, a citizen is expected to be involved in the governance of the state by participating in the political processes. This includes, at a basic level, voting in elections, but it can extend to holding public office and joining political parties and interest groups.[27] Once again, this presupposes that a citizen is sufficiently well informed in order to exercise political power properly. As noted by Professor Engle and Dr Ochoa of Indiana University:

> The citizen's responsibilities also include the responsibility to be informed, for participation in a democracy is irresponsible if it is not informed.[28]

2.31 In terms of participating actively in community life, other responsibilities of citizenship are defined less easily. Generally, debate in this regard focuses on an active or ideal citizen who contributes to the well-being of society. On this point, Marshall commented:

> . . . societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and towards which aspiration can be directed.[29]

The development of Australian citizenship

2.32 Debate about the meaning and principles of citizenship has been integral to the development of citizenship law and practice in Australia. In the Australian context, however, the citizenship debate has focused not only on the progressive acquisition of rights and sharing of responsibilities, as described by Marshall, but also on the establishment of a distinct and separate national identity and status.

---

27 In this regard, it is relevant to note the High Court case of *Sykes v Cleary* (1992) 109 ALR 577, in which it was held that, by virtue of the operation of section 44(i) of the Constitution, persons in Australia holding dual citizenship are not eligible to sit as a Senator or Member of the House of Representatives, unless they take all reasonable steps to renounce or divest themselves of their additional nationality and the rights and privileges of such citizenship (see also paragraph 6.86).

28 S.H. Engle and A.S. Ochoa, *Education for Democratic Citizenship*, Teachers College Press, New York, 1988, p. 16.

29 Marshall, op. cit., p. 87.

2.33 Australian legislators since before Federation have grappled with the complexities of establishing and developing citizenship in a nation born of colonial heritage and searching progressively for an independent national identity. The historical development of Australian citizenship law and practice reflects the search for that identity.

2.34 Before Australia's *Nationality and Citizenship Act 1948* came into operation on 26 January 1949, Australians were known simply as British subjects. While Federation established Australian nationhood in 1901, Australia's citizenship law in the first five decades of nationhood reflected its membership of and commitment to the British Empire and Commonwealth.

2.35 In particular, from 1920 through to 1949, Australia followed the British 'common code' of nationality. The British common code was based on the principles of *jus soli* (nationality by birthplace) and *jus sanguinis* (nationality by descent). The *jus soli* principle in this context provided that 'persons born within the King's dominions and allegiance were subjects', as were those persons born on British ships. The *jus sanguinis* principle initially was accepted only in part, in that nationality was conferred only on the first foreign-born generation of a natural-born or naturalised subject in the male line.[30]

2.36 The common code enabled individual countries to confer by naturalisation British subject status upon alien persons. The criteria for those naturalisations were set by the individual countries and were recognised only in that country.[31] Under the common code, Australia applied the same requirements on persons wishing to acquire British subject status by naturalisation in Australia as applied to naturalisations in Britain and other Commonwealth countries.

2.37 The common code remained operational in Australia until the establishment of a separate Australian citizenship effective from 26 January 1949. It is relevant to note that the impetus to establish a distinct Australian citizenship originated not from developments in Australia, but rather in response to Canadian initiatives to establish its own nationality. Under the common code, sovereign countries such as Australia and Canada had been unable to define an independent national status for their citizens.[32]

30 M. Pryles, *Australian Citizenship Law*, The Law Book Company Limited, Sydney, 1981, p. 21. From 1922, British nationality was transmissible indefinitely by descent. Restrictions on the transmission of citizenship by descent were effected in 1984 by changes to British citizenship law.

31 ibid, p. 21.

32 ibid, p. 24.

2.38 Following the enactment of the *Canadian Citizenship Act 1946*, a conference of Commonwealth Prime Ministers agreed to restructure their nationality laws in accordance with the principles embodied in the Canadian legislation. In 1947, a meeting of legal experts from the Commonwealth countries met to draft the new scheme. The intention was for each dominion to enact legislation defining its own citizens and providing that such citizens, as well as being citizens of the particular countries, would be British subjects or Commonwealth citizens. The two terms were to serve as complementary and associated titles. A citizen naturalised in one Commonwealth country was recognised throughout the Commonwealth as a British subject or Commonwealth citizen.[33]

2.39 Australia's Nationality and Citizenship Act introduced the concept of Australian citizen. As noted above, an individual who became an Australian citizen also became a British subject or retained that status.

2.40 When the *Nationality and Citizenship Bill 1948* was introduced into the Parliament, the then Minister for Immigration, the Hon A. Calwell, MP, stated:

> . . . the Bill puts into effect the principle on which the *United Kingdom Nationality Act 1948* is based. In that Act, the British Government recognised that the people of each of the self-governing countries of the British Commonwealth of Nations had a particular status as citizens of their own country as well as their wider status as British subjects.[34]

2.41 Australia's citizenship legislation was derived from British law and traditions and aimed to reflect Australia's bond with the British Empire. The British orientation of Australia's citizenship law and practice was altered progressively from the late 1960s. In 1969, the terminology used in the Nationality and Citizenship Act was altered. The amendments provided that instead of 'being' British subjects, Australian citizens had 'the status' of British subjects. In addition, the amendments removed the need to refer to an Australian citizen as both British subject and Australian citizen. The then Minister for Immigration, the Rt Hon W. Snedden, MP, described the amendments as being:

> . . . fundamental to our national status and the concept of Australian citizenship, as well as to the rules under which our citizenship may be acquired.[35]

33 ibid., pp. 25-27.

34 Parliamentary Debates (Hansard), House of Representatives, 30 September 1948, p. 1060.

35 Parliamentary Debates (Hansard), House of Representatives, 17 April 1969, p. 1248.

2.42 Despite these amendments, Minister Snedden continued to emphasise Australia's connection to Britain, stating:

> The status of British subject is still important not only for historical and sentimental reasons but because the laws of the Commonwealth and of the States still use the term 'British subject' in prescribing status as a qualification for various rights and duties.[36]

2.43 In 1973, the *Nationality and Citizenship Act 1948* was renamed the *Australian Citizenship Act 1948.*

2.44 In 1984, major changes were made to the Citizenship Act with the aim of ensuring that the Act 'reflects the common national identity of all Australians . . . and . . . is thoroughly Australian in character'.[37] The 1984 amendments included the removal of British subject status from the Citizenship Act. As a result of these amendments, Australian citizens were no longer considered British subjects. This was in line with changes to Britain's citizenship legislation.

2.45 The most recent changes to the Citizenship Act, which came into effect on 24 January 1994, incorporated a preamble in the Act and introduced a new pledge of commitment to be made by persons acquiring Australian citizenship. The aim of these amendments was 'to give proper recognition to the significance of Australian citizenship as a common bond which unites all Australians'.[38]

Principles of Australian citizenship

2.46 Australian citizenship reflects the notion of an inclusive society. Citizenship bestows the right to equal participation in society. Commenting on the inclusive nature of Australian citizenship, the Department of Immigration and Ethnic Affairs (DIEA) stated:

> There are no racial or ethnic barriers or 'grades' of citizenship and citizenship is equally available regardless of gender.[39]

36 ibid., p. 1249.

37 Hon S.J. West, Minister for Immigration and Ethnic Affairs, Parliamentary Debates (Hansard), House of Representatives, 2 May 1984, p. 1663.

38 Evidence, p. S505.

39 Evidence, p. S499.

2.47 Australia's inclusive approach to citizenship currently provides that all those born in Australia with a parent who is an Australian citizen or permanent resident automatically become Australian citizens at birth. Those who migrate to Australia are eligible and encouraged to apply for citizenship. This non-discriminatory and inclusive approach to citizenship has developed progressively, in accordance with changing community attitudes.

2.48 First and foremost was the removal of the discriminations attaching to the citizenship status of Australia's indigenous people. Prior to 1921, Aborigines and Torres Strait Islanders who were denied citizenship under colony or State law could apply to become naturalised British subjects, but only on the same basis as other non-naturalised residents.[40] This situation was changed with the enactment of Australia's *Nationality Act 1920,* under which all Aborigines and Torres Strait Islanders born after 1 January 1921 were considered to be natural-born British subjects.[41]

2.49 In 1949, the Nationality and Citizenship Act granted Australian citizenship automatically to Aborigines and Torres Strait Islanders who either were born after 26 January 1949 or were British subjects prior to that date. However, despite the fact that Aborigines and Torres Strait Islanders were recognised as Australian citizens in 1949, they did not gain all the rights attendant on citizenship at that time. It was not until 1962 that qualifications on the right of Aborigines and Torres Strait Islanders to vote were removed, and it was not until 1984 that they were obliged to enrol.[42]

2.50 The 1949 Nationality and Citizenship Act was predicated on the assumption that British subjects were to receive favoured treatment as compared with persons who were not British subjects, known as aliens. Successive governments removed the favoured status accorded British subjects as they developed a notion of Australian citizenship available to all on a non-discriminatory basis. As noted in a submission from Ms Jordens:

> The Australian government only endorsed a rights-based and egalitarian conception of Australian citizenship in

40 From 1844 to Federation, the naturalisation laws of the colonies concerned the acquisition of British subject status by aliens and, with the exception of Western Australia, made no mention of the status of Aboriginal people.

41 Note, however, the Western Australian approach to citizenship for Aborigines. The *Natives (Citizenship Rights) Act 1944* (WA), although expressly subject to the Commonwealth Constitution, allowed adult Aborigines to apply for a 'Certificate of Citizenship' only if they had 'dissolved tribal and native association[s]' (except for lineal descendants or native relations of the first degree), had successfully served in the armed forces, or were otherwise a 'fit and proper person'. R. Bartlett, A.J. Brown and G. Nettheim, *The Laws of Australia,* J.A. Riordan (ed.), vol. 1, section 1.1, Melbourne, 1993, pp. 29-30.

42 ibid.

> 1973. Up to then, the conception of Australian citizenship was based on an understanding of Australians as a people of British ethnicity and culture. This image of Australian national identity was preserved by legislation which gave favoured treatment to British subjects and discriminated against aliens (defined in the Australian Citizenship Act until 1987 as 'a person who does not have the status of British subject and is not an Irish citizen nor a protected person').[43]

2.51 Under the Nationality and Citizenship Act, British subjects registered for Australian citizenship. Aliens applied for naturalisation as Australian citizens. British subjects seeking to register as Australian citizens were required to reside in Australia for five years during the eight years preceding the date of application, although the Minister could approve a shorter period which was no less than twelve months. In practice, the Minister approved all such applicants who fulfilled a twelve month residence requirement. In contrast, aliens were required to reside continuously in Australia for a period of one year immediately preceding the date of their application, and for four years during the eight years preceding the date of application. The Minister had no power to accept a shorter qualifying period for aliens.[44]

2.52 While successive amendments to the Nationality and Citizenship Act during the 1950s and 1960s relaxed the requirements for naturalisation applying to aliens, it was not until 1973 that the provisions favouring British subjects were removed. In that year, amendments were introduced to establish the same residential requirement for citizenship for British subjects and aliens, namely three years. In addition, the new provisions required all persons to attend a citizenship ceremony and take the oath or affirm their allegiance in order to become Australian citizens. Introducing these changes, the then Minister for Immigration, the Hon A. Grassby, MP, stated:

> The guiding principle for the Government in the vitally important matter of the grant of Australian citizenship is that there should not be discrimination between different groups of settlers seeking to join the family of the nation. Wherever they were born, whatever their nationality, whatever the colour of their complexion, they should all be able to become Australian citizens under just the same conditions.[45]

43 Evidence, p. S186.

44 Evidence, p. S502.

45 Parliamentary Debates (Hansard), House of Representatives, 11 April 1973, p. 1312.

2.53 From the 1980s, successive Ministers for Immigration and Ethnic Affairs have confirmed Australia's commitment to a non-discriminatory approach to citizenship. In 1982, the then Minister for Immigration and Ethnic Affairs, the Hon I. Macphee, MP, stated:

> Acquiring Australian citizenship should not require suppression of one's cultural heritage or identity. Rather, the act of becoming a citizen is–symbolically and actually–a process of bringing one's own gift of language, culture and traditions to enrich the already diverse fabric of Australian society. Our vision of our multicultural society shares, with our concept of citizenship, a strong emphasis on building a cohesive and harmonious society which is all the more tolerant and outward-looking because of the diversity of its origins . . . Citizenship is the symbol of a common national identity and commitment to the nation. A common national identity should be the tie that binds a multicultural Australia together.[46]

2.54 In a similar vein, the Minister for Immigration and Ethnic Affairs in the subsequent government, the Hon S.J. West, MP, stated in 1983:

> Australia is a multicultural society. Six million of our population were either born overseas or have at least one overseas-born parent. Over 300 languages, including about 200 Aboriginal languages, are spoken in our community. The diversity of the Australian society needs to be understood, accepted and provided for by Government and non-Government service providers, and the community at large. Different groups must be able to interact freely while sharing a common commitment to social and national ideals and providing common support for core institutional arrangements.[47]

2.55 In considering Australia's approach to citizenship, it is important not only to consider the basis of citizenship policy, but also to reflect on what differentiates citizens from non-citizens. During its brief history, Australia, like other countries, has imposed various restrictions on non-citizens or aliens.

46 Parliamentary Debates (Hansard), House of Representatives, 6 May 1992, p. 2356.

47 Parliamentary Debates (Hansard), House of Representatives, 1 November 1993, p. 2105.

2.56 In the past, aliens were banned from participating in certain professions. In relation to the legal profession, State and Commonwealth legislation required a practitioner to be a British subject and take an oath of allegiance to the Crown.[48] In certain States, foreigners were unable to sell liquor under licence, to be a ship's master or mate, or to carry on mining or pearling. In Queensland, prior to 1963, an alien was required to receive written permission from the Attorney-General or other authorised administrator before taking or holding real property.

2.57 Many of the distinctions between citizens and non-citizens have been removed from Commonwealth and State legislation. The Attorney-General's Department advised that, in relation to the fundamental human rights covered by international instruments, distinctions in Australian law between citizens and non-citizens are permissible only where the relevant human rights provisions apply to 'citizens' or their equivalent rather than 'everyone'. According to Attorney-General's, these areas can be categorised broadly as:

- political rights;
- entry and expulsion from a state's territory (right to a passport);
- certain economic rights (investment, media ownership); and
- eligibility for diplomatic and consular protection.[49]

2.58 In general, a person must be a citizen in order to be able to participate fully in Australian political processes. Citizens are eligible to enrol to vote and are obliged to vote in Australian elections and referendums. Non-citizens cannot vote, with the exception of certain British subjects who, under the law prior to 1984, were entitled to be registered on electoral rolls and to vote in Australian elections and referendums. In addition, only citizens can be elected to public office. In this regard, it is important to note the ruling in the High Court case of *Sykes v Cleary*[50] that even certain Australian citizens, namely those holding dual citizenship, may be ineligible for election to public office (see also paragraph 6.86).[51]

48 For example, *Legal Practitioners Act 1959* (Tas) no. 78, s. 17(2); *Legal Profession Practice Act 1958* (Vic) s. 5(2); *Legal Practitioners Act 1893-1973* (WA) s. 14.

49 Evidence, p. S440.

50 (1992) 109 ALR 577.

51 Note also the High Court challenge which resulted in the removal of the former Senator Wood from the Senate (*re Wood* (1988) 167 CLR 145).

2.59 Citizens and non-citizens also have different status under immigration law. Citizens have the right to enter, to stay and a general right to leave Australia.[52] By contrast, the Migration Act provides that non-citizens need permission to enter and to stay. The term of their stay may be subject to particular conditions and, in certain circumstances, they may be liable to be removed from Australia. Further, in some categories for migration, additional qualifying points are allocated to persons sponsored by citizens as opposed to those sponsored by permanent residents.[53]

2.60 Citizens also are entitled to seek diplomatic protection from Australian embassies and consulates overseas. In this regard, it is worth noting evidence from the Department of Foreign Affairs and Trade (DFAT) that, in certain recent cases, diplomatic assistance has been provided to non-citizens in situations of humanitarian need.[54]

2.61 On other matters, only citizens are eligible to serve on juries, and to serve in the defence forces.[55] Non-citizens are not eligible for permanent employment in the Australian Public Service, although it is possible for non-citizens to be appointed to the Australian Public Service pending the approval of a citizenship application.[56] In addition, non-citizens are subject to ownership restrictions in relation to certain Australian industries.

52 Subject to any court order preventing departure because of criminal, bankruptcy or family law proceedings.

53 Evidence, p. S533.

54 Evidence, pp. 103-104.

55 A Defence Force Instruction-General of 30 September 1986 (DI(G)PERS 33-1) outlines the citizenship requirements for entry to and service in the Australian Defence Force. Paragraph 4 of the Instruction notes that the requirement of the Citizenship Act that an applicant for citizenship be a permanent resident is '[o]f particular importance to the Defence Force policy'. Paragraph 8 of the Instruction states that 'as a general rule, Australian citizenship is a requirement for entry to and service in the Defence Force'. Paragraph 9 provides that, in particular circumstances, where it is satisfied that a non-citizen clearly intends to become a citizen, he or she may enter the Defence Force, so long as those eligible to apply for citizenship do so, and those not so eligible undertake to apply for citizenship when they become eligible. Read in conjunction with section 13(3) of the Citizenship Act, it would appear that citizenship is indeed a requirement for engagement in the Defence Force, but that entry into the Defence Force may function to abridge the residency requirements under the Citizenship Act. (Evidence, p. S451)

56 Eligibility for permanent appointment as an officer of the Australian Public Service is governed by the *Public Service Act 1922*. Section 47(10) provides that 'the Commissioner shall not, under subsection (3) or (6A), and the Secretary shall not, under subsection (5) or (6), confirm the appointment to the Service of an officer who is not an Australian citizen, except in accordance with arrangements approved by the Prime Minister'. (Evidence, p. S451)

2.62 Aside from these distinctions, non-citizens generally are protected against discrimination and have equal rights to access Australia's legal system. Even in those areas, such as economic rights, in which international human rights law permits certain restrictions on non-citizens, Australia voluntarily has entered into agreements with other countries limiting the extent to which distinctions can be made in economic, trading or commercial relations between citizens and non-citizens.[57]

2.63 The relatively few restrictions on non-citizens participating in Australian society reflects the commitment to an inclusive society whereby all those who live in Australia generally can access its benefits.[58] In this regard, it is important to note that residency status, rather than citizenship status, is the basis for accessing and determining many of the entitlements available and obligations which need to be met in daily Australian life. Eligibility for social security benefits, for example, is determined on the basis of residency rather than citizenship. At the same time, taxation liability also is determined on the basis of residency rather than citizenship.

2.64 Successive Australian governments have sought to avoid linking the concept of citizenship to particular practical benefits as a means of making Australian citizenship more attractive to non-citizens. Indeed, such an approach was rejected as recently as 1989, when the Government responded to the CAAIP report, which recommended that 'government examine ways of restricting public benefits to non-citizens as a means of enhancing the value of citizenship'.[59] Presenting the Government's response to that report, the then Minister for Immigration and Ethnic Affairs, Senator the Hon R. Ray stated:

> A commitment stems from deeply felt sentiments. It cannot be developed by coercion or punitive measures which deny benefits to non-citizens. The Government totally rejects such an approach, which denies the contribution that non-citizen residents make to Australia through working and through rearing their families here.[60]

2.65 In considering the terms of reference for its inquiry, the Committee not only was concerned with evaluating Australia's citizenship law and practice, but also had regard to how the Australian state responds to those living in Australia who are not citizens but wish to become citizens. Part of that response can be determined from the rules which apply to non-citizens wishing to become citizens.

2.66 Australia's existing law and practice on citizenship by grant is based on the principle of encouraging persons to acquire citizenship. Here too there have been progressive changes over time. Alongside the residential requirements for citizenship, which now are common to all non-citizens, Australia changed its language test in 1984 to require only a 'basic' knowledge of the English language. The previous test was 'adequate' knowledge of the English language. The 1984 amendments to the Citizenship Act, which altered the language test and which also reduced the residential requirement for citizenship from three to two years, aimed to ensure that migrants could become citizens as soon as possible after settling in Australia.[61]

2.67 The egalitarian nature of citizenship in Australian society, as reflected in the development of Australian citizenship law and practice over the past five decades, was a primary consideration for the Committee in its examination of how best to enhance the meaning of Australian citizenship. In this regard, the Committee concurs with the view of DIEA that:

> In a richly diverse, multicultural society such as Australia's, Australian citizenship is a unifying factor which transcends other differences amongst members of the community. Regardless of race, ethnicity, religion, gender or economic wealth, every Australian citizen shares exactly the same status in his/her citizenship. It is this intangible, unifying factor which is hard to define and which, in concert with the reciprocal relationship between Australia and its citizens, is at the heart of citizenship in this country.[62]

---

57 In these cases, a national treatment standard is prescribed. Examples include the Closer Economic Relations Agreement with New Zealand, 1988 Protocol on Trade in Services (Article 5), and certain of the trade related instruments of the General Agreement on Tariffs and Trade, e.g. Article III and certain agreements arising out of the Uruguay Round (e.g. TRIPS Article 3, Trade in Services Article XVII). For example, in the services areas, if Australia wishes to maintain distinctions between the rights of citizens to own, for instance, airlines or media outlets, it may need to include specific exemptions to that effect at the time of its acceptance of the relevant instruments (a 'negative list'). The new Agreement on Trade in Services, concluded as part of the Uruguay Round, will operate slightly differently, in that national treatment is only available in sectors where it has been offered specifically (the 'positive list' approach). Hence, in this area, countries are increasingly constrained in the extent to which citizens can receive favoured treatment. (Evidence, p. S442)

58 Evidence, p. S533.

59 CAAIP, op. cit., p. 68.

60 Parliamentary Debates (Hansard), Senate, 8 December 1988, p. 3755; Evidence, p. 33.

61 The criteria for grant of citizenship are discussed in further detail in Chapters Four and Five.

62 Evidence, p. S530.

Chapter Three

ENHANCING AUSTRALIAN CITIZENSHIP

Introduction

3.1 In 1988, the Committee to Advise on Australia's Immigration Policies expressed concerns about the value and meaning of Australian citizenship in contemporary Australian society. CAAIP stated:

> It is not surprising that so few immigrants bother to take citizenship when we place so little value on it . . . Citizenship is of little material value. It also appears to have declined in symbolic value.[1]

3.2 As noted in Chapter Two, CAAIP suggested that the worth of Australian citizenship should be demonstrated in a material sense by linking benefits, welfare entitlements and privileges to the taking of citizenship. It also suggested enhancing the meaning of Australian citizenship in a symbolic and social sense by requiring a new declaration of commitment from prospective citizens, to be made at the time of taking citizenship.[2]

3.3 While the Government rejected the calls for linking citizenship to material benefits, it agreed with CAAIP about the need for a new pledge to reflect a citizen's commitment to Australia and its people. A new pledge was introduced with effect from 24 January 1994.

3.4 In addition, the National Agenda for a Multicultural Australia, which was released in July 1989 and attracted bipartisan support, has sought to define more clearly the underlying principles of Australian society. While not specifically directed at the issue of citizenship, the National Agenda outlines certain basic rights and obligations relevant to all Australians, including:

- the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage, including their language and religion;
- the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth;

---

1 CAAIP, op. cit., p. 11.

2 ibid., p. 12.

- the need to maintain, develop and utilise effectively the skills and talents of all Australians, regardless of background;

- the obligation that all Australians should have an overriding and unifying commitment to Australia, to its interests and future first and foremost;

- the obligation of all Australians to accept the basic structures and principles of Australian society–the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language, and equality of the sexes; and

- the obligation to accept that the right to express one's own culture and beliefs involves a reciprocal responsibility to accept the right of others to express their views and values.[3]

3.5 By providing a broad framework under which 'the rights of the individual are recognised and the interests of the community advanced', and by imposing 'responsibilities as well as rights, including acceptance of the rights of others', the National Agenda for a Multicultural Australia is aimed, whether directly or indirectly, towards enhancing the meaning of citizenship.[4]

3.6 Six years after the CAAIP report and five years on from the National Agenda for a Multicultural Australia, there is renewed community interest in Australian citizenship and how its meaning can be enhanced. Community debate in this regard has focused not only on how best to encourage those living permanently in Australia to become Australian citizens, but also on how to make better citizens out of those who already are Australian citizens. Both of these issues were canvassed widely by the Committee as it examined current community perceptions about Australian citizenship and sought suggestions for enhancing the meaning of Australian citizenship.

Australia's citizenship profile

3.7 Before examining the major issues of this inquiry, it is important for the Committee to outline a statistical profile of Australian citizens showing, amongst other matters, the numbers of persons eligible for Australian citizenship who have

3 Department of the Prime Minister and Cabinet, Office of Multicultural Affairs, *National Agenda for a Multicultural Australia . . . Sharing Our Future*, AGPS, Canberra, 1989, p. vii.

4 ibid., p. 8 and p. 45.

not taken out Australian citizenship. In particular, the Committee was interested to determine the extent to which, if at all, the profile of citizenship had changed in the six years since the CAAIP report.

3.8 CAAIP noted with concern that, based on the 1981 Census, 43 percent of overseas-born residents in Australia who were eligible to take out citizenship had not done so. This amounted to around one million people. About 60 percent of those were from the United Kingdom or the Republic of Ireland.[5]

3.9 The Committee was provided with information on citizenship obtained from the 1991 Census. In the 1991 Census, 16 212 150 persons stated a citizenship, comprising of:

- 14 766 976 persons who stated they were Australian citizens (91 percent); and

- 1 445 174 who stated they were not Australian citizens (9 percent).[6]

3.10 Of those who stated they were Australian citizens, 12 481 130 persons (84.5 percent) stated they were born in Australia, 2 130 379 persons (15 percent) stated they were born overseas, and 80 819 persons (0.5 percent) did not state a birthplace. Of those Australian citizens born overseas, the top ten countries of origin were:

- United Kingdom (539 521 persons);

- Italy (189 316 persons);

- Yugoslavia (132 959 persons);

- Greece (122 908 persons);

- Vietnam (80 270 persons);

- Germany (80 152 persons);

- Netherlands (69 798 persons);

- New Zealand (61 122 persons);

5 CAAIP, op. cit., p. 11.

6 Exhibit 31.

. Poland (55 559 persons); and

. Lebanon (54 139 persons)(see Table 3.1).[7]

3.11 Separate information provided by DIEA showed that, for those granted Australian citizenship over the past ten years, the top five countries of former citizenship were United Kingdom, Vietnam, New Zealand, Philippines and Yugoslavia (see Table 3.2).[8]

3.12 Of those 1 445 174 persons who stated in the 1991 Census that they were not Australian citizens, 1 105 096 persons (77 percent) appeared to be residentially qualified for Australian citizenship. The top ten countries of birth of those residentially qualified non-citizens were:

. United Kingdom (484 916 persons);

. New Zealand (163 432 persons);

. Italy (54 841 persons);

. Malaysia (25 896 persons);

. Germany (24 448 persons);

. Ireland (22 777 persons);

. United States of America (21 982 persons);

. China (excluding Taiwan) (21 086 persons);

. Netherlands (20 988 persons); and

. Malta (20 118 persons) (see Table 3.1).[9]

3.13 The 1991 Census figures show that while the highest number of overseas born Australian citizens originated from the United Kingdom and Italy, migrants from the United Kingdom and Italy also feature among the three nationality groups with the highest number of persons residentially eligible to take out Australian citizenship who have not done so.

7 Exhibit 31.

8 Evidence, p. S581.

9 Exhibit 31.

TABLE 3.1 CITIZENSHIP RATE BASED ON THOSE LIKELY TO BE RESIDENTIALLY ELIGIBLE ie pre mid 89 arrivals

	No. of Aust Citizens (a)	No. of non-citizens likely to be eligible	Total	Citz rate (%)
Argentina	6,496	2,540	9,036	71.9
Austria	15,298	4,759	20,057	76.3
Baltic States (Estonia, Latvia, Lithuania)	15,628	614	16,242	96.2
Burma (Myanmar)	6,501	890	7,391	88.0
Cambodia	12,590	2,498	15,088	83.4
Canada	10,489	8,199	18,688	56.1
Chile	11,822	9,045	20,867	56.7
China (excl Taiwan)	35,289	21,086	56,375	62.6
Cyprus	17,596	2,734	20,330	86.6
Czechoslovakia	14,978	1,259	16,237	92.2
Egypt	27,689	2,166	29,855	92.7
El Salvador	2,825	2,113	4,938	57.2
Fiji	13,954	8,622	22,576	61.8
France	10,312	2,966	13,278	77.7
Germany	80,152	24,448	104,600	76.6
Greece	122,908	6,964	129,872	94.6
Hong Kong	30,253	9,963	40,216	75.2
Hungary	23,556	1,499	25,055	94.0
India	38,806	11,251	50,057	77.5
Indonesia	15,304	10,233	25,537	59.9
Iran	6,552	3,138	9,690	67.6
Ireland	21,954	22,777	44,731	49.1
Italy	189,316	54,841	244,157	77.5
Japan	2,272	7,633	9,905	22.9
Korea	7,665	6,875	14,540	52.7
Laos	7,576	810	8,386	90.3
Lebanon	54,139	3,722	57,861	93.6
Malaysia	30,468	25,896	56,364	54.1
Malta	30,188	20,118	50,306	60.0
Mauritius	12,680	2,520	15,200	83.4
Netherlands	69,798	20,988	90,786	76.9
New Zealand	61,122	163,432	224,554	27.2

TABLE 3.1 CITIZENSHIP RATE BASED ON THOSE LIKELY TO BE RESIDENTIALLY ELIGIBLE
ie pre mid 89 arrivals

	No. of Aust Citizens (a)	No. of non-citizens likely to be eligible	Total	Citz rate (%)
Papua New Guinea	18,183	1,886	20,069	90.6
Philippines	44,136	10,536	54,672	80.7
Poland	55,559	5,852	61,411	90.5
Portugal	9,134	6,015	15,149	60.3
Romania	7,692	1,084	8,776	87.6
Singapore	13,140	5,801	18,941	69.4
South Africa	34,128	8,309	42,437	80.4
Spain	9,262	4,160	13,422	69.0
Sri Lanka	22,372	6,448	28,820	77.6
Taiwan	3,742	2,635	6,377	58.7
Turkey	16,298	7,276	23,574	69.1
Ukraine	8,210	198	8,408	97.6
United Kingdom	539,521	484,916	1,024,437	52.7
United States of America	11,950	21,982	33,932	35.2
Uruguay	7,385	1,531	8,916	82.8
Vietnam	80,270	13,760	94,030	85.4
Yugoslavia	132,959	12,303	145,262	91.5
Zimbabwe	5,523	1,415	6,938	79.6
Other Africa (excl Nth Africa)	12,020	4,002	16,022	75.0
Other Europe	24,939	13,844	38,783	64.3
Other Middle East & Nth Africa	21,021	3,127	24,148	87.1
Other Northeast Asia	1,012	281	1,293	78.3
Other Northern America	222	127	349	63.6
Other Oceania & Antarctica	8,206	7,228	15,434	53.2
Other Southeast Asia	6,408	4,612	11,020	58.1
Other Southern Asia	5,723	2,333	8,056	71.0
Other Sth & Ctrl America & Caribbean	10,255	4,784	15,039	68.2
Other USSR	12,813	1,498	14,311	89.5
Other Responses	2,125	554	2,679	79.3
TOTAL OVERSEAS BORN	2,130,384	1,105,096	3,235,480	65.8

(a) Based on those Australian citizens who arrived in Australia before mid 1989.

Source: 1991 Census Matrix Table CSC6171

Note: Excludes overseas visitors

TABLE 3.2 Top ten countries (in order) of former citizenship or nationality of persons granted Australian citizenship over the last ten years

1983/84	1984/85	1985/86	1986/87	1987/88
Britain	Britain	Britain	Britain	Britain
Vietnam	Vietnam	Vietnam	Vietnam	Vietnam
Yugoslavia	Yugoslavia	Yugoslavia	New Zealand	New Zealand
Italy	New Zealand	Poland	Yugoslavia	Yugoslavia
New Zealand	Poland	New Zealand	Lebanon	Philippines
Philippines	Philippines	Philippines	China	Malaysia
Greece	Italy	South Africa	Philippines	China
Poland	Greece	Italy	Turkey	Lebanon
South Africa	South Africa	Greece	Poland	Turkey
Lebanon	Turkey	Turkey	South Africa	South Africa

1988/89	1989/90	1990/91	1991/92	1992/93
Britain	Britain	Britain	Britain	Britain
Vietnam	Vietnam	Philippines	Vietnam	Vietnam
New Zealand	New Zealand	New Zealand	Philippines	New Zealand
Philippines	Philippines	Vietnam	New Zealand	Philippines
Yugoslavia	Yugoslavia	Yugoslavia	China	China
Lebanon	Lebanon	China	Yugoslavia	Yugoslavia
South Africa	China	Lebanon	Lebanon	Lebanon
Malaysia	South Africa	South Africa	Ireland	Turkey
China	Malaysia	Sri Lanka	Fiji	Fiji
Turkey	Sri Lanka	Fiji	Turkey	India

Source: Evidence, p. S581.

3.14 The statistics from the 1991 Census also indicate the citizenship rate, which is the term used to define the percentage of overseas born persons from particular nationality groups who have taken out Australian citizenship. Persons born in the following countries had the highest citizenship rate:

- Ukraine (97.6 percent);
- Baltic States (Estonia, Latvia and Lithuania) (96.2 percent);
- Greece (94.6 percent);
- Hungary (94.0 percent);
- Lebanon (93.6 percent);
- Egypt (92.7 percent);
- Czechoslovakia (92.2 percent);
- Yugoslavia (91.5 percent);
- Papua New Guinea (90.6 percent); and
- Poland (90.5 percent)(see Table 3.1).[10]

3.15 Persons born in the following countries had the lowest citizenship rate:

- Japan (22.9 percent);
- New Zealand (27.2 percent);
- United States of America (35.2 percent);
- Ireland (49.1 percent);
- Korea (52.7 percent);
- United Kingdom (52.7 percent);
- Malaysia (54.1 percent);
- Canada (56.1 percent);
- Chile (56.7 percent); and

10 Exhibit 31.

- El Salvador (57.2 percent)(see Table 3.1).[11]

3.16 The above statistics and previous studies show that there is considerable variation in citizenship rates between differing birthplace groups. DIEA noted that the main English speaking countries have the lowest rate of citizenship at 55.3 percent after more than 20 years residence in Australia. This compares with a citizenship rate of 80 percent for other birthplace groups after the same time frame.[12] Possible reasons for this were canvassed in a study by Evans based on the 1981 Census. Evans stated:

> One possibility is that the shared language, and strongly similar legal, political, and industrial relations arrangements of Australia and the other Anglo-American countries lead these immigrants to feel less need to make a choice of national identity. Other factors that may reduce the perceived need to choose Australian citizenship are the special privileges and duties of British immigrants, notably the duty to vote in Australia and the right to seek permanent positions in the Public Service.[13] From a slightly different angle, Australia is a very new country and, so the pundits would have it, still suffers from 'cultural cringe' in relation to Britain: British citizenship, like a middle class British accent, may carry greater prestige than the Australian equivalent. Of these explanations, the most likely is the more general one emphasising cultural and institutional similarities, because Anglophone immigrants are also less likely to naturalise in the USA even though they have no special privileges there.[14]

3.17 In evidence to the Committee, DIEA indicated that refugee groups are more likely to take out citizenship as soon as they become eligible for it. DIEA commented:

> . . . some of the groups which seem to take the decision very, very soon are refugee groups. Perhaps you would argue that refugees are one group of people who come to

11 Exhibit 31.

12 Evidence, p. S515.

13 It should be noted that generally the particular privileges available to British citizens were removed in 1984, although those British citizens whose names were on the electoral roll retain their right to vote in Australian elections.

14 M.D.R. Evans, 'Choosing to Be a Citizen: The Time-Path of Citizenship in Australia', *International Migration Review*, vol. 22, no. 2, Summer 1988, p. 258.

> Australia and derive that commitment to Australia–as a country that has offered them protection and a new homeland–very, very quickly. Others take a lot longer.[15]

3.18 In this regard, the 1991 Census figures show that the citizenship rate is high among persons originating from countries which previously were termed 'the captive nations', specifically countries in eastern Europe. Many of those persons arrived in Australia as refugees or displaced persons. Indeed, in its 1976 report on dual nationality, the Joint Committee on Foreign Affairs and Defence noted that generally persons who adopted Australian citizenship as refugees or for political reasons wished to retain Australian citizenship only. In part, this was to prevent their former country gaining access to them and imposing obligations on them.[16]

3.19 A particular country's prohibition on dual citizenship also can be a factor influencing a person's decision on whether to take out Australian citizenship. Persons may not wish to take out Australian citizenship if that means losing citizenship rights in their country of origin.[17]

3.20 Length of residence in Australia also is a principal determinant of the citizenship rate. DIEA noted that after five years residence in Australia, 50 percent of overseas born persons had become Australian citizens. For those who had been in Australia for more than 20 years, the citizenship rate increased to 73 percent.[18]

3.21 Various Australian studies on citizenship have supported the view that duration of residence in Australia is the dominant factor in determining the rate of citizenship. Evans argued that a person's commitment to the Australian social order grows over time. Evans commented:

> My results confirm the importance of length of stay as a cause of Australian citizenship . . .[19]

15 Evidence, p. 28.

16 Joint Committee on Foreign Affairs and Defence, *Dual Nationality*, The Commonwealth Government Printer, Canberra, 1977, p. 3.

17 A study by Rosemary Wearing of LaTrobe University found that 'taking Australian citizenship was more of a utilitarian decision, taken when the practical advantages (travel considerations, welfare support, voting rights, economic opportunity) outweigh the practical disadvantages of relinquishing the former citizenship'. (R. Wearing, 'Some Correlates of Choosing Australian Citizenship', *Australia and New Zealand Journal of Sociology*, vol. 21, no. 3, 1985, pp. 395-413, cited in Bureau of Immigration Research, *Australian Citizenship, Statistical Report No. 1*, AGPS, Canberra, 1990, p. 15.

18 Evidence, pp. S514-S515.

19 Evans, op. cit., p. 259.

3.22 The Bureau of Immigration and Population Research, in its survey of immigration statistics for the December quarter 1993, noted the citizenship intentions of recent immigrants. The major reasons given by respondents as to why they wished to take out Australian citizenship were:

- they intended to live here permanently;
- they wanted to 'belong and feel Australian'; or
- they wanted to have the rights of citizenship.[20]

3.23 The major reasons given by those not intending to apply for citizenship were:

- 'don't know if staying here permanently';
- 'don't want to give up foreign citizenship'; or
- 'not necessary'.[21]

The meaning of citizenship

3.24 As a commencement point for its examination of the major issues of the inquiry, the Committee sought to gain an understanding of community perceptions about and attitudes towards citizenship. In submissions and in evidence at public hearings, various individuals and organisations expressed their opinions about the meaning of citizenship in contemporary Australian society.

3.25 In a number of submissions, it was argued that citizenship encompasses two broad concepts. First, it defines the legal relationship between the state and the individual. Secondly, it demonstrates an individual's commitment to a particular state. As noted by the Constitutional Centenary Foundation:

> A debate about Australian citizenship can be divided into two broad streams: the legal/constitutional and what one might call the 'spiritual' aspects.[22]

20 Bureau of Immigration and Population Research, *Immigration Update, December Quarter 1993*, AGPS, Canberra, July 1994, pp. 40-43.

21 ibid., p. 42.

22 Evidence, p. S630.

3.26 One view put to the Committee was that citizenship bestows unqualified membership to the Australian community. In the words of the Immigration Advice and Rights Centre:

> . . . a person goes from an associate member of the club to full lifetime membership.[23]

3.27 In order to illustrate this point, the Immigration Advice and Rights Centre highlighted the different status of citizens and permanent residents under immigration law. It stated:

> In the formal legal context, permanent residence gives the right to remain without any limitation as to time unless the residence was obtained fraudulently or if there has been a serious criminal conviction within the first ten years of residence. If a permanent resident is absent from the country for more than three years then the right to re-enter is usually lost. A citizen on the other hand has the right to leave and re-enter Australia at will and to avail themselves of diplomatic protection whilst overseas.[24]

3.28 DIEA also emphasised the importance of citizenship in defining a person's legal status within the Australian community. DIEA stated:

> Through the right to vote that it confers, citizenship allows full participation in every aspect of Australian society. This is arguably the most practical and concrete value of Australian citizenship for members of the community as a whole. In some ways citizenship can be said to fully empower people because it is only those with the right to vote who can fully exert their influence on Australian institutions and values. Those who are disenfranchised by their lack of Australian citizenship can freely make their views known but it can be argued that they cannot be fully effective.[25]

23 Evidence, p. S377.

24 Evidence, p. S377.

25 Evidence, p. S531.

3.29 Other individuals and organisations agreed that citizenship provides the right to full participation in Australian society. The Attorney-General's Department noted that while the areas in which a state may distinguish between citizens and non-citizens are reasonably circumscribed, because of international human rights law, those areas, which include voting, public service employment and representation overseas, are nonetheless important.[26] Ms Jordens commented that while political rights may be undervalued by some people, they are 'a sign of their full participation in Australian society'.[27] Similarly, the Chairman of the Ethnic Affairs Commission of New South Wales stated:

> The advantage of becoming a citizen is the ultimate right to participate in all aspects of life in this country. I put a lot of credence on the right to participate in the political and public administration processes and structures of this country. If immigrants are denied access to the political system, to the public administration system, they are missing out on a lot . . . I would not underestimate the significance of that.[28]

3.30 While the practical benefits of citizenship were identified in various submissions, many witnesses argued that the symbolic meaning of citizenship is of greater significance than are those practical benefits. DIEA commented:

> The real sense of citizenship is that statement of commitment to Australia and that statement of commitment incorporates a statement of a sharing in the democratic beliefs of the country. It also incorporates a respect for the rights and liberties of persons in the country and a commitment to upholding and obeying the laws of the country. That is probably the more important statement of commitment–an inclusion in Australian society and, from there, practical benefits in terms of actual participation in the political process, an ability to join the defence forces or the Australian Public Service, the right to carry an Australian passport and the protection it offers.[29]

26 Evidence, p. S444.

27 Evidence, p. 404.

28 Evidence, p. 441.

29 Evidence, p. 6.

3.31 The Attorney-General's Department suggested that because there are limited distinctions between the basic civil and economic rights available to citizens and non-citizens in Australia, the major relevance of citizenship derives from its symbolic meaning. Attorney-General's commented:

> . . . there is not a lot you can point to in terms of what citizenship gives you or the difference that it makes other than the symbolic and emotional ties that it obviously has.[30]

3.32 Attorney-General's argued that citizenship reflects an 'overriding sense of obligation towards the country to which you belong to promote its interests'.[31] Attorney-General's suggested that citizenship should be promoted as a symbol of the reciprocal commitment between an immigrant and Australia which otherwise may not exist.[32]

3.33 Various witnesses echoed those sentiments by indicating that citizenship reflects an individual's commitment to Australia, including a commitment to the values and institutions of Australian society. Australians Against Further Immigration commented that 'citizenship has to be a statement of undivided loyalty and love for your country'.[33] Ms Jordens argued that citizenship is not 'just a technical thing', but is a 'psychological commitment . . . to a country which has certain values, and which enshrines those values in its laws and preserves them in its institutions'.[34] Similarly, Dr Fitzsimons stated:

> . . . citizenship brings with it a variety of things: a statement of identity, the ability to work, a commitment to the surroundings, a commitment to certain democratic ideals and respect for the individual which is very important in my view.[35]

30 Evidence, p. 314.

31 Evidence, p. 313.

32 Evidence, p. S444.

33 Evidence, p. 192.

34 Evidence, p. 404.

35 Evidence, p. 483.

Submissions on enhancing citizenship

3.34 A variety of suggestions for enhancing the meaning of Australian citizenship were made in submissions to the inquiry. In broad terms, the proposals included:

- simplifying the Citizenship Act to make it more easily understood and accessible to Australian citizens and prospective citizens;
- making Australian citizenship more difficult to obtain;
- increasing the practical benefits of Australian citizenship;
- improving community awareness about the meaning of Australian citizenship; and
- making citizenship ceremonies more meaningful.

