



Supplementary remarks – Daryl Melham MP

Should British subjects who are not Australian citizens continue to exercise the franchise?

In 1984 Australian citizenship became the qualification for enrolment and voting. However, an exception was made for British subjects who were already on the electoral roll, recognising them as a separate class of elector, with grandfathering arrangements put in place to maintain their entitlement to the franchise.

The Australian Electoral Commission (AEC) advised that as at 30 September 2008, some 162,928 electors with 'British subject' notation remained on the electoral roll.¹

Since 1984, three significant events have occurred which provide sufficient reason to reconsider whether grandfathering arrangements that maintain the franchise for British subjects who are not Australian citizens continue to be justified.

The first was the passage of the *Australia Act 1986*, which severed any remaining constitutional links between the Commonwealth and state governments and the United Kingdom.

The second was the High Court of Australia's decision in 1999 in relation to the eligibility of a citizen of another country (in this case the United Kingdom) to be a member of the Commonwealth Parliament. In the view of the High Court, Ms Heather Hill – who was a citizen of the United Kingdom and had been elected to the position of Senator for Queensland at the 1998 federal election – was a subject

¹ Australian Electoral Commission, submission 169.6, Annex 3. Note that the national total for electors with British subject notation differs from that in the Australian Electoral Commission's submission (159,095) due to an error made by the Commission in summing each division and jurisdictions. There are also minor differences in the totals for New South Wales (41,509 not 41,510) and Victoria (41,742 not 41,743).

or citizen of a 'foreign power' as defined under s44(i) of the Constitution, thus ruling her ineligible to stand for the Commonwealth Parliament.

The third is that, since 2002, there have been no restrictions on Australians holding citizenship of another country at the same time as holding Australian citizenship. The effect of this change is that large numbers of British subjects are now eligible to become citizens of Australia whilst retaining their former citizenship.

The issue was brought to the committee's attention by former Senator Andrew Murray in the Australian Democrats' submission to the inquiry.²

It is time to examine whether maintaining the enrolment and voting franchise for a certain class of non-citizens continues to be appropriate.

By including these supplementary remarks, I seek to foster genuine and considered debate around this issue. As a member of parliament representing a diverse electorate in terms of origin of citizens, I urge those who engage in the debate to consider whether the grandfathering arrangements put in place in 1984, are relevant and appropriate now, given that they extend the franchise to one group of non-citizens when it is not extended to others.

Background

Subsection 93(1)(b)(ii) of the Commonwealth Electoral Act both entitles and requires British subjects who were on the Commonwealth electoral roll immediately prior to 26 January 1984 to enrol and vote at federal elections.

British subjects who are eligible to vote in federal elections in Australia comprise citizens from 48 different Commonwealth and former Commonwealth countries including: the United Kingdom; Canada; India; Malaysia; New Zealand; Jamaica; Tonga; and Zimbabwe.³

Australia's second federal election, held on 16 December 1903, was the first to take place according to uniform voting rights and electoral procedures in all states.⁴ At that time, the eligibility requirements for enrolment and voting were set out in the *Commonwealth Franchise Act 1902* (Franchise Act) and the *Commonwealth Electoral Act 1902*. The Franchise Act granted the right to vote to British subjects 21 years or older who had lived in Australia for more than six months.⁵

2 Australian Democrats, submission 56, p 12.

3 Australian Electoral Commission, 'British Subjects Eligibility', viewed on 26 November 2008, at http://www.aec.gov.au/Enrolling_to_vote/British_subjects.htm.

4 Australian Electoral Commission, 'Fact Sheet No. 3 - Voting in the Federal Election', viewed on 27 November 2008, http://www.foundingdocs.gov.au/resources/transcripts/cth5i_doc_1902.pdf.

