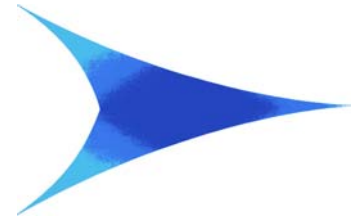


The Southern Cross Group

Promoting Mobility in the Global Community
www.southern-cross-group.org



Supplementary Submission to the Australian Parliament's
Joint Standing Committee on Electoral Matters

*Inquiry into the Conduct of the 2001 Election and Matters Related
Thereeto*

**Comments Relating to the Transcript of
The Committee's Public Hearing of 20 September 2002**

Brussels and Canberra
2 March 2003

***The Southern Cross Group is an international non-profit advocacy and support
organisation seeking to speak for and work with the million-odd members of the
Australian Diaspora worldwide.***

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Responses to Committee Comments

Following the appearance of the representative of the Southern Cross Group (SCG) before the Committee at its public hearing on 20 September 2002, those on the Group's mailing list were invited to provide comments on some of the issues raised by Committee Members during the hearing.

The text of the invitation and the responses received are in the Attachment. The names and contact addresses of the respondents have been withheld by the SCG for privacy reasons.

The SCG emphasises that the views contained in the Attachment are those of the individual respondents and do not necessarily reflect the considered views of the Group.

Italian Elections

The Committee will no doubt be aware of the series of advertisements placed in Australian newspapers over recent months by the Italian Embassy in Canberra in which Italian citizens are invited to register to vote in the forthcoming Italian elections. Details of the arrangements and of the new Italian law which makes this possible are on the Italian Embassy website at <http://www.ambitalia.org.au/votoesteroENG.htm> .

It will be noted that the advertisements indicate that the Australian Government has advised that there are no objections to the Italian ballot being conducted in Australia.

Also on the Italian Embassy website at <http://www.ambitalia.org.au/aireEng.htm> are details of the active registry of Italian Citizens Residing Abroad (AIRE) maintained by the Italian Government under which Italian citizens who will be absent from Italy for more than 12 months are required to register their name and contact details. This registration is one of the pre-requisites for voting in the Italian elections.

Political Rights and Dual Nationality

At the hearing on 20 September there was considerable discussion on whether or not dual nationals should be allowed to vote in elections in both their country of residence and the country for which they hold a second citizenship.

The SCG notes that in the case of naturalised Australian citizens who hold citizenships of other countries, there is no constraint arising from Australian law which prevents them from voting either in Australia or in another country. To impose a requirement on Australian dual nationals living in another country that they do not take part in elections in that country as a pre-requisite to

being allowed to enrol in Australia, would seemingly have an end result of discriminating against some Australian dual nationals but not others.

It should also be remembered that a large proportion of Australian citizens living overseas would not be dual nationals and in most cases would not have a right to vote in their country of residence.

The SCG notes that in a recently published book¹ on the rights and duties of dual nationals, there is an extensive examination of the political rights of dual nationals in the global context by Peter J Spiro², in which he concludes:

“ ... Dual nationality should in most cases today not compromise an individual’s capacity to participate fully in the politics of both countries of citizenship.

Extension of these political rights to dual nationals evidences full acceptance of the status itself. Extension of the franchise to non-residents (both mono- and multiple nationals) evidences a new definition of political space, one in which boundaries are no longer defined in territorial terms.³”

The Right to Vote and the Intention to Enrol

During the hearing of 20 September 2002 there was some discussion as to the number of overseas Australians who are currently disenfranchised and, secondly, the number of those who would seek to enrol should a change in the law enable them to do so.

The SCG emphasises that it seeks to have the right to enrol extended to all Australian citizens living overseas who are over the age of 18 and are not otherwise disqualified under existing provisions relating to Australian citizens resident in Australia. We conservatively estimate that number to be in the order of 500,000.

That said, the SCG would accept that the probable take up of that right by those living overseas is an unknown factor. Many factors, such as length of time away from Australia, lack of currently binding ties, lack of interest in the Australian political scene, difficulties in communication, or logistical difficulties in casting a vote, could be expected to result in many people not exercising their right to enrol.

