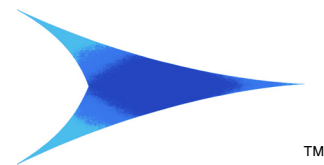


The Southern Cross Group

Promoting Mobility in the Global Community
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Third Supplementary Submission to the Australian Senate's Legal and Constitutional Legislation Committee

Inquiry into the Provisions of the *Australian Citizenship Bill 2005* and the *Australian Citizenship (Transitionals and Consequentials) Bill 2005*

Brussels and Montreal

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The Southern Cross Group is an international volunteer-run non-profit advocacy and support organisation for the Australian Diaspora

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Introduction

In the oral evidence given by the Southern Cross Group (“SCG”) via videolink at the public hearing conducted in Canberra on 6 February 2006 in the present Inquiry, an undertaking was made to provide the Committee with a further written submission setting out its estimations of the number of former Australian citizens who lost Australian citizenship under Section 23 of the *Australian Citizenship Act 1948* (“the current Act”) as opposed to those who lost under the now-repealed Section 17.

The SCG previously raised this matter in the context of the Committee’s Inquiry into Australian Expatriates, in its Supplementary Submission dated 23 July 2004 (page 15) and has raised this matter with DIMA a number of times in the last few months.

The SCG welcomes the fact that under the *Australian Citizenship Bill 2005* (“the Bill”), the Government is willing to allow former Australian citizens who lost their citizenship under Section 23 to resume Australian citizenship (subject to good character requirements) on the same basis as former Australian citizens who lost citizenship under Section 17.

However, it is important to note that the offspring of former Australian citizens who lost their citizenship under Section 23 are excluded from the scope of Clause 21(6)(c) of the Bill, which caters only for the offspring of Section 17 victims. It would appear that an unjustified distinction has been drawn between those Australian parents who lost citizenship under Section 17 and those who lost under Section 23, when the two provisions generally operated in tandem.

1. Operation of Section 23

Section 23 operated (and can still operate) to automatically strip Australian citizenship from a child under 18 years of age based not on the child’s own acquisition of another citizenship, but upon the acquisition of another citizenship by a parent.¹

1.1 26 January 1949 to 21 November 1984

From its inception until 21 November 1984 Section 23 of the current Act removed Australian citizenship from a child if the *responsible parent* (usually, but not always, the father) lost Australian citizenship under Sections 17, 18 or 19 provided that:

- the child was aged under 18 (or under 21 if the parent lost Australian citizenship before 1 December 1973); and

- the child held another, non-Australian citizenship. It was not possible for the child to be rendered stateless, however the child did not necessarily have to hold the same citizenship as the parent.

Loss of Australian citizenship by the *mother* of a child did not usually invoke Section 23, unless the mother was deemed to be the responsible parent. This normally only occurred if the father was deceased or separated from the mother.

1.2 22 November 1984 to 3 April 2002

As a result of the *Australian Citizenship (Amendment) Act 1984*, Section 23 operated differently from 22 November 1984 onwards. From that date, there could be more than one responsible parent for citizenship purposes (usually both father and mother) and hence the Australian child could lose citizenship if *either* parent lost Australian citizenship.

The child was exempted from loss under Section 23 if:

- the child would otherwise have been stateless (i.e. be left without any citizenship). This would have been uncommon as usually such a child would acquire, or already possess, the nationality that the parent had just acquired; or
- the other *responsible parent* retained Australian citizenship, or if deceased, was an Australian citizen on their death.

1.3 4 April 2002 Onwards

Most children who lost Australian citizenship under Section 23 of the current Act did so as a result of a parent losing Australian citizenship under Section 17. Although the repeal of Section 17 with effect from 4 April 2002 reduced greatly the numbers of children losing Australian citizenship under Section 23, Section 23 was not repealed at the same time. Since 4 April 2002 the provision continues to strip Australian citizenship from children whose responsible parents cease to be Australian citizens under either Section 18 or Section 19.