5 Section 3, *Commonwealth Franchise Act 1902*.

In 1924, the Commonwealth Electoral Act was amended to make voting compulsory.⁶

In 1931, the United Kingdom passed the Statute of Westminster Act which granted a number of Commonwealth countries, including Australia, the power to act as fully independent states and create their own citizenship laws. The Statute was to come into force once adopted by the Australian Parliament.⁷

The Curtin Labor Government adopted the Act in 1942 and the Menzies Liberal Government passed the Nationality and Citizenship Act (Citizenship Act) in 1948.⁸

Up until 26 January 1949, any person born in Australia was considered to be a citizen of the British Commonwealth. The Citizenship Act introduced the principle of citizens belonging to Australia rather than the British Commonwealth.⁹ It was not until the Commonwealth Electoral Act was amended in 1981 that the eligibility requirements for enrolment and voting changed from British subjects to Australian citizens.¹⁰

Prior to 26 January 1949, Australians were identified as British subjects. After that date, all Australians were legally defined as Australian citizens.

From 1973 onwards, most of the references to British subjects were amended in relevant legislation by substituting the words 'Australian citizen' for 'British subject'. Most references related to eligibility requirements to be appointed to the Australian Public Service or to similar government agencies.

Between 1981 and 1985 successive governments sought to amend the remaining Commonwealth Acts which contained references to British subjects.

Subsection 93(1)(b)(ii) of the Commonwealth Electoral Act (previously section 39 prior to 1984) was amended in 1981 to grant enrolling and voting rights to:

Australian Citizens or British subjects (other than Australian citizens) who were electors on the date immediately before the date fixed under sub-section 2 (5) of the Statute Law

6 National Archives of Australia, 'Documenting a Democracy, Commonwealth Electoral Act 1924', viewed on 10 December 2008 at <http://www.foundingdocs.gov.au/item.asp?sdID=89>.

7 Dyrenfurth N, 'The Spirit of Sturdy Independence': Robert Menzies' Language of Citizenship, 1942-52', *Australian Journal of Politics and History*, Volume 52, number 2, 2006, pp. 202-223.

8 N Dyrenfurth, "The Spirit of Sturdy Independence": Robert Menzies' Language of Citizenship, 1942-52, *Australian Journal of Politics and History*: Volume 52, Number 2, 2006, pp. 202-223.

9 National Archives of Australia, Commonwealth Documents, 'Nationality and Citizenship Act 1948', viewed on 27 November 2008 at <http://www.foundingdocs.gov.au/item.asp?sdID=97>.

10 *Statute Law (Miscellaneous Amendments) Act 1981*, s 32.

(Miscellaneous Amendments) Act 1981 [a date to be fixed by proclamation].¹¹

On 7 May 1981, the then Minister for Immigration and Ethnic Affairs, the Hon Ian MacPhee MP, made the following statement on voting rights for migrants:

The removal of the anomaly between British subjects and other migrants was recommended by the Report of the Review of Post-arrival Programs and Services for Migrants more widely known as the Galbally report. When this report was tabled in the Parliament in May 1978 the Prime Minister (Mr Malcolm Fraser) announced the Government's acceptance of all of its recommendations.¹²

Mr MacPhee also commented on the status of British subjects already on the electoral roll who had not become Australian citizens, stating:

One of the options considered by Ministers was that British subjects already enrolled should be permitted to take themselves off the roll. Ministers decided that this option should not be adopted. As a consequence, compulsory enrolment and voting will continue for all those who are now on the roll and who will in future be eligible to be on the roll. The introduction of these changes will constitute a further milestone in the social and political development of Australia. The changes reflect the cultural diversity of modern Australia and its independent identity.¹³

Subsection 93(1)(b)(ii) was amended again in 1982 to:

British subjects (other than Australian citizens) whose names were, immediately before [a date to be fixed by proclamation], on the roll for a Division; or on a roll kept for the purposes of the Australian Capital Territory Representation (House of Representatives) Act 1973 or the Northern Territory Representation Act 1922.¹⁴

Sub-section 2 (5) of the *Statute Law (Miscellaneous Amendments) Act 1981* was proclaimed in the Commonwealth of Australia Gazette on 26 January 1984.¹⁵

11 *Statute Law (Miscellaneous Amendments) Act 1981*, s 32.

