The Southern Cross Group

Promoting Mobility in the Global Community
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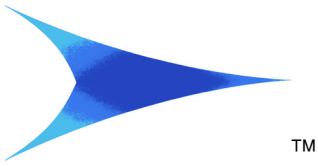

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Submission to the Australian Senate's
Legal and Constitutional References Committee

Inquiry into Australian Expatriates

Brussels and Canberra
27 February 2004

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

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Executive Summary

The Southern Cross Group (SCG) applauds the Senate for establishing the Inquiry into the Australian Diaspora and welcomes the opportunity to make this submission to the Committee.

While the terms of reference for the Inquiry are drawn in the widest possible terms, the SCG believes that the broad outcome of the Committee's report should be that overseas Australians:

- are recognized and accepted as an integral part of the Australian population.

- constitute a significant national asset that should be fostered and developed at both the Government and private sector levels.

Within that broad objective there are many sub-themes that need to be considered by the Committee. Based on our research and on the wide range of contacts we have enjoyed over several years, some of those issues are discussed in this submission.

As background we provide introductory remarks on the Southern Cross Group – its formation, its volunteer committee, its constituency, its advisory support role as a diaspora advice bureau, its website and e-bulletin list, and its plans for the future. This is followed by an explanation of the SCG's role in promoting the Senate Inquiry and in encouraging submissions to it.

The nature and extent of the Australian Diaspora is little understood both in Australia and overseas. We present a reasoned analysis of the concept of the Diaspora and the several groups of which it is comprised. The relationship of Australian Citizenship to the Diaspora is examined and we present a working definition of the Australian diaspora which extends beyond Australian Citizenship.

The ways in which their strong sense of Australian-ness is demonstrated by members of the Diaspora are listed but we conclude that this is not presently reciprocated in Australia's attitudes towards its diaspora and that, consequently, they feel excluded from Australia ***In short the concept of inclusion is a key issue for Expatriates***.

Citizenship is at the core of being for most members of the Australian Diaspora. It is referred to time and again by those who contact the SCG and its loss generates by far the highest level of a sense of exclusion felt by the Diaspora. Based on our contacts with members of the Diaspora and Government agencies, and our extensive research since our formation in 2000, the SCG in this submission undertakes a detailed analysis of the Australian Citizenship Act 1948 as it impacts on the Diaspora. The analysis is backed with a number of examples which graphically illustrate the shortcomings of the Act's provisions relating to loss, renunciation and resumption of citizenship.

We conclude that the Act is in serious need of revision and make a number of recommendations aimed at righting the wrongs created by the current exclusion provisions of the Act.

A number of other initiatives which are seen as desirable in properly including the Diaspora in the Australian nation are discussed.

Much has been said and written about stemming the "brain drain". We believe that it is time that Australia and Australians generally should bite the bullet and accept that in the medium to long term it is not possible to stop the emigration of our talented, highly skilled and well educated people to overseas environments which present opportunities for career development, research and remuneration that are far more attractive than what can be offered in Australia. Our suggestion is that there is a number of strategies which can be adopted to make the best use

of those we have lost without requiring to return immediately to Australia. Not the least of our suggestions is that the creation of Knowledge Networks will allow us to benefit greatly from the accumulated knowledge and skills which reside within the Diaspora.

The nature of arrangements which a number of the leading Diaspora countries have set in place, together with internet linkages to more detailed information, are discussed. The SCG believes that all readers of this submission could benefit greatly by a study of a very comprehensive report on the Indian Diaspora that was in published in December 2001.

Finally we advance a case for the establishment of an umbrella organisation for the Australian Diaspora (which we have named for the benefit of discussion as the Australian Diaspora Council) and suggest a number of roles which it would fulfil. Within that context we see the need for a control system based on an Australian Diaspora Card and the establishment of a Diaspora research facility at one or more of the Australian universities.

List of Recommendations

Recommendation 1

That consideration should be given to the introduction of an "Amnesty", allowing all those who know or suspect they have lost their citizenship under Section 17, regardless of whether they still carry Australian passports or not, to come forward for clarification of their legal situation. Such an "Amnesty" should not be limited in time. Its introduction should be coupled with the reform of the Act's existing resumption provisions as set out below so that immediate resumption is possible in all cases of loss or renunciation.

Recommendation 2

That DIMIA devote resources to a continuing and concerted campaign to inform those in the Australian Diaspora of the basic citizenship rules which apply to and impact them. Such measures should be additional to the passive display of more comprehensive information on the www.citizenship.gov.au **website.**

Recommendation 3

That the *citizenship.gov.au* website be revised in line with the points made in the section above.

Recommendation 4

That DIMIA develop and carry out a continuing and regular training programme for all staff in overseas missions who handle frontline queries about citizenship from members of the Australian Diaspora, whether they be Australian-based or locally-engaged staff.

Recommendation 5

That the two years presence requirement in Section 23AA(1)(b)(iii) be repealed.

Recommendation 6

That the requirement in Section 23AA(1)(b)(iv)(B) that an applicant have an intention to commence residing in Australia within three years of making the statement be repealed.

Recommendation 7

That DIMIA be asked to provide to the Inquiry full statistics of the use of Section 18 of the *Australian Citizenship Act 1948* since 10 February 2000, detailing the other country of citizenship concerned, and that a review of the relevance of Section 18 in the Act be undertaken once those statistics are available. Any policy decision to keep Section 18 in the Act should only be taken in conjunction with the repeal of the three year and two year requirements in Section 23AA.

Recommendation 8

That the requirement in Section 23AB(1)(b) that an applicant for resumption be under the age of 25 years be repealed. Resumption under Section 23AB should be available to individuals of any age, in line with Section 23AA. Further, the two years presence in Australia requirement in Section 23AB(2)(c) should be repealed, along with the requirement to state an intention to commence residing in Australia within three years from the date of application in Section 23AB(2)(d)(ii).

Recommendation 9

That the words "within one year after attaining the age of 18 years or within such further period as the Minister, in special circumstances, allows" be deleted from Section 23B(1) of the *Australian Citizenship Act 1948*, so that all individuals who lost their citizenship while minors under Sections 17, 18 and 19 may resume their Australian Citizenship at any time in adulthood.

Recommendation 10

That the words "within one year after the date of commencement of this section or the date on which the person attains the age of 18 years, whichever is the later, or within such further period as the Minister, in special circumstances, allows" be deleted from Section 23A(1) of the *Australian Citizenship Act 1948*, so that all individuals who lost their citizenship under Section 20 may resume their Australian Citizenship at any time in adulthood.

Recommendation 11

That DIMIA set strict time limits for the prompt processing of all resumption applications within or under three months from the date of lodgement.

Recommendation 12

That the Australian Parliament through its Joint Standing Committee on Electoral Matters, and in conjunction with a newly-established Australian Diaspora Council, re-examine the voting rights of overseas Australian Citizens in the wider context of developing and harnessing the role of the Australian Diaspora in furthering Australia's national interest.

Recommendation 13

That the Government initiate a review of Australia's taxation and investment regimes so as to identify the nature and level of disadvantages suffered by non-resident Australian Citizens vis-à-vis those who are resident in Australia. The review to include an assessment of any concessions that could be granted to expatriates as a means of enhancing their sense of inclusion in the Australian nation and its economic development.

Recommendation 14

That when the Department of Family and Community Services is considering the terms for negation in establishing new International Social Security Agreements that it consult with the Treasury on whether or not there is a need to cover the repatriation of superannuation or other retirement funds in the proposed agreement.

Recommendation 15

That the Government direct the ABS to examine the means by which members of the Diaspora may be included in the national census and that the 2006 census be used to trial systems for the collection of that data.

Recommendation 16

That the Department of Foreign affairs and Trade be asked to submit to the Inquiry details of its current country-by-country estimates of Australian Citizens living overseas on a permanent basis.

Recommendation 17

That the Australian Bankers Association be asked to examine the problems faced by Australian expatriates on arrival in their new country of residence in relation to the arrangement of banking and credit services, and where possible, enter into arrangements with their international counterparts to eliminate any such difficulties.

Recommendation 18

That the Committee should recognise the inevitability of the fact that the brain drain of Australia's well-educated and highly skilled citizens is unlikely to be slowed or reversed in the foreseeable future and that an approach along the lines of the diaspora option is more likely to be successful.

Recommendation 19

That the Committee recommend to the Parliament and the Government that the need for a number of policy reforms to taxation, expatriate investment in Australia, superannuation, and a range of other relevant matters should be addressed without delay.

Recommendation 20

That the network of Australia's bilateral social security and international taxation agreements be expanded as quickly as possible so as to avoid the many inequities Australian expatriates face in regard to pension portability and taxation liability.

Recommendation 21

That a concerted effort be made to identify, develop and support Australia-based entities which facilitate the re-entry of members of the Diaspora to Australia on a permanent basis.

Recommendation 22

That government programs be established to develop and nurture expatriate knowledge networks and the short-term placement of appropriately qualified members of the Diaspora in Australian organisations..

Recommendation 23

That the Australian Government;

- **take steps to hasten the finalisation of those agreements currently under negotiation; and**
- **mount a pro-active campaign to establish working holiday agreements with other countries where there is an existing or potentially significant Australian Expatriate community**

Recommendation 24

That the research and recommendations contained in the report of the Indian High Level Committee on the Indian Diaspora be assessed by the Senate Inquiry Committee for its relevance to the Australian Diaspora.

Recommendation 25

That an umbrella organisation be established by the Government without delay to service the needs of the Diaspora and the needs of Australia in relation to the Diaspora.

Recommendation 26

That the umbrella organisation, while initially having a limited development role, be required to expand its activities so as to represent and address the full range of programs necessary to meet the needs of the Diaspora. That full expansion to be achieved within an initial time frame of, say, three to five years.

Recommendation 27

That one of the primary initial tasks of the umbrella organisation would be to put to Government a proposal to enfranchise those in the diaspora to vote for the Board or Governing Council of the organisation and eventually for direct representation in the Australian Parliament

Recommendation 28

That the umbrella organisation develop a proposal for the issue of Australian Diaspora Cards to identify those entitled to such concessions as may be available to members of the Diaspora.

Recommendation 29

That the Government initiate action to establish a Research Facility for the Study of the Australian Diaspora at one or more of the Australian Universities.

About the Southern Cross Group

History and Formation

The Southern Cross Group is a volunteer-run and volunteer-funded international advocacy and support organisation for the Australian Diaspora. It was founded in January 2000 at a "town hall" style meeting held in Brussels, Belgium, attended by some 35 local Australians. Those present at the founding meeting were of the view that there was a need for an advocacy organisation which could actively focus on and work for changes to law and policy that negatively impacted or disadvantaged those in the Diaspora.