¹ Rights and Duties of Dual Nationals – Evolution and Prospects, Edited by David A Martin and Kay Hailbronner, Kluwer Law International, The Hague – London – New York.

² Op cit, Chapter 6, Political Rights and Dual Nationality.

³ op cit, page 152.

Based on the voter turnout experience of other countries⁴ which allow the vote to their citizens living overseas, the SCG believes that the impact on individual Australian electorates would be small.

Nevertheless the SCG holds strongly to the view that the right to enrol is a right of citizenship, regardless of the country in which the citizen resides.

⁴ Op cit, see the comments by Spiro at page 138.

SCG Member Comments on JSCEM Hansard of 20 September 2000

Text of E-Bulletin to SCG Members

From: Southern Cross Group [mailto:info@southern-cross-group.org]
Sent: 25 September 2002 10:12
To: List Member
Subject: Australian Overseas Voting Campaign Continues
Dear Southern Cross Group Friends,

On Friday 20 September 2002, the SCG's Australian Coordinator, John "Sid" MacGregor, appeared before the Joint Standing Committee on Electoral Matters (JSCEM) in Canberra, as part of the JSCEM's current inquiry into the conduct of the 2001 Election.

You will recall that the SCG made a submission on voting rights for overseas Australians to the JSCEM in July, which can be accessed here:

[http://www.southern-cross-group.org/archives/Overseas%20Voting/2002%20-%202007/SCG JSCEM Submission 12 July 2002.pdf](http://www.southern-cross-group.org/archives/Overseas%20Voting/2002%20-%202007/SCG%20JSCEM%20Submission%2012%20July%202002.pdf)

(If the link above does not function for you, go to www.southern-cross-group.org, click on Archives, then on Overseas Voting, and look in the 2002 - 07 folder).

The SCG's submission was discussed at length last Friday at the JSCEM hearing. You can read the transcript of the proceedings here:

<http://www.aph.gov.au/hansard/joint/commttee/j5772.pdf>

Two issues seemed to trouble the JSCEM in particular, and we would welcome your thoughts on these points.

First, there was some discussion as to whether a person who is a dual citizen should be allowed to vote in two countries - i.e their overseas country of residence, and Australia. Note in particular the statement by Senator Ray on page EM 114 of the Hansard transcript that dual citizenship "was never introduced to give you the right to two votes. If it had been knowledge that dual citizenship would be used for people to get two votes, it may not have been introduced." Many of you were with us during the campaign to repeal Section 17 of the Australian Citizenship Act 1948. What do you think about this statement?

Secondly, the JSCEM seemed concerned as to which electorate potential new overseas voters should belong to, i.e. where they should be registered. (At the moment, eligible overseas electors are on the electoral roll for the sub-

division in which they last resided in Australia, or with which they have the closest connection).

Please contact sid@southern-cross-group.org if you would like to contribute your ideas on these matters. It is likely that the SCG will put in at least one Supplementary Submission to the Inquiry as it continues over the next several weeks.

Further information about the issues concerning voting for Australian citizens from overseas can be found at:

<http://www.southern-cross-group.org/overseasvoting/overseasvoting.html>

Best regards,
The Southern Cross Group Committee
info@southern-cross-group.org
www.southern-cross-group.org

Response 1

The answer to Senator Ray's point is that, in the UK, Australians (or other Commonwealth citizens) can vote in UK elections without needing dual citizenship. This reflects the same position as used to apply until a few years ago to British citizens living in Australia.

Response 2

What an appallingly ill-informed statement. What has voting rights got to do with dual citizenship? As Anne is aware, I am now a dual UK-Australian citizen resident in the UK, but prior to acquiring this status was for many years an Australian citizen with residency rights in the UK. This gave me the right, as a Commonwealth citizen, to vote in all elections in the UK. In fact I was able to vote in the UK even as a long-term temporary resident (when I was a student). The notion that there may be some sort of a link between seeking dual citizenship and engineering oneself into the advantageous position of being able to vote in two different countries is quite ridiculous.

And did they really "introduce" dual citizenship anyway? They just corrected an anomalous and discriminatory situation.

Response 3

The problem with voting for us residents of non-tax countries is that if we show one hint that we have any intentions of ever returning to Australia during our off-shore residency we will be taxed on our earnings in our country of residence by the ATO in Australia. Meaning I could be taxed in Australia on all of my earnings in ... including housing benefit and so on.

