Australian Citizenship Bill 2005

As an Australian citizen I welcome the provisions of this Bill, most notably:

- removing the restrictions on resumption of Australian citizenship; and
- removing age limits for Australian citizenship by descent; and
- allowing children of former Australian citizens who lost Australian citizenship under the former section 17 of the Australian Citizenship Act 1948

There are however a number of opportunities to resolve anomalies from the past that have so far been missed from the Bill.

The comments in this submission are as follows:

- Children of former Australian citizens who lost citizenship under section 23
- Children of former Australian citizens who lost citizenship under section 20
- Children of former Australian citizens who lost citizenship under section 18
- Citizenship by birth in Australia
- Increase of the residence requirement for grant of Australian citizenship
- Australians who lost British nationality prior to 1949
- Persons adopted overseas by Australians
- Australian Citizens who lost citizenship under the 1950 Burmese legislation
- Loss of Australian Citizenship – Children
- Appendix: Section 1 of the British Nationality Act 1981

Children of former Australian Citizens who Lost Citizenship under Section 23

Clause 21(6) of the Bill allows the overseas born children of Australian citizens who lost Australian citizenship under section 17 of the Australian Citizenship Act 1948 to be granted Australian citizenship, subject only to being of good character.

However, those who lost Australian citizenship *as children (ie under 21 prior to December 1973, and under 18 thereafter)* had their citizenship removed under section 23 of the Act, rather than section 17.

The Bill, as it stands, gives these former Australians the right to resume their own citizenship, but does not give their overseas born children the right to access Australian citizenship.

Considering the close linkage between section 17 and section 23 of the Australian Citizenship Act, it is difficult to understand the reasoning for this exclusion. Especially considering the fact that many former Australian citizens who lost citizenship under section 23 of the Act were born in Australia and had no control over the loss of their Australian citizenship.

Children of former Australian Citizens who Lost Citizenship under Section 20

A small number of *naturalised* Australian citizens who left Australia before 8 October 1958 lost Australian citizenship under the (now repealed) section 20 of the Australian Citizenship Act on the basis of more than seven years residence outside Australia and New Guinea.

These former citizens will have the right to resumption, but again their overseas born children will not have access to Australian citizenship, as they are excluded from the scope of Clause 21(6) of the Bill.

Like Section 17, Section 20 operated to strip Australian citizens of their status without any overt action, or knowledge on their part. It creates an anomaly to exclude from Australian citizenship the overseas born children of former Australians who lost citizenship under section 20, while including the children of those who lost citizenship under section 17.

Children of former Australian Citizens who Renounced Citizenship under Section 18

Most notably in Malta, but also in other countries, some Australian citizens were obliged, under economic or social duress, to renounce their Australian citizenship to acquire or retain the citizenship of another country.

These former Australians will be able to resume Australian citizenship, however their overseas born children will not have access to Australian citizenship.

In that context, it seems unfair to draw a distinction between losing Australian citizenship under sections 17 and 18 of the Australian Citizenship Act. Those who renounced Australian citizenship under section 18 may well have understood (to the extent possible at age 18) the gravity of what they were doing, but felt they had little choice in the matter. Many former Australians under section 17 also knew they would lose their Australian citizenship upon acquisition of another citizenship, but felt little choice other than to go ahead.

That said, considering the potentially wide variety of circumstances under which a parent may have renounced Australian citizenship under section 18, it would be reasonable to allow the Minister discretion in deciding whether or not to grant Australian citizenship to the child of such a person.

There is no such discretion in Clause 21(6) as it stands – fairness demands that it should be added.

Citizenship by Birth in Australia

In 1986 the law on citizenship by birth in Australia was amended to require that (with effect for those children born on or after 20 August 1986) one parent of the child be an Australian citizen or permanent resident at the time of birth.

Special provision was made to confer Australian citizenship on non-Australian children who are born in Australia and lived in Australia until age 10 (the '10 year rule') in section 10(2)(b) of the Act. Further provision was made in section 23D of the Act to allow stateless children born in Australia to acquire Australian citizenship. These provisions are re-enacted in Clause 12(1) and 21(8) of the Bill respectively.

The principle behind these changes is clearly correct and should not be challenged. They are reasonable for an increasingly mobile world. The provisions appear to be closely modelled on the provisions for citizenship by birth in the United Kingdom included in the British Nationality Act 1981, in force from 1 January 1983. (Section 1 of of the British Nationality Act is reproduced in an Appendix).

However, there is one significant anomaly that has not been addressed in the Australian legislation. Section 10(2)(a) of the existing Act, and Clause 12(1)(a) of the Bill, requires that an Australian born child will only automatically be an Australian citizen if a parent is a citizen or permanent resident **at the time of the person's birth**.

There is no special provision in the Act or the Bill for children born to temporary residents in Australia where the parent acquires permanent residence **after** the child is born.

Such children can only get Australian citizenship:

- under the "10 year rule", if still living in Australia
- if the parents choose to become Australian citizens while the child is under 16
- by pursuing Australian citizenship independently once aged 16 or over.

In the United Kingdom, special provision was made for cases such as this. A UK born child who is not a British citizen because the parents are temporary residents may be registered as British immediately upon the parents acquiring permanent resident status under section 1(3) of the Act.

This clause reads as follows (with emphasis):

" ... A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1) or (2) shall be entitled to be registered as a British citizen if, while he is a minor--
(a) his father or mother becomes a British citizen ***or becomes settled in the United Kingdom****; and*
(b) an application is made for his registration as a British citizen ... "

There is no requirement for the parents to become British citizens or for the child to wait until age 10.