Although there were already a number of Australian expatriate organisations in existence in various countries, those at the SCG's founding meeting recognised that there was no single organisation which was international in scope. Further, and more importantly, experiences with various existing groups had shown that their activities all stopped short of active advocacy. There was a perception among some of the more established expatriate groups in London, in particular, that it was not their role to "speak out", despite the fact that many of their individual members had or still have needs and concerns later taken up by the Southern Cross Group.

With that in mind, rather than trying to work within any one existing national or regional Australian expatriate organisation, it was felt that it was time to create a new and independent international non-governmental organisation that could speak on behalf of all in the Diaspora on issues of common interest.

Volunteer Committee

In mid 2000 the SCG's first website was established and in an instant, the Group was global. From an initial small core of volunteers in Brussels, the SCG's

Committee network today has grown to encompass almost 100 individuals in 30 countries. Some volunteers have chosen to take on the role of local country or regional coordinator and have their contact details listed on the relevant page of the Contact Us section of the SCG's website. Often they contribute to the building of relationships between the SCG and other Australian expatriate organisations in their area as well as local event organisation. Other volunteers participate behind the scenes, for example in the development of policy work, the provision of administrative and technical IT support, the answering of queries, media monitoring, or the organisation of local SCG events. Communication and interaction among SCG Committee volunteers is constant and primarily by e-mail.

Constituency

From its inception, the SCG has taken the widest and most inclusive approach possible in defining its constituency. The Group strives to be an organisation that is relevant for and can serve all those in the Diaspora, ranging from the newly-born to working holiday makers in their 20s, highly-skilled professionals, trailing partners, or War Brides now in their 70s and 80s to name just a few. It welcomes contacts and input from all those in the Diaspora and indeed in Australia, regardless of age, ethnic background, length of time spent outside Australia, gender, education or occupation. The term "Diaspora" is used rather than "Australian Citizen" so as to make clear that the SCG is accessible not only to those who are legal Australian citizens, but also former Australian citizens and anyone else with a family or other connection or genuine interest in Australia.

The great diversity of the Diaspora is indeed fully reflected in the composition of the SCG's own volunteer Committee, which includes retired people, trailing spouses, students, professionals and others, both in Australia and overseas. There is no boilerplate profile for an SCG volunteer. The only requirement is that the person shares the philosophy and objectives of the Group and seeks to

participate. Some volunteers dedicate many hours each month to the work of the SCG, whereas others have less time to give, depending on their existing work and family commitments at any point in time.

Support Function: Diaspora Advice Bureau

While the "advocacy" or "lobbying" objective of the SCG was perhaps uppermost in the minds of the Group's co-founders in early 2000, it quickly became clear that a "support" function would necessarily and naturally have to go hand-in-hand with any advocacy role. Put simply, the SCG would not know what to go out and lobby for if it was not in constant dialogue with individuals in the Diaspora. Further, the reactions and input received from the Diaspora make it possible for the SCG to take considered positions which reflect the generally shared views and concerns of its broad constituency.

By continually listening to those who contact the Group, over time various specific and general issues of common interest emerge. Now in its fifth year of activities, many responses to e-mails received from Diaspora members contacting the SCG for the first time today begin with the reassurance "You are not alone. The SCG has been lobbying for some time to achieve change on this issue. Here's some background information, what we are doing, and how you can help."

Indeed, many people getting in touch for the first time tell the SCG that they thought they were the only person who had a particular concern until they found the Group's website or heard about the Group through some other avenue. A large percentage of queries received by the SCG today have already been answered many times previously, and its volunteers have built up various information resources to field many of the questions commonly asked.

A crucial aspect of the SCG today therefore is its virtual "Community Help Line or Drop-in Centre" function for the Diaspora, with its volunteers in many countries often providing "Citizens Advice" for the Australian community overseas on issues specific to that community. Sometimes, when a person's query cannot be adequately handled by an SCG volunteer, they will be referred to a reputable professional that the SCG believes can offer quality service and advice. On other occasions, those who contact the SCG simply want to connect with other Australian individuals or social or business networking organisations in their area. Or they may be still in Australia planning to move overseas to a particular country and seeking some tips in advance. Often, our volunteers do no more than provide a friendly ear and share the benefit of their own experience as an Australian expatriate in a particular country.

Website and E-Bulletin List

In addition to the one-on-one interaction the SCG has through its volunteers with members of the Diaspora worldwide, its website has been developed over time to provide key information on core topics of interest. It contains a number of links to the information pages on the websites of Australian government agencies.

Many visitors to the website choose to sign up free of charge to the SCG's e-bulletin list, which now contains the e-mail addresses of over 5,000 individuals in more than 85 countries. Although there is a constant and unavoidable rate of attrition as people move and/or change their e-mail address and out-of-date addresses are removed from the list, the subscriber list has grown consistently in the last five years from an initial list of only 200 Australians in Belgium at the beginning of 2000.

Free information on SCG events and the work of the Group is regularly circulated to subscribers through this medium. Individuals may unsubscribe themselves from the e-bulletin list at any time using the link included at the bottom of every

message sent out. In the privacy statement displayed on its website, the SCG undertakes to keep the personal data about those who sign up fully confidential. E-bulletins might be sent to the entire subscriber list worldwide, or only to subscribers in a particular country or countries, depending on the subject matter. Most subscribers to the list have identified the country they are in, although approximately 13 percent have chosen not to nominate their country of residence at the time they signed up. Those for whom no country of residence has been nominated receive only those e-bulletins sent to the entire list, and not country-specific messages.

The penetration of SCG e-mail bulletins is much wider than merely the number of subscribers on the list at any one time. Many of the addressees are office holders or members of other Australian expatriate groups in many countries who in turn pass on SCG messages through their own e-mail lists and newsletters. It is not uncommon for an SCG e-bulletin to be reproduced wholesale and circulated within many other organisations either by e-mail or snail mail in the days and weeks following its initial release. Many organisations also place notices based on SCG information on their websites, and some also carry links to the SCG website.

In addition, the SCG regularly puts out media releases using its subscriber list, and has worked hard to gain significant media profile in Australia over the last several years for the Diaspora cause. Indeed, it was the SCG that first coined the phrase “Australian Diaspora” in late 2000 that is so often used in the Australian media today. Many individuals on our e-mail subscriber list are journalists both in Australia and overseas.

With the “forwarding on” effect of the family and friends networks among the SCG’s original e-bulletin recipients we estimate that our messages and media releases reach at least two to three times the number on our direct e-mailing list. In addition we have developed, and try to keep up to date, snail mail address lists

for the UK (1500 names) and US (500 names) for those expatriates who, for one reason or another, do not use or have access to e-mail or the internet. These individuals tend to be the more senior members of the Diaspora, many now in their 70s and 80s and who may have left Australia as long ago as the 1940s and 1950s. Those without e-mail in the US and the UK whom the Group has contact details for receive less frequent communications from the Group due to the cost of postage. To date the SCG has not developed snail mail address lists for those in the Diaspora countries apart from the US and the UK and relies solely on e-mail communications everywhere else.

Many in the Diaspora and in Australia simply “drop in” to visit the SCG website for updates and information without ever joining the e-bulletin list. Presently, almost 500 people use the site every day, viewing one or more pages during their visit.

On several occasions the SCG has posted information on its website and sent out e-bulletins about research and/or surveys being conducted into the Australian Diaspora, or other non-commercial opportunities or events, helping the academics or the organisations concerned to reach significant numbers of Australians overseas. The Group remains willing to circulate non-commercial information of general relevance to the Diaspora through its networks, within the limitations imposed by the privacy statement displayed on its website.

There is no formal “membership” of the SCG as such, and no membership fee of any kind. The policy has always been not to exclude people or discourage participation by limiting access to parts of the site or e-bulletins to paid-up subscribers or “members”. The success of the Group today can be partly attributed to this inclusive policy, which has led to continued and rapid growth in e-bulletin subscriber numbers and site visitors, as well as a steady increase in the number of e-mail and telephone comments and queries received by the SCG’s volunteers every day.

Events

Attempting to serve all those in the Diaspora, and be a truly "international" organisation, presents special challenges. Although it would not be possible to run the SCG without internet and e-mail, and it is true that it has been possible to reach many in the Diaspora through these mediums and in doing so build a sense of "virtual" community which previously did not exist in the Diaspora, since its formation, the SCG has also held a number of events in various cities to provide opportunities for face-to-face interaction and discussion.

Several events have to date been held in London, the city with more Diaspora members than any other. These include:

- A "Dual Citizenship Party" to celebrate the repeal of Section 17 of the *Australian Citizenship Act 1948* in April 2002;
- An Australian Citizenship Affirmation Ceremony in February 2003 at which Citizenship Minister Gary Hardgrave presided;
- An Evening with Professor Graeme Hugo from Adelaide University in May 2003 looking at recent diaspora research;
- Two UK Visa Info Nights (jointly with TNT Magazine) in August 2003; and
- The worldwide launch of the book *Australian Expats: stories from abroad*, a joint publication between Global Exchange and the SCG, in October 2003.

In October 2003, launches where held for the abovementioned book in Australia, in Melbourne, Adelaide, Canberra, Brisbane and Sydney.

In the United States, the following events have taken place:

- A joint event in New York with the networking organisation formerly known as YAPA (now Advance: Australian Professionals in America) with Professor Hugo as a guest speaker in May 2003;

- A book launch in Washington DC in November 2003;
- A book launch in Chicago in November 2003;
- An event in New York with Consul General Ken Allen to promote *Australian Expats: stories from abroad* in January 2004;
- A combined brainstorming session with the Chicago Chapter of *Advance* as part of preparations for submissions for this inquiry in Chicago in February 2004.

In Canada, a Citizenship Affirmation Ceremony was held with Citizenship Minister Gary Hardgrave in Ottawa in February 2003.

In Europe, apart from the UK, the following events have been held:

- An information session in June 2001 in Brussels, Belgium;
- A Saturday-afternoon information seminar in Zurich, Switzerland in March 2003;
- A book launch event in November 2003 (in conjunction with the Australia Society of Belgium), Brussels;
- A book launch in Geneva in November 2003;
- A book launch was in Dublin in January 2004.

For some events, the SCG has hired a function venue. On other occasions, events have been organised with the generous assistance of a public affairs officer at the Australian mission concerned in the particular city, and the mission has also kindly provided the use of a room for the function, and in some cases also been able to provide light refreshments. Indeed, the SCG would not have been able to undertake such a diverse programme of events over the last few years had it not been for the generosity of a number of Australian posts overseas. The efforts of Australian High Commissioner HE Mr Michael L'Estrange in London and his staff deserve a special mention in this respect.

In addition, on a number of other occasions, SCG volunteers have been guest speakers at events organised by other groups or organisations in various countries, for example at an ANZCC London Update seminar in October 2001, and at the ANZACC Annual Conference in Washington DC in December 2001.