3.35 The proposals for modifying the Citizenship Act, including the criteria for gaining citizenship, are addressed in Chapter Four, which deals with all aspects of Australian citizenship law. The remainder of this chapter is devoted to consideration of the other proposals for enhancing the meaning of Australian citizenship.

Practical benefits of citizenship

3.36 As noted in the above discussion, a person present in Australia enjoys significant individual rights such as the freedom of speech, freedom of association, freedom of religion and the right to privacy. Such individual rights are not attached to the acquisition of Australian citizenship. Generally, they are enjoyed by citizens and non-citizens alike. This accords with the concept of an inclusive society, whereby all those who live in Australia generally can access its benefits. This approach is consistent with Australia's international human rights obligations.

3.37 As noted earlier, CAAIP proposed in 1988 that the worth of Australian citizenship should be demonstrated by linking benefits, welfare entitlements and privileges to the taking of citizenship. CAAIP recommended that government examine ways of restricting public benefits to non-citizens as a means of enhancing the value of citizenship, beginning with non-survival benefits. It also recommended that entitlement to sponsor immigrants, including through the kinship factor in the Open category, be limited to Australian citizens, except in instances where those

being sponsored are spouses, dependent children, or refugee/ humanitarian cases.[36] As indicated at paragraph 2.64, the Government rejected these proposals in its response to the CAAIP report.

3.38 In evidence to the current inquiry, it was indicated that the longstanding approach has been to encourage citizenship rather than offer inducements to take out citizenship. Ms Jordens commented:

> . . . the tendency all along has been to offer carrots rather than sticks–not to exclude people from benefits on the ground of nationality but to encourage them to become full citizens as a sign that they are part of society and not to become citizens so that they could get this or that benefit.[37]

3.39 Other individuals and organisations rejected the proposition that citizenship should be linked to the acquisition of particular benefits. The Immigration Advice and Rights Centre stated:

> It is believed that an individual's decision to acquire citizenship should be the result of an informed decision rather than out of necessity to acquire rights which are only accessible by citizens rather than permanent residents. The Immigration Advice and Rights Centre supports the view that Australian citizenship will lose its meaning altogether if individuals are forced into acquiring citizenship.[38]

3.40 The South Australian Multicultural and Ethnic Affairs Commission suggested that any removal of privileges from permanent residents would in most cases be a form of discrimination.[39]

3.41 In contrast, the Federal Member for Kalgoorlie, Mr Campbell, MP, argued that only an Australian citizen should be allowed to sponsor overseas family members.[40]

36 CAAIP, op. cit., p. 68.

37 Evidence, pp. 389-390.

38 Evidence, pp. S378-S379.

39 Evidence, p. S468.

40 Evidence, p. S113.

3.42 Australians Against Further Immigration submitted that non-citizens should not be eligible for permanent employment in the public service and government sector, should not be able to sponsor immigrants under any program, except in compassionate circumstances, should not be allowed to own freehold real estate in Australia, except for newly arrived migrants awaiting citizenship or unless they are in equal partnership with Australian citizens, and should not be allowed to vote on any level of government.[41]

3.43 DIEA noted that the issue of sponsorship of relatives has been addressed to some extent by giving additional points in some categories for those who are sponsored by Australian citizens as opposed to those who are sponsored by a permanent resident. DIEA indicated that, aside from this migration related advantage, the introduction of other practical incentives for taking out citizenship generally has been rejected by government. In this regard, DIEA referred to the Government's response to the CAAIP report, as discussed at paragraph 2.64. DIEA commented that Australia has remained steadfast in its commitment to an inclusive society. DIEA also stated:

> Moreover, it is recognised that, in general, increasing the practical value of citizenship does not in fact necessarily enhance it. It might well, instead, coerce migrants into taking out citizenship without the concomitant commitment that is being sought.[42]

Conclusions

3.44 There was little support during the inquiry for increasing the practical benefits of citizenship. As noted in Chapter Two, successive governments have rejected the introduction of practical incentives for taking out citizenship. No substantive evidence was presented to indicate that the meaning of Australian citizenship would be enhanced if citizenship was of greater practical value. Indeed, the Committee is sympathetic to the view that an individual's decision to acquire citizenship should be based on a person's sense of commitment to Australia rather than a person's desire to secure particular benefits for himself/herself or his/her family.

41 Evidence, S72.

42 Evidence, p. S533.

Community awareness about citizenship

3.45 A view often stated during the inquiry was that to enhance the meaning of Australian citizenship, it is necessary to increase community awareness about citizenship and what it entails. As stated in a submission from Ms Martin:

> To be meaningful to all people who become Australian citizens, including those who become Australian citizens by birth, the nature of Australian citizenship needs to be understood. Understanding means more than just the superficialities of rights to vote, stand for parliament etc. and obligations such as the defence of Australia in times of war, but understanding the social context of citizenship and the expectations of citizenship in a multicultural society.[43]

3.46 This view also was reflected by the Immigration Advice and Rights Centre, which commented:

> You cannot force Australian citizens to be good Australian citizens. It is through making them aware of what their powers, obligations and duties are that gives it value.[44]

3.47 Among others, the Attorney-General's Department argued that the concept of citizenship is not well understood within the Australian community.[45] In a similar vein, a representative of the Immigration Advice and Rights Centre stated:

> Many Australians, whether they were born here or not, do not have a very defined idea of what citizenship means. It also does not matter how long their families have been here. I do not think that it is ever explained to people properly. They do not have a very good grasp of it. We talk about loyalty, onus and social contract, but at the end of the day I do not think the majority of Australians really understand those concepts.[46]

43 Evidence, p. S346.

44 Evidence, pp. 461-462.

45 Evidence, p. 314.

46 Evidence, p. 453.

3.48 Various suggestions were made for improving community awareness about citizenship. The proposals focused on three broad themes:

- clarifying and simplifying the Citizenship Act, and increasing its symbolic significance;
- increasing and improving citizenship education for prospective citizens and those who already are Australian citizens; and
- active promotion of citizenship in the community.

3.49 The proposals on the scope of the Citizenship Act are considered in Chapter Four, which deals with Australian citizenship law. The proposals on citizenship education and promotion are considered below.

3.50 Taking citizenship education first, it has been argued that citizenship education should consist of four components:

- developing knowledge and understanding of how democratic society works, how it evolved, and the rights, duties and obligations of citizenship. Within this would come the identification of concepts associated with citizenship such as equity, fairness and equality;
- developing respect for persons and values such as participation and consultation;
- developing the skills of citizenship; and
- providing the experience of community and developing active citizenship within the community.[47]

3.51 DIEA suggested to the Committee that it may be appropriate to conduct a 'broad based education program which is directed at all members of society, children and adults, citizens and non-citizens'.[48] Other evidence to the inquiry indicated two specific areas for attention. First, it was argued that prospective citizens should have greater knowledge about Australian society as well as the rights and responsibilities of citizenship before becoming Australian citizens. Secondly, it was suggested that greater priority should be directed to educating Australian born citizens about the meaning of citizenship, particularly through the school system.

47 K. Fogelman (ed.), *Citizenship in Schools*, David Fulton Publishers, London, 1991, p. 92.

48 Evidence, p. S534.

Citizenship education for migrants

3.52 The *Immigration (Education) Act 1971* provides for the conduct of citizenship and English courses for certain categories of migrants. Section 4 of the Immigration (Education) Act provides that the Minister may arrange for English courses and citizenship courses to be provided:

(a) outside Australia for persons intending to migrate to Australia; and

(b) in Australia for persons who:

(i) hold a permanent entry permit; or

(ii) hold a temporary entry permit of a class specified by the Minister by notice published in the Gazette; or

(iii) previously held a permanent entry permit and have become Australian citizens; or

(iv) are under 18 and have at least one parent who has held or holds a permanent entry permit; or

(v) are citizens of New Zealand who are exempt, under section 106 of the Migration Act, from the operation of subsection 14(1) or section 76 of the Act, and whose stay in Australia is not subject to a time limit; and

(c) in the Territory of Cocos (Keeling) Islands or in the Territory of Christmas Island for persons in the Territory concerned who:

(i) hold a permanent entry permit; or

(ii) hold a temporary entry permit of a class specified by the Minister by notice published in the Gazette; or

(iii) previously held a permanent entry permit and have become Australian citizens; or

(iv) are under 18 and have at least one parent who has held or holds a permanent entry permit.

3.53 Limited evidence was provided to the Committee on the nature and extent of migrant education conducted by DIEA. In DIEA's *Annual Report 1992-1993*, reference was made to the Adult Migrant English Program, which assists migrants to achieve a functional level of proficiency in English. The Adult Migrant English Program is a settlement program aimed at meeting the English tuition

needs of incoming migrants.[49] No reference was made in that Annual Report as to whether that program incorporates any education for migrants on Australian society or on citizenship.

3.54 Migrant Resource Centres also are mentioned in DIEA's *Annual Report 1992-1993*. Those Centres have three broad objectives:

- to provide multilingual advice, referral and counselling services for migrants;
- to serve as a base for ethnic communities' educational, cultural and social activities; and
- to act as a catalyst for developing community awareness of migrant needs.[50]

3.55 No evidence was provided to the Committee on whether Migrant Resource Centres currently provide citizenship education to migrants.

3.56 In its submission, DIEA suggested possible avenues for conducting a citizenship information program for migrants. DIEA stated:

> For non-citizens in Australia who do not have a good command of the English language there are a number of avenues which could be used . . . These could include specific information sessions in conjunction with English classes run through the Adult Migrant English Program and activities by the Migrant Resource Centres and the various ethnic community organisations themselves. SBS radio and television may have resources which could be utilised and community radio programs might also lend themselves to effective dissemination. An innovative information and education program could fully utilise the possibilities opened up by modern communication developments, such as creative use of the telephone system for providing information on an individual basis.[51]

---

49 Department of Immigration and Ethnic Affairs, *Annual Report 1992-1993*, AGPS, Canberra, 1993, p. 89.

50 ibid., p. 109.

51 Evidence, p. S535.

3.57 Another suggestion by DIEA was to provide migrants with a booklet on Australian institutions, society and values, as well as the rights and responsibilities of citizenship, when they are issued visas overseas.[52] This proposal is discussed in further detail in Chapter Four.

3.58 In other submissions, the need to give greater priority to educating migrants about citizenship was canvassed. In particular, it was suggested that applicants for citizenship should be required to attend a seminar, information session or course of education on all aspects of Australian citizenship. The Returned and Services League of Australia Limited (RSL), for example, proposed a course of education for prospective citizens, commenting:

> It is only through such education that prospective citizens can be assured of their ability to participate fully and equally in the Australian community and to give effect to the democratic beliefs they are called upon to share.[53]

3.59 The Ethnic Communities Council of Queensland suggested an information session which should be at no cost to the applicant and which should be conducted in the primary language of the applicant.[54]

3.60 Another proposal was that a course on citizenship should be linked to the process for conferring citizenship. The Chairman of the Ethnic Affairs Commission of New South Wales stated:

> There should be a requirement for people who have been accepted and who are to be granted citizenship to attend a one-day or two-day seminar. The very basics of citizenship, particularly their obligations and rights, would be explained to them at these functions, and then the citizenship would be granted.[55]

3.61 Mr Campbell, MP, submitted that all applicants for citizenship should be given a booklet about Australian history and Australian institutions, and that this booklet should form the basis for a test.[56] The issue of assessing citizenship applicants is discussed further in Chapter Five.

52 Evidence, p. S535.

53 Evidence, p. S221.

54 Evidence, p. S342.

55 Evidence, p. 434.

56 Evidence, p. S111.

Citizenship education in schools

3.62 The need for citizenship education for all Australians also was raised in submissions. DIEA argued that citizenship education should not be targeted just at migrants. DIEA commented:

> . . . we should stop thinking about citizenship as something that foreigners get when they become Australians.[57]

3.63 DIEA argued that the school system seems the most obvious and logical place for an education program aimed at enhancing an understanding of the meaning and value of a citizen's privileges and responsibilities within Australia's democratic, multicultural society.[58]

3.64 A number of previous reviews have addressed the need for improved citizenship education in Australian schools. In 1989, the Senate Standing Committee on Employment, Education and Training, in its report entitled *Education for Active Citizenship in Australian Schools and Youth Organisations*, recommended that 'the Commonwealth designate education for active citizenship as a priority area for improvements in primary and secondary schooling, and that, through the Australian Education Council and other appropriate avenues, the Commonwealth encourage State and non-government school authorities to adopt the same policy'.[59] In a follow up report in 1991, the Senate Committee noted that while important changes are under way in the education sector, there was still a long way to go before many of the proposed changes in curricula and policy were realised fully. The Senate Committee made further recommendations, including that 'schools provide training and other assistance . . . to all school students to assist them to become active citizens in the wider community'.[60]

3.65 The Human Rights and Equal Opportunity Commission, also in 1991, recommended in the report of the National Inquiry into Racist Violence in Australia that:

> . . . government and non-government school education authorities provide training to assist teachers to deal with issues of cultural difference and racism in the

57 Evidence, p. S405.

58 Evidence, p. S535.

59 Senate Standing Committee on Employment, Education and Training, *Education for Active Citizenship in Australian Schools and Youth Organisations*, AGPS, Canberra, 1989, p. 33.

60 Senate Standing Committee on Employment, Education and Training, *Active Citizenship Revisited*, AGPS, Canberra, 1991, p. 35.

staffroom, classroom and playground . . . [and] that school curriculum initiatives on multicultural and multiracial issues be supported, evaluated and extended.[61]

3.66 In 1993, the Republic Advisory Committee indicated that Australians should have more opportunity to understand the basic principles of Australian government. In this regard, it suggested that:

> . . . those entrusted with primary and secondary education in particular, should consider the introduction or extension of appropriate courses in the fields of civics and government.[62]

3.67 In 1994, a discussion paper entitled *Teaching Young Australians to be Australian Citizens* was published by the 'Ideas for Australia' program. In the discussion paper, it was stated that 'students are crying out for information which, in a world both of increased globalism and of renewed nationalism, will help them to renegotiate what it means to be Australian citizens'.[63] In addition, it was suggested that every young Australian should have the opportunity of understanding something of:

- the principle that citizenship involves responsibilities as well as rights;
- the principle of respect for the rule of law;
- the principle of civil liberty for all Australians; and
- the principle that all Australians have equal rights under the law, irrespective of race, sex, ethnicity or faith.[64]

61 Human Rights and Equal Opportunity Commission, *Racist Violence, Report of the National Inquiry into Racist Violence in Australia*, AGPS, Canberra, 1991, p. 351.

62 Republic Advisory Committee, *An Australian Republic, The Options–An Overview*, AGPS, Canberra, p. 20.

63 D. Horne, *Teaching Young Australians to be Australian Citizens*, An 'Ideas for Australia' program discussion paper, National Centre for Australian Studies, Monash University, 1994, p. 3.

64 ibid., p. 6.

3.68 The role of schools in citizenship education also was commented upon in the discussion paper. It was suggested that:

- schools can aid Australia's future as a tolerant, diverse society by ensuring that Australians have the opportunity to understand something of the democratic traditions and achievements of Australians and of the unwritten 'civic contract' that holds us together in our diversity;
- schools can assist our growth as a liberal society by giving all young Australians some knowledge of ideas such as 'civil liberty' and 'tolerance' and of the importance of citizen action in achieving many Australian reforms;
- schools can strengthen our conditions as a democratic state by giving every young Australian the opportunity to learn something of the operation of the apparatus of government and of civil society in Australia;
- schools can assist by providing every young Australian with the opportunity to gain some experience in the critical evaluation of political, social, cultural, scientific, technological, economic and moral issues in understanding democratic processes of change; and
- schools can help give confidence and meaning to the future of young Australians by accepting their right to some knowledge of their own country, in historical, social, cultural, artistic, intellectual, economic and political terms and in terms of its physical environment.[65]

3.69 Over the past decade, partly in response to these reviews, various initiatives have been implemented in relation to citizenship education in schools. During the inquiry, the Committee was advised about some of these developments.

3.70 In its submission to the inquiry, the Parliamentary Education Office noted that citizenship education finds a place in the syllabus guidelines, both primary and secondary, in every State and Territory in Australia. The new national curriculum profiles for studies of society and environment also provide scope for citizenship education. In addition, the Parliamentary Education Office commented:

> . . . there is excellent work done in civics education in many schools, both primary and secondary. Class parliaments, often reflecting a 'whole school' approach to decisions making, are becoming common in schools. The

65 ibid, p. 2.

> 50 000 students and 2 500 teachers coming through the Education Centre at Parliament House, and the near equal numbers visiting the Electoral Education Centre in Canberra, Melbourne and Perth, indicate a growing teacher interest in this area. The demand for curriculum material is growing and the textbook industry is finding this area to be fairly lucrative. Teachers of legal studies, economics, Australian and other social science subjects are discovering the possibilities for interesting classroom work in the study of political decision making as it relates to those subjects. Contrary to popular commentary, there is almost certainly far more 'political' education in Australian schools than there was a generation ago.[66]

3.71 The Parliamentary Education Office also noted that citizenship education was recognised at a meeting of the Australian Education Council in Hobart in 1989. One of the national goals agreed to at that meeting was:

> To develop knowledge, skills, attitudes and values which will enable students to participate as active and informed citizens in our democratic Australian society within an international context.(Goal 7)[67]

3.72 Another example of development in citizenship education was provided by the Queensland Department of Education, which indicated that it is coordinating Active and Informed Citizenship programs. These programs have the goal of developing 'knowledge, skills and values which enable students to participate as active and informed citizens in our democratic Australian society within an international context'.[68] The Queensland Department of Education suggested that Active Informed Citizenship programs will:

- raise student awareness of the importance and value of citizenship; and
- specifically develop the values and action skills, as well as the knowledge and processes necessary for students to form their own judgements, participate in decision-making and take appropriate action.[69]

66 Evidence, p. S815.

67 Evidence, p. S815.

68 Evidence, p. S43.

69 Evidence, p. S48.

3.73 Despite these initiatives, a number of submissions focused on the need for greater priority to be directed to educating Australians about citizenship, and the importance of the school system in fulfilling this need. The Ethnic Communities Council of Queensland, for example, stated:

> . . . Australia's education system should be charged with the responsibility to make young people aware of the value of Australian citizenship. This should be done on a proper basis within the school curriculum, from an early age in primary school and not on an ad hoc basis with the occasional lesson through the whole school life of the student.[70]

3.74 In a similar vein, the South Australian Minister for Education and Children Services, the Hon R. Lucas, MLC, commented:

> . . . school education has an important role to play in citizenship education as it provides an environment where young people from other countries can learn about the social and cultural systems and structures of Australia and practice citizenship skills. The knowledge and skills will enhance their understanding of the advantages, rights and responsibilities of citizenship in Australia, and the learning will impact upon their parent's understanding of citizenship.[71]

3.75 The Premier of Western Australia, the Hon R. Court, MLA, stated:

> . . . I am of the view that there is a need for all Australians, not just applicants for citizenship, to recognise the attendant rights and obligations of citizenship. In the long term this is perhaps best achieved through instilling in all our school children a sense of pride in being citizens of an Australian federation and a greater awareness of their rights and obligations.[72]

70 Evidence, p. S342.

71 Evidence, p. S740.

72 Evidence, p. S622.

3.76 In some submissions, the shortcomings of existing citizenship education programs within the school system were canvassed. The Constitutional Centenary Foundation argued that the education system does not provide the necessary courses in citizenship education to equip children with appropriate information. The Foundation commented:

> About two years ago, as one of its first activities, the Foundation organised a meeting in Canberra attended by representatives of State education ministries and curriculum organisations. We wanted to get a snapshot of what was then taught in schools about the Constitution and about the system of government that is based on it. And the picture we got was pretty bleak. The fact was that at that time–and that is two years ago–most school syllabuses included little or nothing about the Australian Constitution and the system of government that is based on it.[73]

3.77 The Parliamentary Education Office indicated that citizenship education is not given the focus and priority it deserves. The Parliamentary Education Office stated:

> The problem is that its place in the school curriculum (as opposed to the state or territory syllabus guidelines) depends on the interest and knowledge of particular teachers and their familiarity with available curriculum resources . . . The government option in the curriculum may often be omitted because of timetable pressures or because another option is considered to have priority . . . In the absence of explicit directives from state boards of studies or chief executives there is no assurance that civics will be given system-wide support.[74]

3.78 In addition, the Parliamentary Education Office noted that the commitment to citizenship education made at the meeting of the Australian Education Council in Hobart in 1989, as discussed at paragraph 3.71, has received little priority. In its view, this commitment should be reaffirmed and the States and Territories should give practical implementation to that commitment.[75]

73 Evidence, p. 250.

74 Evidence, pp. S814-S815.

75 Evidence, p. S818.

3.79 From a different perspective, Ms Jordens noted that the provisions of the Immigration (Education) Act, which provide for the conduct of English and citizenship courses, are no longer used as a basis for teaching children about citizenship. Ms Jordens argued that this was a retrograde step. Ms Jordens suggested that the Immigration (Education) Act should be amended to provide for the education of Australian born children as well as migrants. In her view, it is important to ensure that the education role provided for in the Immigration (Education) Act is implemented properly.[76]

3.80 While the need for greater emphasis on citizenship education in the school system was suggested in various submissions, little detailed evidence was provided to the Committee on how such education should be structured and implemented. DIEA noted that many of the recommendations in the 1989 report by the Senate Standing Committee on Employment, Education and Training would translate well to a broader education program aimed at enhancing the understanding of the value of citizenship. At the same time, DIEA indicated that a citizenship education program could not be undertaken lightly. Commenting on how to make school based education more effective, DIEA stated:

> To be successful it would require not only the enhancement of the existing curriculum but would also require teacher training and in service courses along with the provision of effective resource material. It may be necessary to develop special units within the overall course to cater for the needs of children for whom the notion of a democratic, multicultural society is completely new . . . It may also be necessary to adapt the general curriculum for those Aboriginal children who are living in traditional societies.[77]

Citizenship promotion

3.81 During the inquiry, the Committee also received evidence on the general promotion of Australian citizenship and how such promotion can assist in enhancing the meaning of citizenship. Citizenship promotion has three principal objectives:

- to encourage those who are not citizens to become Australian citizens;
- to enhance knowledge about the meaning and significance of citizenship; and

76 Evidence, pp. 405-406.

77 Evidence, p. S536.

- to encourage awareness of and pride in Australian citizenship among Australian citizens.

3.82 In this regard, DIEA noted that its principal client group is the migrant community. As a consequence, DIEA's focus is on an enhancement of Australian citizenship for the migrant community and on promotion with a view to encouraging acquisition of citizenship by migrants.[78]

3.83 As noted earlier, one of the principal promotional activities relevant to citizenship conducted by DIEA in recent times was the Year of Citizenship between September 1988 and September 1989. This involved a major campaign, including national television advertisements, aimed at promoting the meaning of citizenship and encouraging individuals to take out citizenship. As stated, this campaign resulted in a 40 to 50 percent increase in applications for grant of citizenship in the following year.[79]

3.84 In addition, following the introduction of the preamble in the Citizenship Act and the new citizenship pledge of commitment, DIEA produced and distributed widely promotional material on citizenship, including posters for use in schools.[80]

3.85 Other more recent promotional activities of which the Committee was advised have tended to focus on increasing community awareness about what it means to be Australian and on generating greater community pride in being Australian. Such promotional activities have been undertaken by a range of organisations, many of which are funded privately.

3.86 The Constitutional Centenary Foundation told the Committee about specific projects it was undertaking to promote awareness of citizenship. First, the Foundation has established the concept of youth citizenship ceremonies for Australian citizens born in Australia. The ceremonies generally are to be held when an individual turns 18 years of age, and are an acknowledgment and celebration that a person has become a citizen of full age with the full rights and obligations of citizenship. The Foundation noted that the ceremonies are similar in form and content to those which confirm citizenship on persons born overseas. They will take place in local government offices and be conducted by mayors or shire presidents.[81]

78 Evidence, p. S532.

79 Evidence, p. 46.

80 Evidence, p. 48. (The cover of this report is based on the design used in the poster.)

81 Evidence, p. S631.

3.87 A pilot youth citizenship ceremony was conducted at the Woodville Town Hall in South Australia in August 1994. At the ceremony, a group of young Australians from local high schools listened to speeches, received a decorative scroll and a booklet describing the Australian system of government, and recited a pledge of allegiance to Australia. The Foundation noted that, following the successful pilot, the project is being developed in cooperation with the Australian Local Government Association.[82]

3.88 Other citizenship related initiatives of the Foundation include:

- school constitutional conventions;
- a booklet on Australian citizenship specifically for young people, including a description of the Australian constitutional system; and
- a resource kit for schools and libraries on the Australian constitutional system, being produced in conjunction with the Parliamentary Education Office and the New South Wales Public Library.[83]

3.89 The Committee also was told about the 'Ideas for Australia' program, which is a Commonwealth Government initiative administered by Monash University. The program organised a series of discussions during 1993 on the meaning of being a citizen in modern Australian society, culminating in a major seminar in February 1994. As noted previously, the program also published a discussion paper entitled *Teaching Young Australians To Be Australian Citizens.*[84]

3.90 Another program aimed at promoting citizenship, in a broad sense, is the *I am Australian* program. That program was established by a private consortium and includes people from a wide cross section of Australian society. It aims to place renewed emphasis on the concept of being Australian.[85] Its objectives are:

- to clarify what it is to be Australian;
- to make Australia's identity a national issue;
- to support individuals, groups and organisations committed to Australia's social and economic development;

82 Evidence, p. S631.

83 Evidence, pp. S631-S632.

84 Evidence, p. S529.

85 Evidence, p. S529.

- to identify factors limiting our social and economic development;
- to develop strategies to improve our society and economy;
- to identify and implement strategies for raising morale and confidence, and for increasing people's social competence and involvement; and
- to identify, support and promote activities aimed at lifting Australians' standards.[86]

3.91 To date, the *I am Australian* program has involved a promotional campaign, including television advertisements, aimed at instilling pride in being Australian. A program overview provided to the Committee indicated that a range of community based projects are being considered, including:

- an Australian Academy of Achievement;
- an Accelerated Learning Program; and
- Business and Community Development Centres.[87]

3.92 Despite such initiatives, the need to increase awareness of and understanding about citizenship was emphasised during the inquiry. In this regard, DIEA stated:

> We believe very firmly that Australian citizenship needs to be better promoted in this country . . .[88]

3.93 As noted at paragraph 3.51, DIEA canvassed with the Committee the possibility of conducting a broad based education and information program directed at all sections of the Australian community. DIEA indicated that if such a program was to reach all sectors of the community, the utilisation and enlistment of mass media would need to be explored. At the same time, DIEA commented that any such program would need to be sensitive and should respect the intrinsic worth of citizenship and the right of migrants to make a choice about citizenship. DIEA stated that it would not be appropriate to confuse promotion of citizenship with promotion of exclusive nationalism, as any such promotion could devalue the concept it is attempting to enhance.[89]

86 Evidence, p. S863.

87 Evidence, pp. S865-S866.

88 Evidence, p. 23.

89 Evidence, p. S534.

3.94 In canvassing the option of a broad based information and education program on citizenship, DIEA noted that any such program inevitably would involve overlap between various agencies, including Commonwealth, State and Local Government instrumentalities. DIEA commented:

> If such an idea were to proceed there would obviously be a need to resolve both the question of funding responsibility and the parallel need to ensure an alignment of purpose.[90]

3.95 DIEA noted that governments at all levels already have some role in relation to citizenship issues. DIEA stated:

> At the national level it is, if you like, the role we play in administering the Citizenship Act. At the State level, through the education system, there is some role played by various school and higher education–particularly the TAFE area–in civics education, broadly described. Of course, at the local government level they have traditionally played an important role for the administration of citizenship ceremonies, that embracing, as they tend to describe it, by the local community of new citizens.[91]

3.96 Nevertheless, DIEA commented that 'there is scope for governments to play a much wider role in this whole area'. DIEA argued that it is a matter which needs to be considered from a national perspective, rather than from the perspective of just the Commonwealth or DIEA.[92]

3.97 On this issue, the Committee questioned DIEA about the degree to which there is coordination between DIEA and other Commonwealth agencies which may have an interest in citizenship matters. DIEA stated:

> . . . it is fair to say we have relatively little. There is some work done in which we would have some limited dealings with the Electoral Office. We are aware that there is a Parliamentary Education Office that has some dealings in this area and there is a little bit of work done by the Department of Employment and Education, but we do not have a significant involvement in that at all.[93]

90 Evidence, p. S536.

91 Evidence, p. 31.

92 Evidence, p. 31.

93 Evidence, pp. 31-32.

3.98 When questioned by the Committee on whether a particular agency should have a coordinating role in this regard, DIEA responded:

> . . . there is a role to be fulfilled and if there is a role to be fulfilled there has to be some machinery to ensure that the functions are being performed.[94]

3.99 Another proposal for promoting Australian citizenship was canvassed by Ms Jordens, who suggested the concept of citizenship conventions. Ms Jordens noted that such conventions were held annually from 1950 to 1970. In suggesting their revival, Ms Jordens commented:

> . . . the focus of these conventions would be the citizenship rights and responsibilities of all Australians, not just migrants as in the past. These conventions could become an ideal monitoring body, reporting to the Government on the efficacy of various laws, regulations and administrative arrangements in achieving the social conditions they were designed to produce. They could recommend to the Government any legislative changes it believed necessary in the light of changing community values, and provide a mechanism to assess Australia's achievements at the grass-roots level in achieving the standards set by various international instruments which it has ratified.[95]

3.100 Alongside the evidence about what is being done in Australia regarding citizenship education and promotion, and the proposals for improvements in this regard, the Committee also received information about education and promotional activities undertaken in Canada relevant to citizenship. This information was provided to enable some comparison to be drawn with the Canadian experience, and to provide possible ideas for use in Australia.

3.101 Ms Kmiecic, a former Registrar of Canadian Citizenship, detailed the extent of Canadian citizenship activities during a meeting with the Committee. Ms Kmiecic stated:

> We do a lot of promotion in education in a relative sense, and it is the responsibility of not only the Canadian Citizenship Branch, and now the Department of Citizenship and Immigration, but really incumbent on all sorts of other third parties we work with. We have been trying to encourage promotion of citizenship, not just for the people to acquire it but also, for people generally who are citizens in Canada, we want to raise awareness about the value of being Canadian citizens and their rights and responsibilities.
>
> So we have had a large campaign. It takes a basic style in which we give pamphlets and brochures to people acquiring, or choosing to acquire citizenship, so that they can learn and read. We have videos; we have educational material that we have contracted; we have research material where we are looking at some of the issues about who acquires it, and who does not acquire it. In the broader public scheme, we have things like a National Citizenship Week, and an awards program for exemplary citizenship work.
>
> We have a number of outreach campaigns with our corporate sector and with our voluntary organisations to have groups like the Rotary Club . . . and Boy Scouts who will go out and promote actively citizenship. For example, scouts and guides have awards for citizenship and we work closely with them to ensure that those awards reflect what we feel citizenship represents. We have an active campaign; it is not highly financed; it is bare budget. I am not sure how effective it has been; it may be something we need to look at. But we have been very active in promoting it both to people wanting to acquire it and more broadly to the Canadian public.[96]

3.102 In material provided by Mr Ryan, Counsellor (Immigration) at the Canadian High Commission in Canberra, it was noted that the objectives of the Canadian Citizenship Registration and Promotion Branch are:

- to promote the concept and values of Canadian citizenship;
- to provide services for the acquisition and proof of Canadian citizenship;
- to provide other service legislatively mandated by the Citizenship Act; and

94 Evidence, p. 32.

95 Evidence, p. S822.

96 Exhibit 32, p. 18.

- to encourage awareness, pride and practice of citizenship activities.[97]

3.103 In terms of promotion, the Canadian Citizenship Registration and Promotion Branch is responsible for:

- National Citizenship Week;
- citizenship citation awards;[98]
- preparation/instructional materials;
- corporate outreach;
- public education;
- special events and ceremonies;[99] and
- displays.[100]

3.104 In its submission, DIEA suggested that the Canadian idea of a Citizenship Week, or the American idea of a citizenship day in Constitution Week, could be taken up in Australia. DIEA commented:

> The potential value of declaring a citizenship week (or day) in which the whole community could focus on the meaning and value of Australian citizenship could be examined.[101]

97 Exhibit 16.

98 The citations are presented annually to 25 individuals chosen for commendation because of their contributions to Canadian citizenship.

99 In 1992, the Canada 125 project 'Committed to Canada' was launched. The project involves the production of 'self-help' kits for reaffirmation of commitment to Canada. Such reaffirmations were targeted primarily at youth and were set to take place during National Citizenship Week in schools and community centres.

100 Exhibit 16.

101 Evidence, p. S537.

Conclusions

3.105 Much of the evidence to the inquiry indicated that increasing community awareness about citizenship is the best way to enhance the meaning of citizenship. In this regard, the Committee agrees with the sentiment expressed in a variety of submissions that those who are well informed about the meaning of citizenship are more likely to become citizens, and that well informed citizens are more likely to become active citizens who participate in and contribute effectively to the community.

3.106 The Committee welcomes recent initiatives aimed at increasing understanding of and promoting interest in the meaning of Australian citizenship. A number of these initiatives have been detailed by the Committee in this chapter. In particular, the Committee welcomes efforts by community based organisations which have sought to encourage debate about and generate pride in Australian citizenship.

3.107 Despite these initiatives, it is clear that much more could be done to enhance the knowledge about and awareness of Australian citizenship among all members of the Australian community, including non-citizens resident in Australia and Australian citizens by birth and grant. In the Committee's view, there is a need for a broadly based education and information program on Australian citizenship. Such a program should be coordinated as a partnership between government and private enterprise, the public and private sector. The three main objectives of such a program should be:

- to encourage those non-citizens resident permanently in Australia, who are or may become eligible to seek Australian citizenship, to acquire an understanding of and commitment to the Australian community and Australian values;
- to increase among all Australians awareness of and understanding about the rights and responsibilities of citizenship, and the exercise of those rights and responsibilities for the benefit of the Australian community; and
- to foster among all Australians pride in Australian citizenship as a unifying symbol of a multicultural society.

3.108 As citizenship is a Commonwealth responsibility, the Commonwealth Government must assume primary responsibility for the development and implementation of the broad based citizenship education and information program. Any such program needs to be coordinated between various Commonwealth agencies, such as DIEA and the Office of Multicultural Affairs, in consultation with State agencies and community organisations.

3.109 A citizenship education and information program should focus on:

- citizenship education for migrants;
- citizenship education within the school system; and
- promotion of citizenship within the community.

3.110 With regard to migrant education, evidence available to the Committee indicated that, at present, the primary if not only focus of such education is the teaching of English to migrants from non-English speaking backgrounds. Citizenship education appears to be neglected. Even where some information on Australia and Australian citizenship is incorporated into English language courses conducted under the Adult Migrant English Program, such information is likely to be limited, is provided only to those who require English language tuition, and is not provided generally to prospective citizenship applicants. Indeed, migrants from English speaking backgrounds, who comprise a significant percentage of persons taking out citizenship, generally are not provided with any instruction on Australian citizenship or Australian institutions and society.

3.111 In the Committee's view, the lack of migrant education on citizenship should be rectified by DIEA arranging citizenship courses for migrants from both English and non-English speaking backgrounds. Such courses should include a curriculum which deals with Australian institutions, Australian history, the rights and responsibilities of citizenship, and the principles and values of Australian society. For migrants from non-English speaking backgrounds, it may be appropriate for such citizenship education to be included within the present English language courses conducted under the Adult Migrant English Program. This will require the establishment of separate citizenship courses for migrants from English speaking backgrounds.

3.112 Citizenship courses should be publicised actively by DIEA so as to encourage non-citizens to attend such courses before they apply for citizenship. In this way, non-citizens will understand more clearly what Australian citizenship entails before they seek to acquire it. Proposals that such citizenship courses should be used as part of the process for granting citizenship are considered in Chapter Five, which deals with the arrangements for assessing and processing citizenship applications.

3.113 With regard to educating the general community about citizenship, the Committee considers that greater priority needs to be directed to citizenship education in the school system. In the past decade, a number of reports have addressed the need for greater emphasis on school based citizenship education. In addition, there have been attempts at a national level to raise the profile of citizenship education across all States and Territories. Despite this, evidence from organisations such as the Parliamentary Education Office and the Constitutional Centenary Foundation indicates that sufficient priority still is not directed to the provision of citizenship education across the school system.

3.114 The Committee recognises that education is a matter which comes under the jurisdiction of State governments. Nevertheless, if there is to be a genuine attempt to raise awareness and understanding about Australian citizenship among Australian youth, it is important that there be national agreement on the priority which should be directed to citizenship education. In the Committee's view, commitments made at the Australian Education Council meeting in 1989 to foster citizenship education in schools should be reaffirmed, and State and Territory governments should be encouraged to ensure the practical implementation of a comprehensive citizenship education program in schools. The Commonwealth Government, in consultation with State governments, should develop a national curriculum for citizenship education which is accepted and implemented as a national priority throughout the school system.

3.115 In relation to citizenship promotion, once again the Committee considers that this is primarily a Commonwealth responsibility towards which the Commonwealth Government should direct greater effort. A national strategy for citizenship promotion should be developed and coordinated by the Commonwealth Government, through key Commonwealth agencies such as DIEA and the Office of Multicultural Affairs. DIEA should have prime responsibility for such promotion. The renaming of DIEA to reflect its enhanced status in and responsibility for all issues relating to citizenship is discussed at paragraphs 5.101 to 5.105. The citizenship promotion strategy should involve the preparation and distribution of promotional material on citizenship, and the organisation of promotional activities and campaigns. Such promotion should serve the dual purpose of encouraging non-citizens to become Australian citizens and increasing awareness among all Australians about the meaning and value of Australian citizenship.

3.116 In this regard, the Committee is in favour of the suggestion to conduct a National Citizenship Week on an annual basis. This would provide an appropriate focal point for a range of community based promotional activities directed at raising general awareness about citizenship. A highlight of such a week should be the presentation of national citizenship awards, to be conferred by the Commonwealth Government in recognition of significant contributions to Australian citizenship.

3.117 Finally, given the success of the previous Year of Citizenship in 1989, the Committee considers that a Year of Australian Citizenship should be proclaimed in 1999 to celebrate the 50th anniversary of Australian citizenship. A range of promotional and educational activities could be arranged to signify the importance of Australian citizenship in its 50th year.

Recommendations

3.118 **The Committee recommends that:**

1. **the Commonwealth Government develop and implement a broad based education and information program on citizenship aimed at:**

   - **encouraging those non-citizens resident permanently in Australia, who are or may become eligible to seek Australian citizenship, to acquire an understanding of and commitment to the Australian community and Australian values;**

   - **increasing among all Australians awareness of and understanding about the rights and responsibilities of citizenship, and the exercise of those rights and responsibilities for the benefit of the Australian community; and**

   - **fostering among all Australians pride in Australian citizenship as a unifying symbol of a multicultural society;**

2. **courses on citizenship be provided for migrants of English and non-English speaking backgrounds, with the curriculum to include Australian institutions and history, the rights and responsibilities of Australian citizenship, and the principles and values of Australian society. For migrants of non-English speaking backgrounds, such citizenship education should be incorporated, where appropriate, as part of the English language tuition conducted under the Adult Migrant English Program;**

3. **the Department of Immigration and Ethnic Affairs actively publicise citizenship courses in order to encourage non-citizens to attend such courses before they apply for citizenship;**

4. **the Commonwealth Government, in consultation with State governments, develop a national curriculum for citizenship education to be implemented as a national priority throughout the school system;**

5. **the Commonwealth Government, through agencies such as the Department of Immigration and Ethnic Affairs and the Office of Multicultural Affairs, develop and implement a national strategy for citizenship promotion;**

6. **a National Citizenship Week be organised on an annual basis to promote awareness of and understanding about Australian citizenship;**

7. **national citizenship awards, in recognition of significant contributions to Australian citizenship, be presented by the Commonwealth Government during National Citizenship Week; and**

8. **1999 be proclaimed the Year of Australian Citizenship to celebrate the 50th anniversary of Australian citizenship, with appropriate events and campaigns to mark the occasion and promote awareness of and understanding about citizenship in the community.**

Citizenship ceremonies

3.119 In examining the options for enhancing the meaning of Australian citizenship, an obvious area for consideration was the citizenship ceremony. The citizenship ceremony is the formal process for conferral of Australian citizenship. As such, it was important for the Committee to consider the adequacy and appropriateness of the existing ceremony, and to consider whether any amendments or additions are required to give greater meaning to the ceremony, thereby enhancing the meaning of citizenship itself.

3.120 The Citizenship Act provides for the conduct of ceremonies for conferral of citizenship. Section 41 states:

> The Minister may make arrangements for a pledge of commitment referred to in section 15 to be made in public and to be accompanied by proceedings designed to impress upon applicants the responsibilities and privileges of Australian citizenship.

3.121 The Citizenship Act states that the grant of citizenship can be conferred by the Minister, a judge of the Federal or State Courts or a magistrate holding office under State law, providing such judges or magistrates are Australian citizens, or certain persons approved by the Minister as authorised to confer citizenship. The Minister has approved Mayors to 'assist in the administration of the citizenship program by conducting ceremonies for the conferral of citizenship'.[102]

---

102 Evidence, p. S511.

3.122 The citizenship ceremony is a formal legal process.[103] Candidates for citizenship legally are required to make the pledge of commitment before authorised or approved persons.