Hence it remains possible for an Australian aged under 18 to lose Australian citizenship based on the independent actions of a parent. The SCG understands from correspondence with DIMA that approximately 250 persons have renounced Australian citizenship under Section 18 of the current Act in the last three years. The fact that Section 23 has been left on the statute book continues to deprive a small number of Australian children of their Australian citizenship status each year.²

¹ Since 4 April 2002 Section 23(1)(a) only applies to children whose responsible parents cease to be Australian citizens under Sections 18 or 19. Prior to that date, it applied to children whose parents lost under Section 17 as well.

² We note that Section 23 will be re-enacted by Clause 36 of the Bill, although, as pointed out by the then Minister when the Bill was tabled on 9 November 2005, the provision will cease to operate “automatically”, and will be replaced with a

Oral evidence given by DIMA on 6 February 2006 to the Inquiry indicates that around 3,600 people have used Section 18 since 1949, and it is fair to assume that many of them will have had minor children who lost under Section 23 at the same time.

It has to be stressed that as minor, dependent children, Section 23 victims presently have, and in the past would have had no control or influence over the actions of their parent that lead to the loss of citizenship (under Section 17) or the renunciation of citizenship (under Section 18). They were and are in every sense of the word wholly innocent victims.

2. Estimation of Losses of Citizenship under Section 23

Like Section 17 of the current Act before 2002, Section 23 operates automatically, by operation of law. No notification to the Department is required, and the former citizen may not even be aware of the fact that he or she has lost Australian citizenship. The Department will be aware of some Section 23 loss cases, just as it is aware of some Section 17 loss cases, but it will never have a complete picture of all losses that have occurred under those provisions.

In order to attempt to estimate the numbers of people that have lost their Australian citizenship under Section 23 over the years, the SCG has obtained naturalisation figures for Australians from some key countries, (notably the United Kingdom and United States of America) and used those as a starting point to try to gauge the overall numbers of Section 17 and Section 23 loss cases.

2.1 United Kingdom

The British Home Office publishes an annual report *Persons Granted British Citizenship* which shows the number of Australian adults and children granted British citizenship each year. The figures available online show United Kingdom naturalisation data going back as far as 1984.

Those figures show that 4,180 adult Australian citizens were granted British citizenship between 1984 and 2001 inclusive, together with 8,198 Australian children. While each of the 4,180 adults becoming British represents a loss of Australian citizenship, it is not necessarily the case that each of the 8,198 children granted British citizenship will also have lost Australian citizenship. There are numerous circumstances in which an Australian citizen child can be registered as a British citizen without a parent acquiring British citizenship at the same time.

discretionary power, so that a decision can be made in each case as to whether it is appropriate for the child to lose their citizenship.

However, there are also cases where an Australian child may have acquired British citizenship at birth and subsequently lost Australian citizenship based on a parent's loss of Australian citizenship. These cases would not be included in the Home Office figures shown.

Without detailed studies on the demographics of loss cases under Section 17, it is impossible to say definitively how many people lost Australian citizenship under Section 23 in the United Kingdom. However the SCG believes, based on experience and correspondence with many in the Australian Diaspora, that an estimate of one Section 23 child on average per former (Section 17) Australian citizen would be conservative.³

Hence the SCG estimates that a total of approximately 4,000 Australian children lost Australian citizenship in the United Kingdom between 1984 and 2001.

Prior to 1984, British naturalisation statistics available to the SCG do not split the acquisition of Australian citizenship between adults and children, and figures predating 1974 are not available at all. Between 1974 and 1983, an average of 170 Australians acquired British citizenship each year, or 1,700 in total. Compared to the post-1983 situation a greater proportion are likely to have been adults because United Kingdom law granted automatic British citizenship to children born in the UK before 1 January 1983 (whereas after that date restrictions applied and in many cases a formal application for registration was required).