12 Hon I MacPhee MP, Minister for Immigration and Ethnic Affairs, Hansard, 7 May 1981, p 2117.

13 Hon I MacPhee MP, Minister for Immigration and Ethnic Affairs, Hansard, 7 May 1981, p 2117.

14 *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, s 215

15 Commonwealth of Australia Gazette, 26 January 1984, No. S247.

Subsection 93(1)(b)(ii) was amended again in 1985 to:

Persons (other than Australian citizens) who would, if the relevant citizenship law had continued in force, be British subjects within the meaning of that relevant citizenship law and whose names were, immediately before 26 January 1984, on the roll for a Division.¹⁶

On 16 October 1985, the then Attorney General, the Hon Lionel Bowen, made the following statement in his second reading speech:

The amendment provides for the continuation of a definition of ‘British subject’ for the purpose of the franchise qualifications. This amendment is required because, when section 7 of the Australian Citizenship Amendment Act 1984 is proclaimed, it will repeal ‘British subject’ status provisions in that legislation.¹⁷

To date, subsection 93(1)(b)(ii) of the Commonwealth Electoral Act, as it pertains to the eligibility of British subjects to enrol and vote, has not been further amended. British subjects who were on the electoral roll prior to 1984 are still required to maintain enrolment and vote in federal elections.

Broader legislative and judicial developments impacting on the franchise for British subjects

Since the grandfathering arrangements were put into the Commonwealth Electoral Act by the parliament in 1984, a number of significant legislative and juridical developments have occurred, which, I believe, provide sufficient justification for examining whether continuing to enfranchise British subjects remains appropriate.

In 1986, following requests from state premiers to remove most of the remaining links between the United Kingdom and the Australian states, the Commonwealth Parliament passed the *Australia Act 1986*. The Australia Act was mirrored in legislation passed by the United Kingdom in the same year. Some of the links broken by the Australia Acts included that the British Parliament:

- declared it would no longer legislate for any part of Australia (section 1);
- relinquished its powers to disallow state legislation (section 8); and

16 *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, schedule 1.

17 Hon L Bowen MP, Attorney General, House of Representatives Hansard, p 2170.

- removed requirements that certain classes of state legislation such as constitutional amendments be assented to in the United Kingdom (section 9).

In commenting on the effect of the Australia Acts and the extent to which Australia became disconnected from the United Kingdom after 1986, Gaudron J of the High Court of Australia noted in a decision concerning the eligibility of subjects of a foreign power to run for parliament (see below) that:

It may be accepted that the United Kingdom may not answer the description of 'a foreign power' in s 44(i) of the Constitution if Australian courts are, as a matter of the fundamental law of this country, immediately bound to recognise and give effect to the exercise of legislative, executive and judicial power by the institutions of government of the United Kingdom. However, whatever once may have been the situation with respect to the Commonwealth and to the States, since at least the commencement of the Australia Act 1986 (Cth) ('the Australia Act') this has not been the case.¹⁸

While certain British subjects are required to enrol and vote in federal elections, they are unable to run for parliament. Subsection 44(i) of the *Commonwealth of Australia Constitution Act* (the Constitution) disqualifies an individual from running or being elected to the Commonwealth Parliament if they have dual citizenship.

Subsection 44(i) of the Constitution provides:

Any person who 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 shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.¹⁹

Anyone who wishes to challenge the validity of an election of another individual on the grounds that they owed allegiance to a foreign power, for example, must make a petition to the High Court of Australia.²⁰

18 Gleeson CJ, Gummow and Hayne JJ in *Sue v Hill* (1999) 163 ALR 648 at 665.

19 *Commonwealth of Australia Constitution Act*, s 44(i).

20 *Commonwealth Electoral Act 1918*, s 354.

In 1992, the High Court commented on the ‘foreign allegiance’ disqualification in section 44(i) of the Constitution. The majority view of the Court was that naturalised Australian citizens who also have foreign citizenship and are standing as candidates should take ‘reasonable steps to renounce foreign nationality’.²¹

A subsequent High Court case in 1999 further clarified the extent to which British subjects are eligible to stand for the Commonwealth Parliament. In *Sue v Hill*, the High Court decided that Ms Heather Hill was not duly elected as Senator for Queensland at the 1998 federal election because she was disqualified by section 44(i) of the Constitution. Ms Hill was both a British subject and an Australian citizen at the time of her nomination. A majority of the High Court found that the United Kingdom is regarded as a ‘foreign power’ for the purposes of section 44(i).²²