3.123 Guidelines for the conduct of citizenship ceremonies are contained in DIEA's Citizenship Instructions, and in a handbook for local government authorities, entitled *Australian Citizenship Ceremonies, A Handbook for Local Government Authorities.*

3.124 There are three types of ceremony:

(a) public ceremonies conducted by delegated local government authorities or by DIEA;

(b) departmental ceremonies, conducted by DIEA, normally reserved for people who do not wish to attend a local government ceremony or who have been exempted from the English language requirement and would find it difficult or embarrassing to participate in a local government ceremony; and

(c) private ceremonies, conducted by a delegated local government or departmental officer, normally held when the number of candidates are few (i.e. under 10) or when requested by a candidate.[104]

3.125 Commenting on the involvement of local government in citizenship ceremonies, DIEA stated:

> . . . the concept of conferring citizenship through local government is based on the idea of welcoming people into the local community. It could be argued that, although becoming a citizen is a relationship between the individual and the nation as a whole, in fact it is really also about being accepted into the local community. And the involvement of local government in that context can be seen as a great strength, because it is about people being accepted through that arm of government that is closest and nearest to them.[105]

103 Citizenship Instructions, para. 8.2.1.

104 Citizenship Instructions, para. 8.1.2.

105 Evidence, p. 38.

3.126 DIEA also noted that there are practical advantages to involving local government. Ceremonies are held in the local community, generally at the local town hall or council chambers, which is convenient and provides ready access for the people acquiring citizenship and their family and friends.[106]

3.127 Local government authorities receive no direct financial assistance from the Commonwealth Government for conducting citizenship ceremonies. Financial assistance, however, can be provided for the cost of hiring halls when suitable local government facilities are not available. DIEA also provides administrative assistance, subject to available resources, to assist with matters such as:

- sending invitation letters to candidates and guests;
- helping arrange publicity; and
- the conduct of ceremonies (with a departmental officer provided to assist in this regard).[107]

3.128 DIEA suggested that all persons approved for citizenship and issued with citizenship certificates should be conferred within two months of approval. In order to achieve this goal, the cooperation of local government is needed in ensuring that citizenship ceremonies are held at regular intervals. Local government authorities also are encouraged to hold a ceremony in association with Australia Day.[108]

3.129 DIEA encourages applicants for citizenship to attend public ceremonies as these provide the formality and mark the occasion of the acquisition of citizenship. However, where applicants have waited for more than two months or are reluctant for personal reasons to attend a local government ceremony, a departmental ceremony will be held. Departmental ceremonies are brief, and friends, relatives and other members of the community are not invited.[109]

3.130 In some instances, applicants may wish to have citizenship conferred at a private ceremony. Examples of people who may request a private ceremony include:

- the aged or bedridden;
- those who require citizenship urgently; and

106 Evidence, p. 38.

107 Citizenship Instructions, para. 8.3.2.

108 Citizenship Instructions, paras. 8.3.3 and 8.3.4.

109 Citizenship Instructions, para. 8.4.2.

those who insist on a really private occasion.[110]

3.131 Private ceremonies can be formal or informal occasions and, as such, speeches by the Minister's representative, Members of Parliament or community groups are not required. With respect to the guest list, the Citizenship Instructions indicate that 'if Members of Parliament are invited, invitations should be extended to all persons normally invited to public ceremonies'.[111] DIEA stated:

> Smaller councils normally do not have enough candidates to warrant a public ceremony and if they delayed ceremonies until they had a sufficient number, candidates would be waiting an unreasonably long time for conferral. Small, private ceremonies ensure that candidates are able to attend a ceremony reasonably soon after their application for citizenship is approved. Larger councils normally have a sufficient number of candidates to hold public ceremonies reasonably frequently.[112]

3.132 In 1992-93, 128 544 persons were conferred as Australian citizens. DIEA indicated that it conducts 16 percent of citizenship ceremonies with the other 84 percent being conducted by local government authorities. Approximately 900 local government councils throughout Australia conduct citizenship ceremonies.[113] With regard to private and public ceremonies, DIEA stated:

> . . . it appears that large municipal local government authorities have more public than private ceremonies– 70/30% on average. Medium to small local government authorities, most of which are located in the country, have far more private than public ceremonies. Some small local government authorities have only one public ceremony per year, on Australia Day, and all other conferrals take place privately in the Council Chambers with twelve or less candidates.[114]

110 Citizenship Instructions, para. 8.5.1.

111 Citizenship Instructions, para. 8.5.3.

112 Evidence, p. S876.

113 Evidence, p. S512.

114 Evidence, p. S876.

3.133 In January 1994, DIEA released the most recent version of its handbook for local government authorities on Australian citizenship ceremonies. The handbook includes information on:

- the role of local government authorities;
- the legal requirements for ceremonies;
- where and when to hold the ceremony;
- advice to candidates;
- official guests;
- publicity;
- the essentials of the ceremony;
- optional extras for the ceremony;
- the sequence of the ceremony; and
- citizenship documents.[115]

3.134 The significance of the citizenship ceremony is highlighted in the handbook. It is stated:

> The acquisition of Australian citizenship is a very important milestone in a person's life in Australia and as such is also an occasion for celebration. The ceremony proceedings should reflect that thought.[116]

3.135 Advice and guidance is provided to assist local government authorities to hold a meaningful ceremony. Local government authorities are advised that their responsibilities include:

- the conduct of a dignified and solemn ceremony to mark the occasion of the acquisition of Australian citizenship;
- administration by a Presiding Officer of the Pledge of Commitment as a Citizen of the Commonwealth of Australia (Australian Citizenship Pledge) to new citizens;

115 Department of Immigration and Ethnic Affairs, *Australian Citizenship Ceremonies, A Handbook for Local Government Authorities*, AGPS, Canberra, 1994.

116 ibid., p. 5.

- certification by the Presiding Officer that the candidate has, in fact, made the Citizenship Pledge to meet the legal requirements under the Citizenship Act; and

- presentation of citizenship certificates and Australian Citizenship Pledge memento cards to new citizens.[117]

3.136 A typical citizenship ceremony involves:

- a welcome and opening address by the Presiding Officer and the introduction of official guests;

- the Presiding Officer administering the Australian Citizenship Pledge to candidates;

- the presentation of citizenship certificates to new citizens by the Presiding Officer;

- participation of other speakers such as Members of Parliament; and

- the national anthem.[118]

3.137 In submissions to the inquiry, comments were received about how improvements to ceremonies could help to enhance the meaning of Australian citizenship. In some submissions, concerns were expressed about the nature and context of existing ceremonies. The Immigration Advice and Rights Centre commented that ceremonies are not of a uniformly high standard. It suggested that the quality of ceremonies varied between local government authorities. It noted that some local government authorities provide applicants with an appropriate and dignified welcome to Australia, while others treat the occasion with less importance. The Immigration Advice and Rights Centre described one ceremony which was conducted with dignity and a sense of inclusion, commenting:

> There was a very interesting array of Australian sustenance on tables and a range of local people attending, being present at and engaged in the whole event. They were saying, 'Yes we welcome you as members of the Australian community and as new citizens'. It was very much more an inclusive thing.[119]

117 ibid., pp. 4-5.

118 ibid., p. 32.

119 Evidence, p. 473.

3.138 In contrast, a representative of the Immigration Advice and Rights Centre noted her experience with an inappropriate ceremony. Ms Gibson stated:

> On attending one ceremony, I was very embarrassed to be an Australian citizen. There was a room full of people wishing to acquire Australian citizenship; the person who officiated was late and there was no explanation given about what was supposed to be happening or where they were supposed to sit. There was no sense of an event occurring, no sense of occasion, no sign outside saying this wonderful thing was happening here today. There was nothing to show where they should sit if they wanted to take the oath or affirmation.[120]

3.139 DIEA also indicated that ceremonies are not of a uniform standard, commenting:

> There is a range of citizenship ceremonies conducted in this country that go from a ceremony which all involved–whether they are conferees, friends, relatives, participating officials or members of Parliament–find particularly moving, to ceremonies which have been criticised because of the premises, or because it was not an enjoyable occasion . . .[121]

3.140 In this regard, DIEA noted that the guidelines contained in the handbook on ceremonies set out how a ceremony should be conducted. DIEA stated:

> There are specific guidelines on what we hope the ceremony will achieve, how it should be conducted, who should be there, who should get an opportunity to speak and what sorts of little extra things could occur at the ceremony to make it more meaningful for the people involved. Certainly, the overriding concern that we have is that it is a meaningful experience . . . those guidelines are probably our best statement of how a ceremony should work.[122]

120 Evidence, p. 472; see also paragraph 5.38.

121 Evidence, p. 63.

122 Evidence, p. 63.

3.141 Another concern was raised about the impersonal nature of large ceremonies. Dr Goodman, referring to a recent ceremony at which some 500 people took part, stated:

> . . . you cannot mass produce new citizens. It is an individual commitment. Such ceremonies should be limited to 20-25 people appearing before a J[ustice of the] P[eace] or Magistrate, individually coming forward to take the Citizenship Oath and to sign the necessary documents. This makes it a personal legal meaningful undertaking.[123]

3.142 In some submissions, it was suggested that the ceremony function could serve an enhanced educative role. Dr Singh, for example, proposed that there should be:

> . . . a compulsory orientation course for all new citizens, to be given before the citizenship ceremony, but without the insistence on tests and examinations. The course should include the culture, constitution, political and administrative system, flora and fauna, history (including aborigines), national and international state objectives, Australian heroes and achievements, and the social welfare schemes.[124]

3.143 This view was shared in other submissions. The Immigration Advice and Rights Centre stated:

> Perhaps there should be seminars beforehand to explain to people what they are about to do, what it means and what will flow on from that, and what the ceremony will involve. We should give them a sense that they are partaking in something important.[125]

3.144 It also was suggested that the ceremony could be enhanced by showing a film about Australia. Dr Lonsdale stated:

> . . . the ceremony could be a somewhat more emotional experience that it is at the moment. Film is an extremely powerful way of eliciting emotion, and few films were more powerful than that which I saw in the touring Bicentennial exhibition in Darwin in 1988. It included lots of fleeting impressions of Australian life, in a very poetic fashion, without being stridently nationalistic.[126]

123 Evidence, p. S393.

124 Evidence, p. S428.

125 Evidence, p. 473.

3.145 Dr Lonsdale also suggested that issuing a passport to all applicants upon conferral of citizenship at the ceremony would help to enhance the meaning of Australian citizenship. He stated:

> Nothing would give the ceremony as much meaning as linking it with the receipt of an Australian passport. At the moment, citizenship involves a series of careful security checks etc. which culminate in one's receiving a useless piece of paper. To get a passport presumably many of the same checks are carried out. Why not link the two processes (if necessary charging more for the process), so that one emerges from the ceremony with a document that actually carries some meaning in the world–an Australian passport.[127]

3.146 While this suggestion was not rejected out of hand, DFAT noted that there would be a range of practical difficulties in implementing such a proposal. DFAT commented:

> It would be very difficult to provide [passports] at the ceremony because they are not Australian citizens until they have got their certificates. Therefore, there would be a lot of machinery and computers required on the spot to deal with all of this.[128]

3.147 DIEA also suggested possible improvements to the ceremony. These included:

- allowing new citizens who wish to do so to say a few words;
- having the Presiding Officer read out a list of the countries of origin of the new citizens; and
- publishing a list of new citizens in the local newspaper (with each individual's permission and in conformity with the privacy legislation).[129]

126 Evidence, p. S117.

127 Evidence, p. S117.

128 Evidence, p. 156.

129 Evidence, p. S538.

3.148 The Committee sought input from local government associations but received little evidence in relation to the conduct of ceremonies. In a letter to the Committee, Councillor Woods, the President of the Local Government Association of Australia and the President of the Local Government Association of New South Wales, commented:

> I believe the vast majority of Local Governments in Australia wish to fully co-operate with the Australian Government in ensuring that citizenship ceremonies are held by councils as a community orientated exercise with the activity being a focal point exemplifying the multicultural nature of our areas. We support the Mayor acting on behalf of the Minister for Immigration in this regard.[130]

3.149 Councillor Woods also indicated that councils can give a worthwhile focus to the ceremony by hosting receptions with refreshments to follow formal proceedings. Councillor Woods suggested that:

> . . . assistance from the Government in funding such receptions would be well appreciated by Councils across the nation.[131]

3.150 DIEA indicated that there have been examples over the years of local councils being concerned about the cost which they have to bear in conducting citizenship ceremonies. DIEA noted that there have been a small number of occasions when local councils have refused to carry out ceremonies. On the issue of funding, DIEA commented:

> The funding of citizenship ceremonies by local government has not been an area which the Commonwealth has funded directly. The view that we have taken is that this is one of the functions that local government performs for which funding is provided as part of the overall general financial assistance grants arrangements between Commonwealth and local governments.[132]

130 Exhibit 26.

131 ibid.

132 Evidence, p. 39.

Conclusions

3.151 Citizenship ceremonies are an important legal and symbolic step in the process of conferring Australian citizenship on non-citizens. As such, they should reflect the importance and solemnity of the occasion, while at the same time providing an opportunity to welcome new citizens to the Australian community.

3.152 In the Committee's view, the conferral of Australian citizenship should not be regarded as a private matter, but should be recognised as the public affirmation of a person's commitment to Australia. Accordingly, the Committee considers that, in the main, Australian citizenship should be conferred at public ceremonies. Private ceremonies should be held only where valid reasons are provided by the applicant as to why a public ceremony is not appropriate, for example, where there is a need for citizenship to be conferred urgently.

3.153 With regard to the conduct of citizenship ceremonies, the handbook issued by DIEA in January 1994 provides appropriate guidance regarding the nature and content of such ceremonies. Nevertheless, it is apparent that the quality of citizenship ceremonies is not uniform and depends to a large extent upon the particular local government authorities conducting the ceremony. From Committee members' own experience, some local government authorities treat the citizenship ceremonies purely as local government occasions, thereby overlooking the fact that the power to conduct citizenship ceremonies is delegated from the Commonwealth Minister. There have been instances where Commonwealth representatives, including Federal parliamentarians, have been excluded from citizenship ceremonies, contrary to the guidelines in DIEA's handbook.

3.154 To overcome such difficulties, the Committee considers that there should be prescribed minimum guidelines for citizenship ceremonies, which must be followed by the Minister's delegate conducting the ceremony. The minimum guidelines should include:

- the core elements of the ceremony, such as the making of the pledge of commitment and the singing of the national anthem;
- a minimum invitation list for the ceremony, including all State and Federal parliamentarians serving within the local council area, and, where it is necessary to achieve political balance, members of the Senate and State Upper House;
- provision for a Federal and State Member of Parliament to speak at the ceremony prior to the making of the pledge of commitment; and
- a requirement that State and Federal parliamentarians serving within the local council area in which the ceremony is held be provided with lists detailing the names of new citizens.

3.155 In the Committee's view, only those local government authorities which follow these prescribed minimum guidelines should be permitted to conduct citizenship ceremonies.

3.156 In proposing prescribed minimum standards for citizenship ceremonies, the Committee accepts that such ceremonies involve expense for local government authorities, particularly where larger ceremonies are conducted. In the Committee's view, the Commonwealth Government should provide a subsidy to local government authorities which conduct public ceremonies in accordance with the prescribed guidelines.

3.157 As for making the citizenship ceremonies more meaningful, the Committee is of the view that every effort should be made to give local publicity to the event and encourage local media to attend and report the ceremony.

3.158 The Committee also considered various proposals made in submissions for improving citizenship ceremonies. Some of those suggestions, such as showing a film about Australia, already are included within the handbook as optional extras for citizenship ceremonies. In the Committee's view, decisions about the use of such optional extras should be left to the local government authorities conducting the ceremony. Any such decisions will depend on the facilities available, the cost of including optional extras within the ceremony, and the size of the ceremony. From Committee members' own experience, the significance and meaning of the citizenship ceremony can decrease if the ceremony is too long.

3.159 One proposal with which the Committee does not agree is the suggestion that passports be given out at citizenship ceremonies. The administrative difficulties associated with such a proposition, as noted by DFAT, preclude adoption of this proposal.

3.160 Other proposals for enhancing the meaning of citizenship ceremonies, such as providing the opportunity for new citizens to speak at such ceremonies, can be added to the section of the handbook dealing with optional extras when it is next updated. In this regard, it is evident that the nature and content of citizenship ceremonies will change over time as community attitudes change. Accordingly, it is appropriate for DIEA to regularly update its guidelines on the conduct of citizenship ceremonies. It also would be worthwhile for the Bureau of Immigration and Population Research to conduct a survey as to the form and content of ceremonies conducted across Australia, including, where practicable, reactions to those ceremonies from participants.

Recommendations

3.161 **The Committee recommends that:**

9. Australian citizenship be conferred at public ceremonies, except where the applicant can demonstrate valid reasons as to why a public ceremony is not appropriate;

10. the Minister for Immigration and Ethnic Affairs prescribe minimum guidelines for the conduct of citizenship ceremonies which must be followed by the Minister's delegate conducting the ceremonies. The minimum guidelines should include:

- **the core elements of the ceremony, such as the making of the pledge of commitment and the singing of the national anthem;**
- **a minimum invitation list for the ceremony, including all State and Federal parliamentarians serving within the local council area, and, where it is necessary to achieve political balance, members of the Senate and State Upper House;**
- **provision for a Federal and State Member of Parliament to speak at the ceremony prior to the making of the pledge of commitment; and**
- **a requirement that State and Federal parliamentarians in the local council area in which the ceremonies are held be provided with lists of new citizens;**

11. the Commonwealth Government provide a subsidy for citizenship ceremonies to those local government authorities which conduct public citizenship ceremonies in accordance with the prescribed guidelines;

12. local government authorities make every effort to publicise citizenship ceremonies in the community and encourage local media to attend and report the event;

13. the handbook on Australian citizenship ceremonies be updated regularly by the Department of Immigration and Ethnic Affairs, which should consider and include suggestions for making the ceremonies more meaningful;

14. the Bureau of Immigration and Population Research conduct a survey on the form and content of citizenship ceremonies held throughout Australia, as well as participant reactions to those ceremonies; and

15. in the next update of the handbook on Australian citizenship ceremonies, the list of optional extras for the ceremony be expanded to include the option of allowing new citizens to speak at ceremonies.

Chapter Four

AUSTRALIAN CITIZENSHIP LAW

Introduction

4.1 The *Australian Citizenship Act 1948* provides the legal basis for Australian citizenship and governs the ways in which citizenship can be acquired, lost or resumed.

4.2 Over the past 45 years, the Citizenship Act has been amended some 27 times. As discussed in Chapter Two, these amendments have been implemented in part in response to changing community perceptions about citizenship, and also to reflect principles of citizenship agreed to in various international instruments.

4.3 The Committee's review of Australia's citizenship law included an examination of the framework, scope and content of citizenship law, including various proposals for amending the existing provisions.

The constitutional framework

4.4 Australia's Constitution establishes the framework of laws and institutions which govern the operation of Australian society. As such, the Constitution is of direct relevance to the daily lives of Australian citizens and non-citizens resident in Australia. As noted by Colin Howard in his book on the Australian Constitution:

> The quickest way of appreciating the closeness of the connection between the constitution and everyday life is to grasp the fact that the constitution is the document which says who can make the laws and what laws can be made . . . It is impossible for a citizen of Australia, or of any other developed country, to undertake the smallest activity without either directly or indirectly coming into contact with the law . . . We are so used to it that we scarcely notice. But since it is the constitution which says who can make the laws and what laws can be made, it is a short step from awareness of the law to realizing that

> behind the screen of rules and regulations it is the constitution itself which controls our lives. It does so in a much more direct way than is generally appreciated.[1]

4.5 In broads terms, the Constitution outlines the following:

- it determines how the national Parliament is established and functions;
- it determines how the executive government works;
- it determines how the court system works;
- it determines how responsibility is divided between the Commonwealth and the States;
- it sets the limits on what the Commonwealth and States can do; and
- it spells out the steps by which it can be amended.[2]

4.6 On the issue of citizenship, the Constitution makes no mention and gives no definition of the term Australian citizen. The phrases in the Constitution relevant to citizenship include 'people of the Commonwealth' (section 24), 'subjects of the Queen' (sections 34 and 117), and 'aliens' (section 51(xix)). In addition, the Constitution does not confer a specific power to make laws with regard to 'nationality' or 'citizenship'. This omission, however, does not inhibit Parliament's powers to enact laws on citizenship, nor does it bring into question the constitutional validity of such laws. Rather, it reflects the historical origins of the Constitution. As stated by a former Secretary of the Attorney-General's Department, Mr P. Brazil:

> No adverse inference is to be drawn from that omission. The fact that the concept of British subject ran at the turn of the century throughout the whole of the British Empire explained why citizenship legislation was not anticipated by the drafters of the Constitution. It does not warrant reading down powers that *were* conferred and that are adequate to encompass this unforeseen development.[3]

4.7 Parliament's power to legislate on citizenship derives from section 51 (xix) of the Constitution, which confers on the Parliament the power to make laws with respect to 'naturalisation and aliens'. This head of power provides constitutional authority for the provisions of the Citizenship Act, and all the provisions which indicate and define who is, and who is not, an Australian citizen under Australian law.[4]

4.8 It also can be argued that the 'external affairs' power in section 51 (xxix) of the Constitution, and the implied powers enjoyed by the Parliament by reason of Australia's existence as a sovereign nation, provide an ample constitutional basis for legislation dealing with all aspects of citizenship.[5]

4.9 Although the constitutional validity of Australian citizenship legislation has not been considered directly by the High Court, the validity of Australian citizenship law has been supported in statements by that Court. In *Nolan v Minister for Immigration and Ethnic Affairs*, Gaudron J, with whom on this point the majority agreed, stated:

> There can be no doubt as to the power of the Parliament to enact laws prescribing the conditions currently prescribed by the Citizenship Act for the acquisition of citizenship . . .[6]

4.10 While the Constitution does not contain a definition of Australian citizen, the term alien is defined there as a person who is not a subject of the Queen.[7] Justice Gaudron, in the case of *Nolan v The Minister for Immigration and Ethnic Affairs*, stated:

> An alien (from the Latin alienus–belonging to another) is, in essence, a person who is not a member of the community which constitutes the body politic of the

1 Colin Howard, *Australia's Constitution* (revised edition), Penguin Books, Victoria, 1985, pp. 1-2.

2 J. McMillan, G. Evans and H. Storey, *Australia's Constitution, Time for Change?*, Law Foundation of Australia and George Allen and Unwin Australia, Sydney, 1983, pp. 7-13.

3 P. Brazil, 'Australian Nationality and Immigration', K.W. Ryan (ed.), *International Law in Australia* (2nd edition), The Law Book Company Ltd, Sydney, 1984, p. 217.

4 ibid.

5 ibid., p. 218, and R. Burnett, et al, *Australian Immigration Law*, Butterworths Service, vol. 1, New South Wales, 1994, p. 3021.

6 (1988) 80 ALR 561, at 568.

7 Australian Constitution, section 34(ii), section 44(i), section 117.

> nation state from whose perspective the question of alien status is to be determined. For most purposes it is convenient to identify an alien by reference to the want or absence of the criterion which determines membership of that community. Thus, where membership of a community depends on citizenship, alien status corresponds with non-citizenship; in the case of a community whose membership is conditional upon allegiance to a monarch, the status of an alien corresponds with the absence of that allegiance.[8]

4.11 In the earlier case of *Pochi v Macphee*, Gibbs CJ observed that the meaning of 'aliens' in the Constitution cannot depend upon the law of England and must depend on the law of Australia. Gibbs CJ stated:

> . . . the Parliament can, in my opinion, treat as an alien any person who was born outside Australia, whose parents were not Australians, and who has not been naturalized as an Australian.[9]

4.12 The term alien is no longer used in Australian citizenship or migration law. In migration law, those subject to immigration control are 'non-citizens', defined as persons who are not Australian citizens.

The legislative framework

4.13 A variety of Australian legislation establishes the broad framework of rights and responsibilities applicable to Australian citizens. The Citizenship Act itself does not confer a range of rights and responsibilities on Australian citizens. As noted by the Immigration Advice and Rights Centre:

> It is significant that none of the rights which are considered to be the touchstone of citizenship in the broader sense are accorded to an individual because of the Citizenship Act 1948 per se. A right or obligation arises by virtue of the entitling or prescribing provisions of a particular piece of legislation which in turn refers back to a person's status under the Migration or Citizenship Acts, or as determined by body of the common law. It therefore appears to be the case that the meaning of citizenship in the broad sense cannot be enhanced by reference to the Citizenship Act in isolation.[10]

4.14 Instead, most of the rights and responsibilities applicable to Australian citizens are derived from a wide range of laws enacted by the Australian Parliament. As noted in Chapter Two, many of these rights and responsibilities are applicable not only in relation to citizens, but also non-citizens in Australia. The relevant laws include, for example:

- the *Commonwealth Electoral Act 1918*, which governs the right and obligation to enrol to vote in elections and referendums;
- the *Income Tax Assessment Act 1936*, which governs the liability for taxation;
- the *Migration Act 1958*, which sets out the rules for entry and stay in and for removal from Australia of non-citizens;
- the *Racial Discrimination Act 1975*, which prohibits discrimination on the grounds of race, colour, national or ethnic origin;
- the *Sex Discrimination Act 1984*, which prohibits discrimination on the grounds of sex, marital status or pregnancy; and
- the *Social Security Act 1991*, which governs the entitlements to welfare benefits.

4.15 Within this broad legislative framework, the Citizenship Act sets down the rules for acquisition, loss and resumption of citizenship. As detailed in Chapter Two, the Citizenship Act in its original form reflected the 1948 agreement between members of the British Commonwealth to create two associated categories of citizenship. These were citizenship of the appropriate Commonwealth country and the status of 'British subject' or 'Commonwealth citizen' which was common to all citizens of British Commonwealth countries. British subject status was removed in Australia through the 1984 amendments to the Citizenship Act. The existing legislative scheme deals only with Australian citizenship.

4.16 The Citizenship Act includes provisions for:

- acquisition of citizenship by birth, adoption or descent (Part III, Division I);
- grant of citizenship (Part III, Division 2);

8 (1988) 80 ALR 561, at 568.

9 (1982) 43 ALR 261, at 266-267.

10 Evidence, p. S378.

- loss of citizenship (Part III, Division 4); and
- resumption of citizenship (Part III, Division 4).

4.17 The *Australian Citizenship Regulations 1960* (Citizenship Regulations) deal with certain administrative matters. These include the formalities of registration, including maintenance of registers of citizenship by descent in Australian consulates, the issuing of declaratory certificates of citizenship, the information required in declarations to resume citizenship, and processing fees.

International law considerations

4.18 There are various international law issues and international human rights obligations which are relevant to citizenship. A basic premise of international law is that no person is free to choose unconditionally his or her legal nationality or the state which shall be his or her certain home and protector.[11] Public international law allows each state to determine who are its own nationals, subject to minimal constraints of international conventions, international custom and the principles of law generally recognised with regard to nationality.[12]

4.19 Article 1 of the *Convention on Certain Questions Relating to the Conflict of Nationality Laws* (Hague Convention), negotiated at The Hague in 1930 and ratified by Australia in 1937, states:

> It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom and the principles of law generally recognised with regard to nationality.

4.20 A number of international treaties deal with the rights to and issues concerning citizenship or nationality. These include:

- the *Universal Declaration of Human Rights* (1948);
- the *Convention on the Nationality of Married Women* (1957);

11 A. Dummett and A. Nicol, *Subjects, Citizens, Aliens and Others*, Weidenfeld and Nicolson, London, 1990, p. 7.

12 *Convention on Certain Questions Relating to the Conflict of Nationality Laws* (1930), Article 1, League of Nations Series, vol. 179, p. 89; also, as noted at paragraph 2.16, Weis states that, in an international law context, the terms citizenship and nationality emphasise two different aspects of the same notion–membership of a state. As noted by Weis, 'nationality' stresses the international, 'citizenship' the national, municipal aspect'. (Weis, op. cit., p. 89.)

- the *Convention on the Reduction of Statelessness* (1961);
- the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979); and
- the *Convention on the Rights of the Child* (1989).

4.21 The *Universal Declaration of Human Rights* (Article 15) provides that:

> 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.

4.22 According to the Attorney-General's Department, the term 'arbitrary' is used in the sense of deprivation in circumstances where that would render a person stateless. It was not intended to prevent deprivation where another nationality was acquired voluntarily.[13]

4.23 The *Convention on the Nationality of Married Women*, to which Australia became a party on 14 March 1961, provides that a woman's nationality shall not be affected automatically by her marriage or the dissolution of her marriage (Article 1). It also provides that states may make special procedures available for a wife to acquire her husband's nationality.[14]

4.24 The *Convention on the Reduction of Statelessness*, to which Australia became a party on 13 December 1973, reinforces the deprivation of nationality provisions in the *Universal Declaration of Human Rights*. It outlines the circumstances in which a state is not to deprive a person of nationality. This includes where deprivation would result in a person having no nationality, or where deprivation is made on racial, ethnic or political grounds. This Convention also stipulates matters which states may take into account in determining rules for acquiring citizenship, for example birth in the state, residence not exceeding five years before lodgement of an application or ten years in all, or the absence of convictions for serious offences (Article 2).[15]

13 Evidence, p. S436.

14 Evidence, p. S434.

15 Evidence, p. S434.

4.25 The *Convention on the Elimination of All Forms of Discrimination Against Women*, to which Australia became a party on 28 July 1983, provides that states shall grant women equal rights to men with regard to the acquisition, change or retention of nationality (Article 9(1)), and with regard to the nationality of their children (Article 9(2)).[16]

4.26 The *Convention on the Rights of the Child*, which Australia signed on 22 August 1990 and ratified on 17 December 1990, reinforces the right of a child to a nationality. Article 7 states:

> 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
>
> 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

4.27 Article 8 of the *Convention on the Rights of the Child* states:

> 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.
>
> 2. Where a child is illegally deprived of some or all elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

4.28 According to the Attorney-General's Department, the existing provisions of the Citizenship Act are consistent with the requirements of international law.[17] This can be evinced from the Committee's examination of these provisions in the sections which follow.

16 Evidence, pp. S434-S435.

17 Evidence, S435.

Scope of the Citizenship Act

4.29 A fundamental issue for consideration by the Committee was the scope and role of the Citizenship Act in modern Australian society. In the words of DIEA:

> Is it to be only the legislative machinery by which a person acquires or loses Australian citizenship, or is it to be more than this?[18]

4.30 According to DIEA, the Citizenship Act, like most other legislation, is a technical, legal document prescribing legal rights, duties and penalties. Apart from the pledge and the recently inserted preamble, the Citizenship Act historically has set down the rules for acquiring and losing citizenship, but has not referred to wider issues relating to the meaning of Australian citizenship.[19]

4.31 Evidence to the inquiry indicated three main points for consideration:

- whether the Citizenship Act should outline only the mechanisms for acquiring and losing Australian citizenship, or whether it also should incorporate reference to the rights and obligations attaching to Australian citizenship;
- whether the language of the Citizenship Act should be couched in simple and easily understood terms; and
- whether the Citizenship Act should contain a specific definition of an Australian citizen.

Content and format of the Citizenship Act

4.32 It was suggested in a number of submissions that the Citizenship Act should contain a section which outlines the rights and responsibilities which Australian citizenship bestows. The Chairman of the Ethnic Affairs Commission of New South Wales, for example, commented:

> As the Act stands now, although it has been amended a few times, primarily it is about procedures, about how one goes about acquiring citizenship and under what circumstances it is granted. I submit that citizenship is more than simply someone going through the motions and procedures. If we are looking for that emotional bond and to citizenship becoming a statement of total commitment and loyalty on both sides by the citizens and

18 Evidence, p. S539.

19 Evidence, p. S539.

> the state, we should have sections in it which flesh out some of the very basic elements of what that relationship and mutual commitment means, other than just having the procedures.[20]

4.33 It was argued that inclusion of a statement about the rights and obligations of Australian citizenship in the Citizenship Act would assist in encouraging pride in and awareness of the meaning of Australian citizenship.[21] Various suggestions were made about what such a statement should encompass. Most of those suggestions were expressed in broad terms. The Ethnic Affairs Commission of New South Wales envisaged a statement along similar lines to that included in the New South Wales Charter of Principles for a Culturally Diverse Society, which states:

> All individuals should respect and accommodate the culture, language and religion of others within an Australian legal and institutional framework where English is the primary language.[22]

4.34 The Administrative Law Section of the Law Institute of Victoria proposed the inclusion in the Citizenship Act of a section which:

> . . . expresses that Australian citizenship is a status which carries with it rights to equality before the law and to participation in the public life of Australian society, in accordance with the Constitutions of the Commonwealth and of the several States, and also obligations to respect the laws of that society for the sake of other individual members of it and for the benefit of the whole.[23]

4.35 Some witnesses suggested expanding the existing preamble in the Citizenship Act. One suggestion was to refer in the preamble to the rights which are contained in the *Universal Declaration of Human Rights*.[24] Another proposal was to bring together in one statement the various rights and obligations which are contained in other pieces of legislation but which are understood to be rights attaching to citizenship. These include, for example, the right to hold public office, the right to be enrolled to vote, the right to apply to defend Australia in the armed

20 Evidence, p. 427.

21 Evidence, p. S621.

22 Evidence, p. S403.

23 Evidence, p. S608.

24 Evidence, p. S414.

forces, the right to leave Australia and to re-enter, and the right to protection from an Australian embassy or consulate while overseas.[25] The Immigration Advice and Rights Centre stated:

> We think there should be some mention of the Constitution within the preamble to draw together things about the particular society that Australia is and the meaning of citizenship in terms of the legislation, and the structures and social institutions of Australia.[26]

4.36 In making this suggestion, the Immigration Advice and Rights Centre was critical of the existing preamble, arguing that it is 'a bit obfuscating in that it is not quite succinct and understandable'.[27] Instead, the Immigration Advice and Rights Centre argued for a preamble which 'recognises the diversity in the Australian population and the notion of tolerance and respect for Aboriginal Australians and those from non-English speaking backgrounds',[28] and which mentions 'conforming and allowing participation and inclusion in the public processes'.[29]

4.37 The Attorney-General's Department observed that the existing preamble was the best attempt yet to indicate some of the rights and obligations of citizenship, but conceded that it was couched in very broad and general terms. Attorney-General's did not envisage any legal difficulties if there was a desire to develop and expand on the concepts within the existing preamble, but warned against stating within the Citizenship Act specific entitlements which are bestowed by other pieces of legislation, such as the Electoral Act, which deals with the right to vote. Commenting on the possibility of incorporating in the Citizenship Act a broader statement on rights and obligations, Attorney-General's stated:

> . . . if its purpose was not to actually confer the entitlements but rather to try to summarise and indicate one's entitlements, there may not be a problem.[30]

25 Evidence, p. 210 and p. S414.

26 Evidence, p. 444.

27 Evidence, p. 451.

28 Evidence, p. 444.

29 Evidence, p. 450.

30 Evidence, p. 329.

4.38 A contrasting proposal was that the rights and obligations of citizenship should not be spelt out in the legislation, but rather in a comprehensive booklet or even charter of citizenship rights. Ms Jordens indicated that because of the precision which is required in legislation, it would be expecting too much to produce legislation which explains in simple terms what it means to be an Australian citizen. Explaining her concept of a citizenship charter, Ms Jordens indicated that it should be 'a simple, clear and easily accessible summary of the minimum standards for all categories of Australian citizens as guaranteed (and enforceable) under existing Australian laws'.[31]

4.39 DIEA also envisaged difficulties with detailing the rights and obligations of citizenship in the Citizenship Act. One such difficulty would be in reaching agreement about which rights and responsibilities relate specifically to Australian citizenship. DIEA noted that many of the rights and responsibilities enjoyed by Australian citizens also are enjoyed by permanent residents. In addition, DIEA indicated that the responsibilities of citizenship are generally 'value commitments' which are not easily stated and which are open to debate.[32]

4.40 DIEA argued that if the purpose of outlining citizenship rights and responsibilities was to be educative, that is to ensure that those who are citizens and those who are seeking to become citizens are aware of what those rights and responsibilities entail, then it would be preferable to detail such information in some form of document, such as a book or charter, which is external to the legislation.[33]

4.41 DIEA also commented that the inclusion of rights and responsibilities is not common to the citizenship laws of other countries. The citizenship laws of Canada and the United States of America (United States), for example, contain only the legislative requirements for acquisition and loss of citizenship, similar to Australian legislation. According to DIEA, in these countries the rights and responsibilities attaching to citizenship are defined elsewhere, for example, in their respective Constitutions and the various provisions of their domestic law.[34]

31 Evidence, p. S822.

32 Evidence, p. S540.

33 Evidence, p. 52.

34 Evidence, p. S540.

4.42 A second issue raised in submissions related to the language and style of the Citizenship Act. Various submissions echoed the sentiments of Australia's former Governor-General, the Rt Hon Sir Ninian Stephen, who in August 1993 criticised the Citizenship Act for being a 'masterpiece of legislative incoherence'.[35] Reflecting this view, the Immigration Rights and Advice Centre stated:

> . . . it is a complex piece of legislation, not readily understandable to people. One of the key things is that the Citizenship Act as a keystone of people's rights and duties should be in clear language, easily accessible and understandable to all Australians.[36]

4.43 In one submission, it was suggested that a more easily understandable Citizenship Act would assist in educating individuals about citizenship.[37] In another submission, it was argued that the language of the Citizenship Act does not contribute to an enhanced meaning of Australian citizenship. The lack of inspirational language was highlighted by Mr Grant, who commented:

> Part of the problem bedevilling the Committee's objectives are the clinical nature and structure of Australian legislation. Soul and spirit in expression appear to be distant relatives to the bare not always intelligible language that euphemistically passes for the King's English.[38]

4.44 In this regard, the Attorney-General's Department noted that the language of the Citizenship Act reflects the historical origins of the legislation. Attorney-General's commented that, to some extent, the Citizenship Act was based on earlier British statutes, and therefore 'has not had the modern style of drafting applied to it'.[39] When questioned by the Committee on whether simplification of the Citizenship Act was desirable, Attorney-General's indicated that it always is in favour of simplifying the law, although achieving that is sometimes more difficult.[40]

35 Stephen, op. cit., p. 3.

36 Evidence, p. 443.

37 Evidence, p. S416.

38 Evidence, p. S75.

39 Evidence, p. 327.

40 Evidence, p. 327.

4.45 DIEA conceded that the Citizenship Act is a difficult piece of legislation for an average person to understand. At the same time, DIEA argued that it was no different to most legislation, particularly legislation dating from that era. To overcome this problem, DIEA suggested the introduction of a reader's guide. DIEA commented:

> It is accepted that the Act must contain the legislative provisions by which a person gains citizenship (birth, descent, grant) or loses citizenship. Any confusion as to the mechanics of these provisions could be reduced by the introduction of such a guide. A guide would serve no legislative purpose but would provide a description of the provisions and how they inter-relate. A recent example is the insertion of a Reader's Guide into the Migration (1993) Regulations.[41]

4.46 DIEA also indicated that the provisions which relate to grant of Australian citizenship could be simplified (see also paragraph 4.123).[42] DIEA, however, did not support a major redraft of the Citizenship Act. It stated:

> We certainly think that, if it is to be dealt with, it should be dealt with through restructuring and fixing it, rather than through wiping it and attempting to start from scratch.[43]

4.47 DIEA questioned the usefulness of redrafting the Citizenship Act, commenting:

> I do not think that most people in society access things about their status in a whole variety of areas by going and reading a piece of legislation to find out where they stand in relation to something. They usually rely on public information documents or other advice to tell them that. So it is a question of deciding the purpose to which the Citizenship Act is to be put, before one decides whether there is any advantage in rewriting it in a style different from the one that it currently is written in.[44]

41 Evidence, p. S541.

42 Evidence, p. S541.

43 Evidence, p. 50.

44 Evidence, p. 51.

4.48 DIEA's proposal for a reader's guide drew support from the Immigration Advice and Rights Centre, which indicated that such a guide could spell out clearly that individuals qualify for Australian citizenship if they satisfy certain criteria.[45] The Immigration Advice and Rights Centre also suggested that a reader's guide could explain which other Acts have a bearing on citizens' entitlements and obligations.[46] The Attorney-General's Department confirmed the feasibility of this suggestion by noting that it would be possible to footnote and cross-reference to other legislation.[47]

Definition of an Australian citizen

4.49 A third issue raised in evidence was that the Citizenship Act should detail who are Australian citizens. In this regard, the Committee noted comments made by Australia's former Governor-General, the Rt Hon Sir Ninian Stephen, that the Citizenship Act should 'as a minimum, spell out our own standing as citizens of our nation and tell us who are our fellow citizens'.[48]

4.50 Only two submissions to the inquiry dealt with this issue in any substantive form. Ms Rubenstein argued that because there have been a number of changes to the definition of Australian citizen since the Citizenship Act came into operation, a new section should be inserted in the Citizenship Act explaining who is entitled to be regarded as an Australian citizen. She indicated that such a section would enable people who came to Australia at different times or who were born in Australia in different periods to ascertain whether they are Australian citizens.[49]

4.51 In response, DIEA commented that the Citizenship Act is not an historical record for the confirmation of a person's citizenship status. DIEA noted that, like most legislative provisions, the Citizenship Act has evolved over time. Provisions which no longer had an active role were repealed.[50] In this regard, DIEA indicated that inclusion in the Citizenship Act of a section which details how citizenship was acquired at various stages of the legislation could complicate the Act. DIEA stated:

> Bearing in mind that the citizenship rules have changed a lot over time, to conceive of an Act . . . that would cover every piece of history of how you could have acquired

45 Evidence, p. 444.

46 Evidence, p. 468.

47 Evidence, p. 328.

48 Stephen, op. cit., p. 23.

49 Evidence, p. S414.

50 Evidence, p. S540.

citizenship at many times since 1949 may well make it much more complicated than it is now, rather than less complicated.[51]

Conclusions

4.52 Throughout the inquiry, the Committee perceived a genuine community interest in raising awareness of and understanding about Australian citizenship. In this regard, the Committee is sympathetic to the view expressed in a number of submissions that if Australian citizenship is to carry enhanced meaning, the foundation stone of that citizenship, namely the Australian Citizenship Act, should be accessible and easily understood by those who already are and those who aspire to be citizens.

4.53 In this regard, the Committee agrees with the often stated view in submissions that the Citizenship Act is cumbersome and dated. In the Committee's view, the Citizenship Act should be redrafted to simplify the language and adopt a modern legislative drafting style.