The numbers of Australians acquiring British citizenship increased over the 1974-1983 period, however for the entire period from 1949 to 1983, an assumption of an average of 70 adult acquisitions of British citizenship per year (or 2500 in total) appears to be conservative. Using the same ratio between Section 17 losses and Section 23 losses suggests that the same number of children (2,500) lost their Australian citizenship status over the same period. Hence an estimated total number of 7,000 persons in the United Kingdom alone have lost Australian citizenship under Section 23 of the current Act since 1949.

2.2 United States of America

Figures available on the numbers of Australians acquiring US citizenship are more limited than those for the United Kingdom. However, US government figures do show that 3,615 Australian citizens were granted U.S. citizenship between 1987 and 2001, or approximately 240 per year. This figure does include some children (up to 1998), however the relative proportion appears to be lower than is the case for the United Kingdom because all children born in the US (except those born to diplomats) are American citizens by birth and do not require registration.

³ An example of a Section 23 loss case in the UK is that of Lorraine Dearden's oldest son Robbie. See Annex 10 to the SCG's Primary Submission to this Inquiry dated 20 January 2006. A further example, in France, is Janet Magnin's son (see Submission 29).

By comparing the figures for 1999-2001 (which do not include children) with those for 1987-98 (which do include children), the SCG estimates that approximately 85% of the figure of 3,615 (or approximately 3,100 persons) represented adult acquisitions of US citizenship and hence losses of Australian citizenship under Section 17 of the Act.

- Using the same ratio of Section 23 losses to Section 17 as for the United Kingdom (and there is no reason to assume otherwise) would suggest approximately 3,000 Australian children lost their citizenship under Section 23 of the current Act in the United States in the same period.
- The US figures suggest a higher number of naturalisations in the 1990s compared to previous decades, however based on the United Kingdom figures, it would appear conservative to assume an average of 70 adult naturalisations in the U.S. each year from 1949 to 1986 (2700 in total). Again, on average this means a similar number of Section 23 losses over that period.
- This excludes a large number of Australian women who married US servicemen during the Second World War or shortly afterwards and subsequently migrated to the US in the immediate post-war era. There were approximately 12,000 such women ('war brides') and many of these became naturalised US citizens and lost their Australian citizenship. It is unlikely there would be many Section 23 losses resulting from these women acquiring US citizenship, as prior to 1984, the "responsible parent" for the purposes of Section 23 was normally the father.

Therefore, the SCG's estimation is that a total of approximately 6,000 former Australians lost their Australian citizenship as children in the United States of America since 1949.

2.3 Other Countries

It is difficult to estimate the numbers of Section 23 losses in countries other than the United Kingdom and United States of America, mainly due to the fact that relatively few foreign governments publish online statistics on naturalisation in their country.

The SCG has made an estimation for Canada based on the relative numbers of Australian born persons resident there in comparison to the United States (approximately 35%).

The United Kingdom, United States and Canada most likely represent the countries where the most significant numbers of Section 23 losses have occurred.

Based on the pattern of Australian born persons overseas, the SCG suggests that it is prudent to assume that 80% of all naturalisations overseas can be represented by the identified countries of

the United Kingdom, United States of America and Canada, with 20% occurring in other countries.⁴

2.4 Total Number of Losses of Australian Citizenship under Section 23

While accepting the inherent difficulty in making estimates of this type, and the significant margin of error involved, the SCG believes that since 1949 a total of approximately 19,000 persons have lost Australian citizenship as children under Section 23 of the current Act. The data on which the estimates in this Submission have been made is attached as an **Annex**.

This compares to a total of approximately 25,000 losses under Section 17 before it was repealed with effect from 4 April 2002, estimated using the same methodology.

Regardless of the exact figures involved, it is clear that a significant number of former Australian citizens lost their status under Section 23 rather than Section 17. Not all of these persons are still alive, and many of those that are still living are well settled overseas and have no intention of moving to Australia.