In coming to their decision in relation to this case, the High Court made a number of important observations about the eligibility of British subjects to stand for parliament. In my view, these are also relevant in relation to the continued enfranchisement of British subjects under the Commonwealth Electoral Act. In her judgement, Gaudron J noted the impact of the Australia Acts on whether the United Kingdom was a ‘foreign power’ had changed since 1986. Gaudron J stated that:

It may be accepted that, at federation, the United Kingdom was not a foreign power for the purposes of s 44(i) of the Constitution. In this regard, the Commonwealth of Australia was brought into being by an Act of the Parliament of the United Kingdom, namely, the Commonwealth of Australia Constitution Act 1900 (Imp) (“the Constitution Act”). And it was brought into being as “one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland” (now the United Kingdom of Great Britain and Northern Ireland). Moreover, the Commonwealth remains under the Crown, as is readily seen from s 1 of the Constitution. By that section, the legislative power of the Commonwealth is “vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives”. Further, the Governor-General is appointed by the Queen, proposed laws may be reserved by the Governor-General “for the Queen’s pleasure” and laws may be disallowed by the Queen.

21 *Sykes v Cleary* (1992) 109 ALR 577.

22 *Sue v Hill* (1999) 163 ALR 648.

And by s 61 of the Constitution, “[t]he executive power of the Commonwealth is vested in the Queen”.²³

However, Gaudron J noted that the relationship between the United Kingdom and the Commonwealth can change over time:

Once it is accepted that the divisibility of the Crown is implicit in the Constitution and that the Constitution acknowledges the possibility of change in the relationship between the United Kingdom and the Commonwealth, it is impossible to treat the United Kingdom as permanently excluded from the concept of “foreign power” in s 44(i) of the Constitution. That being so, the phrase is to be construed as having its natural and ordinary meaning.

... It is necessary, at this point, to consider whether there has been such a change in the relationship between the United Kingdom and Australia that the former is now a foreign power. In this regard, a change in that relationship has been noted by this Court on several occasions. Thus, for example, Barwick CJ observed in *New South Wales v The Commonwealth* that “[t]he progression [of the Commonwealth] from colony to independent nation was an inevitable progression, clearly adumbrated by the grant of such powers as the power with respect to defence and external affairs” and the Commonwealth “in due course matured [into independent nationhood] aided in that behalf by the Balfour Declaration and the Statute of Westminster and its adoption”.²⁴

In the view of Gaudron J, the impact of the passage of the Australia Acts in 1986 was therefore to change the relationship that had existed since federation, noting that:

At the very latest, the Commonwealth of Australia was transformed into a sovereign, independent nation with the enactment of the Australia Acts. The consequence of that transformation is that the United Kingdom is now a foreign power for the purposes of s 44(i) of the Constitution.²⁵

23 Gaudron J, *Sue v Hill* (1999) 163 ALR 648 at 692.

24 Gaudron J, *Sue v Hill* (1999) 163 ALR 648 at 693 and 694.

25 Gaudron J, *Sue v Hill* (1999) 163 ALR 648 at 695.

As a result of the passage of the Australia Acts and subsequent High Court decisions in relation to whether certain British subjects are eligible to stand for the Commonwealth Parliament, I consider that there is now clearly an inconsistency between the grandfathering arrangements put in place by the parliament in 1984 to continue to enfranchise British subjects and the status of British subjects as a subject or citizen of a 'foreign power' under s 44(i) of the Constitution.

Number of British subjects on the electoral roll

The AEC estimated that, at 30 September 2008, some 162,928 electors with British subject notation remained on the electoral roll. This represented 1.18 per cent of electors on the electoral roll at that time.²⁶ Table 1 below provides a breakdown of the number of British subjects on the electoral roll in each state and territory. The AEC note that the figures will:

- (i) *not include* any British subject electors who enrolled prior to the AEC commencing to record British subject status and who have not changed their enrolment since that time; and
- (ii) *include* electors recorded as British subjects who have since taken out Australian citizenship and not updated their enrolment.²⁷

26 Australian Electoral Commission, submission 169.6, Annex 3. The national total for electors with British subject notation differs from that in the Australian Electoral Commission's submission 169.6 for the national total of electors with British subject notation (159,095) and total enrolment (13,783,688). There are also minor differences for the New South Wales total (41,510) and Victorian total (41,742). These are due to errors made by the Commission in summing each division and jurisdiction.