4.54 The Committee does not regard the redrafting of the Citizenship Act as the most pressing priority in terms of equipping both Australian citizens and prospective citizens with a better understanding of Australian citizenship. The Committee accepts the argument put by DIEA that the average person would not seek to determine his or her citizenship status by referring to legislation, but rather would seek out public information material written in non-legal everyday language. Accordingly, a redraft of the Citizenship Act should be a longer term undertaking which should be completed in time for the 50th anniversary of Australian citizenship in 1999.

4.55 The Committee, however, is concerned about the form and text of the Citizenship Regulations. In its view, priority should be directed to redrafting and redesigning the Citizenship Regulations to ensure that they are more comprehensive, informative and accessible. This would entail detailing within the Citizenship Regulations matters of substance which are notable omissions in the present Regulations. These include matters dealing with the grant of citizenship, namely the form of the English language test, the mode of administering that test, and criteria or guidelines indicative of a person's good character, that a person has adequate knowledge of the responsibilities and privileges of citizenship, and that a person is likely to reside in, to continue to reside in, or maintain a close and continuing association with Australia. The Citizenship Regulations also should contain principles which guide the exercise of the Minister's discretion for waiving certain of the criteria for citizenship, such as guidance on which activities outside of Australia are beneficial to the interests of Australia, and guidance concerning the exercise of the Minister's discretion in relation to revocation and resumption of citizenship.

---

51 Evidence, pp. 51-52.

4.56 In proposing these amendments, the Committee is concerned that the existing Citizenship Act and Regulations taken together do not comprehensively explain the requirements on grant, revocation and resumption of citizenship. The proposed amendments are designed to rectify these omissions.

4.57 Changes to the form and content of the Citizenship Act and Regulations, however, will not necessarily serve to explain to citizens and prospective citizens in easily understood terms the complete rules relating to citizenship. Inevitably, such rules must be couched in precise legal language. In addition, the provisions are not organised in such a way as to provide a logical explanation of citizenship requirements. For this reason, the Committee is of the view that another priority should be the production of a reader's guide to the Citizenship Act and Regulations, which, if appropriate, should be included with the Citizenship Regulations. Such a reader's guide should explain clearly and simply the terms, operation and requirements of the Citizenship Act and Regulations. The Committee notes that a reader's guide is contained within the 1994 Migration Regulations.

4.58 To complement the reader's guide, a booklet on Australian citizenship should be produced and made widely available to the public. This booklet should set down who is an Australian citizen, the rules for acquiring and losing citizenship, as well as the rights and responsibilities of Australian citizenship. The booklet should be regarded as an information source on Australian citizenship rules, and the values and meaning of Australian citizenship. It also should provide information on Australian institutions and history. The Canadian citizenship booklet entitled *The Canadian Citizen* could be used as a model in this regard.

4.59 In terms of defining the rights and responsibilities of Australian citizenship in such a booklet, the Committee endorses the principles enunciated in the National Agenda for a Multicultural Australia, namely:

- the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage, including their language and religion;
- the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth;
- the need to maintain, develop and utilise effectively the skills and talents of all Australians, regardless of background;
- the obligation that all Australians should have an overriding and unifying commitment to Australia, to its interests and future first and foremost;

- the obligation of all Australians to accept the basic structures and principles of Australian society–the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language, and equality of the sexes; and

- the obligation to accept that the right to express one's own culture and beliefs involves a reciprocal responsibility to accept the right of others to express their views and values.

4.60 To give enhanced meaning to the Citizenship Act, the Committee is of the view that the principles enunciated in the National Agenda for a Multicultural Australia should form the basis for a revised preamble to the Citizenship Act. While the insertion of a preamble in the Citizenship Act was a welcome initiative aimed at answering criticisms about the nature of the existing legislation, the Committee considers that a more comprehensive preamble, which reiterates widely accepted principles fundamental to Australian society, will assist in increasing the symbolic significance of the Citizenship Act.

Recommendations

4.61 **The Committee recommends that:**

16. the *Australian Citizenship Act 1948* be redrafted using simple language and be recast in a modern legal drafting style. This rewrite of the Citizenship Act should be in place for the 50th anniversary of Australian citizenship in 1999;

17. the preamble to the *Australian Citizenship Act 1948* be revised and expanded so that it is based on the principles enunciated in the National Agenda for a Multicultural Australia, namely:

- **the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage, including their language and religion;**

- **the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth;**

- **the need to maintain, develop and utilise effectively the skills and talents of all Australians, regardless of background;**

- **the obligation that all Australians should have an overriding and unifying commitment to Australia, to its interests and future first and foremost;**

- **the obligation of all Australians to accept the basic structures and principles of Australian society–the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language, and equality of the sexes; and**

- **the obligation to accept that the right to express one's own culture and beliefs involves a reciprocal responsibility to accept the right of others to express their views and values;**

18. the *Australian Citizenship Regulations 1960* be redrafted and revamped so that they operate as a comprehensive, accessible and easily understood guide to the requirements for grant of citizenship and include guidance on the principles of discretion pertaining to the grant, revocation and resumption of citizenship;

19. a reader's guide to the *Australian Citizenship Act 1948* and *Australian Citizenship Regulations 1960* be prepared and, if appropriate, be included with the Citizenship Regulations;

20. the Department of Immigration and Ethnic Affairs produce and make widely available a booklet on Australian citizenship which outlines in clear and simple language who is an Australian citizen, the rules for acquiring and losing citizenship, the rights and responsibilities of Australian citizenship, as well as information on Australian institutions and history;

21. in defining the rights and responsibilities of citizenship for inclusion in the citizenship booklet, reference should be made to the Australian Constitution, to relevant domestic laws and international instruments, and to certain basic principles of Australian citizenship, as enunciated in the National Agenda for a Multicultural Australia and detailed in recommendation 17; and

22. the citizenship booklet be provided to all citizenship applicants on receipt of their citizenship applications, and be made available to all Australian embassies and consulates, and a range of other appropriate organisations, such as schools and local government associations.

Legislative provisions

4.62 In the sections which follow, the Committee considers the main provisions of the Citizenship Act, detailing in particular the evidence which the Committee received regarding the scope and operation of those provisions.

Citizenship by birth in Australia

4.63 There have been several changes to the provisions on acquisition of citizenship by birth since the Citizenship Act came into operation on 26 January 1949. An accurate determination of a person's status is dependent on the provisions of the Citizenship Act in operation at the time of a person's birth.[52]

4.64 Generally, Australian citizenship was acquired automatically at birth if the person was born in Australia between 26 January 1949 and 19 August 1986 inclusive.[53] As of 20 August 1986, when the *Australian Citizenship Amendment Act 1986* came into force, section 10 of the Citizenship Act provides that a person born in Australia shall be an Australian citizen by virtue of that birth if and only if:

(a) a parent of the person was, at the time of the person's birth, an Australian citizen or a permanent resident; or

(b) the person has, throughout the period of 10 years commencing on the day on which the person was born, been ordinarily resident in Australia.

4.65 Only one submission to the inquiry canvassed the need for any changes to the rules regarding acquisition of citizenship by birth in Australia. Ms Rubenstein suggested reverting to the rules which existed prior to 20 August 1986, to provide that all persons born in Australia automatically would become Australian citizens.[54] Ms Rubenstein argued that this approach would be in accordance with the concept of an inclusive society by 'encouraging a sense of wanting to be part of the Australian society'.[55] When questioned by the Committee on the need for such a change, Ms Rubenstein conceded that her proposal was 'more an academic or philosophical approach rather than a practical one'.[56]

52 Evidence, p. S506.

53 The exceptions were if, at the time of the child's birth in Australia, the father (later 'parent') was a diplomat or enemy alien.

54 Evidence, p. S413.

55 Evidence, p. 293.

56 Evidence, p. 295.

4.66 In response, the Victorian Immigration Advice and Rights Centre Incorporated (VIARC) opposed Ms Rubenstein's suggestion on the basis that such a system would be open to considerable abuse for migration purposes. VIARC stated:

> . . . people would come through on a transit visa, pop into the airport, deliver a child and then move on. The child can acquire citizenship and it also gives the parents certain rights and entitlements.[57]

4.67 The Committee notes that such abuse also could occur in relation to persons who arrive in Australia on short term visitor or student visas. Indeed, it was to prevent such abuse that the Citizenship Act was amended with effect from 20 August 1986.

Conclusions

4.68 No substantive evidence was provided to the Committee which demonstrated the need for changing the existing rules regarding citizenship by birth in Australia. Any change to the rules could provide opportunities for abusing Australia's migration processes. The Committee is strongly of the opinion that citizenship law should be drafted so that it is not able to be used by persons seeking to obtain an immigration advantage. The Citizenship Act should retain its own separate and distinguishable purpose associated with a person's allegiance or lack thereof to Australia. As such, the Committee supports the retention of the existing provisions for acquisition of citizenship on birth in Australia.

4.69 Relevant to this issue, the Committee notes that the principles on citizenship by birth contained in Australia's legislation are similar to those in British citizenship law.

Recommendation

4.70 **The Committee recommends that:**

23. the existing provisions for acquisition of citizenship by birth in Australia in section 10 of the *Australian Citizenship Act 1948* be retained.

57 Evidence, p. 217.

Citizenship by adoption

4.71 As of 22 November 1984, section 10A of the Citizenship Act provides that a person shall be an Australian citizen if that person:

(a) under a law in force in a State or Territory, is adopted by an Australian citizen or jointly by 2 persons at least one of whom is an Australian citizen; and

(b) at the time of the person's adoption is present in Australia as a permanent resident.

4.72 Persons adopted in Australia prior to 22 November 1984 may apply for the grant of citizenship.

4.73 Persons adopted overseas by an Australian citizen parent may apply to be granted citizenship when in Australia once the adoption has been recognised or validated under Australian law. The citizen parent and the child must be Australian residents when the overseas adoption is recognised and the citizenship is conferred.[58]

4.74 No evidence was received by the Committee on these provisions, and the Committee did not identify any difficulties with their operation. As such, there appears no need to change these provisions.

4.75 Relevant to this issue, the Committee notes that proposals are being considered in Canada which would bring its law into line with Australian law on citizenship by adoption. The Committee also is aware that in the United Kingdom[59] and New Zealand,[60] Family Courts have been required to deal with adoptions designed in part to obtain citizenship of those countries for children who otherwise would not qualify under immigration law to remain living there. This is particularly evident in relation to inter-family adoptions, where children who cannot qualify to stay are sought to be adopted by a close relative because such adoption avoids and solves the migration problem by conferring citizenship on the child.

4.76 Once again, the Committee endorses the approach implicit in Australian citizenship law that the Citizenship Act should not serve to solve immigration problems.

58 Evidence, p. S506.

59 in *Re H.* (a minor)(Adoption; Non-patrial)(1982) 3 WLR 501; *R v Secretary of State for Health ex parte Iuff* (1992) 1 FLR 59.

60 Application by Webster (1991) NZFLR 537.

Citizenship by descent

4.77 Section 10B of the Citizenship Act provides for citizenship by descent for overseas born children of Australian citizens. Under that section, a person born outside Australia (referred to in the legislation as the 'relevant person') is an Australian citizen if:

(a) the name of the relevant person is registered for the purposes of this section at an Australian consulate, and the registration is the result of an application made within 18 years of the person's birth to register the person's name for those purposes; and

(b) a person, being a parent of the relevant person at the time of birth of the relevant person:

(i) was at the time an Australian citizen who had acquired Australian citizenship otherwise than by descent; or

(ii) was:

(A) at the time an Australian citizen who had acquired Australian citizenship by descent; and

(B) at any time before the registration of the name of the relevant person (including a time before the birth of the relevant person), present in Australia, otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, or in contravention of a law of a prescribed Territory, for a period of, or for periods amounting in the aggregate to, not less than 2 years.

4.78 If persons are not registered as Australian citizens before they turn 18 years of age, they may be registered in accordance with section 10C of the Citizenship Act. Section 10C provides that the Minister must register, in the prescribed manner, an applicant for registration if:

(a) a natural parent of the applicant was an Australian citizen at the time of the birth of the applicant; and

(b) that parent:

(i) is an Australian citizen at the time an application under this section is made; or

(ii) is dead and at the time of his or her death was an Australian citizen; and

(c) the applicant:

(i) was born outside Australia on or after 26 January 1949; and

(ii) is aged 18 years or over on the day on which this section commences (15 January 1992); and

(iii) failed for an acceptable reason to become registered as an Australian citizen under:

(A) section 10B; or

(B) section 11 of this Act as in force at any time before the commencement of section 10B; and

(d) the Minister is satisfied that the applicant is of good character.

4.79 Under section 10C(5), an applicant has an acceptable reason for failing to become registered if:

(a) an Australian passport has been issued to the applicant; or

(b) the applicant's name has been on an Electoral Roll under the *Commonwealth Electoral Act 1918*; or

(c) the applicant was unaware of the requirement of registration for the purposes of obtaining Australian citizenship by descent under section 10B or under section 11 of this Act as in force at any time before the commencement of section 10B; or

(d) the applicant has a reason for failing to become registered that is declared by the regulations to be an acceptable reason for the purposes of this section.

4.80 Under section 11, a person may be registered by descent before 18 June 1996 if that person:

> was born outside Australia or Papua New Guinea prior to 26 January 1949 to an Australian mother who was born in Australia or Papua New Guinea or naturalised in Australia before 26 January 1949; and

- was present in Australia for any time before 1 May 1987; and
- is of good character.

4.81 Four main issues emerged during the Committee's examination of the provisions relating to citizenship by descent:

- whether there are any overseas born children who should acquire Australian citizenship automatically at birth;
- whether persons who acquire Australian citizenship by descent should have the same rights in relation to passing on Australian citizenship to their children as persons who acquire Australian citizenship at birth;
- whether there are any improvements which could be made to the registration system; and
- whether the Minister's discretion to register those who had failed to become registered before they turned 18 years of age is adequate.

4.82 On the first issue, it was suggested in one submission that an overseas born child of an Australian citizen is technically stateless until the registration procedure is effected, unless that child acquires another nationality by birth from one of its parents. Mr Borrowman, citing the example of his own child, argued that it is unacceptable for the children of Australian citizens to either be stateless or be considered a foreign national until such time as the child is registered as an Australian citizen.[61]

4.83 To overcome this problem, Mr Borrowman suggested abolishing the category of citizenship by descent and amending the Citizenship Act to provide automatic conferral of Australian citizenship by virtue of a child's birth to an Australian parent.[62] As a secondary proposal, if the above was considered inappropriate, Mr Borrowman suggested that specific consideration be given to conferring citizenship automatically on children of Commonwealth personnel serving overseas. Mr Borrowman stated:

> As a question of first principles, children of persons who are officially designated and internationally recognised as representatives of Australia should not be denied the full benefit of their Australian citizenship, including the rights and benefits accruing to their children from the

61 Evidence, p. S140.

62 Evidence, p. S142.

> citizenship status of their parents . . . Other Australian law and practice, for instance that of representation (i.e. voting) and taxation, treats Australian personnel serving overseas as Australian residents for administrative purposes. It is difficult to see why the same should not apply in respect of citizenship.[63]

4.84 Mr Borrowman indicated that in the United Kingdom and New Zealand there are specific legislative provisions dealing with the citizenship of children of persons serving overseas on government service. He advised that those children are regarded as if they were born within the national territory.[64]

4.85 From a different perspective, VIARC proposed that consideration should be given to conferring citizenship on the descendants of Aboriginals and Torres Strait Islanders who are overseas and who do not have Australian citizenship. VIARC explained that a few cases have been brought to its attention whereby persons living in certain Pacific islands claim Aboriginal or Torres Strait Islander descent but are not eligible for Australian citizenship. VIARC claimed that their forbears left Australia at the beginning of the twentieth century. It is not known why the forebears departed Australia. VIARC suggested that they could have been removed forcibly or left under duress. VIARC argued that because of the special connection of Aboriginals and Torres Strait Islanders to Australia, as recognised in the High Court Mabo case, consideration should be given to granting citizenship to the overseas descendants of such persons, up to the third generation.[65]

4.86 On the issue of the right to pass on citizenship, it was suggested in some submissions that there should not be different rules for citizens by descent as compared to citizens at birth. Mr Borrowman, for example, argued that the existing provisions, which only allow citizens by descent to pass on Australian citizenship if they have resided in Australia for an aggregate of two years, create two classes of Australian citizen.[66] In a similar vein, Ms Rubenstein suggested that, in support of an inclusive approach to citizenship, all children of Australian citizens be entitled to Australian citizenship.[67]

63 Evidence, p. S143.

64 Evidence, p. S143.

65 Evidence, pp. 214-219 and pp. S372-S373.

66 Evidence, p. S141.

67 Evidence, p. S425.

4.87 In a contrary submission, it was argued that overseas born children of Australian citizens residing overseas should not have the same rights as Australian born children of Australian citizens residing in Australia. Ms Martin stated:

> It seems inequitable that children born overseas of non-residential Australian citizen parents who are contributing little or nothing to Australian society and revenue should have the same right of access to social and educational opportunities as those who can clearly evidence that they are permanent residents of Australia.[68]

4.88 On the registration process itself, VIARC argued that the system is unduly cumbersome and creates unnecessary paperwork. While accepting that the system does not place a particularly onerous burden on individuals, VIARC submitted that a heavy burden lies with the government in making it known to Australian citizens abroad that there is a requirement to register overseas born children for Australian citizenship. VIARC commented:

> . . . there is the burden of maintaining all these birth registers in consulates across the globe and then checking through when people want to acquire their citizenship when they are 18. That to us seems a very cumbersome way of operating the system. It could be done far more simply and more economically with less complexity.[69]

4.89 Mr Borrowman also identified certain problems with the registration process. He stated:

> Obtaining the necessary local birth registration documents can be a time consuming procedure. There is therefore an unavoidable delay in registration, even if it is commenced immediately, during which time the child is stateless. As noted, there is no obligation to register, and many citizens may be unaware of the necessity to do so.[70]

68 Evidence, p. S349.

69 Evidence, p. 225.

70 Evidence, p. S142.

4.90 As an alternative to the registration process, VIARC suggested that it should be sufficient for an applicant to establish descent from an Australian citizen by any evidentiary means available to the applicant, for example, a birth certificate, with the burden of proof being with the applicant.[71]

4.91 Another difficulty, raised by DFAT, is that in some countries registration of a child as an Australian citizen may be regarded as formal acquisition of another citizenship by that child. DFAT was concerned that there may be countries where this acquisition of Australian citizenship might cause the automatic loss of local citizenship, with consequent loss of several important legal rights, such as residence, schooling and inheritance. DFAT indicated that while the registration of Australian citizenship may not be known to local authorities immediately, it would become evident if the child decided to travel to Australia. Under existing policy, if the child travelled to Australia, the child would be required to travel on an Australian passport or on another passport with an Australian Declaratory Visa affixed. This policy is based on advice from the Attorney-General's Department that Australian citizens cannot have an Australian visa placed in a foreign passport. As a result, the child's Australian citizenship would be made known to local authorities.[72]

4.92 This problem also was identified in a submission from Australian citizen women married to foreign nationals and living in the country of their husbands' nationality. In the particular country, dual citizenship is prohibited. The women were concerned that because existing policy prevents their Australian citizen children from obtaining an Australian visa in a foreign passport, they either must take the risk of exposing their Australian nationality when travelling to Australia, and thereby risk losing citizenship rights in their country of residence, or they must renounce their Australian citizenship in order to travel on a foreign passport with an Australian visa. Both options were considered to be unpalatable. In the submission, it was stated:

> If there is no provision for a visa for these minority children to visit or study in Australia using their foreign passports then we (the parents) will be forced to make a decision about their citizenship for them from birth which we feel is unfair to the children . . .[73]

4.93 The Immigration Advice and Rights Centre suggested that there is a further deficiency in the registration process, in that it does not account for difficulties which may arise if the relationship between an Australian citizen father and a non-citizen mother breaks down before their child is registered. The Immigration Advice and Rights Centre advised that it was aware of cases where a

71 Evidence, p. S373.

72 Evidence, p. S359.

73 Evidence, p. S67.

child was unable to be registered as an Australian citizen because the Australian citizen father refused to make a declaration of paternity. It also was concerned about cases where the non-citizen mother was subject to domestic violence. In such cases, to effect registration of the child, the non-citizen woman may be required to reveal her whereabouts, thereby exposing her to the risk of further violence. Alternatively, the threat of the Australian citizen father not declaring paternity, thus preventing the child from being registered, could be used to keep the woman in the violent relationship. To overcome difficulties in the above circumstances, the Immigration Advice and Rights Centre suggested that officials who maintain the citizenship registers should accept the legal presumption that a child born in a marriage is the natural child of the married couple, and that there be a right of appeal on such matters to the Administrative Appeals Tribunal (AAT).[74]

4.94 On the fourth issue of registering persons as Australian citizens after they have turned 18 years of age, VIARC noted the limitations of section 10C, which requires that, for the Minister to effect registration, a person must have been 18 years of age or over on 15 January 1992. VIARC indicated that, because of this time limit, persons who turn 18 years of age after 15 January 1992 and discover that they have not been registered as Australian citizens, are ineligible for registration. According to VIARC, this places such persons in the same situation which led to the enactment of section 10C.[75]

4.95 In response to the criticisms about the registration process, DIEA argued that registration strikes an appropriate balance between granting citizenship where it is wanted and not providing citizenship as a birth right to a limitless number of persons whose connection and/or commitment to Australia, either through themselves or their parents, has passed. In particular, DIEA rejected the suggestion to confer Australian citizenship by birth on the overseas born children of Australian citizens. DIEA commented:

> . . . we would argue that the current system of registration is appropriate, is practical, that there are provisions in the Act to account for any hypothetical situation that may see a child technically left unable to access their Australian citizenship and that to consider passing on Australian citizenship literally by descent would not be a proper course of action.[76]

74 Evidence, pp. S391-S392.

75 Evidence, pp. 226-227.

76 Evidence, p. 87.

Conclusions

4.96 The existing rules governing citizenship by descent are based on the premise that overseas born children of Australian citizens should acquire Australian citizenship only if there is an attachment to Australia. That attachment is demonstrated if one of the child's parents has acquired Australian citizenship other than by descent, or, where the parent has acquired citizenship by descent, the parent has had an appropriate period of residence in Australia.

4.97 As a general principle, the Committee supports the concept that there should be an attachment to Australia for citizenship to be passed on in situations where children are born overseas. Without requiring such an attachment, there is a real possibility that whole generations of a family residing overseas could acquire Australian citizenship without any of those persons having any specific connection to Australia, except through an Australian citizen ancestor. For this reason, the Committee does not support the suggestion that citizenship should be conferred automatically on overseas born children of Australian citizens. This principle is in line with international law provisions which seek to limit the automatic grant of citizenship to persons born outside a country of citizenship.

4.98 As for the registration process, the Committee did not receive any detailed empirical evidence to indicate a need for change. Nevertheless, some of the information brought to the Committee's attention indicated possible shortcomings in the registration process. While the Committee considers that the essentials of the registration process should remain unchanged, some attention may be required in relation to the administrative arrangements for registration. In particular, the Committee considers that there is a need to ensure that, as far as possible, all such registrations of citizenship by descent are recorded electronically, are maintained centrally by DIEA, and are accessible where appropriate to persons on the register and relevant Commonwealth agencies.

4.99 In addition, the Committee accepts that there are legitimate concerns that Australian citizens may not know about the registration process for their children born outside Australia. These concerns can best be addressed by ensuring that information on the registration process is included in the citizenship booklet which the Committee has recommended at recommendation 20. Additionally, DIEA should ensure that such information is readily available at Australian embassies and consulates, and that the information available to Australian travellers, such as the DFAT booklet 'Hints for Australian Travellers', contain specific reference to the registration process for citizenship.

4.100 The Committee, of course, accepts that there always will be some persons who are eligible to be registered as Australian citizens but who, for whatever reason, have not had that registration effected before they turn 18 years of age. In such cases, although the default lies with the parents or guardians of the child, it is the child who ultimately may be disadvantaged by not having Australian citizenship. While section 10C has introduced a ministerial discretion into the Citizenship Act to deal with such circumstances, the concession has a particular time

limit. In the Committee's view, it should be the circumstances of a particular case which should be relevant, rather than whether a person was 18 years of age or older on a particular date. Accordingly, the Committee favours extending the section 10C concession to provide for an ongoing concession which would allow the Minister to grant citizenship to persons who are 18 years of age or over and have not been registered as Australian citizens for acceptable reasons. Those reasons are defined already in the legislation.

4.101 As for the suggestion by VIARC that consideration should be given to granting citizenship by descent to certain persons living on Pacific islands who claim Aboriginal descent, the Committee notes that problems in this regard were asserted by the witnesses but, when questioned on these matters, the claims were not substantiated.

4.102 In relation to the concerns expressed by the Immigration Advice and Rights Centre about difficulties with citizenship registrations being effected where Australian fathers refuse to make declarations of paternity, once again the Committee notes that problems in this regard were asserted by the witnesses but, when questioned on these matters, the claims were not substantiated.

4.103 With regard to the submissions received from certain Australians overseas concerning difficulties experienced by certain Australian citizen children resident in countries which do not permit dual citizenship, the Committee is not in a position to suggest a remedy to these problems. Any change to Australian law and practice would not alter the situation for such children, whose difficulties stem from the citizenship laws of the countries in which they reside. As such, the problems are not amenable to solutions by this Committee.

Recommendations

4.104 **The Committee recommends that:**

24. the process for registration of Australian citizenship by descent for overseas born children of Australian citizens be retained essentially in its existing form;

25. the concession in section 10C of the *Australian Citizenship Act 1948* be amended to remove the limitation contained in section 10C(4)(c)(ii) restricting the applicability of the section to persons who were 18 years of age or older on 15 January 1992, and to provide instead that it is an ongoing concession for persons who for prescribed and acceptable reasons, as outlined in the existing legislation, were not registered as Australian citizens before they turned 18 years of age;

26. the Department of Immigration and Ethnic Affairs ensure that, as far as possible, all registrations of Australian citizenship by descent be recorded electronically and maintained on a central database which is accessible, where appropriate, to persons on the register and relevant Commonwealth agencies; and

27. information on the process for registration of overseas born children of Australian citizens be included in the citizenship booklet which the Committee has recommended at recommendation 20, be made widely available in Australian embassies and consulates, and be included in the present publication by the Department of Foreign Affairs and Trade entitled 'Hints for Australian Travellers' and any future such publications.

Grant of citizenship

4.105 To qualify for the grant of Australian citizenship, applicants must meet certain criteria. Section 13(1) of the Citizenship Act provides that the Minister may, in the Minister's discretion, upon application in accordance with the approved form, grant a certificate of Australian citizenship to a person who satisfies the Minister that:

(a) the person is a permanent resident;

(b) the person has attained the age of 18 years;

(c) the person understands the nature of the application;

(d) the person has been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than one year during the period of 2 years immediately preceding the date of the furnishing of the application;

(e) the person has been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than 2 years during the period of 5 years immediately preceding the date of the furnishing of the application;

(f) the person is of good character;

(g) the person possesses a basic knowledge of the English language;

(h) the person has an adequate knowledge of the responsibilities and privileges of Australian citizenship; and

(i) if granted a certificate of Australian citizenship, the person is likely to reside, or continue to reside, in Australia, or maintain a close and continuing association with Australia.

4.106 Section 13(1)(g), the English language requirement, does not apply where the person has permanent difficulties with hearing, speech or sight, or has attained 50 years of age, or suffers permanent physical or mental incapacity. Section 13(1)(h), the requirement to have an adequate knowledge of the responsibilities and privileges of Australian citizenship, does not apply where a person has permanent difficulties with hearing, speech or sight, or has attained 60 years of age, or suffers permanent physical or mental incapacity.

4.107 The following are exempted from the normal residence requirements:

- children under 16 years of age who are permanent residents in Australia (they may be included in one of their parents' applications);
- persons who have completed at least three months relevant service in the defence forces of Australia; and
- former Australian citizens who have a total of 12 months permanent residence in the two years preceding lodgement of their applications (they cannot be granted citizenship within 12 months of losing it).

4.108 In addition, the Minister has a discretion to treat certain periods of residence as counting towards the normal residence requirements (sections 13(4)(b)(i) to (v)). This includes, for example, a period during which the applicant was a permanent resident, was not present in Australia, and was engaged in activities that the Minister considers beneficial to the interests of Australia (section 13(4)(b)(i)). The term 'activities beneficial to the interests of Australia' was said by Einfeld J in the case of *Minister for Immigration, Local Government and Ethnic Affairs v Roberts* to mean:

> . . . something in the nature of activities which provide some advantage to Australia, whether commercial or otherwise. The concept necessarily connotes some public interest of Australia, even if of a general or non-specific

> character, and means more than the private interests of the respondent. The section requires some objective benefit to Australia.[77]

4.109 The Minister also has a discretion to waive the normal residence requirements and grant citizenship to the spouse, widow or widower of an Australian citizen and to a person who has not attained the age of 18 years. The current policy guidelines applicable to spouses/widow(er)s provide for exemption from the normal residence requirements if the spouse/widow(er) has lived in Australia as a permanent resident continuously for the past year and can demonstrate that he/she would suffer significant hardship or disadvantage if not granted citizenship. From 1 September 1994, grant of citizenship to a spouse, widow or widower requires the person to be a permanent resident.[78]

4.110 Statistics provided by DIEA show that less than one percent of applicants for grant of citizenship are rejected each year because they fail either the English language requirement or the requirement to demonstrate adequate knowledge of the rights and responsibilities of citizenship (see Table 4.1). Both of these requirements are tested at interview. In addition, around one percent of applicants have their applications deferred for not satisfying these requirements (see Table 4.2). A more detailed breakdown of the reasons for rejection of citizenship applications is provided at Table 4.3.

4.111 The criteria for grant of citizenship attracted some comment in submissions. In a few submissions, it was suggested that the value of Australian citizenship would be enhanced if citizenship was made more difficult to achieve. Mr Campbell, MP, for example, commented:

> Citizenship should be made more difficult to achieve. This would increase its status in the eyes of those who strive for it and greatly increase their satisfaction upon achieving it.[79]

77 *Minister for Immigration, Local Government and Ethnic Affairs v Roberts* (1993) 41 FCR 82; 113 ALR 151.

78 Evidence, p. S508.

79 Evidence, p. S111.

TABLE 4.1 Number and percentage of applicants for grant of Australian citizenship rejected for failing to meet the English language requirement and/or the requirement to have an adequate knowledge of the responsibilities and privileges of Australian citizenship under sections 13(1)(g) and (h) of the *Australian Citizenship Act 1948*

Year	Number of Applicants	% of cases rejected	Top three countries of previous citizenship by % of cases rejected for English requirement
1991/92	138	9.96%	Vietnam 39% China 16% Lebanon 6%
1992/93	92	7.78%	Vietnam 20% China 15% Turkey 4%
1993/94 Jul'93-Mar'94	123	12.5%	Vietnam 41% China 6% Portugal 5%

Source: Evidence, p. S850.

TABLE 4.2 Number and percentage of applicants for grant of Australian citizenship deferred for failing to meet the English language requirement and/or the requirement to have an adequate knowledge of the responsibilities and privileges of Australian citizenship under sections 13(1)(g) and (h) of the *Australian Citizenship Act 1948*

Year	Number of cases deferred	cases deferred as % of cases processed
1991/92	1213	1.20%
1992/93	1428	1.32%
1993/94 Jul'93-Mar'94	1344	1.90%

Source: Evidence, p. S850.

TABLE 4.3 Grant of Australian citizenship applications rejected: number and % breakdown of rejection reasons for the last three financial years

REASONS	1991/92	1992/93	1993/94 (Jul'93-Mar'94)
Section 13 (1)(a) Permanent Resident	0.8% (12)	1.3% (16)	2.1% (21)
Section 13(1)(d) 1 year out of 2 previous years	7.9% (110)	7.3% (87)	8.2% (81)
Section 13(1)(e) 2 years out of 5 previous years	42.0% (582)	51.2% (606)	47.6% (467)
Section 13(1)(d) & (e) residence requirement	8.6% (119)	9.3% (111)	6.9% (68)
13(1)(f) good character	5.3% (174)	4.3% (52)	4.1% (40)
Section 13(1)(g) basic English	2.3% (32)	0.8% (10)	0.3% (3)
Section 13(1)(h) responsibilities & privileges	3.2% (32)	2% (24)	6.1% (60)
Section 13(1) (g) & (h)	7.6% (106)	6.9% (82)	12.2% (120)
Section 13(1)(j) intention to reside in Australia	2.9% (41)	2.2% (27)	2.6% (25)
Section 13(11) character	2.3% (32)	1.2% (14)	1.9% (6.4)
Fail to attend an interview	13% (181)	10.9% (130)	6.4% (63)
Did not provide required documentation	4.1% (57)	2.6% (131)	1.6% (16)
% of cases rejected of the total number processed	1.37% (1 385) (100 773)	1.10% (1 183) (107 822)	1.38% (981) (70 898)

Source: Evidence, p. S851.

4.112 This view also was expressed in a few submissions from private citizens. B.M. Baylis, for example, stated:

> I believe that the current conditions for gaining citizenship are demeaning to Australia and Australians in that they are too easy to achieve. Citizenship should be a prize which has to be strived for, thus giving new citizens a sense of pride and achievement on gaining it.[80]

4.113 In other submissions, it was argued that while the core criteria for grant of citizenship are appropriate and provide for a fair and equitable system for gaining citizenship, some modifications could be considered to improve those provisions and enhance the meaning of Australian citizenship. Various suggestions were made to the Committee in this regard. In particular, DIEA conceded that the provisions could be simplified.[81]

Residence requirement

4.114 Those who argued that the existing criteria make citizenship too easy to obtain suggested a stricter residence requirement before citizenship could be granted. In a few submissions, it was argued that the residence requirement should be five years. Ms Brown, for example, commented:

> By extending the qualifying period, people have more time to get to know and truly care about this country. Too many people take out citizenship for expediency and the protection it affords rather than having any feelings of allegiance to Australia and our way of life.[82]

4.115 The Ethnic Communities Council of South Australia Incorporated, while not advocating any changes to the residence requirement, indicated that there may be a connection between a reduced residence requirement and more persons taking out citizenship for their own convenience. The Council commented:

> Following the reduction in the minimum residency period required to qualify for citizenship, it appears that some residents obtain the Australian citizenship and passport merely as a short-term contingency plan to move in to and out of Australia. It is questionable that citizens in this category would have the required commitment and loyalty to their adopted country. This in our view

80 Evidence, p. S229.

81 Evidence, p. S541.

82 Evidence, p. S463.

devalues the pride and value of our citizenship as such and we would recommend that this matter be more fully examined.[83]

4.116 In the vast majority of submissions, however, the time frame which permanent residents are required to spend in Australia before they obtain citizenship did not draw substantial criticism. DIEA defended this time frame, commenting that 'two years is a setting which has not caused us many problems at all'.[84]

4.117 The Committee suggested to DIEA that Australia's time frame for granting citizenship appears generous when compared to other comparable countries. DIEA responded that one needs to consider the total time frame which it takes to gain citizenship. While the time frame in Canada and the United States may appear longer, in the United States one does not have to be resident for some of the qualifying period, and in Canada half the time spent as a temporary resident counts towards the qualifying period. DIEA indicated that this brings the practice of these countries closer into line with that of Australia.[85]

4.118 DIEA also advised that although Australian citizenship now can be gained after two years permanent residence, subject to satisfying the other criteria, statistics show that on average individuals take up to nine years to take up citizenship. DIEA commented:

> It takes an average of nine years, but about 45 percent decide within three years, and the refugee group are probably the ones who take it up earlier rather than later. In offering two years as the minimum we are certainly still leaving it to the individual. We are saying that citizenship is all about understanding your rights, responsibilities and obligations, and that when you feel that you are willing to make that commitment you may do it. The two years is seen as very much the minimum we would want to set. There are some people who take longer and some people who want to come in right at that minimum.[86]

83 Evidence, p. S493.

84 Evidence, p. 27.

85 Evidence, p. 27.

86 Evidence, p. 28.

4.119 Statistics provided by DIEA show that over the last six financial years the average length of residence in Australia before persons have taken out citizenship has been 11.64 years in 1988-89, 9.39 years in 1989-90, 8.44 years in 1990-91, 9.18 years in 1991-92, 9.11 years in 1992-93 and 9.14 years in the period July 1993 to March 1994 (see Table 4.4).

4.120 Support for the existing residence requirement also was evident from ethnic community representatives, such as the Ethnic Affairs Commission of New South Wales[87] and the South Australian Multicultural and Ethnic Affairs Commission,[88] as well as from VIARC. VIARC, however, argued that, in its experience, the wording of the residency requirement introduces unneeded complexity into the law, and is grasped only with difficulty by clients of a non-English background.[89]

4.121 An applicant for Australian citizenship who made a submission to the Committee supported VIARC's concerns. Ms Bristoe commented:

> The guidelines set down are ambiguous and confusing. After applying, being interviewed and returning several times to query the qualifications, I am still unclear as to whether it is two years in the last five with one year in the last two (total of two), or two years in the last five PLUS one year in the last two (total three). I have been told several different interpretations from different staff members and always seem to end up more confused than when I went in.[90]

4.122 The Committee was not in a position, nor was it necessary for the Committee, to verify Ms Bristoe's claims that different advice had been provided to her at different times. Ms Bristoe's comments nevertheless were useful to indicate the scope for confusion within the existing provisions.

4.123 To overcome such potential confusion, VIARC suggested simplifying the residency requirement. VIARC proposed that, subject to the existing provisions for calculation of residence when a person is not present in Australia contained in sections 13(4)(b) of the Citizenship Act, sections 13(1)(d) and (e) be replaced by a provision which requires permanent residence in Australia of periods amounting to two years of the previous three before citizenship can be granted.[91]

87 Evidence, p. S403.

88 Evidence, p. S467.

89 Evidence, p. S370.

90 Evidence, p. S108.

91 Evidence, p. S371.

TABLE 4.4 Grant of Australian citizenship: length of residence of applicants prior to applying for grant of Australian citizenship

YEAR	% of applicants who applied between 2 to 3 years	% of applicants who applied under 5 years	% of applicants who applied between 5 to 10 years	% of applicants who applied over 10 years	Average length of residence in years
1988/89	30.92	44.07	15.12	40.81	11.64
1989/90	42.72	56.89	12.65	30.46	9.39
1990/91	46.45	63.37	11.09	25.54	8.44
1991/92	41.14	60.60	11.37	28.03	9.18
1992/93	41.34	59.90	12.61	27.49	9.11
1993/94 Jul'93-Mar'94	42.23	60.06	12.74	27.20	9.14

Source: Evidence, p. S856.

English language requirement

4.124 In some submissions, it was argued that the existing requirement for 'basic' knowledge of English language should be strengthened. In particular, it was suggested that prospective citizens should be required to demonstrate a degree of proficiency in both spoken and written English. The RSL reflected this view when it stated:

> Every person who becomes an Australian citizen should, if it is practicable, have a knowledge of English sufficient to enable him or her to carry out all the duties of Australian citizenship, such as sitting on a jury.[92]

4.125 The RSL, in suggesting that the Citizenship Act be amended to reflect this, conceded that there should be a waiver for persons who suffer permanent loss or impairment of hearing, sight or speech, and for those who have attained the age of 60 years.[93]

4.126 DIEA, in contrast, defended the existing language requirement, stating:

> It is only 10 years ago that the English requirement was reduced from adequate English to basic English. The arguments then included the argument of inclusiveness, which is that a person who has been in Australia and making a contribution to Australian society, a person who is of good character–or has been of good character–and a person who has sufficient English understanding to understand what citizenship is about should be offered citizenship. Our view would be that that was a reasonable thing to do 10 years ago and that there are no strong reasons why it should change.[94]

4.127 In supplementary evidence, DIEA noted that the Government reduced the English language requirement for citizenship from adequate to basic because it recognised that, while knowledge of English is important for full participation in Australia's social, cultural and political life, citizenship should not be denied to people with limited English who have been accepted as permanent migrants, in many cases without the need to meet an English language requirement. DIEA indicated that, in many cases, such persons have lived in Australia for a considerable

92 Evidence, p. S221.

93 Evidence, p. S221.

94 Evidence, p. 20.

period of time, have a commitment and are contributing to Australia, and would take pride in becoming Australian citizens. DIEA stated:

> This reflects the Government's inclusive approach to Australian citizenship and its desire to see emphasis on the importance of citizenship as a unifying symbol in our society rather than one that divides our migrant community. This approach also acknowledges the particular difficulties faced by some categories of migrants in acquiring English language proficiency.[95]

4.128 At the opposite end of the scale, the abolition of the English language test was suggested in one submission. VIARC argued that as a test of a person's capacity to participate in Australian society, and as a test of a person's commitment to Australia, a person's English language skills are not an appropriate gauge.[96]

4.129 On this point, it is relevant to note that a majority of countries which are members of the Organisation for Economic Cooperation and Development require a command of the national language as a criteria for grant of citizenship. Some countries do not expressly impose particular language skills, but look to such language skills as evidence of other requirements for the grant of citizenship, in particular as evidence of willingness to be assimilated or integrated (Belgium and Luxembourg) or as evidence of attachment to the country's institutions (Austria, Germany, United States).[97]

4.130 Alongside the level of English required, some submissions also dealt with the issue of how English proficiency is assessed. DIEA noted that the level of English proficiency required is such that it is assessed readily in an informal exchange at the citizenship interview without the need for formal written testing procedures.[98] As this chapter concerns the law on citizenship, submissions on the assessment of the citizenship criteria are considered in Chapter Five, dealing with citizenship processing and assessment of citizenship applications.

95 Evidence, p. S894.

96 Evidence, p. 221.

97 N. Guimezanes, 'What Laws for Naturalisation', *OECD Observer*, No. 188, June/July 1994, pp. 24-26.

98 Evidence, p. S894.

Responsibilities and privileges of Australian citizenship

4.131 As noted above, one of the existing requirements for the grant of Australian citizenship is that an applicant must have an adequate knowledge of the responsibilities and privileges of Australian citizenship. In submissions, comments in relation to this criterion related more to how the criterion is assessed rather than whether the criterion is appropriate. Some of those comments already have been detailed in Chapter Three, which includes a recommendation for the conduct of citizenship courses for migrants from both English and non-English speaking backgrounds (recommendation 2). Proposals for using citizenship courses as part of the process for granting citizenship are considered in Chapter Five, which deals with the arrangements for assessing citizenship applications.