The SCG would also like to acknowledge the cooperation and support of the Young Australian Professionals in America (now Advance) in reaching members of the Diaspora in the United States. This young and vibrant organisation represents a breath of fresh air in the promotion of the Australian Diaspora within North America.

Looking Towards the Future

The Southern Cross Group hopes to be able to continue to serve the Australian Diaspora going forward. In 2004-2005 the Group would like to consolidate its volunteer base in Europe the UK and North America and strengthen its presence in particular in Asia, Africa, South America and the Pacific.

At the same time the SCG plans to put in place new legal and organisational structures so that it will be able to have a full-time secretariat and expand its activities. Fund raising will be a necessary part of securing the Group's future, so that the SCG's growth and development can parallel that of the Australian Diaspora, allowing it to remain a leading advocacy and support organisation in the years to come.

Promotion of the Inquiry to the Australian Diaspora

As the Committee is aware, the Southern Cross Group has actively sought to encourage both individuals and organisations to make submissions to this Inquiry since it was announced in October 2003. It was felt that the Committee would only gain an accurate picture of the Australian Diaspora and the issues outlined in the Inquiry's terms of reference if input was received from the broadest spectrum of those in the Australian Diaspora and indeed those in Australia with relevant experience and expertise to share.

For this reason, great emphasis was placed throughout the SCG's campaign promoting the inquiry on encouraging individuals who might never have made a submission to a government inquiry before to participate.

The Group employed a number of methods to reach members of the Australian Diaspora to inform them that the Inquiry was taking place and to assist and facilitate them in making their submissions.

As a first step, we created a new and dedicated section on our website entitled "Senate Inquiry into Expatriate Australians". Within this section, three new pages were created, identified in the drop down menu off the "Senate Inquiry into Expatriate Australians" topic as "Overview", "Ideas for Your Submission" and "E-mail Submission Template".

The "Overview" page set out various background and technical information regarding the Inquiry, such as confidentiality issues, Parliamentary Privilege, the format and length of submissions, and where to send submissions to.

Support as to "what to write" was provided on the "Ideas for Your Submission" page in html format, and the same text was included as part of a pdf document which could be printed out separately, and also included the practical information in html format on the "Overview" page. On the "Ideas for Your Submission" page,

based on its accumulated experience since 2000, the SCG listed many of the issues and topics that individuals were likely to want to touch upon in their personal submissions.

The third page, entitled "Make a Submission to the Senate's Diaspora Inquiry" was constructed as a php mailer file to allow individuals to fill in their name and contact details and compose their submissions directly into a template, which was then sent directly to the Committee Secretariat as an e-mail by clicking on the "Send Submission" button. The template included the Committee's address and a short opening paragraph of one sentence to help writers get started, but the content of the rest of the submission was left entirely up to the individual.

For those who preferred not to use the SCG's e-mail submission template, the Committee's full contact details including e-mail address were provided on the template page.

Once the new section of the SCG website was in place, a number of e-bulletins, some in the form of media releases, were sent to the SCG's 5,000 plus e-mail subscriber list in the period October 2003 to late February 2004. The e-bulletins included links to the SCG's website as well as links to the Committee's website. A number of media releases resulted in articles in national and local print media in Australia, as well as radio coverage. The Inquiry was also covered in *The Times* in London and in the South African press.

In addition, a general information flyer, headed "Calling All Australians" was produced in early November to help promote the Inquiry, and uploaded in pdf format in both A4 and US letter-size format to the SCG's website.[1]

[1] See the document SCG_Diaspora_Inquiry_Flyer_A4_Nov_2003.pdf in the Australian Diaspora folder of the SCG website archives.

Individuals and members of expatriate groups worldwide were able to print out the flyer to copy locally and distribute further within their own networks and place on noticeboards, etc. Many expatriate organisations were directly approached by SCG Committee volunteers by e-mail and telephone, and provided with pdf versions of the flyers and short texts to help them promote the inquiry within their memberships.

The SCG itself also printed several thousand flyers of A5 size, and distributed them widely by post and through its volunteer Committee. During the months leading up the submission deadline, a number of SCG book promotion events took place in various cities, and these occasions were also used as opportunities to announce the Inquiry and discuss its terms of reference with attendees as well as encourage submissions.

It is understood that the Department of Foreign Affairs and Trade (DFAT) is expected to make a submission to this Inquiry. While the SCG believes that all DFAT-run overseas missions were informed of the Inquiry from Canberra, it is not clear to the Group what, if any, measures missions were instructed to take locally to promote the Inquiry to expatriate Australians in their countries of coverage.

Therefore, during the period December 2003 – early February 2004, the SCG wrote to the heads of almost all Australian missions overseas, enclosing bundles of A5-size flyers as well as A4-size posters about the Inquiry, and requested the missions to make these available in their public areas, so as to reach Australians who might visit the mission for passport renewals, etc in the weeks leading up to the submission deadline.[2] In its letter, the SCG also asked the head of mission to circulate information about the inquiry to any local Australian expatriate groups in their jurisdiction, and to mention the inquiry in any newsletters the mission itself

[2] For a handful of missions, no information was formally sent, as individual SCG volunteers liaised directly with officers at the mission concerned regarding publicity about the Inquiry.

might produce for local Australians, as well as make the flyers available at any events which might be held for Christmas or Australia Day etc.

Although over 100 packages were sent out by airmail to Australian missions worldwide, many enclosing complimentary copies of the SCG's book *Australian Expats: stories from abroad*, only a handful of letters were received in acknowledgement.[3] Staff in at least one mission were unwilling to make flyers available in their public area because they viewed the document as "too political".

Some individual submissions to the Inquiry appear to make direct reference to picking up the SCG's flyer in an embassy or consulate, although it remains impossible to fully assess the ultimate reach of this exercise.

As a further measure, SCG Committee volunteers went back through all their e-mail queries on file, and where addresses were still active re-contacted many people who had shown an interest in issues which came within the Inquiry's terms of reference, dating back to the Group's formation. Those individuals were notified of the opportunity to provide input to the Committee and encouraged to participate. In addition, in the weeks leading up the submission deadline, several SCG volunteers fielded many calls and e-mails for individuals who wished to discuss various issues or had questions as they formulated their own submissions.

On 10 February 2004, the SCG and YAPA (now Advance) held a breakfast meeting in Chicago to provide individuals with an opportunity to brainstorm and share ideas pertinent to each term of reference for the Inquiry. A short session at the beginning of the meeting provided those in attendance with statistics on the Diaspora, policies that other countries employ to utilise their expatriate populations, and the current limitations in the *Australian Citizenship Act 1948* and

[3] The responses received can be viewed in the Australian Diaspora and Book Project folders of the SCG's website archives.

the *Commonwealth Electoral Act 1918*. The notes of this meeting were circulated within Southern Cross Group and Advance.

As the Committee is aware, a parallel but specific campaign to promote the Inquiry was conducted in Malta and among the Maltese community in Australia. This campaign targeted the almost 2000 Australian-born Maltese citizens who had renounced their Australian citizenship by the age of 19 before 10 February 2000. Those individuals are currently unable to resume their Australian citizenship unless they are still under 25 years of age.

Although various lobbying efforts had been conducted by the SCG and others over the last several years on this specific issue, the present Inquiry was seen as an excellent opportunity for those affected to raise this problem in Canberra again in a focussed and concerted manner. The SCG's volunteer coordinator for Malta led this campaign assisted by other SCG Committee members. On three occasions, public notices were placed in newspapers in Malta and a one-page article summarising the issue was widely circulated to media both in Australia and in Malta. Contacts were initiated with prominent members of the Maltese community in Australia and in Malta. Considerable media coverage was achieved in both countries.

A model document for Australian-born Maltese to take as a basis for their submissions was developed and placed on the SCG's website. Several hundred affected Maltese citizens and their family members contacted the SCG in the weeks leading up to the Inquiry deadline by e-mail, phone and text message and were provided with the relevant information to enable them to participate in the Inquiry. In addition, an article urging those in the Maltese community in Australia to write to the Inquiry in support of their compatriots in Malta was published in the Maltese Herald in Australia on 24 February 2004. The SCG kept the Australian High Commissioner in Malta fully abreast of these activities, and also wrote to

several Australian federal MPs who have large Maltese communities in their electorates.

All the activities undertaken by the Southern Cross Group to promote this Inquiry were only possible due to the donation of many hours of volunteer time by those on the SCG volunteer Committee. In addition, individual volunteers generously met all the financial outlays necessary for this work.

The Southern Cross Group has been keen to ensure that this is a “People’s Inquiry”, so that the voices of as many as possible in the Australian Diaspora might be heard. Indeed, for a vast number of those in the Diaspora, who currently do not have the right to vote in Australian federal elections, this Inquiry represents a unique opportunity to be listened to in Canberra. It is hoped that many of the generic issues raised in this submission will be supported by anecdotal evidence in the submissions of individuals and organisations.

The Diaspora and Citizenship Defined

To understand the many and varied issues related to the Australian Diaspora it is first necessary to give some definition to the concept of the Australian Diaspora. This in turn requires some discussion of the nature of Australian Citizenship.

Throughout this submission the words *diaspora, citizen* and *citizenship* are used in a variety of contexts. To differentiate our intentions in regard to usage we have adopted the following conventions:

- ***diaspora*** without capitalisation, is used in any general discussion of the concept of diaspora.
- ***Diaspora*** with capitalisation, is used when discussing the **Australian Diaspora.**
- ***Irish Diaspora, etc*** with capitalisation, is used when discussing the diaspora of particular countries other than Australia, e.g. Irish Diaspora, Italian Diaspora, Greek Diaspora, US Diaspora, etc.

- ***citizen*** and ***citizenship*** without capitalisation, is used in any general discussion of the concepts of citizen and citizenship.
- ***Citizen*** and ***Citizenship*** with capitalisation, is used when discussing **Australian Citizens** and **Australian Citizenship**.
- ***Irish Citizen, Irish Citizenship etc*** with capitalisation, is used when discussing the terms as applicable to particular countries other than Australia, e.g. Irish Citizen, Greek Citizenship, etc.

diaspora defined

The Macquarie Dictionary[4] defines the word ***diaspora*** as follows:

[4] The Macquarie Dictionary, Revised Third Edition, Reprinted 2003, The Macquarie Library Pty. Ltd, Macquarie University, Sydney.