27 Australian Electoral Commission, submission 169.6, p 12.

Table 1 Electors on the electoral roll with 'British subject' notation, by jurisdiction (a)

State	British subject notation	Enrolment	Proportion of electors with British subject notation (per cent)
New South Wales	41,509	4,550,184	0.91%
Victoria	41,742	3,466,611	1.20%
Queensland	29,360	2,632,020	1.12%
Western Australia	22,187	1,338,744	1.66%
South Australia	21,151	1,083,693	1.95%
Tasmania	4,272	351,656	1.21%
Australian Capital Territory	1,794	241,224	0.74%
Northern Territory	913	120,973	0.75%
Total	162,928	13,785,105	1.18%

Note (a) The national total for electors with British subject notation differs from that in the Australian Electoral Commission's submission 169.6 for the national total of electors with British subject notation (159,095) and total enrolment (13,783,688). There are also minor differences for the New South Wales total (41,510) and Victorian total (41,742). These are due to errors made by the Commission in summing each division and jurisdiction.

Source Australian Electoral Commission, submission 169.6, Annex 3.

There are a number of divisions where a significantly high proportion of the total number of electors in the division have British subject notations. Table 2 highlights the divisions in which a significant proportion of British subjects are enrolled.

A full list of the number of electors with British subject notation is presented in appendix C, table C.10.

British subjects may have significant effects on voting patterns and election results. There are eight divisions with more than 2,500 electors with British subject notations on the electoral roll, and a further 62 divisions with more than 1,000 electors with British subject notations on the electoral roll. Of these 70 divisions, six divisions had final margins of less than 1,000 votes.²⁸

Table 2 Electors on the electoral roll with 'British Subject' notation, selected divisions, as at 30 September 2008

Division (State)	British subject notation	Enrolment	Proportion of Electors with British subject notation (per cent)
Wakefield (SA)	3,693	96,621	3.82%
Brand (WA)	2,870	94,849	3.03%
Dunkley (VIC)	2,659	93,565	2.84%
Kingston (SA)	2,784	98,959	2.81%
Canning (WA)	2,665	97,778	2.73%
Flinders (VIC)	2,595	96,357	2.69%
Makin (SA)	2,540	95,347	2.66%
Mayo (SA)	2,522	97,630	2.58%
Hasluck (WA)	1,923	83,412	2.31%
Casey (VIC)	1,959	90,019	2.18%
Throsby (NSW)	1,851	89,161	2.08%
La Trobe (Vic)	1,940	93,304	2.08%
McMillan (Vic)	1,779	88,281	2.02%
Pearce (WA)	1,928	97,586	1.98%
Forde (QLD)	1,690	88,498	1.91%
Gilmore (NSW)	1,651	88,386	1.87%
Holt (VIC)	1,775	103,146	1.72%
Lalor (VIC)	1,830	106,609	1.72%
McEwen (VIC)	1,845	106,986	1.72%
Gippsland (VIC)	1,604	95,431	1.68%
Forrest (WA)	1,610	96,033	1.68%
Fisher (QLD)	1,458	88,608	1.65%
Fadden (QLD)	1,565	95,239	1.64%
Longman (QLD)	1,494	91,570	1.63%
Port Adelaide (SA)	1,651	101,448	1.63%

Source Australian Electoral Commission, submission 169.6, Annex 3.

While the grandfathering arrangements only allow British subjects on the electoral roll prior to 1984 to maintain the franchise, the age profile of electors with British subject notation is such that as a group, they will continue to exercise influence on election outcomes for over a decade, with the bulk of these electors aged between 45 and 65 years (figure 1).

Figure 1 Electors enrolled with British subject notation, by age, as at 30 September 2008



Source Australian Electoral Commission, submission 169.6, Annex 3.