Character checks

4.132 In relation to assessment of the good character requirement, paragraph 3.10.2 of the Citizenship Instructions provides that citizenship applications should not be approved in the following circumstances:

- within two years of an applicant's release from prison where the sentence was for a period of 12 months or more, regardless of the length of time of confinement;
- within two years of an applicant's release from prison where an applicant has served more than one custodial sentence in the five years prior to the lodgement of the application and the periods spent under custodial sentence during those five years amount to one year or more;
- where an applicant has been convicted but has not been sentenced or where sentencing has been deferred; or
- where an applicant is under consideration for deportation or a deportation order is in force against the applicant.

4.133 Character checking of citizenship applicants was raised in only one submission to the inquiry. The South Australian Multicultural and Ethnic Affairs Commission submitted that the criterion of good character should be covered by regulation rather than ministerial discretion. It also argued that adverse decisions should be subject to administrative appeal.[99]

4.134 In this regard, it is relevant to note that decisions refusing citizenship on character or other grounds can be reviewed by the AAT.

99 Evidence, p. S481.

Ministerial discretion

4.135 In a number of submissions, the inclusion of ministerial discretion in the Citizenship Act was supported. As stated by the Immigration Advice and Rights Centre:

> Discretion is important since there always will be situations where a person's circumstances do not fit the exact legally framed requirement.[100]

4.136 At the same time, it was argued that discretionary provisions fail in their objective if they are so wide or vague that they create uncertainty.[101]

4.137 Some suggestions were made for altering the scope of the Minister's discretion. VIARC, for example, proposed an amendment in relation to section 13(4)(b)(ii) of the Citizenship Act, which provides that the Minister may look beyond the usual five years in establishing the residence requirement for citizenship. VIARC suggested that the discretion should apply if an Australian citizen or the applicant would suffer significant hardship or disadvantage if citizenship was not granted.[102]

4.138 VIARC also proposed an amendment to the discretion in section 13(9)(c) of the Citizenship Act, which permits the Minister to waive all requirements for the grant of citizenship to the spouse, widow or widower of an Australian citizen, except the requirement that the person is of good character. VIARC again suggested that the waiver should apply where it would cause significant hardship or disadvantage to the applicant or an Australian citizen. VIARC proposed that the waiver also should apply where the applicant has shown substantial commitment to the nation.[103]

4.139 The Immigration Advice and Rights Centre went one step further by suggesting the replacement of section 13(9) with a broad general discretion which would allow the Minister to grant citizenship in exceptional circumstances. The Immigration Advice and Rights Centre stated:

> This would allow for grants to be made where it was considered to be in the public interest or where it would amount to gross injustice or hardship to an individual if it were not granted.[104]

100 Evidence, p. S381.

101 Evidence, p. S381.

102 Evidence, p. S369.

103 Evidence, p. S370.

4.140 In an individual submission to the Committee, the need for a broad discretion was supported on the grounds that it is not possible to account for all cases in rules and instructions. Dr Singh stated:

> It is suggested that there should be provision as in the case of the UK for instance, to grant citizenship in the absolute discretion of the Minister in cases where other rules do not meet the ends of justice or Australian national interests.[105]

4.141 The Commonwealth and Defence Forces Ombudsman (Ombudsman) also proposed a discretion in the Citizenship Act enabling either the Minister or the Secretary of DIEA to confer citizenship where administrative error by DIEA has resulted in a person not having Australian citizenship. The Ombudsman told the Committee of a few cases brought to her attention where persons had been misled into believing that they were Australian citizens, but subsequently discovered they were not. In suggesting this discretion, the Ombudsman emphasised that she was not advocating a general discretion which would allow the Minister to grant citizenship in cases where the applicant failed to satisfy the relevant criteria. Rather, the Ombudsman indicated that she was suggesting a discretion to cover the situation where a person ceases to satisfy the relevant criteria for grant of citizenship as a result of a departmental error.[106]

4.142 The Ombudsman noted that DIEA has not supported such an amendment to the Citizenship Act because it has been concerned that such an amendment would be likely to open up opportunities for abuse of the discretion by a significant number of non-bona fide applicants. According to the Ombudsman, DIEA also has been concerned about the difficulty in defining administrative error. In response, the Ombudsman suggested that careful drafting of the discretion should be able to prevent any abuse. The Ombudsman stated:

> Although the department is concerned that administrative error is too difficult to define, I note that the term is already used in existing paragraph 13(4)(b)(v) of the legislation which contains a Ministerial discretion similar to that which I am now advocating.[107]

104 Evidence, p. S383.

105 Evidence, p. S428.

106 Evidence, p. S484.

107 Evidence, p. S484.

4.143 The South Australian Multicultural and Ethnic Affairs Commission, in contrast, expressed concerns about the ministerial discretionary provisions, arguing that they are open to inconsistent interpretation, involve decisions which are not transparent, and are not open to scrutiny, review or appeal. The Commission advocated the replacement of the ministerial discretionary provisions with more detailed administrative provisions in the Citizenship Act and Citizenship Regulations, along with processes for administrative review and appeal.[108]

Conclusions

4.144 The core criteria for grant of citizenship were not given detailed consideration during the course of the inquiry. As noted in Chapter One, at the outset of the inquiry, the Minister advised the Committee that the 'Government considers that the core criteria in relation to acquisition of citizenship by birth (s10 of the Act) and descent (ss10B, 10C and 11 of the Act), and the core criteria in relation to grant of citizenship (s13(1) of the Act) and the new pledge, are appropriate and not in need of significant amendment'. In addition, only limited evidence was received on the criteria for grant of citizenship. That evidence did not allow for detailed investigation.

4.145 Despite the limited evidence, it is apparent that there are a range of views in the community about the existing citizenship criteria. Some of those views have been noted in this report. In this regard, the Committee considers that it would be appropriate to conduct a more detailed investigation of the citizenship criteria in the near future. Such a review should take place in the lead up to the 50th anniversary of Australian citizenship, which occurs in 1999.

4.146 Such a review requires sound empirical evidence. Better evidence is required than was available to the Committee during the present inquiry. In this regard, the Committee considers that there is a need for the Bureau of Immigration and Population Research to sponsor research which would assist in developing a profile of citizenship applicants. This profile should indicate the English language skills of citizenship applicants, including whether they have functional English, and should evaluate their knowledge of Australian life and institutions. The findings from such research would assist future government decision making in such matters.

4.147 While proposing a more detailed review of the citizenship criteria in the near future, the Committee has identified certain matters which require more immediate attention. In terms of the residence requirement, the Committee agrees with VIARC that the existing provisions can be confusing. The Committee supports a redraft of this section of the Citizenship Act to simplify and clarify the residence requirement.

108 Evidence, p. S469.

4.148 In relation to the English language requirement, the Committee was sympathetic to the view expressed by the RSL that persons seeking to become Australian citizens should have a level of English language sufficient to satisfy their obligations as citizens. The Committee also acknowledges the view stated in various submissions that greater emphasis should be placed on prospective citizens acquiring practical knowledge about Australian society, values and institutions. In the Committee's view, the main problem is not with the existing criteria for grant of citizenship, but with the process for evaluating whether applicants meet that criteria. Recommendations in this regard are made in Chapter Five, dealing with citizenship processing.

4.149 With regard to the scope of ministerial discretion for grant of citizenship, once again there was a lack of detailed evidence indicating any significant difficulties in this regard. The Committee agrees that it is appropriate to have ministerial discretion attaching to the grant of citizenship, because of the difficulty in drafting rules which cover every situation. The Committee, however, does not support suggestions to broaden the scope of such discretion. In particular, the Committee sees no merit in providing the Minister with discretion to waive all of the legislative requirements for citizenship so as to grant citizenship in cases of significant hardship or disadvantage, or to the spouse, widow or widower of an Australian citizen.

4.150 As for the Ombudsman's proposal to provide a ministerial discretion to overcome administrative error, it appeared that the cases referred to by the Ombudsman concerned adults who would have been entitled to have been registered for citizenship, who were misled by DIEA and wrongly believed they were citizens, and who on subsequent discovery of the error had lost their right to register as citizens. The Committee's recommendation 25 would address this problem.

4.151 One anomaly which needs attention arises in relation to the Minister's discretion to waive certain criteria on the basis of age. In the Committee's view, it is anomalous that the discretion to waive the language requirement can be exercised when applicants turn 50 years of age, but the discretion to waive the requirement for applicants to have an adequate knowledge of the responsibilities and privileges of Australian citizenship can be waived only when the applicants turn 60 years of age. It is difficult to comprehend how someone at 50 years of age who does not have basic knowledge of English can demonstrate that he/she has adequate knowledge of the responsibilities and privileges of Australian citizenship. In the Committee's view, the age limit for the exercise of both waivers should be consistent and should be set at the higher limit of 60 years of age.

Recommendations

4.152 **The Committee recommends that:**

28. a review of the core criteria for grant of citizenship be conducted in the lead up to the 50th anniversary of Australian citizenship, which occurs in 1999;

29. to assist in future decision making on citizenship matters, the Bureau of Immigration and Population Research sponsor research aimed at developing a profile on citizenship applicants, including data on such applicants' actual English language skills and knowledge of Australian life and institutions;

30. the provisions outlining the residence requirement in sections 13(1)(d) and (e) of the *Australian Citizenship Act 1948* be redrafted, simplified and clarified;

31. subject to recommendation 32, the provisions setting down the discretion of the Minister for Immigration and Ethnic Affairs for grant of citizenship be retained in their existing form; and

32. the age limit applying to the discretion of the Minister for Immigration and Ethnic Affairs to waive the English language requirement for grant of citizenship be increased to 60 years of age so that it is consistent with the existing age limit applying to the Minister's discretion to waive the requirement that applicants have adequate knowledge of the responsibilities and privileges of Australian citizenship.

Child migrants

4.153 A separate issue raised in relation to the grant of citizenship concerned the position of former British child migrants brought out to Australia in the post-Second World War era. According to the Child Migrants Trust, around 10 000 child migrants were brought to Australia from 1945. Many of those child migrants are not Australian citizens. Some of them wrongfully assumed that they were Australian citizens. As such, they did not take up the opportunity available to all British subjects prior to 1973 to be registered as Australian citizens. The Child Migrants Trust commented:

> . . . the news that they are not an Australian citizen is at times felt as a strong sense of humiliation and betrayal.[109]

4.154 The Child Migrants Trust argued that Australian citizenship should be conferred automatically on all bona fide former child migrants removed to Australia under the British Child Migration Scheme. The Child Migrants Trust also proposed that those wishing to accept the automatic conferral of Australian citizenship should be able to request a declaratory certificate from DIEA at no cost.[110]

109 Evidence, p. S170.

110 Evidence, p. S176.

Conclusions

4.155 In relation to British child migrants brought out to Australia, the Committee considers that, given the circumstances of their removal to Australia and the confusion which in many instances has arisen in relation to their identity and citizenship status, the Minister should waive the fee in relation to their citizenship applications. The Committee does not favour automatic conferral of Australian citizenship because it may result in certain persons gaining Australian citizenship which they do not wish to acquire or for which they otherwise would not qualify. Rather, it is more appropriate that those who wish to take up Australian citizenship be able to do so by applying for that citizenship at no cost.

Recommendation

4.156 **The Committee recommends that:**

33. the Minister for Immigration and Ethnic Affairs waive the citizenship application fee for citizenship applications lodged by persons brought to Australia under the British Child Migration Scheme.

Defence force concession

4.157 Section 13(3) of the Citizenship Act provides for an exemption from the normal residence requirements for the grant of citizenship for persons who have completed not less than three months relevant defence service. Section 5(1) of the Citizenship Act defines relevant defence service as:

> (a) service in the permanent forces of the Commonwealth; or
>
> (b) service by virtue of a notice under section 26 of the *National Service Act 1951* as in force at any time before 26 November 1964.

4.158 DIEA advised that while this section is applicable to permanent members of the forces, members of the reserve forces sometimes are required to be employed on a full time basis but are not classed as serving in the permanent forces of Australia. DIEA indicated that consideration could be given to extending the concessional provision under section 13(3) to include this category of persons.[111]

111 Evidence, p. S571.

4.159 Another issue relevant to defence force personnel was raised by the RSL, which noted that a significant number of people who served in the Australian Defence Force in war or operational service were not and are not Australian citizens. The RSL indicated that some of those are not permanent residents. The RSL suggested that, as such persons showed a commitment to Australia at the highest level, it would enhance the meaning of Australian citizenship to ensure that all such persons have every opportunity to become Australian citizens.[112]

4.160 In this regard, the RSL requested the amendment of relevant Commonwealth legislation to require the Minister to grant entry and permanent residence to every person who, not being an Australian citizen, has served in the Australian Defence Force in war or operational service and is of good character. The RSL noted that such people, having been granted entry and permanent residence, would then be able to apply for citizenship.[113]

Conclusions

4.161 The defence force concession in the Citizenship Act acknowledges the significant service provided to Australia by defence force personnel. On DIEA's advice, however, it would appear that the existing concession does not recognise the service of members of the reserve forces who serve on a full time basis. In the Committee's view, this anomaly should be rectified by extending the defence force concession to include such persons.

4.162 As for the suggestion put forward by the RSL, the Committee is not in a position to come to any conclusions or recommendations in this regard, as the matter of whether persons are given permanent residence is an immigration issue beyond the terms of reference for this inquiry.

Recommendation

4.163 **The Committee recommends that:**

34. the defence force concession provided for in section 13(3) of the *Australian Citizenship Act 1948* be extended so that it also applies to members of the reserve defence forces who have completed not less than three months full time defence service.

112 Evidence, p. S222.

113 Evidence, p. S222.

Loss of citizenship

4.164 Australian citizenship can be lost through either a person renouncing his or her citizenship, the Minister revoking citizenship, or by operation of statute. The mechanisms for loss of citizenship include:

- acquisition of another citizenship (section 17);
- renunciation (section 18);
- service in the armed forces of an enemy country (section 19);
- deprivation (section 21); and
- loss of citizenship by a parent (section 23).

4.165 International human rights law does not prevent a state depriving persons of their nationality as long as such deprivation is not done arbitrarily and does not make the person stateless. According to the Attorney-General's Department, an 'arbitrary' deprivation might be one taken in the absence of any action by the citizen which justified deprivation. Deprivation is acceptable where the citizen acquires another citizenship or otherwise displays allegiance to another country.[114]

4.166 Section 17 of the Citizenship Act provides that an Australian citizen who is over 18 years of age and who does something the sole or dominant purpose and effect of which is to acquire the citizenship of a foreign country ceases to be an Australian citizen upon acquisition of that citizenship. This applies, for example, where an Australian citizen lodges an application for and is granted citizenship of a foreign country. However, persons who register an existing entitlement to a foreign citizenship, for example, one that accrued at birth or by virtue of marriage, do not lose their Australian citizenship. Such registrations do not confer citizenship but activate a pre-existing claim to citizenship. The operation of section 17 is discussed in detail in Chapter Six.

4.167 Section 18 of the Citizenship Act provides that an Australian citizen who is 18 years of age or over and is a national or citizen of a foreign country, or was born or is ordinarily resident in a foreign country and is not entitled to acquire the nationality of that country because the person is an Australian citizen, may apply to renounce his/her citizenship. The Minister cannot register such a declaration if the applicant would become stateless as a result of the renunciation, or if the Minister considers that it would not be in Australia's interests to do so. The Minister also has a discretion to refuse to register the declaration if a person who is a citizen of a foreign country makes a declaration during a war in which Australia is engaged.

114 Evidence, p. S436.

4.168 Section 19 of the Citizenship Act provides that an Australian citizen who also is the citizen of another country and serves in the armed forces of a country at war with Australia ceases to be an Australian citizen.

4.169 Section 21 of the Citizenship Act provides that the Minister can deprive a person of his/her citizenship where:

- the person is convicted under section 50 of the Citizenship Act of knowingly making a false or misleading representation or statement, or concealing a material circumstance when applying for citizenship; or

- at any time after applying for the grant of citizenship, the person is convicted in Australia or overseas of an offence committed before the grant of citizenship, and the person is sentenced to death or imprisonment for a period of 12 months or more for that offence; and

- the Minister is satisfied that it would be contrary to the public interest for the person to continue to be an Australian citizen.

4.170 Section 23 of the Citizenship Act provides that where a responsible parent of a child under 18 years of age ceases to be an Australian citizen under sections 17, 18 or 19 of the Citizenship Act, and the child becomes a citizen of a foreign country immediately after the time when the responsible parent ceases to be an Australian citizen, the child ceases to be an Australian citizen, unless the other parent is an Australian citizen. Where a person is deprived of Australian citizenship under section 21, the Minister may direct that all or any children of that person shall cease to be Australian citizens, unless the other parent is an Australian citizen.

4.171 DIEA advised the Committee that, since the commencement of the Citizenship Act in 1949, there have been only a handful of cases, approximately five, where citizenship has been revoked in accordance with the Minister's powers under section 21. These included one case in 1957, one in 1969, one in 1971, one in 1987 and one in 1993. In all these cases, the persons had made false statements in their citizenship applications, generally concealing criminal convictions in their countries. In the 1987 case, the person unlawfully had fled the United States to avoid prosecution for murder. He travelled on his cousin's passport and was granted Australian citizenship and an Australian passport in his cousin's name. DIEA received information on the case from the man's estranged wife.[115]

4.172 Australia's laws on revocation are similar to those operating in the United States, New Zealand and Canada. United States immigration and nationality law provides for the revocation of citizenship where citizenship was procured illegally by concealment of a material fact or by wilful misrepresentation.

115 Evidence, pp. S886-S888.

Proceedings are instituted in a district court, upon affidavit which shows good cause why a suit should be brought against the citizen. The law also provides for revocation of citizenship where a person returns to his/her country of origin or travels to another foreign country and takes up permanent residence within one year of obtaining United States citizenship. Citizenship is deemed to have been lost for persons who have acquired citizenship through a parent or spouse whose citizenship has been revoked.[116]

4.173 The New Zealand Citizenship Act provides for deprivation of citizenship where a New Zealander has acquired the citizenship of another country by any voluntary and formal act, other than marriage, or acted in a manner that is contrary to the interests of New Zealand, or voluntarily exercised any of the privileges or performed any of the duties of another citizenship he/she possesses in a manner that is contrary to the interests of New Zealand. The New Zealand Citizenship Act also provides for deprivation of citizenship where the acquisition of citizenship by registration, by naturalisation or by grant has occurred as a result of fraud, false representation, wilful concealment of relevant information, or by mistake.[117]

4.174 Under the Canadian Citizenship Act, a person may lose his/her citizenship in the following circumstances:

- where that person obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances; and

- where that person obtained permanent residence by fraud and citizenship was acquired because that person was a permanent resident of Canada.[118]

4.175 The provisions dealing with loss of citizenship attracted comment in a number of submissions. Alongside the operation of section 17, which is dealt with in Chapter Six, attention was directed principally to the Minister's power to revoke citizenship in certain circumstances.

4.176 In one submission, it was argued that the provisions relating to deprivation of citizenship should not be tampered with.[119] In other submissions, it was argued that the Minister's discretionary power to revoke the citizenship of those who have acquired citizenship by grant creates two classes of citizenship, 'one by birth, adoption or descent which is not subject to deprivation for even the most

116 Evidence, p. S884.

117 Evidence, p. S885.

118 Evidence, p. S884.

119 Evidence, p. S342.

heinous crimes, and the other by grant and certificate which is so subject'.[120] The Administrative Law Section of the Law Institute of Victoria commented that, as a matter of principle:

> . . . it is not possible to enhance the meaning of Australian citizenship if there remains a cloud of this kind over one type of citizen. The conclusion is that there are two classes of citizen, and that citizens by grant are not the equals of others.[121]

4.177 In a similar vein, VIARC expressed concern that section 21 gives the Minister an unsupervised power which is not subject to appeal. VIARC commented:

> If the Government is striving to raise the profile, solemnity, meaning and importance of citizenship in the country . . . it follows that citizenship should not be revocable by a summarial and non-reviewable exercise of ministerial power.[122]

4.178 VIARC proposed an amendment to section 21 to provide for merits review by the AAT of ministerial decisions revoking citizenship.[123]

4.179 The Immigration Advice and Rights Centre suggested that the only ground for deprivation of citizenship should be if the applicant lied or omitted relevant information in the application and has been convicted for that under section 50 of the Citizenship Act. In its opinion, in that situation the grant was never valid because it was gained fraudulently by the applicant.[124]

4.180 A separate issue raised by DIEA concerned persons who had gained permanent residency by fraud or misrepresentation and who subsequently had gained citizenship on the basis that they were permanent residents. According to DIEA, under the existing rules, if a person becomes an Australian citizen and that person's application for citizenship did not contain false or misleading statements, then no action can be taken against that person if, after that person gains

120 Evidence, p. S616.

121 Evidence, p. S617.

122 Evidence, p. S372.

123 Evidence, p. S372.

124 Evidence, p. S387.

citizenship, it is discovered that the person secured migration to Australia on the basis of false or misleading statements. DIEA advised that the Migration Act provisions do not apply once persons become Australian citizens.[125]

4.181 The Immigration Advice and Rights Centre was critical of section 23 dealing with the loss of citizenship by children. In particular, it noted that section 23 prevents the exercise of choice by a child whose parent loses Australian citizenship. It also pointed out that the application of the section is inconsistent in that it affects only those children who acquire the citizenship of a foreign country when their parents lose Australian citizenship. The Immigration Advice and Rights Centre argued that appropriate measures should be taken to ensure that children are not deprived of their Australian citizenship because of the actions of their parents.[126]

4.182 In another submission, one individual noted that he had attempted to relinquish his Australian citizenship, but that the Minister had prevented him from doing so because he would have been left stateless.[127]

Conclusions

4.183 Most of the concerns expressed regarding deprivation of citizenship were based on a philosophical view that once persons acquire citizenship, it should be beyond the power of the state to take that citizenship away. The Committee rejects this view. In the Committee's opinion, if an individual's application for citizenship is granted on the basis of defined criteria, including the criteria of good character, then it is appropriate for the Minister to have the power to revoke that citizenship if it is discovered that the person obtained the citizenship by deceit or fraud, or if a crime committed by that person prior to the grant of citizenship is of such magnitude that it would have resulted in the refusal of the citizenship application because of failure to meet the criteria.

4.184 In the Committee's view, it is misleading to suggest that the revocation powers create two distinct classes of citizenship. Citizenship by grant is awarded at the discretion of the Minister. It is a privilege bestowed on the person. It is not a person's claim by right. For those persons who legitimately acquire citizenship by grant and who do not commit a serious offence before being granted citizenship, there is no possibility that they would be deprived of citizenship. The deprivation provisions are used rarely and sparingly. Nevertheless, they are an appropriate power complementing the Minister's discretion to grant citizenship.

125 Evidence, p. 97 and p. S565.

126 Evidence, p. S389.

127 Evidence, p. S5.

4.185 In considering the revocation powers under section 21, the Committee first notes that the concerns expressed by VIARC, namely that section 21 presently gives the Minister an unsupervised power of revocation which is not subject to appeal, are entirely unfounded. The *Citizenship Act* clearly states in section 52A(1)(c) that decisions of the Minister under section 21 are reviewable before the AAT.

4.186 As to the substance of section 21, the Committee is of the view that these provisions should be extended to cover not only those cases where citizenship is obtained by fraud or is awarded inappropriately to persons of bad character, but also in those cases where the applicant's claim to citizenship was based on the applicant's residence in Australia and that residence was obtained by fraud. The Committee notes that Canada, New Zealand and the United States have provisions similar to this in their citizenship legislation. The Committee also notes the suggestion by Ms Kmiecic, former Registrar of Canadian Citizenship, made during a meeting with the Committee, that appropriate use of the revocation powers can be regarded as a mechanism for enhancing the value of citizenship. It makes clear that those who were not entitled to citizenship, because they secured either their migration status or citizenship by fraud, should not retain the citizenship which was gained dishonestly.

4.187 The Australian provisions on deprivation of citizenship, where this was obtained by fraud, should be amended so as to bring them into line with the law and practice in comparable countries. The effect of such an amendment will be that the Minister no longer will be required to prosecute and secure conviction against the person committing the fraud. The new provision should allow revocation of citizenship in cases where the person knowingly obtained citizenship or permanent residence by fraud. Persons who are liable to lose their citizenship under these provisions should continue to have a right of review against the revocation provision to the AAT.

4.188 One other concern of the Committee relates to the revocation of the citizenship of children. While it appears that the existing provisions of section 23 accommodate the obligation in the *Convention on the Rights of the Child* to preserve and safeguard a child's right to a nationality, the Committee is of the opinion that this ought to be made explicit in relation to the exercise of the Minister's discretion to deprive a child of citizenship where that child's parent has lost citizenship under section 21. The Committee notes that there currently is no requirement in the Citizenship Act or Regulations for the Minister to consider whether the revocation of a child's citizenship in such circumstances would render the child stateless. This omission should be rectified. In addition, there ought to be a requirement that whenever a child loses citizenship under section 23, either by operation of the statute or direction of the Minister, the child's guardians be informed of the child's right under section 23B to resume that citizenship within one year of the child attaining the age of 18 years, or such further period as the Minister in special circumstances allows.

Recommendations

4.189 **The Committee recommends that:**

35. section 21 of the *Australian Citizenship Act 1948* be amended to permit the Minister for Immigration and Ethnic Affairs to revoke citizenship not only in cases where persons knowingly committed fraud in relation to their citizenship applications, but also where such fraud was committed in order to obtain permanent residence in Australia and citizenship was acquired because that person was a permanent resident of Australia;

36. revocations under the amended section 21 of the *Australian Citizenship Act 1948* be required to be effected within ten years of the person acquiring citizenship. In addition, there should cease to be an obligation for the Minister for Immigration and Ethnic Affairs to prosecute and obtain a conviction for citizenship fraud under section 50 of the *Australian Citizenship Act 1948*, but there should continue to be a right of review to the Administrative Appeals Tribunal against a decision by the Minister to revoke citizenship in the circumstances outlined in recommendation 35;

37. section 23 of the *Australian Citizenship Act 1948* be amended to provide that the Minister for Immigration and Ethnic Affairs, in considering whether to revoke the citizenship of a child whose parent has had his or her Australian citizenship revoked under section 21, specifically consider whether the revocation would render the child stateless; and

38. the *Australian Citizenship Regulations 1960* be amended to provide that, as a matter of practice, whenever a child loses citizenship under section 23 of the *Australian Citizenship Act 1948*, the child's guardians be informed of the child's right under section 23B to resume that citizenship within one year of attaining 18 years of age, or such further period as the Minister for Immigration and Ethnic Affairs in special circumstances allows.

Resumption of citizenship

4.190 There are a variety of provisions in the Citizenship Act which permit persons who have lost their Australian citizenship to resume that citizenship at a later time. Resumption of Australian citizenship depends on the way in which it was lost and whether the person was an adult or child at the time of the loss.

4.191 Under section 23AA, persons who have lost their Australian citizenship under section 17 as a result of acquiring another citizenship can reacquire their Australian citizenship if:

- the Minister is satisfied that the person would have suffered significant hardship if that person had not acquired the other citizenship; or
- the person can demonstrate that he/she did not know that he/she would lose Australian citizenship by acquiring the other citizenship; or
- the person can demonstrate that he/she was compelled to acquire the other citizenship otherwise he/she would have suffered significant hardship or economic detriment; and
- the person had been resident legally in Australia for a total of at least two years during his/her lifetime; and
- if resident in Australia, the person intends to continue to live in Australia; or
- if resident overseas, the person will start to live in Australia within three years; and
- the person has maintained a close and continuing association with Australia.

4.192 Citizenship also can be resumed where a person lost his/her citizenship in circumstances where the person remained outside Australia for seven years between 26 January 1949 and 8 October 1958 and failed to give notice of his/her intention to retain citizenship.

4.193 Under certain circumstances, a person who ceased to be a citizen whilst a minor also may resume citizenship.

4.194 As an alternative to resumption, a person can apply to be granted Australian citizenship at any time after 12 months from the time of loss, provided that person has been present in Australia as a permanent resident for 12 months in the two years prior to lodging the application.

4.195 Little detailed evidence was received by the Committee on the provisions relating to resumption of citizenship. A recommendation relating to the resumption of citizenship under section 23B has been included previously at recommendation 38.

Chapter Five

CITIZENSHIP PROCESSING AND PASSPORTS

Introduction

5.1 The citizenship program is managed by the Department of Immigration and Ethnic Affairs. DIEA administers the operation of the Citizenship Act and Citizenship Regulations, and has compiled Citizenship Instructions for the use of officers making decisions under the Citizenship Act and Regulations.

5.2 As noted in Chapter Three, local government authorities, under appropriate delegation from the Minister for Immigration and Ethnic Affairs, assist in the administration of the citizenship program by conducting ceremonies for the conferral of citizenship.

5.3 The Department of Foreign Affairs and Trade also has an important function within the citizenship program. DFAT is responsible for the administration of the Passports Act and Passports Regulations. A duly authorised passport is accepted internationally as prima facie evidence of citizenship and entitles the bearer to consular protection.

5.4 The administrative arrangements relevant to the grant of citizenship, including the procedures for assessing citizenship applicants, are examined in this chapter. In addition, as requested by the Minister, the Committee considers the relationship between the Citizenship Act and the Passports Act, as well as the relationship between the agencies which have responsibility for administering those Acts.

Citizenship processing

5.5 During the inquiry, the Committee received some evidence on administrative processing relevant to citizenship. The issues of registration for citizenship and the revocation or resumption of citizenship have been dealt with in Chapter Four. In this chapter, the Committee has focused on the administrative arrangements for processing applications for citizenship by grant.

5.6 As stated in Chapter Four, the criteria and certain of the processes for grant of citizenship are set down in the Citizenship Act and Regulations. Information in this regard is also contained in DIEA's Citizenship Instructions. In addition, during the inquiry, some evidence on the administrative processes relevant to the grant of citizenship was provided by DIEA.

TABLE 5.1 Persons granted Australian citizenship between 1983-84 and 1992-93

Year	Citizenship grants
1983-84	105 758
1984-85	89 632
1985-86	128 327
1986-87	93 450
1987-88	76 444
1988-89	96 820
1989-90	130 312
1990-91	122 498
1991-92	115 670
1992-93	128 544

Source: Evidence, p.S580.

5.7 In its submission, DIEA noted that administration of the process for acquisition of citizenship by grant is the major function of DIEA's citizenship program. On an annual basis, this involves the processing of between 80 000 and 120 000 applications for the grant of citizenship.[1]

5.8 Statistics provided by DIEA show that 1 087 455 persons were granted Australian citizenship from 1983-84 to 1992-93. During this ten year period, the highest figure recorded was in 1989-90, when, following the Year of Citizenship from September 1988 to September 1989, 130 312 persons were granted Australian citizenship (see Table 5.1).[2]

5.9 Only a small percentage of applicants are rejected. DIEA statistics show that the number of rejections was 1 385 applicants (1.37 percent) out of 100 703 applicants in 1991-92, 1 183 applicants (1.1 percent) out of 107 822 applicants in 1992-93, and 981 applicants (1.38 percent) out of 70 898 applicants in the period July 1993 to March 1994. The highest percentage of rejections was on the grounds of residence. Failure to meet the residence requirement was the reason for rejection of 823 applications in 1991-92 (59.3 percent of rejections), 820 applications in 1992-93 (69.1 percent of rejections), and 637 applications in the period July 1993 to March 1994 (64.8 percent of rejections). By contrast, those rejected for failing to meet the English language requirement included 32 applicants in 1991-92 (2.3 percent of rejections), 10 applicants in 1992-93 (0.8 percent of rejections), and 3 applicants in the period July 1993 to March 1994 (0.3 percent of rejections). Similarly, failure to meet the requirement to have adequate knowledge of the responsibilities and privileges of Australian citizenship was the reason for rejection of 45 applicants in 1991-92 (3.2 percent of rejections), 24 applicants in 1992-93 (2 percent of rejections) and 60 applicants in the period July 1993 to March 1994 (6.1 percent of rejections) (see Tables 4.1 and 4.3).[3]

5.10 DIEA advised that the target time for processing applications for grant of citizenship is 60 days from the date of lodgement of the application. This includes an average three week turnaround for police checks. According to DIEA, the 60 day target is achieved in almost all cases. DIEA commented that it has refined the administrative process significantly. DIEA stated:

> It is now a process that is conducted in a very administrative sense, through an officer of the department, so there is no requirement to go before a judicial panel or a member of the judiciary. It does not put the onus on the applicant to organise things such as police clearances. It allows the use of the information that is in our hands, in respect of residence periods, to be

1 Evidence, p. S512 and p. S580.

2 Evidence, p. S580.

3 Evidence, p. S851.

used quickly. Our processing times are seen to be extremely good by international standards, as far as we are aware of them.[4]

Processing of citizenship applications

5.11 For a citizenship applicant, the process for grant of citizenship involves the following steps:

- lodgement of an application;
- an interview;
- if successful, approval of the citizenship application, whereby the applicant is granted a certificate of Australian citizenship; and
- for successful applicants, conferral of Australian citizenship, whereby the applicant who has been granted a certificate of Australian citizenship makes the pledge of commitment as a citizen of the Commonwealth of Australia, and thereby legally becomes an Australian citizen.

5.12 The procedures to be followed by DIEA officers in processing an application for grant of citizenship are outlined in section 7.3 of the Citizenship Instructions. For an application in Australia, DIEA officers are required to:

- raise a file;
- check eligibility;
- check that the fee has been paid;
- check the application form and the Citizenship Automated System to verify that the applicant is not already an Australian citizen or has not applied elsewhere;
- check if there are alternative means of acquisition of citizenship other than grant (e.g. descent, transitional provisions);

4 Evidence, p. 56.

- enter in the Citizenship Automated System[5] the particulars of the applicant and any children under 16 years of age included in the application;
- initiate file, police and Migration Alert List checks in the Citizenship Automated System; and
- arrange an interview by a departmental officer or at an approved post office.[6]

5.13 For an application overseas, DIEA officers are required to:

- raise a file;
- check that the fee has been paid;
- check the eligibility of the applicant for the grant of citizenship as the spouse of or adopted child of an Australian citizen; and
- arrange an interview.[7]

5.14 Application forms and fees for grant of citizenship can be lodged at any DIEA regional office, either in person or by mail. Section 31 of the Citizenship Act requires that applications be lodged on approved forms and that the prescribed fee be paid before the application can be considered.

5 DIEA advised that a Citizenship Automated System has been developed to process applications for acquisition of citizenship from receipt to finalisation. It incorporates a decision support system designed to enable the decision maker to check that all relevant criteria pertinent to a particular requirement have been considered. The system allows for the maintenance of a comprehensive index of new citizens, the recording of the applicant's personal details, and the processing record of each application. It also allows for the calculation of periods of residence and assessment against the residence criteria, the printing and dispatch of letters and certificates requested automatically through the system, the allocation of certificate numbers, the scheduling of conferral ceremonies to meet the applicant's needs in respect of location, date, time and type of ceremony, and the recording of details of the attendance at ceremonies by the applicants. The details of acquisition of citizenship by grant, descent, loss of Australian citizenship, when known, and re-acquisition also are recorded on this index. (Evidence p. S514)

6 Citizenship Instructions, para. 7.3.1.

7 Citizenship Instructions, para. 7.3.1.

5.15 A fee of $55 is payable for applications for grant of citizenship. A concessional fee of $20 is payable by age pensioners who produce their social security card or health benefits card at the time of lodgement of the application. The concessional fee also is payable by veteran age pensioners who produce their health benefits card, service pension benefits card or their Veteran's Affairs card at the time of lodgement of their application.

5.16 The responsibilities and privileges associated with becoming a citizen are outlined on the application form and in a leaflet which is given to all applicants at the time of lodgement of the application.

Interviews

5.17 Interviews are compulsory and can be conducted by DIEA officers or at approved post offices closest to the applicant. As noted in Chapter Four, postal managers conduct interviews for applicants who live in remote areas and who are unable to attend at a DIEA office. In evidence, DIEA noted the following in relation to postal managers conducting citizenship interviews:

> At the time we were last having a look at this we looked at a range of organisations. One was local government. A second was Australia Post, which had been doing this work for us previously. We also looked at people in some State agencies, such as serjeants of police at local police stations, but the role was not considered an appropriate one . . . for them. We settled on Australia Post because they were readily accessible, they had been doing a satisfactory job for us previously, they perform somewhat analogous functions for other Commonwealth agencies– for example, they interview on behalf of the Department of Foreign Affairs and Trade in relation to passport applications–and the charge was seen as being a reasonable one for the service.[8]

5.18 DIEA also noted that post office staff are provided with instructions on how to conduct citizenship interviews, similar to those provided to DIEA officers. The postal officer is then required to submit a report of the interview to DIEA for the delegate to make the decision.[9] DIEA advised that its officers regularly visit post offices to ensure that correct procedures are being followed. DIEA commented that no problems have been brought to its attention.[10]

8 Evidence, p. 60.

9 Evidence, p. 60.

10 Evidence, p. 61.

5.19 Interviews usually are conducted at the time of the lodgement of an application. DIEA noted:

> If they lodge it in person, it is likely that an interview may be scheduled immediately if they wish to wait. That interview can be conducted on day one of the process. If they do not wish to wait, an interview is scheduled for as soon as convenient for the client and the office.[11]

5.20 The procedures for conduct of the interview are outlined in section 7.4 of the Citizenship Instructions. In that section, it is stated that applicants should be informed that the main purpose of the interview is to establish their eligibility for the grant of citizenship. It is also stated that the majority of interviews, being quite straight forward, are completed in 10 to 15 minutes. Some interviews take longer if, for example:

- the applicant has not completed the form correctly;
- there have been many changes to the information provided since the application was lodged;
- there is difficulty in obtaining necessary further information from the documentation the person has brought to the interview; or
- an interpreter is required.[12]

5.21 At the interview, the necessary information is to be verified from the applicant's passport or other travel document, birth certificate, marriage certificate or other departmental records. For interviews in Australia, DIEA officers or postal managers are required to:

- check identity;
- counsel applicants about the importance of providing correct personal particulars;
- check immigration status;
- confirm personal details;

11 Evidence, p. 58.

12 Citizenship Instructions, para. 7.4.1.

- check the details of any children under 16 years of age included in the application;
- check the details of any other family members;
- assess whether the applicant meets other requirements; and
- update data, record interview arrangements, make assessment and ceremony arrangements in the Citizenship Automated System.[13]

5.22 For interviews conducted overseas, DIEA officers are required to:

- check identity;
- counsel applicants about the importance of providing correct personal particulars;
- have applicants complete the declaration in support of the grant of citizenship abroad;
- confirm personal particulars;
- confirm citizenship status of spouse from passport, and check passport control file;
- check that the Australian citizen spouse is living abroad;
- in case of adopted children, confirm the citizenship status of the parents and sight the adoption order;
- assess whether the applicant meets other requirements; and
- refer to DIEA's Central Office together with certified copies of the relevant documents (adoption order, marriage certificate, etc.) and the appropriate written statements (upon receipt in Central Office personal details and assessment are entered in the Citizenship Automated System).[14]

13 Citizenship Instructions, para. 7.4.2.

14 Citizenship Instructions, para. 7.4.2.

5.23 As stated, a primary function of the interview process is to ensure that all details provided by the applicant on the application form correspond with original documentation provided by the applicant. In this regard, DIEA commented:

> The officer uses the application form–basically as the administrative checklist–as he or she goes through the application with the person.[15]

5.24 In addition, an important part of the interview process is the assessment of the legislative criteria for grant of citizenship.

Assessment of citizenship criteria

5.25 The criteria for grant of citizenship have been described in detail in Chapter Four. Certain of these criteria are factual, objective criteria, including, for example, the age of the applicant, whether the applicant is a permanent resident, and the length of the applicant's residence in Australia. Other criteria require evaluation of an applicant's understanding and knowledge, including an applicant's understanding of the nature of the application, knowledge of the English language, as well as knowledge of the responsibilities and privileges of Australian citizenship. Evaluation of such criteria is not always straight forward and can involve a more subjective assessment of an applicant.

5.26 The factual criteria are assessed on the basis of documentary evidence provided by the applicant and evidence available to DIEA. The more subjective criteria generally are assessed at interview by the interviewing officer.

5.27 Guidance for DIEA officers assessing whether applicants meet the criteria for grant of citizenship is provided in Chapter 3 of the Citizenship Instructions. The Committee examined the guidelines in relation to the more subjective criteria and also considered the views in submissions about the evaluation of the citizenship criteria.

Understanding the nature of the application

5.28 In relation to the criterion requiring applicants for citizenship to understand the nature of the application, it is stated at paragraph 3.4.1 of the Citizenship Instructions that applicants meet this requirement if the Minister or the Minister's delegate is satisfied that the applicants 'understand the significance of becoming an Australian citizen including the possibility that they may lose their previous citizenship and associated rights (depending upon the citizenship laws of the relevant country)'.

15 Evidence, p. 58.

English language requirement

5.29 Section 3.11 of the Citizenship Instructions provides guidance on the assessment of the requirement that applicants have a basic knowledge of the English language. At paragraph 3.11.1, it is stated that a basic knowledge of English may be demonstrated by:

- responding in simple English to questions in simple English about personal particulars; and
- answering 'yes' or 'no', or replying in simple English to factual questions on the responsibilities and privileges of Australian citizenship.

5.30 It is further stated at paragraph 3.11.2 of the Citizenship Instructions:

> It is important that an applicant's ability to respond to questions not be hampered by the interviewer's use of complex words or sentence structures. It is essential that where an applicant's proficiency in English is limited, interviewers:
>
> - speak slowly and carefully, saying each word clearly but without losing continuity of the sentence
> - look directly at the applicant when speaking.

5.31 In addition, at paragraph 3.11.3, it is noted that interviewing officers should stress to applicants that to acquire citizenship they will be required to take/make the oath/affirmation (now the pledge of commitment) in English. It is stated:

> If a person's proficiency in English is basic, the person should be counselled about the importance of either memorising or becoming sufficiently familiar with the wording of the oath or affirmation so that they will have no difficulty in repeating the words at the citizenship ceremony. (As of 24 January 1994, the new requirement is to make a pledge of commitment as a citizen of the Commonwealth of Australia. The Citizenship Instructions available to the Committee predated this change.)