3. No Difference between Loss of Australian Citizenship under Section 17 and Section 23

Under both Section 17 and Section 23 of the Act, Australian citizenship was lost involuntarily. No specific renunciation of Australian citizenship was required.

In fact, to make a distinction between Section 17 and Section 23 victims ignores the fact that those who lost Australian citizenship under Section 23 had even less control over their situation than those who lost Australian citizenship under Section 17.

Persons losing Australian citizenship under Section 23 did not make the choice themselves to acquire a foreign citizenship, but instead lost their Australian citizenship because a parent made such a choice, and they lost their Australian citizenship as a knock-on effect.

4. Resumption for Section 23 Victims More Restricted

While Section 23 victims lost Australian citizenship entirely through no fault of their own, it is ironic that resumption of Australian citizenship has been much less accessible for these persons

⁴ Other countries include France, Italy, the Netherlands, Germany, the Republic of Ireland, South Africa and New Zealand. Although New Zealand has a significant number of Australian born residents, relatively few Australian citizens have naturalised in New Zealand because Australians have been able to access most citizenship rights in New Zealand without being required to take out New Zealand citizenship.

compared to those who lost Australian citizenship under Section 17 (including, in many instances, the parent whose actions caused the loss under Section 23).

The difficulties facing those Section 23 victims seeking resumption under Section 23B of the current Act were documented in the SCG's Primary Submission to the Senate Enquiry into Australian Expatriates (page 80-83). In summary, if a Section 23 victim reached the age of 19 without applying for resumption of Australian citizenship, the requirement for *special circumstances* to be demonstrated has made resumption of Australian citizenship difficult, if not impossible, in the majority of instances.

This was discussed in the *Catanzaro* and *Beertsen* cases in the Administrative Appeals Tribunal ("AAT"). In both of these instances, persons born in Australia who lost their Australian citizenship under Section 23 were unsuccessful in their applications for resumption of Australian citizenship.⁵

5. Many Section 23 Losses concerned Australian-born Citizens

Like Section 17 in the case of adults, Section 23 operated to strip an Australian child of citizenship *irrespective* of how that child acquired Australian citizenship in the first place. No protection was given to children born in Australia.

6. Section 23 Victims are Now Adults and Many Have Offspring

While it was only possible to lose Australian citizenship as a child (under 21 prior to 1 December 1973, under 18 thereafter), the majority of Section 23 victims have subsequently become adults.

For example, a person who lost Australian citizenship under section 23 in 1949 at age 20 would be turning 77 this year. This is an extreme case, but illustrates that Section 23 victims can be of almost any age, and in many instances will have had their own children born outside Australia.

Using the examples documented in the AAT, the Beertsen brothers were born in 1962 and 1966 (and would turn 44 and 40 this year). Similarly, Mr Catanzaro was born in 1966 and would turn 40 this year. All could feasibly have fathered children since their loss of Australian citizenship or could still go on to father children. It is reasonable to presume that there is a significant number of Section 23 offspring overseas today.

⁵ <http://www.austlii.edu.au/au/cases/cth/aat/unrep6579.html> Beertsen and <http://www.austlii.edu.au/au/cases/cth/aat/unrep5446.html> Catanzaro.

Conclusion

Under the Bill as it stands, the offspring of these Section 23 victims will not be eligible for Australian citizenship under Clause 21(6)(c) because their parent lost Australian citizenship under the "wrong" section of the current Act (Section 23 and not Section 17).

The SCG submits that while Section 23 victims lost Australian citizenship as children, the majority are now adults and even though many of them are Australian-born, they have not been able to pass on their Australian heritage to their overseas-born children. That fact, combined with the involuntary and innocent nature of loss of Australian citizenship under Section 23, means there is no justifiable reason for making a distinction between their offspring and those of Section 17 victims in Clause 21(6)(c) of the Bill.

Annex: Naturalisation Statistics and Estimates for Australians in the UK, the US and Other Countries