Dual citizenship

A dual citizen is a person who holds citizenship of two countries. From 4 April 2002, changes to the *Australian Citizenship Act 1948* removed restrictions on Australians holding the citizenship of another country.²⁹

Such a change largely reflects a trend towards the relaxation of citizenship around the world, with Professor Kim Rubenstein considering that such a move 'is an acceptance and consequence of globalisation and cosmopolitanism'.³⁰

Dual citizenship has also been accepted by a number of other countries. Of note is that the countries of origin for a number of British subjects permit their citizens to hold dual citizenship. For example:

- Canada – Citizens are allowed to acquire foreign nationality without automatically losing Canadian citizenship;³¹
- New Zealand – There are no restrictions on New Zealand citizens also holding the citizenship of another country;³² and

29 Australian Citizenship Legislation Amendment Bill 2002, clause 1.

30 Rubenstein K, 'Citizenship in the age of globalisation: The cosmopolitan citizen?', in Chen J, Puig GV and Walker G (eds), *Rights protection in the age of global anti-terrorism* (2007), Law in Context 88.

31 Citizenship and Immigration Canada, 'Dual Citizenship', viewed on 22 September 2008 at http://www.cic.gc.ca/english/resources/publications/dualci_e.asp.

- United Kingdom – There are no restrictions on United Kingdom citizens also holding the citizenship of another country.³³

There are some countries where British subjects living in Australia remain citizens however, that do not permit their citizens from holding dual citizenship. Such countries include India and Singapore.³⁴

Conclusion

The parliament's grandfathering arrangements for British subjects was appropriate in 1984, when citizenship became the key qualification for enrolment and voting in Australia. However, the passage of the Australia Acts to separate Australia and its states from the United Kingdom in 1986, and the High Court judgements in *Sykes v Cleary* and *Sue v Hill*, have in my view, confirmed that there is inconsistency between maintaining a continuing franchise for non-citizens who remain subject to, or are citizens of a foreign power, whilst not allowing British subjects to represent Australian people in the parliament.

Notwithstanding our historical links, I believe that in this day and age, continuing the grandfathering arrangements for a special class of British subjects is unfair and unreasonable to other non-citizens. No other group of non citizens receive 'special' considerations or relaxation of the enrolment and voting rules.

Further, with dual citizenship arrangements now in place for many British subjects, who have the ability to take up Australian citizenship without having to give up citizenship of another country, the continuation of the grandfathering arrangements for British subjects is no longer appropriate. The removal of barriers to dual citizenship in Australia and many other countries from which many British subjects originated, suggests that most electors on the electoral roll with British subject notation would not be disadvantaged were they to take out Australian citizenship upon removal of the grandfathering arrangements.

32 New Zealand Embassy, 'Dual Citizenship/Nationality', viewed on 22 September 2008 at <http://www.nzembassy.com/info.cfm?c=36&l=96&CFID=9817&CFTOKEN=11005406&s=nz&p=60956>.

33 Home Office, UK Border Agency, 'Can I be a citizen of two countries', viewed on 7 May 2009 at <http://www.ukba.homeoffice.gov.uk/britishcitizenship/dualnationality/>.

34 Article 9 of the Constitution of the Republic of India, India Code Legislative Department, viewed on 19 September 2008 at <http://indiacode.nic.in/coiweb/coifiles/p02.htm>; Article 134 of the Constitution of the Republic of Singapore, Singapore Statutes Online website, viewed on 22 September 2008 at http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-CONST&doctitle=CONSTITUTION%20OF%20THE%20REPUBLIC%20OF%20SINGAPORE%20a&date=latest&method=part&sl=1.

The grandfathering arrangement for certain British subjects continues to provide them with preferential treatment.

Entitlement to the franchise is not automatic. To be eligible to enrol and vote at an election a person must be 18 years or older, an Australian citizen and have lived for at least one month at their current address. The franchise is not extended to all persons that meet these criteria, with several classes of persons excluded from enrolling or voting including those who:

- are of unsound mind and incapable of understanding the nature and significance of voting;
- are a permanent resident but not an Australian citizen;
- have been convicted of treason or treachery and have not been pardoned; and
- are serving a sentence of imprisonment of three years or longer.

Additional barriers are placed on Australian citizens living overseas who wish to remain on the electoral roll. They are required to enrol as eligible overseas electors and, after a six year period and voting at each federal election, maintain their enrolment by informing the relevant Divisional Returning Officer every year from year six onwards that they retain an intention to resume permanent residency in Australia.

It has been 60 years since the Nationality and Citizenship Act came into effect and 25 years since the eligibility qualification for enrolment and voting in the Commonwealth Electoral Act changed from British subjects to Australian citizenship. It is not unreasonable to believe that British subjects have had more than enough time to become Australian citizens.