> ***diaspora*** *n.* **1.** a dispersion, as of people of common national origin ***or beliefs*** (SCG emphasis added). **2.** the people dispersed. [Gk: a scattering: orig. applied to the Jews scattered among the Gentiles after the Babylonian captivity]

The Southern Cross Group (SCG) believes that recent usage of the term implies that at its core a country's diaspora is comprised in a large part by its ***citizens*** who live outside its borders. However, a country's diaspora is often seen to also include those who are not citizens of that country but who have a generally accepted ancestral connection to it. For example:

- **India** defines its diaspora to include Persons of Indian Origin (PIO) who, though foreign citizens, have as either of their parents, or any of their grandparents or great-grandparents a person who was born in India.[5]

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[5] Report of the High Level Committee on the Indian Diaspora, Ministry of External Affairs, India, 19 December 2001, page vii.

The full text of the definition used in the report is:
"The term Indian Diaspora includes in its ambit both NRIs and PIOs. ***NRIs*** or ***Non Resident Indians*** are Indian citizens, holding Indian passports and residing abroad for an indefinite period, whether for employment, or for carrying on any business or vocation, or for any other purpose.

"On the other hand, the term ***PIO*** or ***Person of Indian Origin*** is applied to a foreign citizen of Indian origin or descent. Technically he/she would belong to one of the following three categories, namely:

- A person who, at any time, has held an Indian passport;
- Any one, either of whose parents or any of whose grandparents or great-grandparents was born in, and was permanently resident in India as defined in the Government of India Act 1935 and other territories that became part of India thereafter, provided he/she was not at any time a citizen of the countries referred to in para 2 (b) of MHA notification No. 26011/4/98-1C. dated 30th March, 1999:
- The spouse of a citizen of India or a person of Indian origin covered in the above two categories."

- **Ireland** "cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage."[6]

The SCG notes that the International Rugby Board also recognises the concept of ancestry in defining who may play for national Rugby teams, by extending that entitlement to foreign-born players who have a parent or grandparent who was born in the country for which they intend to play.[7]

citizen defined

The Macquarie Dictionary[8] defines the word ***citizen*** as follows:

> ***citizen*** *n* **1.** a member, native or naturalised, of a state or nation (as distinguished from *alien*). **2.** a person owing allegiance to a government and entitled to its protection.
>
> (SCG note: Other usages indicated in the Dictionary are not relevant to this submission).

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[6] Article 2 of the Constitution of Ireland, as amended by Referendum held in 1998 following the Good Friday Agreement, provides that:

"It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage."

[7] Regulations of the International Rugby Board (taken from its website http://www.irb.com/laws_regs/regs/pdfs/Regulations_8.pdf on 29 January 2004) state:

"REGULATION 8.
ELIGIBILITY TO PLAY FOR NATIONAL REPRESENTATIVE TEAMS
8.1 Subject to Regulation 8.2, a Player may only play for the senior fifteen-aside National Representative Team, the next senior fifteen-a-side National Representative Team and the senior National Representative Sevens Team of the Union of the country in which:

a) he was born; or
b) one parent or grandparent was born; or
c) he has completed thirty six consecutive months of Residence immediately preceding the time of playing."

[8] Macquarie Dictionary

citizenship defined

The Macquarie Dictionary[9] defines the word ***citizenship*** as follows:

> ***citizenship*** *n.* the status of a citizen, with its rights and duties.

Australian Citizenship

The *Australian Citizenship Act 1948*[10] (the Act) indicates that Australian Citizenship (Citizenship) may be gained in a number of ways:

- Citizenship by birth - section 10 of the Act.
- Citizenship by adoption - section 10A.
- Citizenship by descent - section 10B.
- Citizenship by descent for a person aged 18 or over on 15 January 1992 - section10C.
- Grant of Citizenship (naturalisation) - section 13
- Resumption of Citizenship – (Subsequent to loss of Citizenship under the provisions of former section 17 of the Act) - section 23AA.
- Resumption of citizenship lost under section 18 of the Act (which allows renunciation of Australian Citizenship) – section 23AB.
- Resumption of citizenship lost under section 20[11] – section 23A.
- Resumption of citizenship lost under section 23 (children of persons who lose or are deprived of citizenship) – section 23B.

Shortcomings in the current resumption provisions of sections 23 AA, 23AB, 23A, and 23B are discussed later in this submission.

[9] Macquarie Dictionary
[10] For ease of reference the provisions of the Australian Citizenship Act 1948 that relate to gaining Australian Citizenship, as indicated in this paragraph, are included in Appendix A of this submission.
[11] Section 20 was repealed by Act No. 63 of 1958.

The Australian Citizenship Act 1948 also contains, or did previously contain, provisions under which Australian Citizenship could be lost. They are:

- Former section 17 under which Citizens taking up the citizenship of another country automatically lost their Australian Citizenship on the day that they acquired that new citizenship.

  Although section 17 was repealed with effect from 4 April 2002 there were no changes made to the Act which allowed the victims of section 17 a simple path by which they might claim resumption of their Citizenship. For many victims the current resumption provisions of section 23AA represent significant barriers to their applying for resumption.

- Section 18 of the Act[12] which allows Citizens to renounce their Citizenship.

  Renunciation of other citizenships was, and in some cases still is, a condition attached by some countries to the acquisition of that country's citizenship and associated rights.

  In relation to former Australian Citizens the most well known example of the use of section 18 is the Maltese Citizenship which, until 10 February 2000, required that other citizenships be renounced in order to allow its citizens over the age of 18 to participate fully in many aspects of Maltese life.

  The current ages of many former Australian Citizens in Malta exclude them from resumption under the provisions of section 23AB.

[12] For ease of reference the provisions of Section 18 of the Australian Citizenship Act 1948 that relate to the loss Australian Citizenship, as indicated in this paragraph, are included in Appendix B of this submission.

- by reason of service in the armed forces of an enemy country – section 19.

- Deprivation of Citizenship by naturalised Australian Citizens convicted of certain offences – section 21.

Groupings within the Australian Citizenship

The body of Australian Citizens living in Australia or overseas at any given time can be categorised in several significant, but different, ways, eg residents vis-à-vis those permanently or temporarily overseas, by country of residence, or how their Australian Citizenship was gained under the provisions of the Act.

Appendix C contains data on the location of overseas Australians.

In any general consideration of the nature of the Australian Citizenship the Southern Cross Group (SCG) believes that for the purposes of the current Inquiry it is useful to identify several groupings of Australian Citizens on the basis of citizenship acquisition. For ease of subsequent reference throughout this submission we have given alphabetical identifiers to each group. We emphasise that we neither imply nor seek to imply that Citizens within any grouping are any less worthy than others as Australian Citizens. The groups are identified in Appendix D.

Dual Citizenship

Many Australian Citizens in the above groups are, or have the potential to be, citizens of another country, i.e. dual or multiple citizens.

Prior to the repeal of section 17 of the Act effective from 4 April 2002, it was estimated that there were between 4 and 5 million dual citizens in the Australian Citizenship. Most of these were overseas-born naturalised Australian Citizens who were not required to renounce their existing citizenships when granted citizenship under section 13 of the Act. There was also a number of Australian-born Australian Citizens who were dual citizens at birth because of the descent provisions attached to the citizenship rules of some other countries.

Since the repeal of section 17, there is an increasing trend among overseas Australians to become dual Australian Citizens by taking up citizenship in their country of residence where they have qualified to do so under that country's citizenship laws – usually by the length of their residency.

The importance of dual citizenship to Australians and Australia as a nation, cannot be overemphasised in today's globalised world. In most countries the right to live as a normal member of its society flows from citizenship of that country, with all of the rights and responsibilities that accompany citizenship. Few countries have a migration program equal to that of Australia. Most place severe restrictions on who may reside permanently or legally work within the country.

Flowing directly from Australia's immigration programs and its adoption of a multicultural approach to absorbing migrants into its population without requiring renunciation of other citizenships, most naturalised Australians enjoy dual citizenship. More importantly, many Australian-born children of migrants have dual citizenship at birth, or have a right to claim another citizenship flowing from the citizenship laws of their parents' or, in some cases grandparents', country of birth.

Thus, many Australian Citizens enjoy a mobility which allows them to live and work freely in other countries on a long term basis without facing problems associated with visa applications, residency permits and/or work permits. Other

Australians, without the initial right to dual citizenship but who overcome these initial difficulties, face several years of administrative hassle before acquiring a right to apply for a new citizenship on a years-of-residence basis.

Of particular and growing importance to Australia is the right of those Australian dual citizens who have as their second citizenship, the citizenship of one of the fifteen countries within the European Union (EU) as this allows them freedom of movement, residence and employment throughout the EU. The scope of these freedoms will be enhanced considerably when a further ten countries join the EU in May 2004.

For the purposes of this Inquiry it is appropriate to recognise the several groupings of those who hold dual Australian Citizenship. We have continued the series of alphabetical identifiers in the table identifying dual citizenship groups at Appendix E.

The Australian Diaspora

An initial tendency is to consider the Australian Diaspora (hereinafter Diaspora) as being comprised of those Australian Citizens (hereinafter Citizens) who have emigrated from Australia, either on a short or long-term basis. This is no doubt an important element of the Diaspora and possibly warrants consideration as the core grouping - see the recent CEDA study "***Australia's Diaspora****. Its Size, Nature and Policy Implications*". [13] But it is not the only element that is part, or potentially part of, the Diaspora.

[13] **Australia's Diaspora**. Its Size, Nature and Policy Implications. Graeme Hugo, Dianne Rudd and Kevin Harris. CEDA Information Paper No.80, December 2003.
The Committee for Economic Development of Australia (CEDA) is an independent, apolitical organisation made up of business leaders, academics and others who have an interest in, and commitment to, Australia's economic and social development.
Professor Graeme Hugo is Federation Fellow and Professor of the Department of Geographical and Environmental Studies and Director of the National Centre for Social Applications of Geographical Information Systems at the University of Adelaide.

Again, we continue the sequence of alphabetical identifiers for the several groups we consider to be part of the Diaspora in the table at Appendix F.

The first group we identify in Part 1 of Appendix F, Group DiA, is comprised of Australian Citizens who have emigrated from Australia and are residing overseas for an indefinite period, for employment reasons, or for carrying on any business or vocation. It is the group which receives the most attention in the Australian politics and the Australian media. For most people it will represent the **brain drain.** It can readily be seen as the most materialistic of the expatriate groups. It is probably the driving group behind the **"tall poppy syndrome"** attitude which is prevalent in Australia with respect to its Diaspora. It is the group within the Diaspora, which has its equivalent in all other diasporas, about which the re-entry programs of Australia and other countries are directed as it consists of people most likely to contribute to the economic development of their country of citizenship.

The other five groups identified in Part 1 of Appendix F are far less materialistic in nature and are seldom recognised in discussions about the Diaspora. Nevertheless, those who belong in each of five groups believe they have equally important reasons for being recognised as a part of the Diaspora. They have strong feelings about Australia – its culture, its heritage, its economic development, its lifestyle, its political scene and its place in a globalised world. Many have strong personal and family ties to those remaining in Australia. They are every bit ambassadors for Australia as those in the brain drain Group DiA. They, as individuals and those to whom they have links in Australia, have an expectation that they will continue to be, and expect to be seen as, an important segment of the Australian nation. Thus, those parts of the Diaspora should not be

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overlooked when considering the initiatives suggested by the SCG and others in their submissions to this Inquiry.