5.32 In evidence, DIEA indicated that the English language test is a test of basic conversational English, focusing on whether a person can listen to a question and answer that question. It does not involve a test of writing or reading.[16] As noted in Chapter Four, DIEA advised that the level of English proficiency required is such that it is assessed readily in an informal oral exchange at the citizenship interview without the need for formal written testing procedures. In this regard, DIEA stated:

> Such [testing] procedures, as well as being expensive to applicants in time and money terms, would act as a strong disincentive to many permanent residents of this country contemplating becoming citizens.[17]

5.33 DIEA noted that while it has contracted the National Centre of English Language Teaching and Research at Macquarie University to develop two tests to be used in the assessment of language skills, those tests are for migration visa classes where English language ability is a matter for consideration under the regulations. DIEA indicated that it does not propose to have a formal written English language test developed for citizenship. Accordingly, such a test has not been considered by the National Centre of English Language Teaching and Research.[18]

5.34 In some submissions, it was argued that prospective citizens should undergo a certified English language test held under rigorous and uniform conditions. In this regard, the Ethnic Affairs Commission of New South Wales stated that the method of testing and the standards should be consistent, no matter where the test is applied. It also suggested that there should be a right of appeal.[19]

Responsibilities and privileges of Australian citizenship

5.35 Guidance on the assessment of the responsibilities and privileges of Australian citizenship is provided in sections 3.11 and 3.12 of the Citizenship Instructions. At paragraph 3.12.1, the responsibilities are listed as:

> taking an oath of allegiance or making an affirmation of allegiance to the Queen of Australia (as stated, as of 24 January 1994, the new requirement is to make a pledge of commitment as a citizen of the Commonwealth of Australia. The Citizenship Instructions available to the Committee predated this change);

16 Evidence, p. 19.

17 Evidence, p. S894.

18 Evidence, p. S893.

19 Evidence, p. 433.

- enrolling on the electoral register and voting at Federal and State elections and at referendums;
- serving on a jury if called to do so; and
- defending Australia, should the need arise.

5.36 At paragraph 3.12.2, the privileges of Australian citizenship are listed as:

- entitlement, under Australian law, to the same rights as all Australian citizens;
- the right to apply for appointment to any public office or to stand for election as a Member of Parliament;
- eligibility to apply to enlist in the defence forces and for those Government jobs for which Australian citizenship is required;
- the right as a voter to help elect Australia's governments;
- the right to apply for an Australian passport and to travel to Australia without a resident return visa;
- the right to claim protection by Australian diplomatic representatives while overseas; and
- the right to register as an Australian citizen by descent a child under 18 years of age born to an Australian citizen overseas.

5.37 It would appear from the Citizenship Instructions that an officer simply asks applicants whether they are aware of the listed responsibilities and privileges, and applicants simply need to answer 'yes' or 'no' as the list of responsibilities and privileges is read out by the officer.

5.38 In this regard, of interest to the Committee was a journal article by Ms R. Peters describing her experience with the process for acquiring Australian citizenship. In that article, Ms Peters stated:

> The application form was long and demanded my vital statistics, my convictions (other than traffic offences), the details of every time I'd entered or left Australia. It also spelled out the obligations imposed by Australian citizenship: voting is compulsory; you must be prepared to serve on a jury; you must be willing to defend Australia should the need arise. You can't just mail in your application, but must take it to a personal interview with a departmental officer. Fair enough, I thought–it's an important step to take, after all; it makes sense for me and my new country to mutually suss each other out, to be sure of what we're letting ourselves in for.
>
> So I take the morning off work and front for the interview. The departmental officer checks that all the slots on my application are filled, then looks me in the eye and lays it on me: 'Now, do you understand what it means to be an Australian citizen?'
>
> Barely am I gathering breath for a patriotic soliloquy *What This Great Nation Means To Me* than she obliges with the answer. 'Voting is compulsory, you must be prepared to serve on a jury, you must be willing to defend Australia should the need arise'. That's it, thanks very much, off you go. Next!
>
> Why am I disappointed? I guess I thought the meaning of citizenship might be more than that. It seems pedestrian, mundane, bureaucratic–like applying for a parking sticker, or queuing at a post office in Bulgaria. Even when I applied for sickness benefits it was more personal . . .[20]

5.39 The Committee recognises that the above comments relate to only one person's experience at a citizenship interview. No other experiences of interviews were provided as evidence during the inquiry. Nevertheless, in some submissions it was suggested that there should be stricter assessment of the criterion that applicants have an adequate knowledge of the responsibilities and privileges of Australian citizenship.

5.40 In some submissions, it was suggested that, to satisfy this criterion, an applicant should be required to demonstrate a basic understanding of Australian history, Australian institutions and the Australian Constitution.[21] As noted in Chapter Three, one proposal was that applicants should be given a booklet about Australian history and Australian institutions, and that this booklet should form the basis for a test.[22]

---

20 R. Peters, 'Citizen Peters and Aristotle, The right to park in a loading zone', *Alternative Law Journal*, vol. 17(3), June 1992, p. 106.

21 Evidence, p. S111 and p. S493.

22 Evidence, p. S111.

5.41 As previously discussed, in other submissions, it was suggested that it would be preferable to educate applicants about Australian society rather than test them on such matters. It was suggested that applicants be required to attend a seminar, information session or course of education on all aspects of Australian citizenship (see paragraphs 3.58 to 3.60).

5.42 DIEA indicated that its emphasis has been on encouraging education about Australia instead of requiring a testing of that knowledge as part of the citizenship process. DIEA noted that citizens by birth are not required to confirm their knowledge of Australian history or institutions. DIEA commented:

> It is a question of whether we should impose a standard of education on a person who applies for Australian citizenship by grant that is not imposed on other citizens.[23]

5.43 Nevertheless, DIEA conceded that consideration may need to be given to upgrading the process for evaluating whether a citizenship applicant has adequate knowledge of the responsibilities and privileges of Australian citizenship. DIEA stated:

> There is an argument that the symbolic value of citizenship could well be enhanced if the interview undertaken in connection with the processing of applicants were to be upgraded so that the applicant's understanding of the rights and responsibilities of citizenship in multicultural Australia were more fully explored. It may not be necessary to go as far as the system in the United States and Canada where there is detailed questioning on a range of citizenship and related issues including a knowledge of history and geography of the country. However, an increased emphasis on the role of the citizenship interview might well enhance its symbolism and in turn, the value ascribed to citizenship.[24]

23 Evidence, p. 26.

24 Evidence, p. S538.

Conclusions

5.44 From the evidence available to the Committee, it is evident that the acquisition of citizenship by grant involves a streamlined administrative process aimed at producing a speedy determination with minimal inconvenience to the applicant. Clearly, given the volume of citizenship applications which DIEA is required to consider annually, an efficient and fast administrative process is of great importance to the management of the citizenship program. No doubt, a streamlined administrative process also is aimed at ensuring that the process for acquiring citizenship is not considered to be a barrier or disincentive for persons who are contemplating becoming Australian citizens.

5.45 While the Committee commends DIEA for establishing such a system for grant of citizenship, the Committee is concerned that the system may have become too focused on administrative processing, and insufficiently focused on the careful evaluation of applicants for citizenship. On the evidence available to the Committee, it would appear that the citizenship interview, as it currently is conducted, serves more as an administrative check than an opportunity for careful evaluation of applicants against the legislative criteria for grant of citizenship. DIEA generally conducts interviews at the same time that applicants lodge their applications. Applicants are required to answer simply 'yes' or 'no' when questioned on their personal particulars and the responsibilities and privileges of Australian citizenship. Information from one applicant even suggested that cursory attention is paid to this last criterion.

5.46 The Citizenship Instructions themselves provide limited information on how officers should assess criteria such as basic English language skills, an applicant's understanding of the nature of the application, and adequate knowledge of the responsibilities and privileges of Australian citizenship. The Committee doubts whether an appropriate evaluation of these criteria for citizenship can be made if an applicant merely states his or her name, responds 'yes' or 'no' when questioned on personal particulars, and acknowledges when an officer recites a list of responsibilities and privileges of Australian citizenship.

5.47 In Chapter Four of this report, the Committee has noted that the core criteria for grant of citizenship have not been considered in detail during the inquiry because of the Minister's advice that he considers those criteria are not in need of significant amendment. Indeed, the Committee received limited evidence on the criteria during the inquiry. Instead, the Committee has recommended a review of the core criteria in due course. In adopting this position, the Committee is of the view that immediate attention should be directed to ensuring that there is appropriate evaluation of the existing criteria for grant of citizenship, particularly during the citizenship interview.

5.48 The Committee considers that the interview should be a process which allows for appropriate and careful evaluation of an applicant's claims against the criteria for citizenship. In particular, greater attention should be directed to determining whether an applicant has basic knowledge of English and adequate knowledge of the responsibilities and privileges of Australian citizenship.

5.49 At recommendation 2, the Committee has proposed that citizenship courses be conducted for migrants of both English and non-English speaking backgrounds. In the Committee's view, satisfactory completion of a citizenship course should be regarded as evidence that a citizenship applicant satisfies the criteria of having an adequate knowledge of the responsibilities and privileges of citizenship.

5.50 In this regard, the Committee considers that when persons lodge a citizenship application, they should be told that they are required to satisfy an interviewing officer that they have adequate knowledge of the responsibilities and privileges of Australian citizenship. At that time, they should be provided with a citizenship booklet, as proposed at recommendation 20, and they should be encouraged, if they have not already done so, to attend a citizenship course, as proposed at recommendation 2. Applicants should be informed that satisfactory completion of a citizenship course will be regarded as the evidence necessary to satisfy the interviewing officer that the applicant has adequate knowledge of the responsibilities and privileges of citizenship. Applicants also should be advised that if they do not satisfactorily complete a citizenship course, they will be required, as part of a revamped citizenship interview, to answer questions on the responsibilities and privileges of Australian citizenship as outlined in the citizenship booklet.

5.51 To guide interviewing officers through an enhanced citizenship interview, more detailed guidelines on the assessment of some of the more subjective criteria, such as the responsibilities and privileges of citizenship, should be produced. In particular, such guidelines should incorporate more detailed indicators of the responsibilities and privileges of citizenship, as are contained in the National Agenda for a Multicultural Australia, which the Committee has recommended for incorporation in a revamped preamble to the Citizenship Act.

5.52 As for the role of postal officers in interviewing citizenship applicants, DIEA must continue to ensure that interviews are conducted by senior persons within the postal system, that is postal managers, who have received appropriate training in the requirements for grant of citizenship and the process for interviewing citizenship applicants.

Recommendations

5.53 **The Committee recommends that:**

39. the practice in relation to citizenship interviews be upgraded to provide for careful and thorough evaluation of whether an applicant understands the nature of the application, has basic knowledge of English, tested objectively, and has adequate knowledge of the responsibilities and privileges of Australian citizenship;

40. satisfactory completion of a citizenship course be regarded as evidence that an applicant for grant of citizenship satisfies the criteria of having an adequate knowledge of the responsibilities and privileges of Australian citizenship;

41. on receipt of a citizenship application, the Department of Immigration and Ethnic Affairs recommend to all citizenship applicants that they attend a citizenship course, and advise applicants that satisfactory completion of a citizenship course will be taken as evidence that they satisfy the criteria of having adequate knowledge of the responsibilities and privileges of Australian citizenship. The Department also should advise citizenship applicants that if they do not satisfactorily complete a citizenship course, they will be required to demonstrate, as part of a more rigorous interview process, that they have adequate knowledge of the responsibilities and privileges of Australian citizenship, as outlined in the citizenship booklet proposed at recommendation 20;

42. to assist interviewing officers in conducting an upgraded interview, more detailed guidelines be produced and included in the Citizenship Instructions on the assessment of the existing criteria for grant of citizenship;

43. the guidelines in the Citizenship Instructions for the assessment of the citizenship criteria that an applicant have adequate knowledge of the responsibilities and privileges of Australian citizenship incorporate more detailed indicators of such responsibilities and privileges, including those listed in recommendation 17; and

44. where citizenship interviews are conducted by postal officers, the Department of Immigration and Ethnic Affairs ensure that such officers are of appropriate seniority, that is postal managers, and are trained adequately in the requirements for grant of citizenship and the process for interviewing citizenship applicants.

Immigration status, character and security checking

5.54 An important part of the process for grant of citizenship involves the checking of information relevant to an applicant's immigration status and character. As noted previously, two of the requirements for grant of citizenship are that the applicant is a permanent resident and is of good character. As such, various inquiries are set in train once an application for grant of citizenship is lodged.

5.55 DIEA advised that an interviewing officer with the delegation to grant citizenship is required to consult all departmental holdings in respect of the applicant. DIEA indicated that those holdings provide the officer with details of previous visa applications, details of a person's entry to Australia as a permanent resident, details of the length of residence of the intending applicant, and details of any references in respect of the person's character.[25] Included within DIEA records is information from State departments of corrective services, which advise DIEA of any non-citizen who is indicted for an offence in Australia which carries more than 12 months imprisonment.[26] In relation to the information available to DIEA officers, DIEA commented:

> The citizenship area has access to all the systems available to the department. As a department-wide practice we maintain electronic records so that if a person applies in any office of the department that office can become aware of any contact the department has had with that individual over any matter—be it compliance, temporary residence, visitors, students.[27]

5.56 In the Citizenship Instructions, it is stated that DIEA officers are required to initiate file, police and Migration Alert List checks.[28]

5.57 The Committee questioned DIEA on the potential for error and/or fraud with regard to information available to DIEA officers. DIEA responded:

> No system is foolproof. If there is contact with the department and that contact is not recorded or it is recorded under a wrong name, it can be breached. You cannot deal in the numbers of people and the numbers of applications we deal in and say that it is foolproof.[29]

25 Evidence, p. 21.

26 Evidence, p. 21.

27 Evidence, pp. 58-59.

28 Citizenship Instructions, para. 7.3.1.

29 Evidence, p. 59.

5.58 DIEA advised that breaches which have been discovered in the system usually have been cases of internal corruption, where an officer may have corrupted data to permit a grant of citizenship, or where character checks were not done. DIEA, however, indicated that 'you could count on one hand' the prosecutions which have been undertaken in relation to internal corruption in the citizenship program. According to DIEA, other breaches have been external to the citizenship system, where persons have presented forged documentation or real documentation which did not belong to them.[30]

5.59 While the Committee did not receive any detailed evidence about the use of departmental records for checking immigration status, it was made aware of instances where problems appear to have arisen in relation to information sharing between different sections of DIEA. One case was detailed to the Committee's predecessor, the Joint Standing Committee on Migration Regulations, by Mr G. White during that Committee's inquiry into change of status on grounds of spouse/de facto relationships. The Migration Regulations Committee heard that a Philippine national was granted Australian citizenship even though her marriage to an Australian citizen was annulled and there was evidence that the marriage relationship was not genuine. The marriage provided the woman concerned with permanent residence, which enabled her to gain citizenship. Evidence received by the Migration Regulations Committee indicated that while one section of the then Department of Immigration, Local Government and Ethnic Affairs was investigating the matter, the citizenship section proceeded with the grant of citizenship.[31]

5.60 The Committee also was made aware of the *Smith-Davidson* case, the details of which are noted at paragraph 5.81. In relation to that case, there was some indication that DIEA's compliance section was assessing the validity of Ms Smith-Davidson's immigration status, in particular whether her residence was obtained by fraud, at the same time as the citizenship section was organising to grant her citizenship.

5.61 Alongside the checks of DIEA records, police checks also are undertaken in relation to citizenship applicants. An applicant's details are referred electronically by DIEA to the New South Wales police force, which checks the details against an index of criminal offences committed throughout Australia and advises DIEA of any relevant details. DIEA noted that one problem with this procedure is that the index was comprehensive for the whole of Australia up until 1986-87. Since that time, the index has remained comprehensive only in relation to New South Wales. There has been limited updating in relation to other States.[32] DIEA advised that while it has come to a one-off arrangement with the Australian Federal Police to supplement some of its departmental character checking processes, character

30 Evidence, p. 59.

31 Joint Standing Committee on Migration Regulations, *Change of Status On Grounds of Spouse/De Facto Relationships*, AGPS, Canberra, 1991, pp. 74-75.

32 Evidence, p. 21.

checking by the Australian Federal Police is not available in terms of an ongoing high volume requirement such as citizenship.[33] In this regard, DIEA noted that it is eager to gain access to a national index of criminal activities which was to be available for internal law enforcement purposes in mid-1994. DIEA commented that while its existing system of character checking is reasonably thorough, for its purposes there is a need for a more comprehensive national index of criminal activities in Australia. DIEA stated:

> We certainly have been extremely keen advocates for and have pushed the project which the national law enforcement agencies have, which is for a national index of names in respect of criminal offences in this country.[34]

5.62 During the inquiry, the Committee also received some submissions in which it was claimed that an alleged former member of a secret police organisation inappropriately had gained residence in Australia and subsequently had been granted citizenship. It was not the role of the Committee to investigate such matters. In the context of this inquiry, these matters were considered only in terms of ensuring that an appropriate system of security checking of citizenship applicants is in place.

Conclusions

5.63 In view of the significance of citizenship status and the rights it bestows on an individual, particularly the general right to enter, reside in and depart Australia freely, it is vital that vigorous checks on immigration status, character and security are undertaken during the processing of citizenship applications. While DIEA has expressed confidence in its system for conducting such checks, the Committee considers that certain matters require attention to ensure the thoroughness of that system.

5.64 The Committee is of the view that there should be appropriate liaison between DIEA's citizenship and compliance sections. Limited evidence about lack of information sharing between the two sections was available to the Committee, and that evidence related to incidents over two years ago. Even so, the Committee is keen to ensure that the citizenship section is fully informed about the immigration status of all persons who have applied for citizenship, some of whom could be under investigation by other areas of DIEA. In this regard, the Committee notes that the Citizenship Instructions contain limited guidance on the checks which need to be carried out by DIEA officers in making decisions on citizenship applications. The

33 Evidence, pp. 21-22.

34 Evidence, p. 21.

Committee considers that the Citizenship Instructions explicitly should alert DIEA officers to the need for appropriate checks of immigration status, including data matching with the compliance section.

5.65 On a separate point, the Committee agrees that DIEA requires access to a comprehensive and up to date national index of criminal activities in Australia. It is clearly unsatisfactory that, for citizenship purposes, DIEA is, to a large degree, reliant on police checks from a database which is current only for New South Wales.

Recommendations

5.66 **The Committee recommends that:**

45. the Citizenship Instructions include more detailed guidance on the immigration status, character and police checks to be undertaken in relation to citizenship applicants, and specifically alert departmental officers assessing citizenship applications to the need for appropriate liaison and information checking with the compliance section of the Department of Immigration and Ethnic Affairs; and

46. priority be directed to ensuring that the Department of Immigration and Ethnic Affairs has access to a comprehensive and up to date national index of criminal activities in Australia.

Deferral of citizenship applications

5.67 Section 14 of the Citizenship Act provides that consideration of a decision to grant citizenship may be deferred where the application would be refused if considered at that time, but probably would be approved if some time lapsed before consideration. Section 14 states:

> (1) Subject to subsection (2), where:
>
> (a) an application is made to the Minister under section 13; and
>
> (b) it appears to the Minister at a particular time that:
>
> (i) if the Minister were to complete consideration of the application at that time the Minister would be likely to refuse the application (otherwise than by reason of the operation of paragraph 13(1)(d) or (e) [the residence requirement]); and

(ii) having regard to the effluxion of time, or to the likelihood of a change in circumstances, the Minister would be likely to grant the application if consideration of the application were deferred for such period as the Minister determines;

the Minister may, in the Minister's discretion, defer consideration of the application until the expiration of that period.

(2) The Minister shall not defer consideration of an application made under section 13 for a period that exceeds, or for periods that, in the aggregate, exceed, 12 months.

5.68 DIEA advised that 1 213 applications for the grant of citizenship were deferred in 1991-92, 1 428 applications in 1992-93, and 1 344 applications for the period July 1993 to March 1994 (see Table 4.2).[35] DIEA noted that those applications were deferred purely for the benefit of the applicant, as it was considered that the applicant would be able to meet certain criteria in the future. Deferral of those applications meant that the applicant did not have to re-apply for citizenship and pay another fee.[36]

5.69 According to DIEA, the majority of applications are deferred where the applicant does not meet the English language requirement. Other circumstances where the deferral power is used include where the applicant does not know the responsibilities and privileges of Australian citizenship, has gone overseas after lodging the application, or is on a bond ordered by a court. DIEA commented:

> In effect, it is a power that provides the applicant with an extended opportunity to meet some of the criteria for grant of citizenship.[37]

5.70 Statistics provided by DIEA show that the deferrals comprised 1.2 percent of cases processed in 1991-92, 1.32 percent of cases processed in 1992-93 and 1.9 percent of cases processed for the period July 1993 to March 1994 (see Table 4.2).[38]

5.71 As a consequence of the introduction of the new powers to cancel visas under the *Migration Reform Act 1992*, DIEA advised that the deferral power in the Citizenship Act is to be extended by the insertion of section 14A. Section 14A will provide a discretion to defer consideration of citizenship applications for up to

35 Evidence, p. S850.

36 Evidence, p. S561.

37 Evidence, p. S561.

38 Evidence, p. S850.

12 months if a person is under an investigation which may lead to the cancellation of the person's visa, or if the person has been charged or may be charged with an offence under a law of the Commonwealth, a State or a Territory.[39]

5.72 According to DIEA, the new deferral power will cover circumstances where it is possible that the applicant will not be eligible for citizenship in the immediate future. DIEA indicated that while it is difficult to predict how many applications will be deferred under this power, it is expected that the number will be low.[40]

Conclusions

5.73 The Committee welcomes the decision to extend the deferral power in relation to citizenship applications, so that it can be used to defer applications not just from those who in time may qualify for citizenship, but also from persons who, following further investigation, may be shown to be ineligible for citizenship. It is an appropriate power which will enable DIEA to undertake further investigation of applicants where that is considered warranted, and will enable the citizenship section to await the outcome of investigations by other sections of DIEA.

5.74 In the Committee's view, a particular advantage of the deferral power is that it allows DIEA to continue its expeditious and efficient processing of cases which are not problematic, and, under the deferral power, to reserve those cases which require more careful scrutiny, or in which an applicant would be assisted if given additional time to satisfy certain citizenship criteria.

From grant to conferral of citizenship

5.75 Under the Citizenship Act, acquisition of citizenship by grant is a two stage process involving first the grant of a citizenship certificate and then the conferral of citizenship when the applicant makes the citizenship pledge of commitment.

5.76 Section 13 of the Citizenship Act provides the Minister or the Minister's delegate with the power to grant a certificate of citizenship. The certificate is evidence that the person has been approved for the grant of citizenship by naturalisation. By section 46 of the Citizenship Act, a certificate of Australian citizenship granted under the Citizenship Act may be issued by the Minister or by a person authorised in writing by the Minister to issue such a certificate. The certificate is forwarded to the venue nominated for conferral of citizenship on the applicant. As noted in Chapter Three, generally ceremonies for conferring citizenship are conducted by local government authorities or DIEA officers.

39 Evidence, p. S561.

40 Evidence, p. S561.

5.77 Section 15 of the Citizenship Act provides that a person to whom a citizenship certificate has been granted becomes an Australian citizen on the day on which that person makes the pledge of commitment as a citizen of the Commonwealth of Australia to an approved person. In the case of certain children under 16 years of age, citizenship is obtained on the day or after the certificate is granted.

5.78 Certain problems with the arrangement set down in these provisions were noted in evidence by DIEA, and also were discussed in the Federal Court case *Smith-Davidson v Minister for Immigration, Local Government and Ethnic Affairs* WAG 100 of 1992, Lee J, Federal Court, Western Australia Registry (1993) 30 ALD 871.

5.79 DIEA noted that there is no legislative requirement for a person to make the citizenship pledge of commitment within a particular time frame following the grant or issue of a certificate of citizenship. According to DIEA, sometimes the time between grant and conferral amounts to a number of years because the applicant leaves Australia following grant. DIEA indicated that, in such situations, the person may cease to satisfy the grant of citizenship criterion of residing in Australia and maintaining a close and continuing association with Australia. Alternatively, if a substantial time has elapsed since the grant of citizenship, and the person has not had citizenship conferred, the good character criterion might be affected if, subsequent to the grant but before conferral, the person commits an act or offence, or information is revealed, which brings into question that person's character.[41]

5.80 DIEA suggested that, in order to maintain the integrity of the citizenship process, it may be appropriate to include in the Citizenship Act a reasonable but definitive time frame in which the grant of citizenship certificate will cease to have effect if the citizenship pledge is not taken and citizenship is not acquired.[42]

5.81 The *Smith-Davidson* case illustrated additional problems which can occur between grant and conferral of citizenship. In that case, Smith-Davidson unsuccessfully sought a declaration that she was a permanent resident or an Australian citizen, and also sought a writ of mandamus to compel the Minister to deliver the certificate of citizenship granted to her to the local authority at the City of Wanneroo. Subsequent to having granted the certificate to Smith-Davidson, the Minister's delegate discovered that Smith-Davidson had obtained her residence in Australia by deception. The Minister took back Smith-Davidson's citizenship certificate from the City of Wanneroo and purported to cancel or revoke that certificate.

41 Evidence, p. S572.

42 Evidence, p. S572.

5.82 The *Smith-Davidson* case concentrated on whether the Minister has the power to revoke or cancel citizenship certificates, and on whether, if the certificate was not revoked, the Minister could be required to return the certificate to the City of Wanneroo, so that Smith-Davidson could make the then oath/affirmation and obtain citizenship. In the case, the Minister argued that a power to revoke the citizenship certificate was to be implied by the terms of section 33(3) of the *Acts Interpretation Act 1901* or from the terms of the Citizenship Act itself. The Committee notes that the Citizenship Instructions proceed from an assumption that such power exists, as the Citizenship Instructions contain guidance for revoking citizenship certificates.

5.83 In the *Smith-Davidson* case, Justice Lee did not finally decide this question. However, he canvassed arguments to indicate that the Minister has no power to revoke a citizenship certificate. Justice Lee noted that there was no explicit power to cancel citizenship certificates included in the Citizenship Act, and that various provisions suggest that the legislature did not intend that a power to revoke such certificates be implied from the terms of the Citizenship Act.[43] As Justice Lee pointed out:

> . . . it would have been a simple matter for the Act to make express provision [for revocation of citizenship certificates] in that regard.

5.84 The *Smith-Davidson* case was resolved when Smith-Davidson left Australia. Justice Lee, however, alluded to consequences which flow from the uncertainty over the Minister's power to revoke a citizenship certificate. Justice Lee declined to order the Minister to return Smith-Davidson's certificate to Wanneroo because he took the view that, once the certificate was granted and so long as the certificate was not revoked, the person named in the certificate could still take the oath or make the affirmation before a competent person and thereby obtain citizenship. Under the Citizenship Act, the certificate is not needed for the ceremony (section 15(1)(a)(i)). Justice Lee indicated that if Smith-Davidson was able to make her oath or affirmation, the Minister then could be required to deliver up the certificate for insertion of the date of acquisition of citizenship.

5.85 If a person such as Smith-Davidson obtained citizenship in such a way, the Minister may have the power to revoke that citizenship if the case fitted within the revocation provisions of the Citizenship Act.

43 For example, in section 32(3) of the Citizenship Act, a certificate of Australian citizenship is conclusive evidence that the person was an Australian citizen on the date of the certificate unless it is proved that the certificate was obtained by means of fraud, a false representation, or the concealment of some material fact. The section does not render the certificate void. Justice Lee observed: 'The fact that whilst such a fraudulent act is made punishable as an offence, a certificate granted under the Act in consequence of that act is not invalid suggests that the legislature did not intend that a power to revoke that certificate be implied from the terms of the Act'.

5.86 Situations as arose in the *Smith-Davidson* case could be avoided if the Minister had a specific power to revoke citizenship certificates. Certainly, Justice Lee intimated that the present grant and conferral provisions allow persons initially approved for citizenship, whom the Minister subsequently discovers were not entitled to obtain citizenship, to obtain citizenship and, depending on the circumstances of the case, may place such persons beyond the reach of the provisions for revocation of the citizenship which they inappropriately obtained.

5.87 Further problems associated with citizenship certificates were referred to by the Auditor-General in Audit Report No. 35, 1993-94, on the compliance function of DIEA. In that report, it was noted that DIEA staff referred to problems with forged Australian citizenship certificates used to obtain passports.[44] These problems were not elaborated upon to the Committee.

Conclusions

5.88 The current provisions of the Citizenship Act relevant to grant and conferral of citizenship can create anomalous situations where a person who is granted Australian citizenship may cease to satisfy certain criteria for grant before the citizenship is conferred. As explained by DIEA, this can occur where a person's circumstances change between the grant and the conferral. It is most likely to occur if there is a significant duration of time from the grant of citizenship to the conferral of that citizenship. To reduce the possibility of such cases arising, the Committee considers that there should be a time limit of six months during which an applicant granted citizenship must have citizenship conferred by making the pledge of commitment. After six months, the validity of the certificate of grant of citizenship should lapse and the certificate should no longer be valid for the purposes of conferring citizenship.

5.89 In addition, the Committee is of the view that the Citizenship Act should be amended to provide the Minister with an explicit power to revoke certificates of citizenship before citizenship is conferred. A specific power is necessary to overcome the difficulties alluded to by Justice Lee of the Federal Court in the *Smith-Davidson* case.

44 The Auditor-General, *Audit Report No. 35 1993-94, Efficiency Audit, The Compliance Function, Department of Immigration and Ethnic Affairs*, AGPS, Canberra, 1994, p. 47.

Recommendations

5.90 **The Committee recommends that:**

47. the *Australian Citizenship Act 1948* be amended to provide for a time limit of six months from the time a certificate of Australian citizenship is granted to the time that an applicant must make the pledge of commitment at a ceremony for conferral of citizenship;

48. the *Australian Citizenship Act 1948* be amended to provide the Minister of Immigration and Ethnic Affairs with the explicit power to revoke certificates of Australian citizenship before citizenship is conferred; and

49. there be a right of review to the Administrative Appeals Tribunal in relation to decisions by the Minister for Immigration and Ethnic Affairs to revoke citizenship certificates.

Enrolment of new citizens

5.91 An administrative issue raised with the Committee during a public hearing related to the procedures for enrolment of new citizens on the electoral roll. The Australian Electoral Commission (AEC) advised the Committee that there have been lengthy delays in some new citizens being included on the electoral roll, with some delays being up to five months. The AEC outlined the major area of difficulty.[45]

5.92 In the past, the AEC sent officers to citizenship ceremonies. AEC officers provided new citizens with enrolment cards at the ceremonies and had them fill out those cards in accordance with their legal obligation to enrol to vote. New citizens could be enrolled within 24 hours. This practice, however, was discontinued. According to the AEC, the practice was costly because ceremonies tended to be held on weekends or after normal business hours and, as a result, significant overtime costs arose in relation to the attendance of AEC officers at those ceremonies.[46]

5.93 The AEC advised that, more recently, the Electoral Act was amended to provide for 'semi-automatic' enrolment at the time of becoming a citizen. Under the new practice, applicants for citizenship are able to make a provisional application for enrolment at the time they apply for citizenship. The details relevant to the provisional enrolment are entered on the AEC computer system, and the

45 Evidence, p. 345.

46 Evidence, p. 345.

enrolment is given effect when the AEC is notified that citizenship has been granted. It is this notification that citizenship has been granted which is causing difficulties for the AEC. The AEC commented:

> In practice, we are having a lot of administrative difficulties with that. As you know, most ceremonies are conducted by local government. It can take a very lengthy period for advice of new citizenships to come back to us through the Department of Immigration and Ethnic Affairs. We have heard of instances where the delay has been up to five months. That means that a person is effectively disenfranchised for a lengthy period. It is not working in the way that anybody expected it would.[47]

5.94 The AEC advised that it now takes on average two to three months from the time the citizenship ceremony is held to the time that the AEC is advised that a person has become an Australian citizen. The AEC gave one recent example of how this has caused difficulties:

> The recent Australia Day was a perfect example. We had 8 000 citizenship applicants turn up on Australia Day. Three days later, we had Queensland local government election roll closures. In order for those newly appointed citizens to get on to those closed rolls, we had to be advised before the closure of the rolls. Of course that did not happen. In Queensland in particular, we needed to write to 2 000 provisional electors who were sitting on our database—we had not been advised that they had been matured—and offer them a normal enrolment card and follow it through our normal process.[48]

5.95 According to the AEC, DIEA has indicated that the primary source of the delay is in receiving information from local councils and then, to a lesser degree, a delay in keying that information into DIEA's database.[49]

47 Evidence, p. 345.

48 Evidence, p. 346.

49 Evidence, p. 352.

5.96 The AEC noted that it has had many discussions with DIEA on this problem, and indicated that the two agencies are examining ways of resolving the problem.[50] The AEC commented:

> . . . we feel that one of the solutions is to go back to issuing those enrolment cards at the point of citizenship ceremony because of this delay.[51]

Conclusions

5.97 One of the specific and important rights and responsibilities of Australian citizenship is to vote in elections and referendums. As such, it is of concern to the Committee that new citizens may be disenfranchised for periods ranging from two to five months as the AEC awaits advice from local government associations, through DIEA, that persons who have nominated for enrolment have become citizens. What should be a simple administrative process clearly is not working as it was intended. Accordingly, the Committee is of the view that the AEC should return to its previous practice of sending AEC officers to citizenship ceremonies for the purpose of enrolling new citizens on the electoral roll. The Committee notes the advice of the AEC that this practice generally resulted in new citizens being enrolled to vote within 24 hours of becoming citizens.

Recommendation

5.98 **The Committee recommends that:**

50. the Australian Electoral Commission revert to its previous practice of sending officers to citizenship ceremonies to facilitate the enrolment of new citizens on the electoral roll.

Portfolio responsibility

5.99 In one submission, it was proposed that citizenship should be transferred from the Immigration and Ethnic Affairs portfolio to the Attorney-General's portfolio. The Administrative Law Section of the Law Institute of Victoria, in making this suggestion, stated:

> While it is true that in some cases a determination that a person is a citizen, or a grant of citizenship, is the culmination of a process of migration, as citizenship is a more general and fundamental matter than migration, it

50 Evidence, p. 345.

51 Evidence, p. 352.

is not clear that the nature of citizenship is presented most clearly if the responsible Minister is the Minister for Immigration.[52]

5.100 Responding to this suggestion, a representative of the Attorney-General's Department commented:

> That is the first time I have heard that suggestion and, obviously, I cannot speak for the department. Traditionally, though, citizenship has been very much linked to immigration and the immigration department. I guess that is largely because citizenship is something that tends to be of most concern to newly arrived immigrants in their move to become Australian citizens. It has traditionally been associated with the department of immigration and I can see good reasons why that might continue.
>
> Not a lot in the Citizenship Act as it stands at present would be of particular direct concern or relevance to the Attorney-General's Department. It would involve the addition of entirely new functions—not something that would flow naturally from the things the department is involved in at present.[53]

5.101 Another suggestion, from Mr Grant, was that responsibility for the Australian Citizenship Act, Migration Act and Passports Act should be with the Minister for Immigration and Ethnic Affairs, whose portfolio and department should be renamed Immigration, Australian Citizenship and Passports and Ethnic Affairs.[54]

Conclusions

5.102 No convincing evidence was provided to the Committee as to why there is a need to transfer responsibility for citizenship from the Immigration and Ethnic Affairs portfolio to the Attorney-General's portfolio. As such, the Committee rejects this suggestion.

52 Evidence, p. S609.

53 Evidence, p. 312.

54 Evidence, p. S76.

5.103 The Committee, however, considers that greater prominence should be given to citizenship within the existing portfolio arrangements. As noted in Chapter Three, DIEA itself indicated that we should stop thinking about citizenship as something that migrants get. If this is to be achieved, then appropriate recognition should be given to the status of citizenship within the Immigration and Ethnic Affairs portfolio. In the Committee's view, to enhance the status of citizenship among all Australians, the department responsible for administering the Citizenship Act should be renamed the Department of Citizenship, Immigration and Ethnic Affairs. This will help all Australians to recognise that citizenship is a matter of significance to the Commonwealth. It also will ensure that Australians are readily able to identify which Commonwealth agency is responsible for citizenship matters.

5.104 As for the suggestion that the passport function be transferred to DIEA, this proposal is considered in the next section of this chapter dealing with passports.

Recommendation

5.105 **The Committee recommends that:**

51. the Department of Immigration and Ethnic Affairs be renamed the Department of Citizenship, Immigration and Ethnic Affairs.

Passports

5.106 As stated previously, the Minister requested the Committee, as part of this inquiry, to consider the relationship between the Citizenship Act and the Passports Act. As noted at paragraph 5.3, an Australian passport is recognised internationally as prima facie evidence of Australian citizenship.

5.107 The Passports Act is administered by DFAT. The passport function was transferred to the then Department of Foreign Affairs from the then Department of Immigration and Labour in 1975.

5.108 Section 7(1) of the Passports Act states:

> the Minister or an officer authorised in the behalf by the Minister may issue Australian passports to Australian citizens.

5.109 Section 5 of the Passports Act defines an Australian citizen as:

> a person who is an Australian citizen within the meaning of the *Australian Citizenship Act 1948-1973*.

5.110 DFAT advised that more than five million Australian travel documents have been issued since 1984-85. The Passport Information and Control System database contains over seven million files.[55]

5.111 The Passport Service maintains regional passport offices in the capital cities of all States, as well as in Canberra, Darwin and Newcastle. Passport services also are provided at Australian diplomatic and consular posts overseas.[56]

5.112 DFAT noted that its Central Office and all regional passport offices are linked to the Passport Information Control System, as are major overseas issuing posts such as London, Athens, Los Angeles, New York, Port Moresby, Hong Kong, Wellington and Auckland. Passport transactions in the Passport Information Control System are down-loaded daily from the DFAT mainframe computer to DIEA's Traveller Information Processing System for barrier control processing of Australian citizens departing and arriving through Australia's international airports.[57]

5.113 Apart from issuing passports, DFAT, in certain circumstances, also issues internationally recognised travel documents, such as certificates of identity, to non-citizens who are unable to obtain a travel document from their country of claimed nationality. Persons who are determined to be refugees under the 1951 *Convention Relating to the Status of Refugees* can be issued travel documents, known as Convention travel documents or Titre de Voyage, provided for in that Convention.[58]

5.114 In relation to Australian passports, DFAT noted that the Passport Service has an important responsibility to ensure that as far as possible only those persons entitled to receive a passport do so.[59] As such, verification of identity and citizenship are critical processes.[60]

5.115 Following the 1982 report of the Royal Commission of Inquiry into Drug Trafficking by Justice Stewart, more stringent requirements in relation to passports were introduced from November 1984, including:

> personal interviews by a Passport Officer (or DFAT's agent, Australia Post);

55 Evidence, p. S362.

56 Evidence, p. S362.

57 Evidence, p. S362.

58 Evidence, p. S362.

59 Evidence, p. S360.

60 Evidence, p. S364.

- full documentation and evidence to prove citizenship and identity;
- evidence of name changes;
- proof of identity declarations; and
- individual travel documents for minors.[61]

5.116 According to DFAT, proof of birth in Australia is sufficient evidence of Australian citizenship for the majority of applicants. At the same time, DFAT noted that verification of identity, by linking the holder of a birth certificate or certificate of Australian citizenship to the name on that certificate, is an essential part of the process for acquiring a passport. In this regard, DFAT has adopted the view expressed by Justice Stewart in relation to birth certificates. In Interim Report No. 2 of the Royal Commission of Inquiry into Drug Trafficking, Justice Stewart stated:

> From a legal point of view, a birth certificate would not be accepted by any Court as proof of date of birth or place of birth of any person unless there was evidence linking the person in question with the person named in the birth certificate.[62]

5.117 Verification of identity involves identification by a designated member of the public, a personal interview, and submission by the applicant of official and private documentation. Proof of Identity Declarations are provided by designated members of the community, who could be liable for penalties under the Passports Act should they fraudulently identify a passport applicant in a passport application. The person making an identity declaration also is required to certify on the back of each passport photograph the identity of the applicant. These photographs are checked during the applicant's passport interview to guard against photograph substitution. DFAT advised that Proof of Identity Declarations are subject to random Passport Office contact with the person providing the declaration. Other verification checks for identity include Australian electoral rolls, drivers' licences, bank cards, telephone subscriptions, Medicare cards and school records.[63]

61 Evidence, pp. S361-S362.

62 Evidence, p. S363.

63 Evidence, p. S364.

5.118 Applicants born in Australia after 20 August 1986[64] must provide proof not only of their birth in Australia, but also evidence that one of their parents was an Australian citizen or permanent resident at the time of their birth. DFAT advised that the volume of evidentiary checks in this regard will increase from about 2004, when those born after 20 August 1986 who have not been issued with a passport turn 18 years of age, at which time they will not need parental permission to acquire a passport. DFAT also noted that, in time, passport applicants will be required to submit the details of parents and grandparents, along with relevant documentary evidence.[65]

5.119 DFAT indicated that where an Australian citizen loses citizenship, such information is transmitted directly from DIEA' citizenship branch to DFAT's on-line mainframe computer system.[66]

5.120 In DFAT's assessment, fraudulent applications for passports are the main threat to the integrity of the passport system rather than passport counterfeiting or tampering. According to DFAT, technology advances make detection of such counterfeiting and tampering relatively certain. In contrast, DFAT noted that there can be no absolute guarantee that identity verification processes are effective in every case.[67]

5.121 In this regard, DFAT advised that in 1993 considerable publicity was given to a major fraudulent passport application racket in New South Wales. High quality counterfeit New South Wales birth certificates were used to obtain fraudulently the issue of 70 passports to illegal entrants. Those passports were used to perpetrate fraud against the Department of Social Security, Medicare and the Australian Taxation Office. DFAT indicated that the participants were prosecuted under the Passports Act and other legislation. Many were deported. According to DFAT, large scale fraud of this nature has a reasonable chance of being discovered because of the patterns which emerge when a large number of people are involved.[68]

64 This was the date when the Citizenship Act was changed to remove automatic conferral of Australian citizenship on anyone born in Australia, and to provide instead that those born in Australia acquired citizenship automatically only if, at the time of the birth, one parent was an Australian citizen or permanent resident.

65 Evidence, p. S363.

66 Evidence, pp. S362-S363.

67 Evidence, p. S365.

68 Evidence, p. S365.

5.122 DFAT, however, indicated that, because of the absence of computer access to the records of State Registrars of Births, Deaths and Marriages, including facilities for cross-referencing births, deaths, marriages and name changes, identity verification can never be said to be without risk.[69] In this regard, DFAT advised that, over recent years, it has liaised with State Registrars of Births, Deaths and Marriages about problems which arise for passport issue as a result of their current systems. DFAT noted that steps are being taken by some registrars to improve security through, for example, the introduction of common security paper stocks to all registrar's offices. DFAT commented that such initiatives generally will improve verification processes relevant to the issue of Australian passports.[70]

5.123 In general terms, DFAT advised that there are no inconsistencies between the Passports Act and the Citizenship Act which cause difficulty in the delivery of Australian passports to Australian citizens, or which cause difficulty for officers responsible for administering the Passports Act.[71] DFAT commented that the Passport Service has no evidence to suggest that the requirements concerning citizenship within the Citizenship Act or the Passports Act cause undue inconvenience or difficulty for the public when passport applications are made. DFAT also stated that DIEA advice on citizenship matters, when sought, is authoritative and prompt.[72]

5.124 Alongside DFAT's evidence, only three other matters were raised in relation to passports. First, it was noted that the Australian passport does not include a statement that the bearer of the passport is an Australian citizen.[73] Secondly, in one submission it was suggested that a passport should be issued to all citizenship applicants upon conferral of citizenship at the citizenship ceremony.[74] This suggestion was discussed in Chapter Three, at paragraphs 3.145 and 3.159. Thirdly, as noted at paragraph 5.101, in another submission, it was suggested that responsibility for passport administration should transfer to the Minister for Immigration and Ethnic Affairs, whose portfolio and department should be named Immigration, Australian Citizenship and Passports and Ethnic Affairs.[75]

69 Evidence, p. S365.

70 Evidence, p. S365.

71 Evidence, p. S365.

72 Evidence, p. S361.

73 Evidence, p. S530.

74 Evidence, p. S117.

75 Evidence, p. S76.

Conclusions

5.125 Limited evidence was provided to the Committee about the passport function and its relationship with the administration of the citizenship program. The Committee notes the advice of DFAT that no inconsistencies or difficulties have been detected in this regard.