Unless completely lunatic it is unlikely that one Australian in a non-tax country would even consider voting and if they do they should contact me for a little advice.

Whilst Australia is my motherland to return at the end of my tenure without an outstanding excuse or reason could be commercial suicide.

Appalling isn't it. Can you imagine the number of expats who retire with their wealth in a country other than Australia because of this issue, I will be I can assure you.

I would rather that you don't contact the ATO and tell them my name and share my chagrin with them on this matter. They have already tried it on with me and failed it would be imprudent if we gave them the impression that I was being anything other than humbled by the experience.

Response 4

Being able to vote in two countries is hardly a new concept! Many countries allow it anyway. Indeed, since I have been a resident in the UK I have been entitled to vote in UK and European elections, and local elections. It strikes

me that Australia's insistence on citizenship and residency is out of step with most modern democratic thinking, not the other way around.

Response 5

I am not sure that Senator Ray's point withstands close examination. Senator Ray's concern really relates to the issue of dual citizenship and divided loyalties - whether an Australian citizen with dual nationality might vote in an overseas election for a candidate who supports policies which could harm Australia's interests. Does Senator Ray also object to an Australian living and working in an overseas country, contributing to its wealth and paying taxes (to) that country's government etc., which may have policies that the Australian government thinks, say, harm Australian farmers (eg. most of Europe and the US). Describing it as having "two votes" is also emotive - they are votes in different elections, just as State and Federal elections are different.

The fact of life is that the governments of different countries will always look after their own national interests. Occasionally these may conflict with those of another country. I am not sure how denying an Australian citizen, who votes overseas, the right to vote in Australia improves the situation, unless Senator Ray thinks that the Australian is likely to vote for a candidate in the Australian election who is going to put overseas interests before those of Australia. This seems highly unlikely and it is virtually impossible to imagine that such a person would be elected to the Australian Parliament.

The intended or unintended effect of Senator Ray's proposal is to discourage Australians from voting in overseas elections (or risk losing their right to vote in Australia). How does this help Australia? Commonsense surely says that if anything such a person would be likely to be swayed against voting candidates in overseas elections that support policies harmful to Australia.

Response 6

As far as I can recall, the election (I checked the AEC website for election dates, I would never remember them) we failed to vote because we had just left Australia in July 1984 and we had not done anything to notify anyone. Ironically I recall we were fined \$20 each for not voting.

I believe we voted in the July 1987 election by mail through the then Chicago Consulate. We requested and received the voting papers as I recall. This is 3 years after we left, but we were actually on a 2 year postdoc position and always had intentions of returning to Australia. (regarding intention to return: We always have intention to return - in fact we never unpacked our things for 16 years....they were all in storage in Australia....and our goal was if a good quality, reasonably paid position became available in academia, I would return - except there just was nothing competitive with what is available here)

For the March 1990 Election, I believe we requested mail ballots but were denied. I believe that was the time we found out that we had been

disenfranchised. Also about that time the Aust. Govt had closed the Chicago consulate (which was a very frustrating thing for those of us in the Midwest).

Regarding voting twice:

Well, one is actually only voting once. There is never a suggestion that a person is voting twice. If one has an impact on two cultures, it is not unreasonable to vote in both countries. That is not the same as voting twice. This is a twisted view of things and I suspect Senator Ray has been watching too much of the History channel and Chicago politics. Does senator Ray suggest that even tho I pay city and school taxes in my home town in the USA, that should my franchise be returned to me in Australia, that I should no longer be able to vote for my local Mayor? influence my local school board? Etc etc. it is really a hollow argument, and one that sounds good on the floor, but has no real basis to it. It sounds like Senator Ray might be afraid that the 600,000 individuals who have left Australia, may on the most part, be intelligent, thinking individuals who may actually think hard before they cast their vote...

The second issue: Electorate:

My opinion is that your electorate should remain the last point of significant contact. That is usually where one resided prior to leaving, and if one returned, would likely (is that an Australian word ???) return.