All of the groups identified in Part 1 of Appendix F are made up from those who are Australian Citizens. However, the SCG believes that the concept of the Australian Diaspora could usefully include other groups that share Australia's cultural identity and heritage. These include those groups identified in Part 2 of Appendix F.

The first six groups identified in Part 2 of the appendix, Groups ADA to ADF, consist of those people who have lost their Australian Citizenship, or their potential to claim Australian Citizenship, as a consequence of the operation of the now repealed Section 17 and the existing Section 18 of the Australian Citizenship Act 1948.

The impact of the now repealed Section 17 was at the core of the forces leading to the formation of the Southern Cross Group at the beginning of 2000. Although the repeal of Section 17 in April 2002 brought much relief for many in the Diaspora and future members of the Diaspora yet to leave Australia, the amendments to the Act at that time did nothing to reclaim the many former Australian Citizens who had lost their Australian Citizenship under Section 17, or those who had renounced their citizenship under the provisions of Section 18, as part of the Australian nation. Many of those affected have expressed the view that they feel betrayed by Australia and are unable to understand why the Parliament has not acted to bring them back into the fold.

The SCG's concerns on this issue and its recommendations for righting the situation are canvassed later in this submission.

The remaining groups, Groups ADG to ADN, identified in Part 2 of the appendix are all worthy of being considered as part of the Australian Diaspora. Through

their links with Australians and Australia they represent forces which could well be harnessed to promote Australia's national interest however that may be defined at any given time.

Distinguishing Features of the Diaspora

Three factors set the Australian Diaspora apart from the diaspora of most other countries.

First, the Australian Diaspora has a relatively recent history dating essentially from the latter part of the 20th century and the new 21st century. Thus, many within the Diaspora are first generation emigrants. In contrast, other diaspora have a much longer history and rely heavily on ancestral links in claiming numbers and cultural affinity.

Second, the socio-economic factors which pertain to the growth of the Australian Diaspora are very different to those applying to most other diaspora. Australians, more or less as a right of citizenship, enjoy comparatively high standards of living, are relatively well educated and enjoy well-paid and congenial working conditions. Their emigration is self-funded and is for reasons related to personal betterment from the already reasonable standards they enjoy as individuals within the Australian community. In contrast, the histories of many other diaspora encompass slavery, indentured labour, escape from famine and other natural disasters, the ravages of war or racial discrimination, and/or the escape from poverty.

Third, flowing directly from Australia's immigration programs and multiculturalism, is the fact that many within the Australian Diaspora go to countries with which they already have a cultural affinity and language ability flowing from place of birth or family ties. In effect, they are already members of that other country's diaspora. The universality of the English language eases the

transition of Australian emigrants to the United Kingdom and North America which both have a very large proportion of the Australian Diaspora. In contrast, the initial emigrants in the diaspora of other countries faced serious cultural shock and language difficulties in their new countries.

How then to define the Australian Diaspora?

The SCG believes that unless the term *Australian Diaspora* is required to be included in any piece of legislation, it is not necessary to arrive at a precise, binding definition of the term.

We would favour a working definition along the lines of those in the Irish Constitution. For example:

> *It is the entitlement and birthright of every person born in Australia, which includes its islands and seas, to be part of the Australian nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Australia.*
>
> *Furthermore, the Australian nation cherishes its special affinity with, and includes in its Diaspora:*
>
> - *Australian Citizens and former Australian Citizens living overseas:*
> - *spouses and dependent children of Australian Citizens living overseas where the spouse or child is not an Australian Citizen;*
> - *people of Australian ancestry living overseas who share its cultural identity and heritage;*

- *foreign citizens living overseas who are the parents or children of persons who have migrated to Australia as permanent residents; and*

- *other persons, not of Australian ancestry, who are seen to be active supporters of the Australian nation, its cultural identity and heritage, through their regular involvement in Australian expatriate organisations, other relevant organisations, and/or otherwise promoting Australia's interests.*

Such a working definition does not equate the legal entitlement to Australian Citizenship with membership of the Australian Diaspora. It allows flexibility in approach when considering the development of programs or legislation to:

- enhance the position or status of individuals within the Diaspora; and
- promote Australia's national interest through aspects of the Diaspora.

In other words, the content of the Diaspora at any given point in time, depends on the reasons for assessing the importance of the Diaspora to Australia's national interests at that time and in the context of that assessment.

Purposes relating to the use of the Diaspora

How the Australian Diaspora is identified within the above working definition at any given point in time is inevitably linked to the objectives and outcomes that are seen as important from time to time in recognising, developing, harnessing and/or utilising the Diaspora.

These various objectives and outcomes could include:

- the rights and obligations of Australian Citizenship;
- family and community benefits;
- population growth;
- repatriation of Australian Citizens;
- priorities for select migrant groups;
- investment in Australia;
- repatriation to Australia of financial assets of Australian Citizens;
- flow of overseas currencies to Australia;
- commercial and/or economic factors;
- tourism
- export or import of innovation:
- brain circulation;
- educational, cultural and scientific exchange programs;
- identification and development of networks for various reasons;
- enhancement of Australia's standing in a globalised world; and
- in-country support for the establishment of bilateral agreements with other countries in respect of trade, social security, taxation, migration, working holiday schemes, etc.

I Am, You Are, We Are Australians

Or

Still Call Australia Home

The overwhelming message that comes through in the Southern Cross Group's contact with the Australian Diaspora is that, as individuals, they have a very strong sense of their Australian-ness:

- they cherish their Australian Citizenship or long for the reinstatement of their lost Citizenship;
- they have strong affiliations to Australia, its heritage and culture through their experience of life in Australia, an Australian education and work experience and/or continuing family ties;
- most have a desire to return to Australia on a permanent basis at some future time;
- many continue to maintain property or financial interests in Australia in the expectation of that return;
- they promote with fervour and by example, at the personal, community and business levels:
    - the virtues of the Australian way of life;
    - Australia as a source of highly educated and skilled workers;
    - Australia as a migration friendly country;
    - Australia as a tourist destination;
    - Australia as a place of opportunity for investment, trade, commerce, and education; and
    - Australia's stature in a globalised world.

Nevertheless, over time many Expatriates experience a sense of disconnection from Australia. While, to a degree, this is no doubt a reflection of the niche they have developed for themselves in their country of residence, the SCG believes that a significant root cause of this sense of disconnection lies in Australia's and

Australians' attitudes towards our Expatriates as individuals and its Diaspora as a whole.

Until recently few Australian residents would have been able to guess at the number of Australians living overseas or thought that it was something they needed to know. Certainly their guesses would have fallen well short of the DFAT estimate of one million. The term *diaspora*, while long recognised in other countries, has only very recently begun to be used by the Australian media. Most resident Australians probably still do not know the meaning of the word or the context in which it is important to Australia.

Over many years there has developed in Australia a belief that Australians at all levels enjoy employing the *tall poppy syndrome* against high achievers in most aspects of life. It would seem that overseas Australians, as a class, are seen by many who remain in Australia as legitimate *tall poppy* targets. This is so regardless of the level of achievement attained by individual Expatriates.

The SCG recalls that in the inquiries, discussions and debates on citizenship that preceded the repeal of Section 17 of the *Australian Citizenship Act 1948*, some sections of the community were opposed to the concept of dual citizenship on the grounds that for an Australian Citizen to consider becoming the citizen of another country, that person's loyalty to Australia had to be questioned.

Fortunately that attitude in relation to dual citizenship is fast disappearing but the SCG suspects that the lack of loyalty, or perhaps the perception that expatriates have failed to repay the debt to Australia that they have built up through their early development and Australian education, is still popularly believed in respect of Australian expatriates.

Thus, a major task facing the Committee must be to make recommendations and suggest programs and research directed at changing community attitudes to the

Diaspora. This change in attitude could be expected to press for a sea change at both Government and private sector levels in the willingness to enhance the lot of expatriates as part of the process of making better use of the Diaspora.

In short the concept of inclusion is a key issue for Expatriates.

Citizenship Law Reform Section

Introduction

As has already been stated above, the concept of "inclusion" is critical for those in the Australian Diaspora. A number of individual members of the Diaspora in their submissions to this inquiry speak of feelings of being forgotten or overlooked, being treated as "out of sight, out of mind", or indeed perceptions of being inadvertently or even deliberately excluded from the Australian nation and important aspects of Australian life.

Australian law and policy determining who is allowed to enjoy Australian citizenship in the legal sense is fundamental for the Australian Diaspora. It cannot be stressed strongly enough that in the SCG's experience, citizenship issues rank at the very top of the list of concerns of those in the Diaspora. The Group receives more communications about citizenship than on any other single subject.

Under Australia's current complex citizenship laws, who presently qualifies as an Australian citizen? In many instances, individuals in the Diaspora are not sure of their own citizenship status or that of their children or grandchildren when they contact the SCG. The examination of hundreds of cases over the last several years and the provision of citizenship law advice to these individuals has led the Southern Cross Group to the view that it is high time for Australia to take a new look at the existing legal framework. As a nation, and in an age of globalisation when almost one million Australians live abroad, we must ask ourselves afresh who in the Diaspora it is appropriate to recognise as citizens in the legal sense.

In her 2002 book *Australian Citizenship Law in Context*, Melbourne University academic Kim Rubenstein identifies as a recurring theme the tension between

"inclusive" and exclusive" notions of citizenship.[14] She labels the legal notion of citizenship as exclusive, and the normative notion as inclusive and universal. It is submitted, however, that even within the purely legal notion of Australian citizenship as it is defined today under the *Australian Citizenship Act 1948*, the tensions and ambiguities of "inclusive" versus "exclusive" are very much in evidence.

Within Australia, legal citizenship is usually discussed at the political and public levels in the context of encouraging migrants to become Australian citizens by naturalisation. Indeed, the Minister for Citizenship and Multicultural Affairs, the Hon Gary Hardgrave MP, was quoted in *The Sunday Telegraph* of 7 September 2003 as beginning a "campaign of mild harassment" to pressure long-time permanent residents holding British and New Zealand citizenship to take out Australian citizenship.[15] The Government's Australian Citizenship Promotion campaign has as one of its objectives "the enhancement of the profile and significance of Australian citizenship among all Australians". Here one can see an "inclusive" notion of citizenship in evidence.