In order to ascertain exactly how many electors may be affected by such a change, it is critical to find out exactly how many British subjects on the electoral roll may have taken out Australian citizenship but who have not yet updated their enrolment.

The AEC advised the committee that such an exercise would require the individual examination of the images of enrolment forms (some of which are held only on microfiche) for each of the remainder of the 13.8 million people enrolled, to establish place of birth, and then compare AEC records with citizenship data from the Department of Immigration and Citizenship.³⁵ The AEC considered that it does not have the resources to carry out such a manual task.³⁶

35 Australian Electoral Commission, submission 169.15, p 12.

36 Australian Electoral Commission, submission 169.15, p 12.

The committee heard that the AEC asked the Department of Immigration and Citizenship (DIAC) to provide the number of permanent residents who were British subject and at least 18 years old in Australia in January 1984 who are still resident but not Australian citizens today. DIAC advised the AEC that they do not have the historical data to provide a specific answer, but that using a combination of census and stock data sources; they estimate the count may be within 143-163,000 people. Given that there were a number of untested assumptions made in deriving this estimate; DIAC does not recommend relying on its accuracy.³⁷

One alternate approach, which would ascertain the current citizenship status of electors with British subject notation is for the AEC to write to each of the 162,928 electors requesting that they advise the AEC of their citizenship status.

Following that, I recommend that the government should move to end the enfranchisement of British subjects who are not Australian citizens, whom the High Court has decided are ‘aliens’. This would require the Commonwealth Electoral Act to be amended to remove all references to the eligibility of British subjects who are not Australian citizens to remain enrolled and to vote in federal elections and referenda.

I believe that such a change should occur before the 30th anniversary of the passage of the *Australian Citizenship (Amendment) Act 1984* – when entitlement to the franchise was to be based on Australian citizenship. To this end, I suggest that the change be made to have effect on 26 January 2014.

The change should be preceded by an extensive education campaign designed to encourage those remaining enrolled British subjects to become Australian citizens.

In order to provide a safety net for former British subjects who have taken out Australian citizenship but who may be removed from the electoral roll by mistake, transitional arrangements should be put in place to allow such electors to cast a provisional vote at the next following election and be reinstated to the roll if they provide their Australian citizenship number to the Australian Electoral Commission.

There are eight divisions with more than 2,500 electors with British subject notations on the electoral roll, and a further 62 divisions with more than 1,000 electors with British subject notations on the electoral roll.

Of the 150 divisions at the 2007 election, nine divisions had final margins of less than 1,000 votes and 19 divisions had margins of less than 2,500 votes. It is clear that the continued enfranchisement of British subjects has the potential to affect

37 Australian Electoral Commission, submission 169.15, p 12.

election outcomes. It is not fair to Australian citizens and other non-citizens that such a situation continues to exist.

The right to enrol and vote is not unfettered, with potential electors needing to satisfy a range of requirements before they can exercise the franchise. It is reasonable to require that people take out Australian citizenship as an essential element of their entitlement to enrol and vote at federal elections.

Recommendation 1

That the Australian Electoral Commission write to each of the 162,928 electors with British subject notations on the electoral roll to ascertain their citizenship status. Where it is determined that the elector is an Australian citizenship and has provided their Australian citizenship number – the British subject notation should be removed. Where it is determined that the elector is a British subject but not an Australian citizen, the notation should be retained.

Recommendation 2

That the *Commonwealth Electoral Act 1918* be amended to remove all references to the eligibility of British subjects to remain enrolled and to vote in federal elections and referenda by 26 January 2014 – 30 years since citizenship became a necessary qualification. This change should be preceded by an education campaign designed to encourage enrolled British subjects to become Australian citizens.

Recommendation 3

That upon removal of the grandfathering arrangements to enfranchise British subjects who are not Australian citizens, a transitional safety net be put in place to require British subjects who are Australian citizens and who were removed from the electoral roll in error by the Australian Electoral Commission as part of implementing the preceding recommendation, to cast a provisional vote at the next following election; and that they be required to provide their Australian citizenship number to the Australian Electoral Commission in order for their votes to be admitted to the count and they are reinstated to the electoral roll.

**Daryl Melham MP
Chair**