Response 7

As for the voting scenario, I will be comfortable to say that if I am living in Canada where I have taken out Canadian citizenship, then I would feel no urge to vote in Australian elections. My feeling is that as I am not living in Australia, it would not be fair to impose my views and circumstances on the Australian situation. Further, determining the constituency to which I belong in Australia (especially if I do not have an address in Australia any more) will become problematic.

If I were not a Canadian citizen and only living/working in Canada, then I would demand a vote being an Australian citizen.

The most important thing for me right now is that I can have dual citizenship. For now, this satisfies my needs as an Australian living overseas.

Response 8

The principle that those who acquire a new citizenship should not still vote in Australia seems reasonable to me, at least as long as they are not resident in Australia. I am in the process of acquiring a permanent residence in the US; perhaps one day citizenship. Choosing where to vote (based on residence) seems reasonable to me, should I become a US citizen. If I should return, I would want to resume voting immediately.

The current arrangements for determining my Australian electorate are fine with me.

Response 9

My feeling is that that we should be careful what we ask for...we might get it! My desire is to keep my Australian birthright.... I have not had the opportunity to vote for either country for 30 years. By the same token, I am paying American taxes and doing what other good "citizens" do. I have lived under the cloud of estate tax and lived with no vote all that time. If I am afforded the chance to keep my Australian citizenship, in absentia, I am willing to trade off the right to vote, unless and until, I decide to return and accept the taxation that goes with that decision. There is no way to ask for voting rights without incurring the costs of taxation. That is basically what the objections are about.

The other question/concern, related to electoral roles is political posturing and power. I think that the person who is being affected should state the electoral district of their preference. The reason these government types object is that buckets of real money get attached to any census. They want as much control over that as they can get.

Anyway, Thanks for caring for all of us and for fighting for a very important and fundamental issue!

Response 10

I really don't understand what Sen. Ray has a problem with here - it is not as if someone is getting two votes for the same election in the same country - the votes are in different elections in different countries. If I am a citizen of two countries, I may have business, social and other interests in both countries. I may well be paying tax in two countries, even if I am a non-resident of one. Therefore, why shouldn't I be able to vote in two different countries? As for getting a second citizenship "just to be able to get two votes", I think this is a highly unlikely reason by itself, but the next question must likewise be "so what?". Is Sen Ray implying that lots of people are applying for a dual citizenship simply to perform some kind of elaborate stacking of voters? I still only get ONE vote in Australia, regardless of what other country gives me citizenship. Who I vote for in Azerbaijan or Zimbabwe doesn't make any difference to the outcome of an Australian election (well, it seems unlikely...). If a person meets the citizenship requirements of a country then they should be entitled to vote like any other citizen.

OK, I could maybe see this could be a sensitive issue in a closely contested election, if a mass of overseas electors chose to enrol in a specific electorate just prior to the close of rolls in order to influence the outcome in a marginal seat, but how is this different from people in Australia moving house just before the electoral rolls close? It seems to suggest they are worried about a conspiracy of overseas voters. I think the place of last residence makes most sense, but for people who have turned 18 overseas and who have never resided in Australia, I can see the problem. There would be cases where someone might have to use the pin the tail on the donkey method to

choose an electorate. Having made that choice however, it should remain in place until the person ceases to be an overseas elector (eg moving back to a different electorate in Australia). Of course, even this is no guarantee that things would stay static...since living overseas, the electoral boundaries have changed twice, so I have "moved" electorates without ever having changed the address for which I claim elector status!

Response 11

Have no real comments on the first problem, but on the second, thought you might be interested to know that last week I found out that the French constitution provides for French nationals resident overseas to vote and be represented, and the way they do it is that they have no representative in the lower house, but have a quota for "overseas French nationals" in their Senate, i.e. the equivalent in Australia would be to have (12) senators for overseas Australians, elected in the same way as resident Australians elect their senators ...

Response 12

It is not clear (to me) what Senator Ray is objecting to. Is it to the fact that a dual citizen could vote in both countries i.e. with one vote for the Parliament of one country and one vote for the Parliament of another? If that is the case what is the problem? They are different countries with different Parliaments with quite distinct constituencies & jurisdictions.