But little attention has been paid by Australian governments over the years to the enhancement of the profile and significance of Australian citizenship to those in the Diaspora. While great efforts have been put into publicising "inclusive" messages about citizenship to migrants in Australia, these have not been adequately mirrored towards those outside Australia in the Diaspora. Citizenship law and policy as it applies to those overseas is unquestionably still based on notions of "exclusion" rather than "inclusion". Comparatively few resources have been devoted to citizenship issues impacting those in the Diaspora, although almost a million Australians now live overseas, a figure equivalent to one

[14] Kim Rubenstein, *Australian Citizenship Law in Context*, Lawbook Co., 2002, page 6 and following.
[15] Question on Notice No. 2607, House of Representatives Hansard, 24 November 2003, page 22613. There are an estimated 346,000 UK citizens and over 200,000 NZ citizens who meet the residence requirements to acquire Australian citizenship and have not yet chosen to. See also the Minister's media release of 16 December 2003, "Australian Citizenship Invitation Renewed".

twentieth of Australia's resident population. Having large numbers of Australians offshore for long periods raises new challenges for policy makers in the area of citizenship legislation.

It is an unfortunate matter of historical fact that the Australian Diaspora continues to live with the legacy of Section 17 of the *Australian Citizenship Act 1948*, which, until its repeal with effect from 4 April 2002, automatically stripped those Australians who acquired another citizenship of their Australian citizenship. From 26 January 1949, when Australian citizenship came into existence,[16] until the repeal of Section 17, Australia did not allow dual citizenship for those who started from a base of Australian citizenship and sought naturalisation elsewhere. The SCG was heavily involved in working towards the repeal of Section 17,[17] and applauds the fact that since 4 April 2002, no further Australians are forfeiting their citizenship. But despite the repeal of Section 17, the *Australian Citizenship Act 1948* continues to be peppered with provisions that still exclude particular groups in the Diaspora from legal citizenship. Legislative reform attempts over the years, which have tinkered at the edges of the Act, have often created further difficulties or excluded additional groups within the Diaspora from citizenship, usually failing to provide a complete "fix".[18]

Legal citizenship is of importance generally because of the special rights and obligations it brings with it.[19] It cannot be stressed enough that contrasted with

[16] Until 26 January 1949, the only national status of members of the Australian community was "British subject". "British subject" status then co-existed as a supra-national status alongside the status of Australian citizen from 26 January 1949 until it was removed from the *Australian Citizenship Act 1948* in 1987. See Rubenstein, *op cit*, pages 79 and 86.

[17] See the Dual Citizenship folder in the Archives section of the SCG website, and in particular the document "Section 17 of the *Australian Citizenship Act 1948*: Grounds for Repeal and Associated Issues", Submission to the Australian Department of Immigration and Multicultural Affairs, Brussels and Washington DC, 6 July 2001.

[18] The present submission deals solely with citizenship issues concerning the repeal of Section 17 and those provisions in the Act covering resumption. A separate and supplementary submission will be made the Inquiry on the issue of citizenship by descent.

[19] The *Australian Citizenship Act 1948* simply determines who is entitled to be an Australian citizen. It does not set out the rights and obligations of citizenship. For a discussion of the legislative consequences of citizenship, and the myriad of pieces of federal legislation that

those who reside in Australia, citizenship has a very different, and much more immediate functional importance for those in the Diaspora. For those overseas, Australian citizenship is of great practical concern, not least because it entitles one to hold an Australian passport.[20]

The Department of Foreign Affairs and Trade (DFAT) estimates that some 8 million Australians hold Australian passports. Almost one million of those are members of our Diaspora. Those within our Diaspora are by definition a very mobile group and are constantly travelling to various places from their country of current residence, for business and for pleasure. Many often return to Australia for business and/or to visit family and friends. Those without citizenship and the Australian passport it brings need a visa to enter Australia for any purpose unless they are New Zealand citizens.[21] Mobility in and out of Australia is determined by a person's citizenship status. The High Court has found that "the right of an Australian citizen to enter the country is not qualified by any law imposing a need to obtain a licence or "clearance" from the Executive".[22]

The SCG is strongly of the view that the urgent reform of a number of discriminatory and inequitable provisions in the *Australian Citizenship Act 1948* is an essential and necessary prerequisite to improving and strengthening the relationship between Australia and those in its Diaspora. The provisions in question are discussed in more detail below. The legislative reform of these

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discriminate on the basis of Australian citizenship and residence, see Rubenstein, *op cit*, Chapter 5, pages 177 – 255.

[20] Section 7(1) of the *Passports Act 1938* provides that Australian passports may only be issued to Australian citizens. Section 5 of that Act provides that only a person who is an "Australian citizen" within the meaning of that term in the *Australian Citizenship Act 1948* is an Australian citizen for the purposes of the Act. It should in addition be noted that the Federal Court has found that the issuing of a passport in error does not in law confer citizenship upon the holder and is legally irrelevant to citizenship: *Minister for Immigration & Ethnic Affairs v Marjan Petrovski* [1997] 154 FCA. A citizen's right to a passport to travel in and out of Australia is not absolute as the Minister may refuse its issue in certain circumstances. See Rubenstein, *op cit*, page 243.

[21] The *Migration Act 1958* governs the "entry into and presence in Australia of aliens, and the departure of deportation from Australia of aliens and certain other persons" and is entirely founded on the distinction between citizens and non-citizens.

[22] *Air Caledonie International v Commonwealth* (1988) 165 CLR 462 at 469. See also Rubenstein, *op cit*, pages 230-231. Australian citizens do not have an absolute right to remain in Australia, as they can be extradited under the *Extradition Act 1988*, for example.

provisions would send a clear and unequivocal message that many thousands of Diaspora members are welcome in the Australian family.

The Legacy of Section 17

Until 4 April 2002, an adult Australian citizen who acquired another citizenship lost their Australian citizenship under the following provision of the *Australian Citizenship Act 1948*:

Section 17

(1) A person, being an Australian citizen who has attained the age of 18 years, who does any act or thing:

(a) the sole or dominant purpose of which; and
(b) the effect of which,

is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.

(2) Subsection (1) does not apply in relation to an act of marriage.[23]

Section 17 was repealed by Schedule 1 of the *Australian Citizenship Legislation Amendment Act 2002*.[24] The provision which repealed the Section simply read:

Repeal the section.

[23] This version of Section 17 was introduced on 22 November 1984. From 26 January 1949 to 21 November 1984, Section 17 read: *"An Australian citizen of full capacity, who whilst outside Australia and New Guinea, by some voluntary and formal act, other than marriage, acquires the nationality or citizenship of a country other than Australia, shall thereupon cease to be an Australian citizen."* The 1984 amendment appears to have been made to ensure that a person obtaining permanent residence in Israel (oleh status) and consequently Israeli citizenship would no longer lose their Australian citizenship (unless in applying for permanent residence the only or main objective was to acquire Israeli citizenship).

[24] Act No 5 of 2002. A consolidated version of the *Australian Citizenship Act 1948* incorporating the 2002 amendments is available at: http://scaleplus.law.gov.au/html/pasteact/0/381/top.htm

It is important to stress that the sole effect of this amendment was to prevent Australian citizens who acquired another citizenship on or after 4 April 2002 from losing their Australian citizenship. Schedule 1 of the *Australian Citizenship Legislation Amendment Act 2002* specifically points out:

> The repeal of section 17 of the Australian Citizenship Act 1948 by this Schedule applies to an acquisition of nationality or citizenship of a foreign country, where the acquisition occurs after the commencement of this item.

In 2002 no new amendment was made to the *Australian Citizenship Act 1948* to allow those who had forfeited their Australian citizenship under Section 17 before 4 April 2002 to "get it back". However, it should be noted that the Act already contained a provision providing for the resumption of citizenship lost under Section 17 which was not amended in 2002.[25] It and other resumption provisions in the Act are discussed separately below, and raise their own difficulties.

Although the repeal of Section 17 was a much-needed reform, the Australian Diaspora continues to bear the legacy of that provision in a number of ways.

First, the Southern Cross Group continues to receive many communications from members of the Diaspora who are still unaware that Section 17 has been repealed, whether or not they themselves have acquired another citizenship at any stage. Several individual submissions to this inquiry appear to have been written on the assumption that Section 17 is still good law, because they urge the government to "allow dual citizenship".

Second, many in the Diaspora who have learned of the repeal of Section 17 mistakenly assume or believe that because that change has now occurred and dual citizenship is today possible for all groups of Australian citizens, all those who forfeited their citizenship under Section 17 before 4 April 2002 have

[25] Section 23AA.

somehow had their citizenship "returned" to them from that date, even in the absence of any overt act or resumption application on their part. The Southern Cross Group receives many queries from people who acquired another citizenship in the period 26 January 1949 to 3 April 2002 who believe this to be the case, until the exact nature of the 2002 amendment is explained to them.

Third, many Section 17 victims who have heard about the 2002 repeal and who do understand that their lost citizenship has not automatically been given back to them are very often unaware of the Section 23AA resumption option and the issues which that provision in itself raises for those who are away from Australia in the longer-term (see the discussion below). At least one individual submission to this inquiry demonstrates an ignorance of the existence of the Section 23AA resumption provision despite acknowledging that loss of citizenship under Section 17 had occurred some years previously.

Fourth, a number of individuals continue to contact the SCG to inquire as to whether they did indeed fall victim to Section 17 in the period 26 January 1949 – 3 April 2002. A mythology exists among many that a person only actually lost Australian citizenship under Section 17 if the Australian government authorities were specifically informed of, or otherwise concretely became aware of, the person's acquisition of another citizenship.[26] The SCG continues to spend a great deal of time explaining to people that it is completely irrelevant whether their acquisition of another citizenship before 4 April 2002 was or is known to the

[26] In the past Australia had international reciprocal arrangements with 27 countries which involved exchanging information in relation to acquisition of citizenship. Some of these dated back to the 1940s. Under these arrangements, if a citizen of one country acquired the citizenship of another, then the latter country was to provide the former country with details of the person, and, under some arrangements, collect the person's passport and return it to the former country. In the years immediately preceding the repeal of Section 17, these reciprocal arrangements largely lapsed. In February 2000, the Australian Citizenship Council recommended that existing reciprocal arrangements remain lapsed, or where necessary, be formally terminated: Australian Citizenship Council, *Australian Citizenship for a New Century*, A Report by the Australian Citizenship Council, February 2000, pages 65-66. This recommendation was accepted by the government in May 2001 and it undertook at that time to "pursue discussions with relevant countries as necessary to give effect to termination": Australian Citizenship…A Common Bond, Government Response to the Report of the Australian Citizenship Council, page 24, May 2001.

Australian authorities or not. Section 17 applied by operation of law. Put simply, the person lost their Australian citizenship on the day they acquired the other citizenship, regardless of who knew about it.