5.126 Nevertheless, given the significance of a passport as an internationally recognised identity document, the Committee was eager to ensure that appropriate measures exist to protect against potential fraud. While DFAT advised the Committee about increased evidentiary checks relevant to the issuing of passports implemented following the 1982 report of the Royal Commission of Inquiry into Drug Trafficking, DFAT's evidence about a major fraudulent passport racket in 1993 alerted the Committee to the risks which remain in the issuing of passports. The comments from DFAT that verification can never be said to be without risk confirmed the need for stringent procedures to safeguard against passport fraud.

5.127 While the existing verification procedures for issuing of passports are detailed, the Committee notes DFAT's concerns about lack of on-line access to the records of State Registrars of Births, Deaths and Marriages. The Committee considers that, despite the initiatives being taken by State Registrars to improve security of documentation used in gaining a passport, DFAT's lack of on-line access to current records held by State Registrars of Births, Deaths and Marriages increases the potential for fraud in the issuing of passports. In the Committee's view, the Commonwealth Government should pursue, as a priority, the issue of on-line access to such records for the purposes of passport issue.

5.128 As for the suggestion that the passport function should be transferred from DFAT to DIEA, the Committee considers that there is merit in the proposal, given that information on citizenship, which is the basis for acquiring a passport, is in the domain of DIEA. The Committee recognises the important role of DFAT in providing passport services in overseas countries. On balance, however, the Committee is of the view that it would be more appropriate for all the functions associated with citizenship to be controlled by one Commonwealth department. That department should be DIEA, which processes citizenship applications and revocations, and which, under the Committee's recommendation 51, should be renamed the Department of Citizenship, Immigration and Ethnic Affairs. As limited evidence was provided to the Committee on the implications of transferring the function of issuing passports to DIEA, the Government should investigate the implications and viability of this proposal.

5.129 Another proposal which the Committee supports is the inclusion of a statement within the Australian passport that the bearer of the passport is an Australian citizen. In view of the Committee's other recommendations about enhancing the symbolic meaning of Australian citizenship, this is an appropriate additional measure to adopt.

Recommendations

5.130 **The Committee recommends that:**

52. to further safeguard against fraud in the issuing of Australian passports, the Commonwealth Government, as a priority, actively pursue efforts to gain on-line access to the records of State Registrars of Births, Deaths and Marriages for the purposes of passport issue;

53. Australian passports incorporate a statement that the bearer of the passport is an Australian citizen; and

54. the Commonwealth Government consider transferring responsibility for administration of the passport function, including issuing of passports, to a renamed Department of Citizenship, Immigration and Ethnic Affairs.

Chapter Six

DUAL CITIZENSHIP

Introduction

6.1 Section 17 of the Citizenship Act provides for the loss of Australian citizenship in certain circumstances where an Australian citizen acquires the nationality or citizenship of a foreign country. If a non-Australian citizen takes out Australian citizenship and the country of his or her existing citizenship permits dual citizenship, the non-Australian citizen can retain this citizenship and become a dual citizen.[1]

6.2 The issue of dual citizenship attracted most attention throughout this inquiry. There were a large number of submissions providing a range of views in favour and against dual citizenship. The Committee examined the issue in detail through analysis of Australia's history and approach to dual citizenship, the operation of section 17, the changing needs of Australia's multicultural community, and comparison with overseas law and practice.

6.3 Dual citizenship has been the subject of previous reviews in Australia. In 1976, the Joint Committee on Foreign Affairs and Defence reported to the Parliament on 'the international legal and diplomatic aspects of the situation of Australians possessing dual or plural nationality'.[2] In October 1982, dual citizenship was discussed in the report by DIEA on the national consultations on multiculturalism and citizenship.[3] The matters raised in these reports are detailed later in this chapter.

6.4 In 1986, DIEA estimated that there were three million dual citizens in Australia.[4] Recent advice indicates that this figure could have increased in the period to 1994.[5] Given the implications of this issue for a large section of the

---

1 The term dual citizenship often is used interchangeably with the term plural or multiple citizenship. Dual citizenship is the most frequently occurring case of plural citizenship and is the common term used when describing this issue. As such, the Committee uses the term dual citizenship in this report, but notes that the references to dual citizenship can apply equally to plural or multiple citizenship.

2 Joint Committee on Foreign Affairs and Defence, op. cit., p. 1.

3 Department of Immigration and Ethnic Affairs, *National Consultations On Multiculturalism and Citizenship*, AGPS, Canberra, 1982, p. 28.

4 Evidence, p. S557.

5 Evidence, p. S557.

Australian community, it is appropriate for the Parliament to reconsider, through this Committee's inquiry, Australia's existing approach to dual citizenship.

International law

6.5 Customary international law provides no firm or comprehensive rules concerning dual nationality. As noted in Chapter Two, under international law, it is for each state to determine under its own law who are its nationals, subject to international convention, international custom and the principles of law generally recognised with regard to nationality.

6.6 It follows that dual nationality is recognised at international law, even if the ideal, at least as recited in the Hague Convention, was that every person should have a nationality and should have one nationality only.

6.7 The Hague Convention is the principal international instrument relevant to dual citizenship. The Hague Convention was drafted at a time when the inconveniences attaching to double nationality were particularly prominent in consequences of the changes of nationality arising out of the Peace Treaties of 1919.[6]

6.8 The general principles of the Hague Convention as it relates to dual nationality are set down in Articles 1 to 6, which provide that:

1. It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.

2. Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

3. Subject to the provision of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

4. A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

6 Jennings and Watts, op. cit., p. 884.

5. Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

6. Without prejudice to the liberty of a State to accord wider rights to renounce its nationality, a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorisation of the State whose nationality he desires to surrender.

   This authorisation may not be refused in the case of a person who has his habitual and principal residence abroad, if the conditions laid down in the law of the State whose nationality he desires to surrender are satisfied.

6.9 From an international law perspective, the difficulty with dual citizenship, which the Hague Convention seeks to avoid and rectify, derives from the function, which is a right of the state, to grant protection to a citizen in relation to other states. As stated by Commissioner Nielsen of the United States-Mexican Special Claims Commission in the *Naomi Russell* case:

> Nationality is the justification in international law for the intervention of one government to protect persons and property in another country.[7]

6.10 On a similar point, Weis states:

> This protection which has been termed diplomatic protection is different from the internal, legal protection which every national may claim from his State of nationality under its municipal law, i.e., the right of the individual to receive protection of his person, rights and interests from the State. International diplomatic protection is a right of a State, accorded to it by

7 *Opinions of Commissioners* (Sp.Cl.C.) (1931), p. 44, at p. 51; U.N. Reports, vol. IV, p. 805, at p. 811., cited in Weis, op. cit., p. 32.

customary international law, to intervene on behalf of its own nationals, if their rights are violated by another State, in order to obtain redress.[8]

6.11 The rights of states to afford protection to its nationals was affirmed in the *Nottebohm* case of 1955. In that case, the International Court stated:

> Diplomatic protection and protection by means of judicial proceedings constitute measures for the defence of the rights of the State. As a Permanent Court of International Justice has said and has repeated, 'by taking up a case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights–its rights to ensure in the person of its subjects, respect for the rules of international law.[9]

6.12 As noted by Weis, the provision of services that states can afford to its citizens 'involves the resort to all forms of diplomatic intervention for the settlement of disputes, both amicable and non-amicable, from diplomatic negotiations and good offices to the use of force. As a rule, only amicable means will be resorted to'.[10] Rode describes some of the conflicts that can arise:

> Conflicts arising from the status of dual nationality have been a common occurrence in international law. In the first place, immigrants who became citizens of their adopted country by naturalization, and their sons, naturalized or born in the adopted country, have been inducted into military service when visiting the country of their origin. Secondly, passports issued by the adopted country have been seized by foreign governments from visitors and not returned to their owners, in order to prevent the departure of such dual citizens from the countries claiming jurisdiction over such persons. Finally, personal injury and property claims, otherwise justified, have been rejected by the country against whom such claims were asserted, because the claimant also happened to be a national of the respondent country.[11]

8 Weis, op. cit., pp. 32-33.

9 I.C.J. Reports, 1955, p. 4, at p. 24, cited in Weis, op. cit., p. 36.

10 Weis, op. cit., p. 33.

11 Z. Rode, 'Dual Nationals and the Doctrine of Dominant Nationality', *The American Journal of International Law*, vol. 53, 1959, p. 139.

6.13 It follows that where a person has dual citizenship, there can be conflict between states as to which state has the right to protect the person. Bilateral treaties can assist in reducing such conflict of nationality laws. Weis explains that these treaties are of two kinds:

> . . . they either provide which of the nationalities held shall be recognised as prevailing as between the Contracting States, or they contain provisions regulating the determination of the nationality of the persons concerned, i.e., the nationality law of at least one of the Contracting States is amended in order to avoid double nationality.[12]

6.14 The United States, for example, has sought to reduce conflict by concluding agreements with neighbouring countries which secure the right of a naturalised citizen of the United States to return to his or her country of origin without being subject to punishment for failure, prior to naturalisation, to respond to calls for military service.[13]

6.15 Bilateral arrangements also have been negotiated by Australia and include its formal consular sharing agreement with Canada. Under this agreement, Australia and Canada will protect each others citizens in countries where either one or the other has no representation.[14] Similarly, the 1972 London conference on consular relations within the Commonwealth decided that 'where a Commonwealth country lacks its own representation in another Commonwealth country it should be open to it to make whatever arrangements are most satisfactory, both from its own point of view and that of the 'host' Government, for the performance of consular work in respect of its citizens in that country, including reliance on the representative of a third Commonwealth country'.[15]

Overseas practice

6.16 As stated, dual citizenship occurs because each state has the right at international law to set its own rules concerning the acquisition and loss of its citizenship. Dual citizens exist in almost all countries, including those which have a policy of single citizenship.

12 Weis, op. cit., p. 191.

13 Rode, op. cit., p. 140.

14 Evidence, p. 104.

15 Department of Foreign Affairs and Trade, Consular Instructions and Manual of Passport Issue, para. 5.2.1.

6.17 An examination of the citizenship laws of other countries shows an increasing, liberal acceptance of dual nationality.[16] It is notable that, since 1937, 14 of the signatories to the Hague Convention, through their citizenship laws, have permitted their citizens to hold dual citizenship. These countries include, Brazil, Canada, Colombia, Egypt, France, Hungary, Ireland, Italy, Netherlands, Portugal, South Africa, Spain, Switzerland and the United Kingdom. DIEA indicated that there are a number of additional countries which have accepted dual citizenship including New Zealand, Greece and Turkey.[17]

6.18 Dual citizenship is permitted because of perceived domestic needs of individual states, a growing recognition of multicultural needs, greater choice and freedom for individuals, and the acceptance that loyalty and commitment to a country is not solely the virtue of single citizenship holders. In a world where travel and immigration rules are becoming increasingly strict, dual nationality is seen to facilitate travel, business and work opportunities. For some countries, the move to dual citizenship also reflects the growing administrative difficulties associated with monitoring citizens to ensure that they are citizens with single citizenship. The following discussion examines the policy on dual citizenship in Canada and the United States.[18] These countries, like Australia, are both large immigrant receiving countries with growing multicultural communities. Further, they both have moved to accept dual citizenship in light of changing multicultural needs and conditions.

Canada

6.19 Canada has allowed dual citizenship since the introduction of its *Citizenship Act 1977*. The general theme of the 1977 Act was 'improved access and equal treatment'.[19] Under this theme, the controls on dual citizenship were eliminated.

6.20 The Canadian Government's position is that multiculturalism and dual citizenship are intrinsically linked. In view of the cultural diversity and expanding multicultural base, the option of dual citizenship provided Canadians with increased opportunity to retain their cultural heritage. The Canadian Government wanted to

16 Evidence, p. S745.

17 Evidence, p. 79.

18 Additional information on the dual nationality laws of other countries can be found in the research paper prepared by the Committee's parliamentary intern: R. Van Der Meer, *Citizenship: International Law and Practice, A report on overseas citizenship practices*, ANU, Canberra, 1994.

19 Exhibit 15, p. 8.

'take the barriers away and move towards a more open and welcoming environment'.[20] Representatives of the Canadian High Commission in Australia explained the major issues which encouraged Canada to embrace dual citizenship:

> . . . it was very important to encourage people to take out citizenship, and it was very clear from doing surveys, and from looking at our client base, that there were a great deal of restrictions on certain individuals in taking out Canadian citizenship because the laws of either their nation or our nation required them to relinquish their prior citizenship . . . We realised that, in the world, nationality legislation of one country does not really impinge on nationality legislation of any other country; so regardless of Canada's restrictions or intentions in asking people to relinquish former allegiances and to acquire only Canadian citizenship, the reality was that we had dual and multiple citizens in our country by virtue of the nationality laws in their own countries taking precedence.[21]

6.21 When the Canadian Parliament was considering dual citizenship in relation to the 1977 Act, there were two major arguments in favour of dual citizenship. The first was a desire to treat all Canadians with equity. Naturalised Canadian citizens often had a previous nationality and under Canadian law were entitled to keep it, thus having the status of dual citizens. Canadian born citizens, however, were not entitled to take out another citizenship and could not be dual citizens. It was considered 'unfair that native-born Canadians should be stripped of their original citizenship upon acquiring status in another country'.[22]

6.22 The second argument for moving towards dual nationality involved administrative reasons. The Canadian Parliament 'recognised that it was virtually impossible to police the Act on a global basis (for example, to recover Canadian passports or Certificates of Canadian Citizenship, or even to keep track of citizens acquiring foreign status)'.[23]

20 Exhibit 32, p. 5.

21 Exhibit 32, p. 5.

22 Exhibit 32, p. 9.

23 Exhibit, 32, p. 9.

6.23 Towards the end of the inquiry, the Committee was provided with a copy of a report on Canadian citizenship by the Canadian Parliament's Standing Committee on Citizenship and Immigration. In that report, a majority of the Canadian Committee recommended that:

- the government should explore the possibility of providing that the new *Citizenship Act* require that a Canadian citizen who, as an adult, voluntarily and formally acquires the nationality or citizenship of another country, except by marriage or other circumstances such as adoption, ceases to be a Canadian citizen, with the intent of avoiding citizenship of convenience;

- the new *Citizenship Act* should establish the principle that Canadian citizens who hold dual citizenship by virtue of events beyond their control must, while living in Canada, accord primacy to their Canadian citizenship; and

- naturalised Canadians should be required to declare as a condition of receiving their citizenship that they will accord primacy to their Canadian citizenship over all other citizenships.[24]

6.24 While not explicitly stated in that report, it is evident that the recommendations on dual citizenship have some association with the debate surrounding Canada's federal constitutional arrangements. A dissenting opinion on the recommendations was provided by members of the Bloc Quebecois.[25]

United States of America

6.25 The current nationality laws of the United States do not refer specifically to dual nationality. Prior to 1980, United States citizens could not acquire the citizenship of another country without losing United States citizenship. In 1980, the United States Supreme Court determined that the law permitted dual citizenship. In that year, in case of *Vance v Terrazas*, the United States Supreme Court held that:

> In establishing loss of citizenship, the Government must prove an intent to surrender United States citizenship, not just the voluntary commission of an expatriating act such as swearing allegiance to a foreign nation. Congress does not have any general power to take away an American citizen's citizenship without his 'assent', which means an intent to relinquish citizenship, whether the intent is expressed in words or is found as a fair inference from his conduct.[26]

24 Exhibit 29, p. 16.

25 Exhibit 29, p. 51.

6.26 The United States Supreme Court held that applying for citizenship of another country was not sufficient of itself to constitute a voluntary or deliberate renunciation of United States citizenship. Loss of citizenship was held to depend upon the will of the citizen and required, in addition to evidence that the citizen voluntarily committed an expatriating or relinquishing act, evidence that the citizen intended to relinquish citizenship. The current revocation provisions in the United States require proof that the person consciously intended to lose his/her American citizenship upon taking out the citizenship of another country. Loss of United States citizenship requires an express renunciation.[27]

6.27 In a previous United States Supreme Court case, *Afroyim v Rusk*, the claimant protested his loss of United States citizenship as a result of voting in a foreign political election. The Supreme Court held this to be unconstitutional and stated:

> The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship.[28]

6.28 In line with these cases, the United States Government has implemented a procedure under which citizens who take out another nationality are asked to visit a United States embassy or consulate to fill in a questionnaire. The questionnaire asks among other things if the person wishes to renounce United States citizenship. If the person indicates that he or she does not intend to relinquish United States citizenship, the person retains that citizenship.[29]

Other countries

6.29 There is a variety of practice in relation to dual citizenship in overseas countries. Some countries explicitly permit their citizens to acquire another citizenship. In other countries there are no provisions dealing with dual citizenship. In the absence of any explicit provision, it is taken that the citizens can acquire additional nationalities. In countries where citizenship is lost when a citizen acquires

26 *Vance v Terrazas*, 444 U.S. 252 (1980), Supreme Court of the United States.

27 F.S. Goodman, 'Protecting Citizenship: Strengthening the Intent Requirement in Expatriation Proceedings', *George Washington Law Review*, vol. 56, no. 2, January 1988, p. 349.

28 *Afroyim v Rusk*, 387 U.S. 253, 268 (1967), Supreme Court of the United States.

29 Van Der Meer, op. cit., p. 11.

a new nationality, there also is a variety of practice. The prohibition may cover adults and children, or simply adults acquiring a new nationality. Adults may lose their existing citizenship if they intend the acquisition of citizenship to have that effect. Alternatively, citizenship may be lost by the simple act of registering for a new citizenship whether or not the person intended to renounce their existing citizenship.

6.30 In Europe, there is considerable momentum for change in citizenship law as membership of the European Union prompts countries to re-evaluate their citizenship law. All citizens of member countries of the European Union, in addition to their local citizenship, have European citizenship. Among other things, European nationality allows European nationals to move freely throughout the European Union. European nationals also receive consular protection from member states of the European Union.[30]

6.31 Britain has long supported dual nationality. The British *Nationality Act 1948* provided for dual citizenship, and this is still the case under the 1981 Act. Britain is a member of two supra-national entities, the Commonwealth and the European Union.

6.32 Table 6.1 shows countries which allow dual citizenship. European countries such as Italy, France and the Netherlands recently have changed their laws to allow dual citizenship. The Netherlands, for example, has permitted dual citizenship since January 1993. The change was motivated by the relatively large number of foreign citizens in the Netherlands (800 000), and the desire to improve the position of Dutch citizens living abroad. Another consideration for change was the development of the European Union.[31] Spain also allows dual citizenship in certain cases. For example, since ıe 1980s, it is easier for former Spanish citizens to re-acquire citizenship withouı having to renounce their current citizenship. Spanish citizenship, however, still can be lost if a person intentionally acquires another citizenship.[32]

6.33 Table 6.2 shows countries wı ich prol dual citizenship. Many of these countries are similar to Australia. Non-cit cquiring citizenship by naturalisation in these countries do not always lose . isting citizenship. These countries restrict or prohibit their own citizens acqu another citizenship, but naturalised citizens often become dual citizens. In this . dual citizenship occurs in countries such as Denmark, Iceland, Lithuania, Mauritius, and Norway.[33]

30 Van Der Meer, op. cit., p. 56.

31 Evidence, p. S747, and Exhibit 32, p. 4.

32 Evidence, p. S748.

33 Evidence, pp. S748-S751.

TABLE 6.1

Countries which allow dual citizenship

Bangladesh	Brazil	Canada
Colombia	Egypt	Federal Republic of Yugoslavia
France	Hungary	Former Yugoslav Republic, Macedonia
Ireland	Israel	Italy
Jordan	Lebanon	Malta
Netherlands	New Zealand	Portugal
South Africa	Spain	Switzerland
Syria	Tonga	Turkey
United Kingdom	Western Samoa	United States of America

Source: Evidence, pp. S747-S748.

TABLE 6.2

Countries which prohibit dual citizenship

Austria	Belgium	Brunei
Burma	Chile	China
Denmark	Ecuador	Fiji
Finland	Germany	Iceland
India	Indonesia	Iran
Japan	Kenya	Kiribati
Korea	Latvia	Lithuania
Malaysia	Mauritius	Mexico
Nepal	Norway	Pakistan
Papua New Guinea	Peru	Philippines
Poland	Romania	Singapore
Solomon Islands	Sweden	Thailand
Vietnam	Venezuela	Zimbabwe

Source: Evidence, p. S748-S751.

6.34 Many countries in Table 6.2 are in Asia. For example, Indonesia promotes single citizenship and the avoidance of dual citizenship where possible. The existence of the Chinese minority in Indonesian society and the commitment to avoid dual citizenship resulted in the 1955 Sino-Indonesian Treaty on Dual Nationality.[34] One of the aims of the agreement was to prevent future Sino-Indonesian dual nationality. Dual nationality is provided for in 'case of marriage of an Indonesian woman to an alien where no express renunciation has taken place'.[35] In other cases where dual nationality may arise through birth to Indonesian parents in a foreign country, 'acquisition of Indonesian nationality is of such a fundamental character that it is considered unacceptable to cede to the application of the law of a foreign state'.[36]

6.35 In Malaysia, dual citizenship is not encouraged and a Malaysian citizen may be deprived of his or her citizenship if he or she acquires a citizenship of another country. The large number of Chinese people in Malaysia resulted in the Sino-Malaysian Joint Communique of 1974, the purpose of which was to ensure that anyone of Chinese origin who has taken up of his/her own will or has acquired Malaysian nationality automatically forfeits Chinese nationality.[37]

6.36 Japan also is opposed to dual nationality and, through its policies, traditionally has sought to avoid conflicts of nationality. Under Japan's nationality law, voluntary acquisition of a foreign nationality by naturalisation and marriage will result in the loss of Japanese nationality. A naturalised citizen is expected to renounce his or her former citizenship. Japan confers citizenship by descent through the mother and father. Children born in other countries to a Japanese parent will acquire Japanese citizenship and the citizenship of the overseas country depending on the laws of that country. Consequently, there are Japanese citizens with dual nationality.[38]

34 Ko Swan Sik (ed.), *Nationality and International Law in Asian Perspective*, Martinus Nijhoff Publishers, The Netherlands, 1990, p. 168.

35 ibid., p. 167.

36 ibid.

37 ibid., p. 332.

38 Van Der Meer, op. cit., p. 18.

Australian law

6.37 Australia does not encourage dual or plural citizenship.[39] One of the reasons for this position relates to Australia being a signatory to the Hague Convention, the basis of which was single citizenship.[40] In this regard, it is relevant to note that DFAT indicated that it planned to review Australia's position as a party to the Hague Convention. DFAT advised the Committee that the Hague Convention is no longer consistent with Australian consular practice.[41]

6.38 Dual citizenship has been resisted in Australia in part because of the idea that citizenship reflects a person's allegiance, and that such allegiance consists of an undiluted attachment between citizen and state. As noted by DIEA:

> The main argument for retaining the current approach to dual or plural citizenship is that holding more than one citizenship is a detraction from the ideal of a single citizenship for all Australians. It may be argued that a person's loyalty to the country of residence should be without question. It is argued that the status of citizenship should reflect a person's total commitment to a nation including the emotional attachment to one society. Similarly it is said that citizenship status should not be treated as a commodity which is sought for example, for purely economic reasons or the convergence of travel arrangements, employment opportunities and tax advantages.[42]

6.39 The history of Australian citizenship legislation reflects the Parliament's attempts to deal with these issues. From 1949, it was a requirement for non-citizens acquiring Australian citizenship that they renounce their other allegiances. Applicants originally were required to renounce allegiance to their former countries before swearing allegiance to the Queen. From 1966, words of renunciation were incorporated into the oath of allegiance to shorten and simplify the naturalisation ceremony. This was in order to 'eliminate the emotional disturbance felt by candidates due to their natural and rightful love of their

39 Evidence, p. S557.

40 Evidence, p. 74.

41 Evidence, pp. S357-S358.

42 Evidence, p. S560.

homeland'.[43] In 1986, the requirement to renounce all other allegiances was deleted from the oath. The then Minister for Immigration and Ethnic Affairs, the Hon C. Hurford, MP, commented:

> Renunciation is ambiguous and unnecessary. Some candidates think that it requires them to renounce not only other allegiances but also their cultural background and all other ties with their country of origin. In many cases renunciation does not affect the previous nationality or citizenship of candidates because the nationality laws of many countries permit their nationals to have more than one citizenship.[44]

6.40 The Citizenship Act also deals with the issue of allegiance as it arises for Australian citizens. Section 17 provides that:

> (1) A person, being an Australian citizen who has attained the age of 18 years, who does any act or thing:
>
> (a) the sole or dominant purpose of which; and
>
> (b) the effect of which;
>
> is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.
>
> (2) Subsection (1) does not apply in relation to an act of marriage.

6.41 This version of section 17 came into effect on 22 November 1984. Prior to this, section 17 provided that 'an Australian citizen of full age and full capacity, who, while outside Australia and New Guinea, by some voluntary and formal act other than marriage, acquires the nationality or citizenship of a country other than Australia, shall cease to be an Australian citizen'.[45]

6.42 The meaning of 'voluntary and formal act' was tested in the AAT in *Allan v Department of Foreign Affairs*, 1986. Allan was born in Australia of Irish parents and applied to be registered as an Irish citizen in 1979. On receiving Irish citizenship, Allan's Australian citizenship was taken to be revoked by reason of section 17. Allan's counsel argued that Allan had not acquired citizenship by some 'voluntary and formal act' since he applied for registration of birth which 'merely

43 Parliamentary Debates (Hansard), House of Representatives, 31 March 1966, p. 833.

44 Parliamentary Debates (Hansard), House of Representatives, 19 February 1986, p. 867.

45 S. Kontelj, 'Consequences of acquiring dual citizenship', *Law Institute Journal*, vol. 67(10), October 1993, p. 957.

activated his citizenship'.[46] The AAT did not accept this view and the implication was that section 17 would be activated if a person applied for 'citizenship by having their birth registered'.[47]

6.43 The present version of section 17 includes an element of intention to acquire another citizenship. The acquisition of another citizenship must be the sole and dominant purpose motivating the applicant's actions which would lead to the acquisition of foreign citizenship.[48] The meaning of 'sole and dominant purpose' was tested in the AAT in the case of *Gugerli v Department of Immigration and Ethnic Affairs*, 1992, and later in the Federal Court in *Minister for Immigration, Local Government and Ethnic Affairs v Gugerli*.[49] The AAT asserted that the Australian citizen in the case who had applied for registration as a Swiss citizen 'had not done anything other than apply successfully for recognition of her rights by birth'.[50] As such, she was deemed not to have lost her Australian citizenship. The Federal Court held that the test in section 17 as to what is the 'sole or dominant purpose' is subjective; the fact that the action resulted in the acquisition of a foreign citizenship is not conclusive, rather the crucial issue is the purpose of the person's action.[51] The *Gugerli* case is similar to the *Allan* case, except the *Allan* case was tested under the pre-1984 section 17.

6.44 The *Gugerli* case is significant for Australian citizens who may have a claim to another nationality. It follows from the case that, from November 1984, certain Australian citizens, whose actions in registering for additional citizenship activate an existing entitlement to that citizenship, can acquire dual citizenship.[52] The administration of section 17 consequently is made more difficult. DIEA

46 ibid., p. 958.

47 ibid.

48 ibid., p. 958.

49 (1992) 36 FCR 68.

50 Kontelj, op. cit., p. 959.

51 Evidence, p. S559.

52 It is worth noting that the Citizenship Act acknowledges the existence of dual citizenship through sections 18(5) and 10(B). Section 18(5) provides that during war a declaration made renouncing Australian citizenship by a person who is a national or citizen of a foreign country may be refused. Section 10(B) provides that a person born outside Australia of parents one of whom is an Australian citizen may have his or her name registered at an Australian consulate. In both cases, another citizenship is implied.

indicated that the *Gugerli* case makes the 'determination of whether an individual falls within section 17 more difficult'.[53] Kontelj suggests that:

> There is scope to say that if you merely register your entitlement to citizenship of a foreign country and as a consequence acquire the rights of a citizen of that country that you will not lose your Australian citizenship.[54]

6.45 The *Gugerli* case has set a precedent for Australian citizens who may, through applying for recognition of rights by descent, achieve the citizenship of another country. They would not be subject to section 17 because their acquisition of another citizenship was the 'sole or dominant purpose' of so doing. DIEA explained its concerns to the Committee and stated that the *Gugerli* case:

> . . . meant that we could not accept, as we had in the past, that just because a person applied for the citizenship of a foreign country that is what they intended to do . . . we have had to leave open the possibility that people may have had something else in mind when they applied for the citizenship of another country. We have to offer them the opportunity to argue that point.[55]

6.46 DIEA's records of persons who have lost citizenship under section 17 show that, in 1991-92, 420 persons were recorded as losing Australian citizenship. DIEA, however, indicated that this number reflects only those cases which come to its attention. It is quite possible that there are many more Australian citizens who take out another citizenship and who do not come to the attention of DIEA.[56]

6.47 The circumstances in which Australian citizens lawfully can acquire dual citizenship are described below:

- when a non-citizen acquires Australian citizenship through the normal grant process and the laws of the person's previous country do not remove the person's citizenship of that country;

53 Evidence, p. S559.

54 Kontelj, op. cit., p. 961.

55 Evidence, pp. 72-73.

56 Evidence, p. S558.

- when a person is born in Australia to a parent who is, or in some cases was, a citizen of another country. The person acquires Australian citizenship by birth as well as the parent's other citizenship by descent. Where citizenship by descent is acquired or activated by registration, the registration does not fall within section 17 if effected while the person is a minor (under 18 years of age). Registration of an adult is outside section 17 if it is within the *Gugerli* case principles;

- when a person is born overseas to an Australian citizen parent and acquires Australian citizenship by descent as well as the citizenship of the country in which he/she was born; and

- when an Australian citizen acquires the citizenship of another country automatically by legislation of that country, for example, by marriage.[57]

6.48 Section 23AA of the Citizenship Act provides for the resumption of citizenship where a person has lost it under section 17. This provision applies where:

> . . . a person would have suffered significant hardship or detriment if the person had not acquired the other citizenship or, at the time of acquiring the other citizenship the person did not know that the consequence would be the loss of Australian citizenship.[58]

6.49 Since 1 July 1988, there have been 1 291 registrations of people resuming citizenship under section 23AA.[59]

Previous reviews of dual citizenship

6.50 As noted in the introduction to this chapter, dual citizenship was the subject of a 1976 review by the Joint Committee on Foreign Affairs and Defence, and also was considered in the context of the national consultations on multiculturalism and citizenship conducted in 1982.

57 Evidence, pp. S557-S558.

58 Evidence, p. S558.

59 Evidence, p. S558.

6.51 A major purpose of the 1976 report of the Joint Committee on Foreign Affairs and Defence was to analyse the circumstances of persons who had migrated to Australia from Eastern Europe and the Soviet Union, had taken out Australian citizenship, and were unable to relinquish their former citizenship. Such people were believed to be suffering discrimination.[60]

6.52 In its report, the Joint Committee on Foreign Affairs and Defence noted that the majority of the submissions received from people wishing to have or to retain dual nationality were from British subjects. It also indicated that others who favoured dual nationality were from countries previously associated with the United Kingdom or from Western Europe. The Joint Committee stated that the arguments presented in favour of dual nationality were as follows:

- dual nationals would have the right to obtain a passport from either country. Thus, they would not need a visa to enter Australia, a requirement which was new to British subjects who, prior to 1973, freely could enter or leave Australia;
- procedures for revisiting former homelands for an extended period of time would be simpler;
- better employment opportunities in either country of nationality where one country may apply employment restrictions on non-nationals;
- improved rights to social benefits, to own land or property and to inherit assets from either country;
- the benefit in some cases of conveying similar nationality rights to offspring;
- an advantage to those who feel an equal allegiance both to their country of origin and to Australia;
- it could avoid the situation where an Australian resident, not a British subject, wishing to retain his/her former nationality for family or other reasons is disadvantaged in such ways as paying taxes without having the vote and being unable to be permanently appointed to the Australian Public Service; and
- on the United Nations world stage, Australia would appear less insular than it is currently regarded.[61]

60 Evidence, p. 114.

61 Joint Committee on Foreign Affairs and Defence, op. cit., pp. 2-3.

6.53 In contrast, the Joint Committee on Foreign Affairs and Defence indicated that those who opposed dual nationality tended to be people of European origin who wished to divest themselves of their former nationality for family reasons or to avoid problems when revisiting their former homelands. The Joint Committee reported that it was predominantly those from Czechoslovakia, Hungary, Poland, Yugoslavia, Estonia, Latvia, Lithuania, Italy and Greece who wanted only Australian citizenship. It noted that many were war refugees who fled their former country for political reasons and faced severe obstacles, or outright refusal, when they attempted to relinquish their former nationalities.[62]

6.54 Commenting on the disadvantages of dual nationality, the Joint Committee on Foreign Affairs and Defence stated:

> Many European countries have strong views on the obligations of their citizens and Australian citizens holding a second nationality can find themselves unexpectedly confronted with these obligations when they revisit their former homeland. As dual nationals they can be expected to contribute to the general wealth or gross national product of the country and to fulfil compulsory requirements such as national service. Obligations can also include taxation, social services and various property law obligations. They can be placed at a serious disadvantage when visiting the country of other nationality if, either willingly or not, they should come into conflict with the domestic law of that country. For example, if involved in complex marital-divorce-custody proceedings which may extend over a long period, one may be denied legal exit from the country until the question has been resolved in the courts. In these and other forms of legal proceedings the situation can arise where the dual national concerned is denied access to or the advice of Australian diplomatic representatives.[63]

6.55 The Joint Committee also reported that it received complaints from dual nationals who had adopted Australian nationality as refugees or for political reasons, but who, by virtue of the domestic laws of their former countries, were regarded as nationals of that country as well. One complaint was of intrusion into

62 ibid., p. 3.

63 ibid.

their private lives and harassment by persons claiming to represent their former countries. The Joint Committee stated:

> The Committee finds this yet another one of the complex problems of dual nationality in that it is difficult to draw the line between what the individual may regard as intrusion and the desire of the country of former nationality to have access to, what is under its law, one of its nationals.[64]

6.56 In its conclusions and recommendations, the Joint Committee on Foreign Affairs and Defence stated:

> The Committee supports the long-standing Australian policy—a policy consistent with obligations under the convention concluded at The Hague in 1930—that every person should have one nationality only, but recognises that the holding of dual nationality by some Australian nationals is inevitable while the differences in various domestic nationality laws continue.[65]

6.57 The Joint Committee also recommended that:

- machinery should exist for the receipt and investigation of complaints by dual nationals of harassment or other forms of invasion of privacy by persons claiming to represent their former countries;
- where such complaints are substantiated, action should be taken within Australia or through diplomatic channels, whichever is appropriate; and
- Australia should initiate action within the United Nations Organisation to renew efforts to resolve nationality problems.[66]

6.58 In its 1982 report on the national consultations on multiculturalism and citizenship, DIEA also detailed certain advantages and disadvantages of dual citizenship. DIEA indicated that, during public forums, some speakers advocated

64 ibid.

65 ibid., p. 10.

66 ibid.

initiatives by the Australian Government, in cooperation with other governments, to allow for the holding of multiple citizenships. DIEA noted:

> It was argued that, in a multicultural society such as Australia, it would be appropriate for people to hold more than one citizenship. It was also pointed out that those Australians who were able to retain their original citizenship as well as their acquired Australian citizenship were in a favourable position compared with those who lost their original citizenship when they acquired Australian; others should enjoy the same benefits.[67]

6.59 At the same time, DIEA indicated that the disadvantages of dual citizenship also were stressed at the public forums. DIEA reported:

> The Australian Government was asked to take action to protect the rights of its citizens who were penalised when they visited countries which also claimed them as citizens. One speaker described the disadvantage of holding a second citizenship that he could not relinquish. He regarded himself as Australian only, and did not wish to hold the citizenship of another country, but he could not divest himself of it.[68]

Submissions on dual citizenship

6.60 As noted in the introduction to this chapter, dual citizenship attracted comment in a large number of submissions. While the notion of dual citizenship was criticised in a few submissions, a vast majority favoured the repeal of section 17 of the Citizenship Act.

6.61 Those opposed to dual citizenship argued that it is not possible to owe allegiance to more than one country. As stated in one submission:

> . . . no national identity, loyalty, cohesion, etc. is possible if people possess more than one citizenship.[69]

67 Department of Immigration and Ethnic Affairs, *National Consultations on Multiculturalism and Citizenship*, op. cit., p. 28.

68 ibid.

69 Evidence, p. S129.

6.62 The RSL expressed concern that Australian citizenship could become a 'flag of convenience' for persons who do not have a real commitment to Australia.[70] In another submission, it was argued that dual citizenship does not contribute to the evolution of Australia's own identity.[71]

6.63 Those supporting dual citizenship rejected these arguments. In particular, various ethnic community representatives disputed the suggestion that dual citizenship implied a lack of loyalty. The South Australian Multicultural and Ethnic Affairs Commission stated:

> Most of the opposition to dual citizenship seems based on emotional rather than rational grounds; and is inconsistent in . . . that . . . it tends to question the loyalty of non-English speaking dual citizens, but not the loyalty of English speaking dual citizens or British subjects who have not taken up Australian citizenship.[72]

6.64 In a similar vein, the Ethnic Affairs Commission of New South Wales commented:

> . . . there is a perception amongst some people that anyone who seeks to retain citizenship of another country is not committing himself or herself totally to Australia. There is a perception amongst some that dual citizenship implies disloyalty to Australia. I would submit that that should not be the perception and that is not the case.[73]

6.65 The Ethnic Affairs Commission of New South Wales suggested that if Australia is a mature nation, it should not need to question the loyalty of its citizens who wish to take out dual citizenship. Rather, it should 'feel secure enough and mature enough to say that if you want to have dual citizenship, you can have that'.[74]

6.66 On the issue of loyalty, Dr Fitzsimons commented:

> One government representative recently argued that s. 17 should remain because it is impossible to be loyal to two countries simultaneously. The Government cannot possibly believe this argument, given that it amended the law in 1983 so as not to require our new citizens to renounce former allegiances. The notion that you cannot have loyalties to two countries is as unfortunate as supposing that a child cannot be loyal to both his or her parents. For those whose identities demand such dual loyalties, it is ungenerous of the rest of us to try to prevent it.[75]

70 Evidence, p. 171.

71 Evidence, p. S428.

72 Evidence, p. S477.

73 Evidence, p. 425.

74 Evidence, p. 429.

6.67 It also was argued that the concept of single citizenship is based on outmoded and antiquated views of citizenship. The South Australian Multicultural and Ethnic Affairs Commission stated:

> Dual citizenship is consistent with the wide acceptance of multiculturalism.[76]

6.68 The Ethnic Affairs Commission of New South Wales stated that the Citizenship Act should 'seek to balance the value of Australian citizenship with the legitimate needs of many Australian citizens to retain links with another country'.[77] DFAT suggested that in those common law countries which have moved to dual citizenship, 'it is possible to have dual nationality without interfering with the concept that you serve your country'.[78] Regarding those countries which still have single citizenship, DFAT commented:

> . . . countries that still hold to single nationality recognise that dual nationality is going to happen and they work out ways of accommodating that within their own circumstances.[79]

6.69 Another argument put in submissions was that section 17 discriminates against Australian citizens by birth as compared with persons who become naturalised Australians. It was considered discriminatory that those who are born in Australia are not able to acquire another citizenship without losing their Australian citizenship, while those who become Australian citizens are allowed to retain their existing nationality. Ms Rubenstein, for example commented:

> . . . the anomaly is that some Australian citizens are entitled to dual citizenship and others are not—it depends

75 Evidence, p. S248.

76 Evidence, p. S477.

77 Evidence, p. S403.

78 Evidence, p. 122.

79 Evidence, p. 122.

on the birthplace of the Australian citizen. This offends any notion of equality before the law.[80]

6.70 In other submissions, principally from Australian citizens resident overseas, it was argued that the prohibition on dual citizenship creates disadvantages for Australians living overseas who are not willing to give up their Australian citizenship and who are not able to acquire the nationality of their country of residence without losing their Australian citizenship. In many cases, these Australian citizens moved overseas because they married foreign nationals. The disadvantages cited to the Committee included:

- employment restrictions;
- inability to claim inheritance; and
- the need to apply for periodical reviews of residence permits, usually at a financial cost.

6.71 In many of the submissions received in this regard, the individuals wished to retain their Australian citizenship because they continued to consider themselves to be Australians at first instance, and continued to have an emotional attachment to Australia. In seeking an additional citizenship, they did not wish to sever their links with Australia. Rather, they simply sought to avoid any disadvantage which would arise for them because they were living overseas.