There is nothing unusual about that. Indeed in many countries a person with properties in several local council areas may have a vote in each. That does not confer any advantage or privilege over and above other constituents as each vote has equal value with all other votes in the particular jurisdiction. Again, for example, if one votes for Mr Blair in the UK and Mr Howard in Australia, that does not confer any advantage over other voters in either country. They are different worlds.

Perhaps the problem arises in some minds because one may be a taxpayer in one country and not in the other. Many dual citizens pay taxes of one kind or another in both jurisdictions anyway. But even if they don't the right to vote is not contingent on being a taxpayer (read the Australian constitution on this point!).

Obviously there is a problem if the dual citizen has no direct contact or connection with a specific electorate or constituency or has lost it over time. But most people would have a connection with one area or another. At the least they would have a connection with one state or another – relevant for Senate elections. The more remote the connection the less likely the dual citizen will be interested or concerned about the outcome of routine elections. but there are occasions when they may have a very deep interest, For example referendums to change then Australian Constitution or to make Australia a republic. The best outcome may be to leave it to the dual citizen's choice whether they want to enrol and in which electorate.

Nationality and residence may be distinct - and if one is not a resident there are less compelling reasons to vote in routine elections. The fact that Australia has compulsory voting is a complication because under these proposals a dual citizen may in effect have the right not to enrol and not to vote which some may think an anomaly. In effect that is already the situation for Australian nationals living abroad if they choose not to vote.

Response 13

You raise two points which appear to trouble the JSCEM. As to the first, dual voting, I would have thought that it is of no concern to Australia whether or not someone who has dual citizenship has by the law of his other citizenship-nation the right to vote in that nation's elections. That appears to me to be entirely a matter for that other nation.

As to the second point, the electorate in which a dual citizen should be registered, I have no views.

Response 14

As one of that diaspora (for most of the last 34 years - though it was never intended to be that long) that has both clear intent to return, property and family in Australia, and who can hopefully lay claim to being both eligible and willing to be assessed in what ever criteria of related interests the (politicians) may eventually decide is a legitimate litmus test of my Australian commitment and/or right to vote, I would place my current thoughts here on what I have just read in the Hansard draft. They may form a singular view or fall within a general grouping more likely as you hear back from others.

1. Despite Senator Ray's concern over restricting two voting options or opportunities, such a position as he contends overlooks potential divided loyalties already inherent in those eligible voting Australians at home such as party membership, religious preferences, heritage, and all manner of personal and political biases. While he might make a populist case (a la P. Hanson?) for restricting the influence of otherwise eligible voters resident overseas, his would be a poorly validated argument protecting the rights of citizenship as you have highlighted. The argument to rights wherever you are affected by laws if you are required to reside overseas should prevail here. That right to vote elsewhere (in a variety of manners and electorates) may already be inherent in cases where even such local or dual nationality is not a requirement. As an example, as permanent residents in HKG by virtue of longer than seven years residency, we are eligible to vote in local elections, though not citizens. It would be difficult for Senator Ray to suggest my primary loyalties were to thus lie with the People's Republic of China though I wish them well and am happy to contribute to this society as well as my own, Australia. He may be even big enough to concede that it might be partly my Australian sense of fair play and democracy as well as a civic duty to the community where I currently make my living that might not render me ineligible to practice my right to an Australia that my children can be proud of.

2. The tone of this and other concerns needs to be further assessed no doubt as to how far we can expect to go in the first instances, and particularly if they are to be the group that we need to rely on to take us forward at this time. After the expressions of interest from such as myself perhaps, there may be a need for a suggestion of definitions of eligibility based on intentions and clearly identified remaining interests other than pride or nostalgia where they remain opposed and when intent is clearly never to return (like Mr Melham's uncle) or a limit is clarified as to involved interest or desire to contribute to the advancement of Australia. It is interesting that Americans are never asked this question.

A future clear or sworn statement of intent with/without proof of such intent may need to be offered should that emerge as a final hurdle though it should not apply in my opinion if other clear interests can be shown. Maybe even Mr. Melham's uncle could and should qualify if he has descendents for example who are in Australia, since it could be equally argued their interests could assure his loyalty should that need to continue to be questioned.