Many Section 17 victims contact the SCG in a state of great agitation having just learned that the provision was part of the law until 4 April 2002 and are loathe to face the legal reality that they have not been Australian citizens since the date they acquired their new citizenship before 4 April 2002. They approach the SCG rather than inquire with their nearest Australian mission for fear of the consequences, or because they have attempted to inquire with their nearest mission but have not received satisfactory advice or assistance.

In addition, many people who acquired another citizenship before 4 April 2002 equate the current possession of an Australian passport which has not expired with the continued enjoyment of Australian citizenship, whether or not they were aware of the existence and operation of Section 17 before contacting the SCG. Unequivocal advice is given to these individuals that an Australian passport is only evidence of citizenship and that there is no entitlement to a passport unless the person is a citizen. If a person acquired another citizenship while Section 17 was still in force, from the date of acquisition of their new citizenship, their Australian passport in fact ceased to be valid, even if it was not confiscated and on the face of it appears still to be a valid travel document.

It should be noted that passport application forms used within Australia have differed from those used overseas. Those provided in Australia did not draw attention to the Section 17 loss of citizenship issue. The SCG is aware of a number of cases where victims of Section 17 who were not aware of the existence of the provision have obtained new passports while visiting Australia, thereby remaining oblivious to the fact that their acquisition of another citizenship since the issue of their last passport had in fact rendered them no longer Australian. These individuals, who are not Australian citizens, continue to use

their Australian passports in the genuine belief that they are still Australian citizens.

Some people who acquired another citizenship in the years previous to 4 April 2002 and fully understood at the time or have since learned of the effect Section 17 would have on their Australian citizenship confidentially relate to the SCG how they have “kept mum” and “never owned up to anyone at the Embassy or High Commission or Consulate” that they have acquired another citizenship, in order to be able to keep renewing their Australian passport. Some still sincerely believe themselves to be Australian citizens. Most have only the haziest understanding of Australian citizenship law, no doubt compounded by various anecdotal tales from friends and family over a number of years. Some individuals appear to have wondered for many years whether they are still Australian citizens. A number of people have been too afraid to seek definitive advice or explore the subject fully for decades, believing that it is “best not to know” if they have indeed lost their citizenship and that “it won’t matter if nobody finds out”.

Several individuals, on learning that they are no longer citizens despite the fact that they have current passports, when their citizenship status has been comprehensively assessed by the Southern Cross Group, have chosen to simply take no further action. The SCG believes that a number of Section 17 victims may continue to present themselves to the world as Australian citizens until their dying day. It should be noted that the loss of citizenship under Section 17 often also automatically led to the loss of Australian citizenship for any minor children, if the other parent did not remain an Australian citizen. Discovery or realisation today that a person is in fact no longer an Australian citizen and has not been for some years can have devastating legal and emotional consequences not only for that individual, but also for their children and in some cases, grandchildren.

Often, people who acquired another citizenship before 4 April 2002 are incredulous that they have forfeited their Australian citizenship because they have acquaintances and friends who were legally citizens of both Australia and another country even before 4 April 2002. In many instances these people, when acquiring another citizenship, just assumed that dual citizenship was available to them as well. For example, there are many Australian-born children of British-born parents who were able to be dual citizens because they were Australian by birth under Australian law and British by descent under British law. This is one of the ironies of the now-repealed Section 17. While it existed, it discriminated against overseas Australians who wanted to acquire another citizenship by naturalisation, whereas other groups of Australian citizens were allowed to be dual citizens.[27]

Recommendation 1

Consideration should be given to the introduction of an "Amnesty", allowing all those who know or suspect they have lost their citizenship under Section 17, regardless of whether they still carry Australian passports or not, to come forward for clarification of their legal situation. Such an "Amnesty" should not be limited in time. Its introduction should be coupled with the reform of the Act's existing resumption provisions as set out below so that immediate resumption is possible in all cases of loss or renunciation.

Confusion also remains as to when a person was lawfully able to hold dual citizenship before 4 April 2002 and when they were not. Many individuals suddenly concerned that they have lost their citizenship are relieved to learn that they did not "acquire" a new citizenship within the meaning of the old Section 17,

[27] The Australian Citizenship Council noted in its Report in 2000 that around 4.4 million Australian citizens were able to lawfully possess more than one citizenship and set out some of the ways in which this occurred: Australian Citizenship Council, *Australian Citizenship for a New Century*, A Report by the Australian Citizenship Council, February 2000, pages 60-61.

but were simply exercising an entitlement to a travel document, such as a passport, for a citizenship they simply had from the time of birth under the law of another country.

This would be the case, for example, for a person born in Australia to an Irish citizen parent who was himself or herself born in Ireland. Under Irish law, the Australian-born person is simply an Irish citizen from their time of birth, with no registration requirement. Obtaining an Irish passport in these circumstances before 4 April 2002 did not invoke the operation of Section 17, because the person was not doing an act or thing to "acquire" a citizenship, but merely obtaining a travel document as evidence of an existing citizenship.

The situation is not the same however, for those born in Australia to an Irish citizen who was himself or herself born outside Ireland, with one or more grandparents born in Ireland. These individuals are entitled to become Irish citizens, and can do so by having their births registered in the Irish Foreign Births Register maintained by the Irish Department of Foreign Affairs. For those entitled to register, their Irish citizenship is effective from the date of registration. Before 4 April 2002, Section 17 did apply to Australian-born individuals in this situation who took the step of becoming registered in the Irish Foreign Births Register. The AAT case *Re Allan and Department of Foreign Affairs* (1986) 5 AAR 432; 11 ALD 28 was just such a scenario.

Although the events in *Re Allan* occurred under the pre-22 November 1984 version of Section 17, and even in spite of what might be considered somewhat ambiguous statements by the Federal Court in *Minister for Immigration, Local Government and Ethnic Affairs v Gugerli* (1992) 15 AAR 483, at 489, the SCG understands from various discussions that DIMIA continues to treat such cases of registration in the Irish Foreign Births Register occurring in the period 22

November 1984 - 4 April 2002 as cases of loss of citizenship.[28] Indeed, the decision of the AAT in *Finn and Minister for Immigration and Multicultural Affairs* [2000] AATA 823 confirms this. Mr Finn was granted Irish citizenship through his grandparents of Irish descent in 1995, and was deemed to have automatically lost his Australian citizenship under Sub-section 17(1) of the Act. It should be noted that an Australian-born person with an Irish-born grandparent could become an Irish citizen by registration in the Irish Foreign Births Register while still a minor before 4 April 2002 without forfeiting their Australian citizenship, as Section 17 only applied to those aged 18 or over.[29]

When presented with possible loss of citizenship cases under the now repealed Section 17, it is necessary to look closely at the provisions of the other country's citizenship law applicable at the relevant time. A thorough examination must be undertaken to ascertain whether the particular provision in the citizenship law concerned was conferring citizenship from a specific date. Often it is necessary to seek the advice of the Ministry of the foreign country concerned with responsibility for citizenship matters, or to seek the advice of foreign counsel. In many cases, English translations of the foreign citizenship law are not available. These cases are often very complicated, and much hangs on the final legal assessment for the individual concerned. But for many, this is a necessary process in order to definitively ascertain their current Australian citizenship status.

Recommendation 2

That DIMIA devote resources to a continuing and concerted campaign to inform those in the Australian Diaspora of the basic citizenship rules which apply to and impact them. Such measures should be additional to the passive display of more comprehensive information on the www.citizenship.gov.au website.

[28] See also Kim Rubenstein, *Australian Citizenship Law in Context*, Lawbook Co, 2002, pages 138 – 139.
[29] Prior to 1 December 1973, Section 17 only applied to someone 21 years or older.

The Australian Citizenship Instructions

The *Australian Citizenship Instructions* (ACI) provide only very limited guidance with respect to the above.[30] It is submitted that those paragraphs addressing loss of citizenship under Section 17 in the ACI should be reviewed and expanded to include many more specific examples of cases where DIMIA has in the past taken a view on the impact of steps taken under the citizenship laws of various foreign countries, or where case law has already determined, that loss did or did not occur in a particular scenario under the citizenship law of another country. The Irish example stated above is presently not mentioned in the ACI, although the SCG is aware that this is an extremely common scenario. Over the years the Department has been presented with many questions via its officers in overseas missions of this nature. This accumulated wisdom should be fully reflected in the ACI.

The ACI currently suggest that departmental officers, when presented with a possible Section 17 case of loss of citizenship due to the acquisition of a foreign citizenship on or after 22 November 1984, ask the person concerned the following question: "At the time you did the act or thing which resulted in the your acquiring the foreign citizenship, was your sole or dominant purpose to acquire that citizenship?" It is observed, however, that in practice this question is rarely, if ever, put to individuals who present as potential Section 17 victims at overseas missions.

Furthermore, it seems illogical and indeed unfair to make the loss or retention of Australian citizenship dependent upon the answer to what is far from a straightforward question. The ACI states that "purpose is not to be equated with motive", and goes on:

[30] *Australian Citizenship Instructions*, Version 7 of 1/12/2003, paragraphs 9.2.1 to 9.2.7.

> Those who voluntarily applied for, and subsequently acquired, the citizenship of another country will usually find it difficult to establish the "sole or dominant purpose" of the act of applying was other than to acquire that citizenship. The fact that the reason behind the application was so that he/she would be eligible to obtain employment, hold a licence, etc, does not mean hat the "sole or dominant purpose" was other than the acquisition of that citizenship.[31]

Moreover, a person who was in ignorance of the law, and honestly by mistakenly believed themselves to be applying for a travel document evidencing an existing citizenship, or applying for recognition of an existing citizenship (as in *Gugerli*) on or after 22 November 1984 and before 4 April 2002, would be able to keep their Australian citizenship, whereas a person who was more fully informed of the law at the time, and whose sole or dominant purpose was to acquire that citizenship, would forfeit their Australian citizenship under the old Section 17.[32]

A further comment should also be made regarding the *Australian Citizenship Instructions*. Not only are they of limited value due to their content on the matter of loss of citizenship, but they are difficult and expensive to obtain to consult in the first place, particularly for those outside Australia. Departmental officers have access to the ACI through LEGEND, and to date it has also been possible to obtain them by subscribing to the Lawbook Co Immigration Service CD Rom, which at the date of this submission cost AUD 2,167 (GST included) for a single-user 12-month subscription.[33]

It is understood that the Department has to date had an arrangement with Lawbook Co giving Lawbook Co exclusive rights to publish the ACI as part of the abovementioned commercial CD Rom product. While the Department was prepared to provide Kim Rubenstein, an academic at Melbourne University with

[31] *ACI* paragraph 9.2.4, fourth bullet point.
[32] The SCG understands that a number of Australians who acquired United States citizenship by naturalisation in the 1980s and 1990s were advised by US counsel to execute sworn affidavits attesting to the reasons under which they felt compelled to seek US naturalisation at the time. This may have been at least partly to secure the existence of evidence of their subjective intent at the time of loss of Australian citizenship for use at some future time as part of a resumption application.
[33] Lawbook Co.'s Immigration Service on CD-ROM is to be withdrawn from sale on 30 March 2004. From April 2004 DIMIA will be launching a new web-based immigration service called LEGENDcom. A full subscription will cost AUD 1,450.

the latest version of the ACI while she was researching and writing her book on Australian Citizenship Law, in 2003 it was unwilling to provide the SCG with a copy of the ACI although it is aware that the SCG fields many queries from those in the diaspora on citizenship on a not-for-profit volunteer basis.