Many immigrants now come to Australia as temporary residents initially and only become permanent residents later on. This includes those who arrive on work permits (subclass 457 visas), Skilled Independent Regional (SIR) visa holders and most business skill migrants.

It is not clear why, when the 1986 legislation was passed, there was no special provision made for children where parents became Australian permanent residents subsequent to the birth.

The "10 year rule" contained in section 10(2)(b) of the Act, and Clause 12(1)(b) of the Bill, bears a close resemblance to section 1(4) of the British Nationality Act 1981. However there is no equivalent in the Act or Bill to section 1(3) of the British legislation.

Considering that many more people are arriving in Australia as temporary residents and becoming permanent residents later on (compared to the situation in 1986) it is now appropriate to revisit the special circumstances of children born in Australia where the parents subsequently acquire permanent resident status.

Such children - born in Australia and with permanent resident status - should be eligible for grant of Australian citizenship independently of whether their parents choose to become Australian citizens or not.

Increase in the Residence Requirement for Grant of Australian Citizenship to Three Years

In principle it is not unreasonable to increase the residence requirement, to ensure that new migrants become integrated into the Australian community before becoming citizens.

The proposed three year residence period compares favourably with those in Australia's peer nations.

However, in the context of a longer residence requirement:

- there is a strong argument that existing permanent residents be exempted, not least the practical consideration that this will avoid DIMIA being innundated with citizenship applications in the period preceding the new law coming into force (with impact on processing times)
- more flexibility is required in the cases where migrants arrive as temporary residents. Under current policy, time as a temporary resident is usually not allowed to count towards the residence requirement for Australian citizenship. Clause 22(7) of the Bill suggests that there will be more flexibility in future, however the policy underlying this has not been announced.

Should a concession be made on the increased residence requirement for existing permanent residents, it should come with a sunset clause – i.e. that after a set period of two or three years following commencement of the legislation, the increased residence requirement will apply to all permanent residents.

Australians who lost British nationality prior to 1949

Persons who lost British nationality prior to 26 January 1949 through naturalisation in another country (most notably the United States of America) and their overseas born children. These persons never acquired Australian citizenship (despite birth or naturalisation in Australia) because they were not 'British subjects' on 26 January 1949.

Fairness demands that a person born or naturalised in Australia who did not become Australian on 26 January 1949 **solely** for the reason that that person was not a British subject should be included among those now eligible for Australian citizenship, together with overseas born children.

There is no fundamental difference between a person in this category and a person who lost Australian citizenship under section 17 of the Australian Citizenship Act.

Persons Adopted Overseas by Australian Citizens

There is no provision in the Bill for persons now aged over 18 who were adopted overseas by Australian citizens.

Many Australian citizens permanently resident overseas – especially in the United Kingdom, United States, Canada and New Zealand – have adopted children under the laws of those countries. While the Minister has discretion to grant Australian citizenship to any child under 18, if the child turns 18 without becoming an Australian citizen, he or she has no route to citizenship.

While the diversity of overseas adoption laws demands that Ministerial discretion be retained, the current Bill does not give the Minister any such discretion to ensure that a person legitimately adopted overseas by an Australian should have the same access to Australian citizenship as a natural child of an Australian citizen.

Former Australian Citizens by virtue of the 1950 Burmese Legislation

No provision is made in the Bill to allow relief to any former Australian citizen who lost citizenship under the *Nationality and Citizenship (Burmese) Act 1950*.

Although the numbers of those affected are likely to be very low, if the Bill seeks to resolve anomalies of the past these persons should be treated the same way as any other former Australian citizen.

Loss of Australian Citizenship – Children

Clause 36 of the new Bill allows the Minister to deprive an Australian child of citizenship if a responsible parent loses or renounces Australian citizenship, where that child has another citizenship and the other parent is not Australia (or was not Australian at death).

Although it is not as harsh a provision as section 23 of the existing Act – which is an automatic rather than discretionary process – it is a matter of some concern that Australian children may still have their citizenship removed based on the actions of a parent.

The policies that will underly the future application of clause 36 are not clear at this stage, however in the absence of any strong public policy reason to the contrary, a law that allows children to lose citizenship involuntarily is unacceptable and should be removed from the Bill.

APPENDIX

BRITISH NATIONALITY ACT 1981
s 1 Acquisition by birth or adoption.

(1) A person born in the United Kingdom after commencement, or in a qualifying territory on or after the appointed day, shall be a British citizen if at the time of the birth his father or mother is--

(a) a British citizen; or
(b) settled in the United Kingdom or that territory.

(2) A new-born infant who, after commencement, is found abandoned in the United Kingdom, or on or after the appointed day is found abandoned in a qualifying territory, shall, unless the contrary is shown, be deemed for the purposes of subsection (1)--

(a) to have been born in the United Kingdom after commencement or in that territory on or after the appointed day; and
(b) to have been born to a parent who at the time of the birth was a British citizen or settled in the United Kingdom or that territory.

(3) A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1) or (2) shall be entitled to be registered as a British citizen if, while he is a minor--
(a) his father or mother becomes a British citizen or becomes settled in the United Kingdom; and
(b) an application is made for his registration as a British citizen.

(4) A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1) or (2) shall be entitled, on an application for his registration as a British citizen made at any time after he has attained the age of ten years, to be registered as such a citizen if, as regards each of the first ten years of that person's life, the number of days on which he was absent from the United Kingdom in that year does not exceed 90.