3. Regardless of those concerns, I would be reluctant to be lumped into voting for an "At Large" electorate when, or if, I can claim ties to a particular electorate where I maintain a home and/or intend to reside on return, have family and property etc. and have a direct interest in how it may be run politically for either myself or offspring who, while with me and/or underage, may have no protection otherwise. An "at large" electorate is unlikely to attract the cream of the political party's nominees, methinks! A second aspect of their concerns about "two votes" should consider that if Senator Ray or others want to restrict us if at all, to voting only in Australia, then we should definitely want the right to vote in electorates that matter to us and not in some supplementary seat represented by political leftovers.

4. Most of us, I can vouch for, are victims of poor advice or poorly educated information passed or relayed to us by overseas consular staff to earlier enquiries. It is undoubtedly the reason why many of us stopped or thought to stop voting - we had more indications we were ineligible more often than not.

I have been instrumental in my companies investing over \$A - 9 figure sums in Australian infrastructure in recent years, I currently serve on the board of the 800 member strong Australian Chamber of Commerce in HKG, am a previous head of their Food & Beverage Committee charged with encouraging further exports, which matter I have supported in all countries where I have had an influence in the Hospitality industry in those many years and have participated in Associations of like causes throughout my time away. I employ 56 overseas Australians currently other than myself from HKG to London, Toronto to Boston and have all of my family otherwise in Australia but this all should not need to count in such a debate but ultimately, we may need to have some way of showing them we are serious in our interest and support, regardless of our intent or ability to return. But none of that should count to qualify my right.

Lord knows, when it suits them, they want the recognition and support to their own overseas jaunts that we all must frequently provide and bear.

My unwavering support through endless years of trial and derision for South Sydney Rugby League since I could walk or my son's commitment beyond reason for Essendon Football Club since he first set foot in Australia for the first time in 1992 at the age of 5 should be just as clear intentions of our value as Australians.

I wish you well in this continuing crusade,

Response 15

I just thought I would send you a quick response to the question regarding having the ability to vote in two countries comment. You will need to go back to the Australian Citizenship Council report about the reasons for the proposed changes to s 17 and the government responses etc, but my own view is that Senator Ray's opposition to voting in 2 countries is inconsistent with the purpose of the section. The move to allow dual citizenship is recognition that sole allegiance or sole "loyalty" is not necessarily appropriate in today's globalised world. People can have connections (and voting rights) to more than one country without that undermining their relationship with either. See further my discussion on this in Kim Rubenstein (Australian Citizenship Law in Context, 2002, LBC)

Response 16

For what they're worth, here are my thoughts after reading the (Hansard) transcript.

What struck me as most interesting was that it seemed to me that they were more willing to consider the idea of an electorate of "overseas Australians" more easily than an unknown number of extra votes in each currently existing electorate. The only problem comes back to the numbers - if a proper census could be carried out, they may find that rather than one member (which was neither here nor there as they said), they may end up with ten! (Imagine overseas Australians holding the balance of power!!!!!!) Still, it's definitely worth pursuing that line, I think.

For Senator Ray: every Australian has more than one vote - one vote for each election, one vote for each level of government. A person can quite deliberately vote Labor at State level and Liberal at Federal level, if he/she wishes. In any case, a vote is secret.

Also for Senator Ray: he seemed to be basing his experience on one person (his uncle). Every case is different. The tricky part of our argument comes down to the difference between a "right" and a "duty". We are asking for the "right" to vote, or, to be more precise, we are saying that our inalienable right to vote has been taken away from many of us by a certain number of complicated rules. In Australia, the law making voting compulsory has transformed the "right" to vote into a "duty" to vote. This has caused confusion

in the minds of many Australians (including Sen Ray) I believe. Of course, Australians don't care that they are one of the very few (if not the only) democracies in the world with compulsory voting! Senator Ray could also be reminded that many overseas Australians are not necessarily eligible to take a second citizenship, but may no longer have the right to vote in Australia, so in fact, rather than having two votes, many currently have no vote at all. But here, again, we are in the dark without hard information on numbers. I do believe that our argument is weakened, from the Australian point of view, by arguing for non-compulsory voting, even though I know perfectly well that this is mainly for purely practical reasons. Perhaps we should soften this line - argue that if someone overseas doesn't vote, that, like within Australia, if he/she gives a valid reason, they are not struck off the roll nor even fined. (Very few people in Australia are actually fined, I believe.)