6.72 One Australian citizen married to a Greek citizen and living in Greece commented that if she was able to acquire Greek citizenship while retaining her Australian citizenship, she would not be required to continually renew her temporary residence permit and would be free to work and help support her family.[81] She noted:

> . . . all of my foreign friends here have taken Greek citizenship while being able to retain citizenship of their country of birth whether they are from Britain, New Zealand, America or South Africa.[82]

6.73 Another submission referred to the situation of female Australian citizens married to French nationals and living in France. In spite of being married to French nationals, these Australian citizen women have to apply for periodical renewals of their resident's permit and have to apply for exit/entry visas out of and

80 Evidence, p. S419.

81 Evidence, p. S113.

82 Evidence, p. S120.

into France whenever visiting family in Australia or elsewhere. In addition, on the death of their husbands, they would be treated as foreigners and would be unable to claim their husbands' pensions.[83]

6.74 DFAT noted that, from its experience, Australian citizens who are living overseas and who are not able to take out the citizenship of another country for fear of losing their Australian citizenship can experience problems in relation to property settlements and estates. Commenting on the situation in the United States, for example, DFAT stated:

> . . . there are a lot of cases that have come to our attention of women who were Australian citizens, who went to the United States and who married there, and who decided that they needed to take out American citizenship in order to protect themselves from this death duty circumstance in the event that their husband would die and the property would transfer. They did not do this with any intention of surrendering their loyalty to Australia at all, and in many cases they felt affronted by the need to do that.[84]

6.75 DFAT subsequently provided the Committee with more detailed information to indicate other possible disadvantages for Australians resident overseas who do not acquire the citizenship of the country in which they are resident because of the fear of losing their Australian citizenship. DFAT noted that in certain countries:

- custody laws favour citizens over non-citizens;
- non-citizens are not able to seek public sector employment;
- non-citizens are not able to own property; and
- non-citizens are not able to employ people.[85]

6.76 In proposing either the amendment or repeal of section 17, DFAT noted in particular that the acquisition of another citizenship is often necessary for Australian business people to secure better access to business and employment opportunities overseas. DFAT argued that if Australian citizens need to acquire

83 Evidence, p. S163.

84 Evidence, p. 109.

85 Evidence, pp. S751-S754.

other citizenships in order to facilitate business overseas, then it would be preferable to allow them to do so without forcing them to lose their Australian citizenship. DFAT commented:

> Such loss would seem a high price to pay for work or commerce which may in fact assist Australia.[86]

6.77 The South Australian Multicultural and Ethnic Affairs Commission argued that 'the benefits of dual citizenship are primarily economic'.[87] The Commission suggested that debate on dual citizenship was being exploited by 'emotional and questionable issues of loyalty and allegiance'.[88] The Commission agreed with DFAT that dual citizenship would assist Australians to invest, work and obtain benefits normally not available to non-citizens in overseas countries.[89] It stated:

> As Australia and South Australia seek to develop a more export oriented economy, dual citizens can be the spearhead of the export drive.[90]

6.78 In a contrary submission, it was suggested that the acquisition of citizenship purely for economic reasons undermines the principles of commitment and emotional bonding which underpins the meaning of citizenship. It was argued that a 'system of dual citizenship is not only detrimental to the evolution of an Australian identity but capable of being misused for clandestine economic activities by unscrupulous persons'.[91]

6.79 DIEA also expressed reservations about amending citizenship policy purely for economic reasons. However, DIEA acknowledged that a person could have a commitment to more than one country. DIEA's Deputy Secretary commented:

> I have far less argument with the case that says an Australian citizen moves to another country, feels a commitment to that country and wishes to take citizenship of that country out but maintains a commitment to Australia.[92]

86 Evidence, p. S354.

87 Evidence, p. S468.

88 Evidence, p. S469.

89 Evidence, p. S468.

90 Evidence, p. S468.

91 Evidence, p. S428.

92 Evidence, p. 75.

6.80 During the inquiry, the Committee received little evidence about the practical disadvantages of dual citizenship today. As noted at paragraphs 6.54, 6.55 and 6.59, previous reports examined the problems which can arise as a result of dual citizenship. In those reports, it was noted that some persons in Australia, including Australian citizens, could experience difficulties or be precluded from divesting themselves of their former citizenship. In addition, problems arose if dual citizens visited their other country of citizenship.

6.81 In relation to the problems associated with divesting a former citizenship, the Committee notes that this is not a matter which can be remedied by Australian legislation. The difficulty arises because of the citizenship laws of other countries. This was recognised in the 1976 report, referred to at paragraph 6.57, in which the Joint Committee on Foreign Affairs and Defence recommended resolution of such problems through diplomatic channels.

6.82 As for the difficulties experienced by dual citizens visiting their countries of other citizenship, previous reports have noted that such persons were required to fulfil certain obligations according to the domestic laws of that country, including, for example, liability for military service and particular requirements for departure from that country. Such persons also might not be able to access diplomatic protection from Australian posts overseas. These potential difficulties are referred to in the booklet 'Hints for Australian Travellers 1994' produced by DFAT. In that booklet, DFAT warns:

> If you are regarded as a citizen of another country and are treated as a citizen of that country according to its laws, the Australian Consul may not be able to help you while you are in that country.[93]

6.83 During the course of this inquiry, the Committee did not receive any submissions from dual citizens who either had experienced difficulties in divesting themselves of a former citizenship or had encountered problems when returning to their other country of citizenship. One reason for this may be that, for those persons who expressed concerns during the 1976 review, the problems are not as evident following changes in the political situation in their countries of origin. This would apply particularly to those persons who came to Australia from countries in eastern Europe. Another reason may be that there have been changes in the law and practice on dual citizenship in other countries.

93 Department of Foreign Affairs and Trade, 'Hints for Australian Travellers 1994', p. 23.

6.84 In this regard, it is relevant to note that in the 1976 report on dual nationality by the Joint Committee on Foreign Affairs and Defence, it was stated that persons originating from Italy were among those who wanted only Australian citizenship.[94] This Committee, by contrast, received a copy of petitions signed by 807 members of the Italian-Australian community of Western Australia and 1 196 members of the Italian-Australian community of South Australia seeking amendments to section 17 of the Citizenship Act so that they could become dual citizens by reacquiring their Italian citizenship without ceasing to be Australian citizens.[95]

Constitutional issues

6.85 In considering whether Australian law should be changed to remove the restriction on dual citizenship, it is important to note that the Constitution places certain limitations on the ability of dual nationals to participate fully in Australian society. Section 44(i) of the Constitution provides for the disqualification of a person from being chosen or of sitting as a Senator or a Member of the House of Representatives if the person:

> Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power.[96]

6.86 The operation of section 44(i) was considered by the High Court in the case of *Sykes v Cleary* in 1992.[97] In that case, the High Court held that two candidates in the Wills by-election of 1992 were ineligible to stand for election to the House of Representatives because they both held citizenship of another country. A majority of the judges considered the policy objectives underlining section 44(i). The joint judgement repeated the intent of the Senate Standing Committee on Constitutional and Legal Affairs, as noted in its 1981 report on the constitutional qualifications of members of Parliament, that ' members of Parliament did not have a split allegiance and were not, as far as possible, subject to any improper influence

94 Joint Committee on Foreign Affairs and Defence, op. cit., p. 3.

95 Exhibits 27 and 30.

96 The Constitution, Part IV, section 44(i).

97 See S. O'Brien, 'Dual citizenship, foreign allegiance and s.44(i) of the Australian Constitution', Background papers (Law and Government Group), Parliamentary Research Service, December 1992.

by foreign governments'.[98] Brennan J likewise regarded the section as ensuring that no obedience was owed to foreign powers by candidates and parliamentarians, and that there was no risk of residual duties under foreign law 'as a threatened impediment to the giving of unqualified allegiance to Australia'.[99]

6.87 The crucial issue implicit in the judgements was how to reconcile the protection of parliamentary sovereignty with the reality that a significant proportion of potential parliamentary candidates hold both Australian and foreign citizenship. The compromise reached was to require candidates to take 'all reasonable steps under foreign law' to renounce and divest themselves of foreign nationality and allegiance. The majority of the High Court identified several factors which could indicate whether such reasonable steps had been taken, including:

> The situation of the individual, the requirements of the foreign law and the extent of the connection between the individual and the foreign state to which he or she is alleged to be a subject or citizen.[100]

6.88 Various submissions suggested that section 44(i) should be changed by referendum.[101] It was suggested that section 44(i) was 'inconsistent with the *Universal Declaration on Human Rights* which provides for a right to take part in government either directly or by elected representatives' and was inappropriate given the existing large numbers of dual citizens in Australia.[102]

Conclusions

6.89 The debate on dual citizenship during this inquiry encompassed a number of important themes germane to the general concept of citizenship, including issues of allegiance and commitment, as well as questions of rights and obligations. As part of that debate, and in considering these themes, the Committee focused on whether Australia's existing approach to dual citizenship best serves the needs of contemporary Australian society.

98 (1992) 109 ALR 577, per Mason CJ, Toohey and McHugh JJ, at 591 and see Senate Standing Committee on Constitutional and Legal Affairs, *The Constitutional Qualifications of Members of Parliament*, AGPS, Canberra, 1981, p. 10.

99 (1992) 109 ALR 577, at 596.

100 ibid, p. 38.

101 Evidence, p. S422 and p. S613.

102 Evidence, p. S613.

6.90 The overwhelming view in submissions was that Australia's insistence on single citizenship for those born in Australia is outmoded and discriminatory. In a world of increasing mobility, it was considered anachronistic that one section of the Australian population should be disadvantaged by a prohibition on accessing more than one citizenship.

6.91 In keeping with Australia's non-discriminatory and inclusive approach to citizenship, the Committee considers that it is timely to allow dual citizenship for all Australians by repealing section 17 of the Citizenship Act. The existing legislation has long tolerated dual citizenship for those who are naturalised Australians. It is only fair and equitable that the opportunity to acquire the citizenship of another country should be extended to Australian citizens at birth.

6.92 The Committee rejects the argument that one cannot owe allegiance or commitment to more than one country. It is estimated that three million Australians currently possess dual citizenship. There is no evidence to suggest that these persons are disloyal or lack a commitment to Australia simply because they have chosen not to relinquish their former ties and heritage.

6.93 Tolerance of diversity is a cornerstone of multicultural Australian society. The ultimate expression of such tolerance would be the recognition that while Australian citizens owe their primary allegiance to Australia, they also can show a commitment to their country of origin or the country in which they are resident.

6.94 In a number of submissions, it was suggested that dual citizenship would enhance employment and business opportunities overseas for Australians, and would allow Australian citizens resident overseas to overcome various disadvantages stemming from the laws of different countries. The Committee agrees that economic benefit and personal gain should not be the principal factors influencing citizenship policy. However, it would be inappropriate to ignore international trends in citizenship law, including the growing international trend towards dual citizenship, and their implications for issues such as trade and travel. Australia cannot afford to be isolated from such developments.

6.95 It also is evident that the existing system of revoking Australian citizenship places an administrative burden on Australian embassies and consulates around the world. Again, while this was not a primary factor in the Committee's deliberations, it was a relevant consideration which, the Committee notes, also featured in Canada's decision to accept dual citizenship.

6.96 The Committee, of course, accepts that, apart from the benefits, dual citizenship carries with it certain potential difficulties for Australians travelling overseas. There may be limitations on the diplomatic protection Australia is able to afford to its citizens in those countries where the Australian citizens hold dual nationality. In addition, Australians travelling to a country where they hold dual nationality may be required to undertake national service. These potential difficulties already exist for the three million Australians who hold dual nationality

by virtue of not having relinquished their former nationality. The Committee was not given any evidence to indicate that these problems are of any great magnitude. In the Committee's view, the best solution to such potential difficulties is to ensure that Australian travellers are able to access adequate information on the problems which can arise for dual citizens overseas. Such information is available through publications such as the DFAT booklet 'Hints for Australian Travellers', which already contains a section on dual nationality.

6.97 The Committee also notes the restrictions within Australia's Constitution which prevent dual citizens from holding public office. In this regard, Committee members consider that there is merit in the argument canvassed by the framers of the Constitution and by the High Court in the case of *Sykes v Cleary*, that Australia's elected representatives should owe undivided loyalty to Australia, and have a disposition to maintain this requirement. Any amendment to section 44 can occur only through referendum. Resolution of this particular issue is beyond the terms of reference for this inquiry.

Recommendations

6.98 **The Committee recommends that:**

55. section 17 of the *Australian Citizenship Act 1948* be repealed, thereby allowing Australian citizens to acquire dual citizenship; and

56. former Australian citizens who have lost Australian citizenship under section 17 of the *Australian Citizenship Act 1948* have the unqualified right to apply for the resumption of their Australian citizenship.

SENATOR JIM McKIERNAN
CHAIRMAN

SEPTEMBER 1994

BIBLIOGRAPHY

Aristotle, (ed. E. Barker), *Politics*, Clarendon Press, 1946.

Auditor-General, Audit Report No. 35, 1993-94, *Efficiency Audit, The Compliance Function, Department of Immigration and Ethnic Affairs*, Australian National Audit Office, AGPS, Canberra, 1994.

Barbalet, J.M., *Citizenship, Rights, Struggle and Class Inequality*, University of Minnesota Press, Minneapolis, 1988.

Brazil, P., 'Australian Nationality and Immigration', in Ryan, K.W., (ed.), *International Law in Australia*, (2nd edition), The Law Book Company Limited, Sydney, 1984.

Bureau of Immigration and Population Research, *Immigration Update, December Quarter 1993*, AGPS, Canberra, 1994.

Burnett, R., et al, *Australian Immigration Law*, Butterworths Service, vols. 1 and 2, New South Wales, 1994.

Commission on Citizenship, (United Kingdom), *Encouraging Citizenship*, HMSO, London, 1990.

Committee to Advise on Australia's Immigration Policies, *Immigration, A Commitment to Australia*, AGPS, Canberra, 1988.

Department of Immigration and Ethnic Affairs, *Annual Report 1992-1993*, AGPS, Canberra, 1993.

Department of Immigration and Ethnic Affairs, *Australian Citizenship Ceremonies, A Handbook for Local Government Authorities*, AGPS, Canberra, 1994.

Department of Immigration and Ethnic Affairs, *National Consultations on Multiculturalism and Citizenship*, AGPS, Canberra, August 1982.

Department of the Prime Minister and Cabinet, Office of Multicultural Affairs, *National Agenda for a Multicultural Australia . . . Sharing Our Future*, AGPS, Canberra, July 1989.

Dummett, A. & Niessen, J., *Immigration and Citizenship in the European Union*, Churches Commission for Migrants in Europe, Briefing Paper No. 14, 1993.

Dummett, A. & Nicol, A., *Subjects, Citizens, Aliens and Others, Nationality and Immigration Law*, Weidenfeld and Nicolson, London, 1990.

Engle, S.H. & Ochoa, A.S., *Education for Democratic Citizenship*, Teachers College, Columbia University, New York and London, 1988.

Evans, M.D.R., 'Choosing to Be a Citizen: The Time-Path of Citizenship in Australia', in *International Migration Review*, vol. 22(2), Summer, 1988.

Fogelman, K., (ed.), *Citizenship in Schools*, David Fulton Publishers, London, 1988.

Goodman, F.S., 'Protecting Citizenship: Strengthening the Intent Requirement in Expatriation Proceedings', *George Washington Law Review*, vol. 56, no. 2, January 1988.

Guimezanes, N., 'What Laws for Naturalisation', *OECD Observer*, no. 188, June/July 1994.

Heater, D., *Citizenship: The Civic Ideal in World History, Politics and Education*, Longman, London and New York, 1990.

Horne, D., *Teaching Young Australians to be Australian Citizens, A 2001 Centennial National Priority*, An 'Ideas for Australia' program discussion paper, National Centre for Australian Studies, Monash University, Glen Waverley, 1994.

Howard, C., *Australia's Constitution, What it Means and How it Works*, (revised edition), Penguin Books, Victoria, 1985.

Human Rights and Equal Opportunity Commission, *Racist Violence, Report of the National Inquiry into Racist Violence in Australia*, AGPS, Canberra, 1991.

Joint Committee on Foreign Affairs and Defence, *Dual Nationality*, The Commonwealth Government Printer, Canberra, 1977.

Joint Standing Committee on Migration Regulations, *Change of Status On Grounds of Spouse/De Facto Relationships*, AGPS, Canberra, May 1991.

Jennings, R. & Watts, A., *Oppenheim's International Law*, (9th edition), Longman, United Kingdom, 1992.

Ko Swan Sik (ed.), *Nationality and International Law in Asian Perspective*, Martinus Nijhoff Publishers, The Netherlands, 1990.

Kontelj, S., 'Consequences of Acquiring Dual Citizenship', *Law Institute Journal*, vol. 67(10), October 1993.

Macdonald, I. A. & Blake, N. J., *Macdonald's Immigration Law and Practice in the United Kingdom*, (3rd edition), Butterworths, London, 1991.

McMillan, J. & Evans, G. & Storey, H., *Australia's Constitution, Time for a Change*, Law Foundation of NSW and George Allen & Unwin, Sydney, 1983.

Marshall, T. H. & Bottomore, T., *Citizenship and Social Class*, Pluto Press, London, 1992.

Marshall, T. H., *Sociology at the Crossroads and Other Essays*, Heinemann, London, 1963.

O'Brien, S., 'Dual citizenship, foreign allegiance and s.44(i) of the Australian Constitution', Background Papers (Law and Government Group), Parliamentary Research Service, December 1992.

Pryles, M., *Australian Citizenship Law*, The Law Book Company, Sydney, 1981.

Riordan, J.A., *The Laws of Australia*, The Law Book Company, Melbourne, 1993.

Republic Advisory Committee, *An Australia Republic, The Options - An Overview*, AGPS, Canberra, 1993.

Rode, Z., 'Dual Nationals and the Doctrine of Dominant Nationality', *The American Journal of International Law*, vol. 53, 1959.

Sawer, G., *The Australian Constitution*, AGPS, Canberra, 1975.

Senate Standing Committee on Constitutional and Legal Affairs, *The Constitutional Qualifications of Members of Parliament*, AGPS, Canberra, 1981.

Senate Standing Committee on Employment, Education and Training, *Education for Active Citizenship in Australian Schools and Youth Organisations*, AGPS, Canberra, 1989.

Senate Standing Committee on Employment, Education and Training, *Active Citizenship Revisited*, AGPS, Canberra, 1991.

Stephen, Rt Hon Sir Ninian, *Alfred Deakin Lecture*, University of Melbourne, 26 August 1993.

The Cyclopedic Law Dictionary, (3rd edition), Callaghan & Company, Chicago, 1940.

Weis, P., *Nationality and Statelessness in International Law*, Sijthoff & Noordhoff, The Netherlands, 1979.

Appendix One

SUBMISSIONS

No.	Name of person/organisation
1	Confidential
2	Mr Dennis Thomas
3	Confidential
4	Superannuated Commonwealth Officers' Association
5	Confidential
6	Mr Fritz Schroeder
7	W Eagleton
8	Mr Leon Lack
9	Australian Electoral Commission
10	Department of Education (Queensland)
11	Bureau of Ethnic Affairs (Queensland)
12	Name and address not for publication
13	Australians Against Further Immigration
14	Confidential
15	Mr H.J. Grant
16	United Nations High Commissioner For Refugees
17	Shire of Stawell
18	Mrs Christiane Dodd
19	Miss Sally Bristoe

No.	Name of person/organisation
20	Mr Graeme Campbell, MHR
21	Hon Lou Lieberman, MHR
22	Dr W.M. Lonsdale
23	Mrs Joline Koutroulis
24	C. Petersforde
25	Mr L.R. Burch
26	Name and address not for publication
27	Mr Keith Flack
28	Mr David Lewis
29	Mr P. Smalpage (address not for publication)
30	Mr Peter Papaemmanouil
31	Mr Hugh Borrowman
32	Mr H.R. Hassett
33	Ms Judith Anderson
34	Independent Support for Ex-Residents & Victims
35	Mr and Mrs J. Macaulay
36	Mr Frank Pearson
37	Mr and Mrs Devine
38	Mrs Doreen Spalding
39	Ms Margaret Hovens
40	Hon Ian Medcalf
41	Child Migrants Trust
42	Mrs G. Hawksworth

No.	Name of person/organisation
43	Ms Ann-Mari Jordens
44	Mr W.B. Webster
45	Mr and Mrs H. Scholz
46	Independent Support for Ex-Residents & Victims
47	The Returned & Services League of Australia Limited
48	O. Hargrave
49	B.M. Baylis
50	Confidential
51	Dr Constance Lever-Tracy
52	Mr and Mrs R.W. Nation, Mrs P.J. Down & Mr and Mrs K. Barton
53	Dr Robin B Fitzsimons
54	Ms Rosalind Halvorsen
55	P.M. Inman
56	Mr Garry Nehl, MP
57	P M Inman
58	Confidential
59	Confidential
60	Confidential
61	Confidential
62	Confidential
63	Confidential
64	Confidential
65	Mr Marshall Wilson

No.	Name of person/organisation
66	Mrs A.B. Chahovski
67	F.W. Smith
68	Mrs Mary-Ellen Field
69	Ethnic Communities Council of Queensland Limited
70	Rockhampton City Council
71	Ms Robyn Martin
72	Department of Foreign Affairs and Trade
73	Victorian Immigration Advice and Rights Centre Inc.
74	Immigration Advice and Rights Centre
75	Dr Rupert Goodman
76	Mrs E. MacPherson
77	Mr Paul O'Dwyer
78	Ethnic Affairs Commission of New South Wales
79	Confidential
80	Ethnic Minorities Action Group
81	Kim Rubenstein
82	Dr Kunwar Raj Singh
83	Attorney-General's Department
84	Mr and Mrs F. McLennan
85	Ms I. Brown
86	Mr P.F. Moffitt
87	South Australian Multicultural and Ethnic Affairs Commission
88	Commonwealth Ombudsman

No.	Name of person/organisation
89	United Kingdom Settlers Association
90	Ethnic Communities Council of SA Inc.
91	Department of Immigration and Ethnic Affairs
92	Confidential
93	Mr Ian Bishop Secretary Albany Branch ALP
94	J B Bresnahan
95	Confidential
96	Administrative Law Section Law Institute of Victoria
97	Government of Western Australian
98	Mr J. Russell
99	Victorian Immigration Advice & Rights Centre Inc. - supplementary submission
100	Constitutional Centenary Foundation Inc
101	Dr James Jupp
102	Mrs J.S. Elder
103	Department of Employment, Education & Training
104	Mr J.B. Smith, Mayor, Coffs Harbour City Council & Mr A. Fraser, MP
105	Confidential
106	Mrs R. Thompson
107	Mrs N. Kogitz
108	Mrs Caroline Griffith

No.	Name of person/organisation
109	Name and address not for publication
110	Susanne Howe
111	Victorian Immigration Advice & Rights Centre Inc. - supplementary submission
112	Lawrence Peter Humphreys
113	Name and address not for publication
114	J.A. Paterson
115	Professor Iain Johnstone
116	Name and address not for publication
117	Name and address not for publication
118	Mr Alan Williams
119	Dr Robin B. Fitzsimons - supplementary submission
120	Mr Douglas Cohen
121	Mr Jonathan Fulcher
122	South Australian Minister For Education & Children's Services
123	Mr Gavin Imhof
124	Department of Foreign Affairs and Trade - supplementary submission
126	Melville Environment Group
127	Australian Electoral Commission - supplementary submission
128	Queensland Minister for Education
129	Name and address not for publication

No.	Name of person/organisation
130	Attorney-General's Department - supplementary submission
131	Mr William Russell
132	Mr Byron B. Ramsey
133	Parliamentary Education Office
134	Mr A.K. Toffar
135	Ms Ann-Mari Jordens - supplementary submission
136	Department of Immigration and Ethnic Affairs - supplementary submission
137	Australian Electoral Commission - supplementary submission
138	Department of Immigration and Ethnic Affairs - supplementary submission
139	Department of Immigration and Ethnic Afffairs - supplementary submission

Appendix Two

EXHIBITS

1. Rt Hon Sir Ninian Stephen, 'Issues in Citizenship', Address on the occasion of the Deakin lecture, University of Melbourne, 26 August 1993.

2. Ann-Mari Jordens 'Redefining 'Australian Citizen' 1945-75', Administration, Compliance and Governability Program, Research School of Social Sciences, Australian National University, Working Paper No. 8, January 1993.

3. Department of Immigration and Ethnic Affairs, *Australian Citizenship Ceremonies, A Handbook For Local Government Authorities*, AGPS, Canberra, January 1994.

4. Department of Immigration and Ethnic Affairs, Australian citizenship pledge certificate.

5. Department of Immigration and Ethnic Affairs, Citizenship poster.

6. Department of Immigration and Ethnic Affairs, Application for registration of Australian citizenship by descent.

7. Commonwealth of Australia, Extract from register of citizenship by descent.

8. Department of Foreign Affairs and Trade, 'Hints for Australian Travellers 1994'.

9. Standing Senate Committee on Social Affairs, Science and Technology, Canada, *Canadian Citizenship: Sharing the responsibility*, May 1993.

10. Constitutional Centenary Foundation Inc., 'Representing The People, The Role Of Parliament in Australian Democracy, A Discussion Paper', revised edition 1994.

11. Constitutional Centenary Foundation Inc., *Constitutional Centenary*, Newsletter, vol. 2, no. 3, July 1993; vol. 2, no. 4, October 1993, vol. 2, no. 5, December 1993; vol. 3, no. 1, March 1994.

12. Constitutional Centenary Foundation Inc., *First Annual Report 1992.*

13. Standing Committee on Citizenship and Immigration, Canada, *A Citizenship Strategy*, 2 May 1994.

14. Multiculturalism and Citizenship Canada, *The Canadian Citizen*, Minister of Supply and Services, Canada, 1985.

15. Registrar of Canadian Citizenship, 'Citizenship '87, Proud to be Canadian', Discussion Paper, June 1987.

16. Multiculturalism and Citizenship Canada, Citizenship Registration and Promotion Branch, Corporate Plan, April 1992.

17. Constitutional Centenary Foundation Inc., Material distributed at a pilot youth citizenship ceremony held in Woodville, South Australia, August 1983:

    . invitation;

    . program;

    . booklet entitled 'Becoming An Active Citizen'; and

    . certificate.

18. Bureau of Immigration Research, *Australian Citizenship, Statistical Report No. 1*, AGPS, Canberra, 1990.

19. Kim Rubenstein, 'Constitutional issues associated with integration: the question of citizenship', *BIPR Bulletin*, Bureau of Immigration and Population Research, Issue No. 11, April 1994.

20. Andrew S Hughes, 'Understanding Citizenship: A Delphi Study', The University of New Brunswick, November 1992.

21. Eva Kmiecic, 'A Look at Canadian Citizenship Legislation in 1990', Discussion Paper, May 1990.

22. Department of the Secretary of State of Canada, Pamphlet entitled 'Dual Citizenship', Minister of Supply and Services Canada, 1987.

23. Multiculturalism and Citizenship Canada, Pamphlets entitled 'How To Become A Canadian Citizen' and 'How To Prove You Are A Canadian Citizen', Minister of Supply and Services Canada, 1989.

24. Multiculturalism and Citizenship Canada, Resource kit entitled 'Canadian Citizenship Take It To Heart', issued for National Citizenship Week, 17 to 23 April 1994.

25. Citizenship and Immigration Canada, Pamphlet entitled 'The Citation for Citizenship'.

26. Statement by Councillor Peter Woods, President of the Australian Local Government Association and President of the Local Government Association of New South Wales.

27. Petition on dual citizenship signed by 807 members of the Italian-Australian community of Western Australia, 19 August 1994.

28. Ann-Mari Jordens, Extract from *Redefining Australians: Alien Integration, Citizenship and National Identity 1945-75*, unpublished.

29. Standing Committee on Citizenship and Immigration, Canada, *Canadian Citizenship, A sense of belonging*, June 1994.

30. Petition on dual citizenship signed by 1 196 members of the Italian-Australian community of South Australia, 7 September 1994.

31. Bureau of Immigration and Population Research, Citizenship statistics.

32. Transcript of meeting between the Committee and Mr Tom Ryan, Counsellor Immigration, Canadian High Commission, Canberra, Ms Eva Kmiecic, former Registrar of Canadian Citizenship, Mr Willem de Bruin, Attache, Consular and Administrative Affairs, Royal Netherlands Embassy, Canberra, and Mr Willem van Arnhem, Division Head, Ministry of Foreign Affairs of the Netherlands.

Appendix Three

WITNESSES AT PUBLIC HEARINGS

Witnesses/Organisation	Date(s) of appearance
Individuals	
Dr Robin Fitzsimons	15-06-94
Ms Ann-Mari Jordens	14-06-94
Ms Kim Rubenstein	24-05-94
Attorney-General's Department	
Mr Henry Burmester Acting Chief General Counsel	14-06-94
Ms Anna Funder Counsel	14-06-94
Ms Joan Sheedy Senior Government Counsel	14-06-94
Australian Electoral Commission	
Dr Robin Bell Deputy Electoral Commissioner	14-06-94
Ms Anthea Dempster Acting Director of Education	14-06-94
Mr Andrew Moyes Director of Research	14-06-94
Mr Tim Pickering Director of Enrolment	14-06-94
Mr Benjamin Reilly Research Officer	14-06-94

Australians Against Further Immigration

Mrs Robyn Spencer Secretary	24-05-94

Bureau of Immigration and Population Research

Mr Lyle Baker Statistics Section	14-06-94
Dr Trevor Batrouney Acting Assistant Director	14-06-94
Mr Andrew Struik Deputy Director	14-06-94

Child Migrants Trust

Mrs Angela Moran Client	24-05-94
Mr Colyn Pietzsch Australian Representative	24-05-94

Commonwealth and Defence Force Ombudsman

Ms Susan Matthews Director of Investigations	14-06-94
Ms Susan Pidgeon Assistant Ombudsman	14-06-94

Constitutional Centenary Foundation Inc.

Mr Denis Tracey Executive Director	24-05-94

Department of Foreign Affairs and Trade

Mr Christopher Lamb Legal Adviser B	28-04-94
Miss Margaret McGovern Principal Adviser	28-04-94
Mr David Rutter Assistant Secretary	28-04-94
Dr Susan Thomson Acting Director	28-04-94

Department of Immigration and Ethnic Affairs

Mrs Mary-Anne Ellis Acting Assistant Secretary	27-04-94
Mr Peter Hughes Assistant Sector	27-04-94
Mr Andrew Metcalfe Assistant Secretary	27-04-94
Mr Mark Sullivan Acting Secretary	27-04-94
Mr David Wheen First Assistant Secretary	27-04-94
Mr Paul Windsor Director	27-04-94

Ethnic Affairs Commission of New South Wales

Mr John Brennan Acting Director	15-06-94
Mr Stepan Kerkyasharian Chairman	15-06-94

Immigration Advice and Rights Centre

Mr Peter Blair Solicitor/Caseworker	15-06-94
Ms Christine Gibson Coordinator/Policy Officer	15-06-94

Administrative Law Section
Law Institute of Victoria

Mr Erskine Rodan Member	24-05-94
Mr David Stratton Member	

Returned and Services League of Australia Limited

Mr Frederick Cullen Member	24-05-94
Mr Colwyn Williams Member	24-05-94

United Kingdom Settlers Association

Mr Alan Bouch President	24-05-94
Mr Bruce McElholum Member	24-05-94

Victorian Immigration Advice and Rights Centre Inc.

Mr Matthew Beckmann Solicitor and Immigration Adviser	24-05-94
Mr Seth Richardson Solicitor	24-05-94

Appendix Four

CITIZENSHIP: INTERNATIONAL LAW AND PRACTICE

A REPORT ON OVERSEAS CITIZENSHIP PRACTICES

EXECUTIVE SUMMARY

By

Rosemary Van Der Meer

Student Intern

Australian National University

Canberra

June 1994

Citizenship law concerns every person in the world. Nationality dictates a persons rights to live, work and vote in a country and their right to travel out of that country and return without interference. Without citizenship some of these rights are not freely available. Also, citizenship law must change to meet the needs of a countries citizens. This report looked at certain aspects of citizenship law around the world. These aspects were the qualifications for citizenship at birth, the acquisition and loss of citizenship, the effect of adoption on citizenship, citizenship through birth abroad and the possession of multiple nationalities. Amongst these aspects there are some varying requirements. All of the countries studied in this report have their own citizenship law. Some of these laws have been changed over time while others have remained the same since the early part of this century.

Citizenship at Birth

Within the aspect of citizenship acquired at birth there are several different ways of gaining citizenship. The two main distinctions are *jus sanguinis* and *jus soli*. *Jus sanguinis* is citizenship by descent while *jus soli* is citizenship by territory. Most of the countries studied use the principle of citizenship by descent. The only countries in the report to use citizenship by territory are the United States of America and the Republic of India. In these two countries any child born within their territory, and this includes ships and aircraft registered in these countries, becomes a citizen of the country regardless of the citizenship of the parents or the length of time they have remained in the country. The only exceptions to this are children born of diplomatic officials or their staff from other countries.

The rest of the countries in the report use citizenship by descent as their principle of acquiring citizenship at birth. However, there are differences within these countries also. In the United Kingdom, Canada, Japan, Malaysia, Netherlands and France the citizenship can be claimed through either the father or the mother with no preference to either. A child can gain citizenship through their mother or they can claim through their father.

Within China, Korea and Indonesia, citizenship is acquired through the father as preference. Citizenship is only claimed through the mother if the father is unknown or stateless. The final kind of acquisition through parents is in the countries Norway, Sweden and Finland. In these countries citizenship at birth is claimed through the mother. Citizenship through the father is only claimed if the father is married to the child's mother at the time of birth.

Within all these countries, foundlings are given citizenship automatically until such times as their true nationality can be established.

Citizenship by Birth Abroad

Within the area of gaining citizenship through parents when the birth occurs abroad, all countries have citizenship by descent. However there are many differences to the acquisition in which parent it is claimed through and whether the child must be registered or not. The countries China, Korea, Indonesia, the

Netherlands and France only require that one of the parents be a citizen for the child to acquire citizenship abroad. Canada, Norway, Sweden and Finland all allow citizenship to be gained through either parent but the child will lose the citizenship at a particular age, Canada at twenty-eight the rest at twenty-two, unless an application to retain the citizenship is made. Britain allows the citizenship to be carried through either parent as long as it is not a parent by descent also.

With Malaysia and India, citizenship can be gained by descent through the father only and the births have to be registered at a Consulate, India within a year of the child's birth. A child can gain citizenship by descent from either parent in Japan, however, if the child acquires another nationality at birth also, the parents must indicate their desire to retain Japanese nationality within three months of the child's birth. Lastly, the United States allows citizenship by descent through either parent but a Consular Report of Birth Abroad must be filled out. A copy of this report can be seen in Appendix A.

Citizenship by Adoption

Foreign children adopted by citizens of Britain, China, India, Indonesia, Sweden and the Netherlands shall acquire citizenship of the country automatically with the finalisation of the adoption agreement. However, in Indonesia the adopted child must be less than five years of age.

Foreign children adopted in Malaysia, Finland and France by citizens of those countries acquire citizenship by the submission of a declaration.

In Canada, the United States, Japan, Korea and Norway, a foreign child adopted by citizens of these countries must go through the normal naturalisation procedure in order to gain citizenship however, the requirements are relaxed some. Norway, Canada and the United States have no residence period requirement provided the child lives in the country. Japan has a residence requirement of one year rather than five for normal applications.

Naturalisation

Generally, two main requirements need to be met for naturalisation. These are length of residence and language. With regard to residence requirement, the general length of time an applicant needs to be resident in a country is five years. The only exceptions in the report to this are Canada, Malaysia and Norway. Canada has a residence requirement of approximately three years, Malaysia's residence requirement is ten years and Norway's residence requirement is seven years.

In the area of language the general principle for knowledge of a country's language is a reasonable level of sufficiency. This usually involves an oral test, but may also include a small written test. The United States is one of these, as the requirement is to be able to read, write and speak the English language. Japan, China, Korea, Norway, Sweden and Finland have no language requirement listed in their naturalisation laws. It is likely the applicant must have a reasonable knowledge.

Loss of Nationality

There are two main ways of losing the citizenship and these are acquisition of a foreign nationality and renunciation. All the countries examined in this report allow their citizens to renounce their nationality on the single proviso that they are not left stateless as a result of the renunciation or that they will acquire another nationality within a certain length of time.

Canada, the United States, the United Kingdom, China and France do not have an automatic loss of citizenship when their citizens acquire a foreign nationality. All other countries have an automatic loss of nationality if their citizens acquire a foreign nationality.

Loss of citizenship can also occur when a child's parents lose their citizenship. Many of the countries provide that when a father or mother loses their nationality the children under the age of eighteen who are unmarried also lose their nationality provided they do not become stateless because of this. Countries who allow loss of citizenship through changes in family status are China, Korea, India, Indonesia, Norway, Sweden, Finland and the Netherlands. All other countries studied in the report do not deprive children of their nationality through a change in the family status.

Dual Nationality

Dual nationality is an issue being considered by a number of countries in these times. Many countries including Australia are considering whether to allow dual nationality.

All countries have dual nationality to some extent and the main reasons are through children acquiring two nationalities at birth and through naturalised citizens who have no means to renounce their foreign nationality on acquisition of a new nationality. For example, Greek nationals are unable to renounce their Greek nationality.

Countries in this report which allow dual nationality are Canada, Britain, France and the United States, though in the United States the decision was made in a Supreme Court ruling. Other countries not studied that also allow dual nationality are New Zealand, Italy, Eire, Greece and Turkey.

Germany and China have partial dual nationality. China allows dual nationality for its citizens by birth, but foreign citizens who apply for naturalisation must renounce their original nationality first.

Countries that do not allow dual nationality are Malaysia, Korea, the Netherlands, Pakistan, Singapore, Austria, India, Japan, Indonesia, Norway, Sweden and Finland. These countries have automatic loss of citizenship for nationals who acquire a foreign nationality and people applying for citizenship must renounce their original nationality in order to gain the new nationality. These countries do have some cases

of dual nationality through the two cases mentioned above. Dual citizenship is also allowed where a person gains a foreign nationality involuntarily for example through marriage to a foreign citizen.

At this point in time the Netherlands does not allow dual nationality. However, their Parliament is considering a Bill which will allow dual nationality for naturalised citizens and citizens by birth who acquire a foreign nationality. The reasons for this change is to encourage foreign citizens living permanently in the Netherlands to acquire Dutch nationality and also to help those citizens of the Netherlands who live overseas but have not acquired the citizenship of the country they reside in as they do not wish to lose their Dutch nationality.

Canada's reasons for allowing dual nationality when they changed their citizenship laws in 1977, was to allow equality between citizens at birth and naturalised citizens. At the time naturalised citizens were allowed to hold dual nationality while citizens at birth automatically lost their Canadian nationality on acquisition of a foreign nationality. By allowing dual nationality for all citizens they removed this inequality. Another factor for allowing dual nationality was administration. It was found to be very difficult to keep track of who had attained a foreign citizenship and who was just living permanently abroad.

Finally it is worth noting that even though more and more countries are grouping together, for example the European Union and the newly formed Asian Pacific Economic Co-operation, citizenship is still very much a State matter. Within the European Union once a citizen you can live within any one of the Member States but to gain citizenship of one of these countries you must go through a particular country's naturalisation procedures. A single citizenship Act for the Union is far in the future.

As this report shows, there is a wide divergence in the law and practice of citizenship of the countries researched. Factors that influence this are the type of country, is it a migration country? The citizens which live in these countries, the history of the country and its ties with other countries. All these factors influence the way in which citizenship is perceived in these countries and the path it will take in the future.

OMB NO. 1405-0011
EXPIRES: 9-30-88
Estimated Burden - 30 Minutes

U.S. DEPARTMENT OF STATE

APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD OF A CITIZEN OF THE UNITED STATES OF AMERICA

A. THIS SECTION TO BE COMPLETED BY APPLICANT. Please Type or Print Neatly in Blue or Black Ink. See Instructions on Reverse Side.

FS-

Serial No. _____
Date Issued _____
Approved by _____
FS Post _____

1. NAME OF CHILD IN FULL (First)	(Middle)	(Last)	2. SEX
JOHN HENRY		DOE	☒ M ☐ F

3. DATE OF BIRTH (Month, day, year)	4. HOUR	5. PLACE OF BIRTH IN FULL (City, State, Country)
AUGUST 23, 1979	4:35 ☐ AM ☒ PM	SYDNEY, NEW SOUTH WALES, AUSTRALIA

THE FOLLOWING ITEMS PERTAIN TO THE NATURAL PARENTS. COMPLETE FOR BOTH FATHER AND MOTHER.

FATHER	ITEM	MOTHER
ROBERT ARTHUR DOE	6. FULL NAME (Include mother's maiden name)	MARGARET FIONA DOE, NEE THOMPSON
MAY 16, 1942	7. DATE OF BIRTH (Month, day, year)	OCTOBER 11, 1948
RALEIGH, NORTH CAROLINA, U.S.A.	8. PLACE OF BIRTH (City, State, Country)	BRISBANE, QUEENSLAND, AUSTRALIA
235 EASY STREET, PADDINGTON, NEW SOUTH WALES 2021, AUSTRALIA	9. PRESENT ADDRESS (Street, City, State)	235 EASY STREET, PADDINGTON, NEW SOUTH WALES 2021, AUSTRALIA
821 STONE AVENUE, KELSO, WASHINGTON 98646	10. ADDRESS IN UNITED STATES (Street, City, State)	821 STONE AVENUE, KELSO, WASHINGTON 98646
U.S. PASSPORT: Z123456 ISSUED: FEBRUARY 14, 1980 AT SYDNEY, N.S.W., AUSTRALIA	11. EVIDENCE OF U.S. CITIZENSHIP IF ALIEN, SHOW NATIONALITY	AUSTRALIAN
FROM: BIRTH TO: MARCH 1967	12. PRECISE PERIODS OF PHYSICAL PRESENCE IN UNITED STATES (Do not list individual States. Use additional paper, if necessary)	FROM: TO: NONE
FROM: FEB. 1966 TO: FEB. 1967 BRANCH OF SERVICE: USAF-VIETNAM	13. PRECISE PERIODS ABROAD IN U.S. ARMED FORCES, IN OTHER U.S. GOVERNMENT EMPLOYMENT, WITH QUALIFYING INTERNATIONAL ORGANIZATION, OR AS DEPENDENT OF SUCH PERSON (Specify)	FROM: TO: BRANCH OF SERVICE: NONE
ONE PRIOR MARRIAGE ON APRIL 1, 1964 TERMINATED BY DIVORCE ON MAY 3, 1968	14. PREVIOUS MARRIAGES SHOW DATE AND MANNER OF TERMINATION OF ALL	NONE

15. DATE AND PLACE OF PRESENT MARRIAGE (Month, day, year - City, State, Country)

JULY 11, 1974 AT BRISBANE, QUEENSLAND, AUSTRALIA

B. THIS SECTION TO BE COMPLETED BY CONSULAR OFFICER, NOTARY PUBLIC OR OTHER PERSON QUALIFIED TO ADMINISTER OATH

16. AFFIRMATION: I SOLEMNLY SWEAR (OR AFFIRM) THAT THE STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

NAME OF PERSON PROVIDING INFORMATION	SIGNATURE	RELATIONSHIP TO CHILD

SUBSCRIBED TO: (SEAL)	TYPED NAME AND TITLE OF OFFICIAL	SIGNATURE OF OFFICIAL	CITY	DATE

SAMPLE

C. THIS SECTION TO BE COMPLETED BY CONSULAR OFFICE

17. DOCUMENTS PRESENTED: 234