Following inquiry, and only after a long delay, the SCG was informed by the Department that the ACI could be purchased from Government Bookshops in Australia. However, extensive web searching by SCG volunteers failed to uncover how the ACI might be purchased from abroad online through the Government Bookshop, and the ACI was eventually obtained, following a series of incidents of exceptionally poor overseas customer service, from Lawbook Co as part of the Immigration Service CD Rom for the not insignificant sum stated above.

Following the withdrawal from sale of the Lawbook Co CD-ROM in March 2004, the alternative will be to purchase the new LEGENDcom service from DIMIA, albeit at a cheaper, but still not insignificant price. The SCG questions the Department's policy of limiting the availability of the ACI in this way, and submits that DIMIA should be called upon to make public as part of this Inquiry the exact terms of its previous agreement with the Lawbook Co, including the value of any royalties or other revenue it may have earned from this arrangement. The Department should also be asked to provide information about the termination of the arrangement with Lawbook Co, and the factors which have led it to make LEGENDcom available instead.

It is submitted that DIMIA has a captive audience for this new product in that all registered migration agents need access to this information in order to fulfil their professional requirements under the law. But it is stressed that the *Australian Citizenship Instructions* are only a small part of LEGEND, which also contains a great deal of *Migration Act 1958* material. Further, it is noted that a person who

is giving advice under the *Australian Citizenship Act 1948* is not required to be registered as a migration agent.[34]

While it is logical to include the ACI in any collection of material made available to registered migration agents, the SCG questions why the ACI cannot be published separately as well, and made available at no cost on the DIMIA and *citizenship.gov.au* websites. Those in the Diaspora overseas are unfairly disadvantaged by the current limited access to the ACI. Limited access to the ACI and other citizenship information contributes to the continued confusion surrounding all aspects of loss of Australian citizenship among those in the Diaspora.

The citizenship.gov.au Website

As well as publishing the ACI on the DIMIA and citizenship websites, the Department's dedicated citizenship website should be enhanced and improved to include far more detailed and specific advice on all Diaspora citizenship issues.

It is noted that the overall focus of the *citizenship.gov.au* website remains the grant of citizenship of Australian permanent residents. Only a small part of the site is devoted to citizenship issues relevant to those in the Diaspora. Yet the *citizenship.gov.au* website is at present the primary source of official information for those in the Diaspora on citizenship, as many thousands do not live within close proximity of an Australian mission, and telephone inquiries to Australian missions often yield less than satisfactory outcomes.

[34] The Australian Citizenship Council considered this matter in 1999, but concluded in its 2000 Report that there was insufficient evidence of exploitation to justify bringing citizenship into the migration advice regulatory regime, especially as regulation could restrict the current wide availability of citizenship advice. See Australian Citizenship Council, *Australian Citizenship for a New Century*, February 2000, pages 74-75.

Following a suggestion to DIMIA by the Southern Cross Group approximately two years ago, the *www.citizenship.gov.au* website carries a link on its home page which reads "Are you an Australian citizen overseas? Read on…" This takes those in the Diaspora through to a page with citizenship information and forms relevant to them, including limited material about the repeal of Section 17.

Nevertheless, there is significant scope for the section of the website on overseas citizenship issues to be expanded. The site would be greatly enhanced, for example, by a page of frequently asked questions specific to the needs of the Diaspora. It is noted that of the seventeen FAQs currently displayed on the website, only five concern matters of relevance to those overseas. A great many more FAQs could be developed based on the plethora of common citizenship queries received by the Southern Cross Group from those in the Diaspora. It is believed that the Citizenship Policy Section with DIMIA has also received many queries over the years which could be used as a basis for the expansion of the site. A number of established points of law which have emerged as a result of past decision-making practice, as well as appeals to the AAT and the Federal and High Courts, could also be clearly set out on the website. As mentioned above, an improved version of the *Australian Citizenship Instructions* should also be publicly available on the DIMIA and the *citizenship.gov.au* websites.

Further, no general e-mail address for citizenship queries is provided on the citizenship.gov.au website. The Contacts and Links page of the site states:

> Generally, we are not able to reply to email.

An e-mail address is provided for the Minister for Immigration, but not for the Minister for Citizenship and Multicultural Affairs. Alternatively, visitors to the Contacts and Links page are provided with a link to DIMIA's e-mail directory.[35]

[35] http://www.immi.gov.au/contacts/email.htm.

But on that page, there is also no specific address for citizenship inquiries, only an address for assistance with the electronic lodgement of applications for grant of Australian citizenship.

It is the SCG's understanding that the Department has an existing e-mail address for citizenship matters in the format *citizenship@immi.gov.au*. It questions why this e-mail address cannot be displayed on the *citizenship.gov.au* site.

The SCG also notes that the *citizenship.gov.au* website contains a page entitled "Australian citizenship stories" with the welcoming statement "Enjoy our collection of personal stories on the citizenship experience".[36] Unsurprisingly, the seven stories currently displayed on that page appear to exclusively concern individuals who have become Australian citizens by grant. While these are heart-warming stories in themselves, an inclusive gesture would be to include stories on the citizenship experiences of some of those in the Diaspora. Perhaps the Department is reluctant to do this because it is fully aware that for many overseas the Australian citizenship experience has been far from positive.

Recommendation 3
That the *citizenship.gov.au* website be revised in line with the points made in the section above.

Citizenship Advice and Services at Overseas Missions

The issue of accessibility and support provided by DIMIA on citizenship issues to those in the Diaspora needs to be comprehensively reviewed and improved. Those in the Diaspora regularly need to avail themselves of various citizenship services, such as the registration of a child born overseas to an Australian parent as an Australian citizen by descent, or the resumption of lost Australian

[36] http://www.citizenship.gov.au/stories.htm.

citizenship. As well as being able to undertake these consular acts, those in the Diaspora need to be able to rely on competent advice on citizenship matters which is readily accessible.

It is noted that the Citizenship Information Line (131 880) is not accessible from all overseas countries. The SCG believes that an internationally accessible telephone number in Canberra should be displayed on the *citizenship.gov.au* website and on other citizenship materials published by the Department. That telephone number should be manned by adequately trained staff with specialist knowledge of Diaspora citizenship issues with an answering machine in place only when the service is closed. Consideration should be given to having the service open not only during Australian business hours but during business hours for different time zones, perhaps on a rotating basis. Calls should be able to be made on an anonymous basis if the caller does not wish to give their identity and/or contact details.

The *citizenship.gov.au* website refers those overseas to their nearest overseas Australian mission for citizenship information. The SCG receives many anecdotal reports of encounters on citizenship matters at Australian missions around the world from those in the Diaspora. While some posts do seem able to provide adequate levels of service delivery and indeed the SCG is aware that many staff use their best endeavours to serve those in the Diaspora, a very common complaint is that it is very difficult or impossible to get a “live person” on the telephone at a mission to ask about a citizenship issue. Some report that they are treated rudely and aggressively.

For example, in early 2004, a person who had suffered the loss of her Australian citizenship under Section 17 in February 2002 went in to a High Commission in a country in which few Section 17 cases arise. The person concerned had already had advice from the SCG that she was indeed a case of loss under Section 17 and not renunciation under Section 18. The SCG had confirmed its initial

assessment by e-mail with officers in DIMIA in Canberra, so the individual concerned presented herself at the High Commission with a clear understanding that the loss had occurred, wishing to resume her lost citizenship under Section 23AA. She was treated with great suspicion, perhaps because she presented herself with a clear understanding of her legal position and made clear that she had had advice. She was told by an extremely unfriendly officer at the High Commission that she had been under a positive duty to advise the High Commission of her loss under Section 17 some two years earlier. No such positive duty exists or has ever existed under the law.

Further, the officer advised the woman that she should have filled out a separate Form 132 to apply for resumption for her small daughter. This is also incorrect as Form 132 specifically provides for the inclusion of minor children with their parent on the same application form.

Finally, the officer took away the woman's Australian passport and told her that it would not be returned. On inquiry as to whether the passport could simply be marked cancelled from the date of loss of citizenship and have the corners cut off, and then given back to the woman, as is the case when passports are renewed, the officer rudely told the woman that would not be possible, seemingly inferring that the woman had behaved fraudulently by keeping her passport in the period since she had lost her citizenship under Section 17. The woman was distressed by this stance.

It should be noted that the woman concerned only became aware that she had lost Australian citizenship on consulting the SCG in February 2004. The extremely negative and somewhat obstreperous exchange reported above occurred in a small public area of the High Commission in which several other individuals were waiting and could not avoid overhearing proceedings. No attempts were made to invite the woman into a separate interview room so that her privacy could be maintained while the matter was discussed further.

Unfortunately these incidents are not uncommon. Many report that the information they have received either on the telephone or in person was unclear, confusing, or insufficient. In some very unfortunate instances, individuals have relied on incorrect or unclear advice obtained from a mission and subsequently taken steps which it later emerges were to their significant legal detriment.

The SCG understands that overseas staff in missions handling citizenship queries receive little or no training at the present time specifically on citizenship law and policy. It appears to be up to the individual staff members to train themselves by thoroughly reading through the applicable Act and Regulations and the *Australian Citizenship Instructions*. The SCG urges the Committee to recommend in its report resulting from this Inquiry that DIMIA develop and carry out a continuing and regular citizenship law and policy training programme for all staff in overseas missions who handle frontline queries about citizenship from members of the Australian Diaspora. Such training should be available to all overseas staff handling such queries, whether they are Australian-based or locally engaged. Completion of a basic training course should be a prerequisite before a staff member is placed in a position where he or she is dealing with the public.

Recommendation 4

That DIMIA develop and carry out a continuing and regular training programme for all staff in overseas missions who handle frontline queries about citizenship from members of the Australian Diaspora, whether they be Australian-based or locally-engaged staff.

Before and after such training programmes are implemented, it should be emphasised by the Department in Canberra to staff handling citizenship queries at all overseas missions that difficult inquiries which they themselves cannot adequately answer must be referred to Canberra, rather than unclear or incorrect

information being provided. Although the *Australian Citizenship Instructions* state that such cases should be referred to the "Citizenship Helpdesk for advice", anecdotal evidence suggests that often a quick, off-the-cuff but inadequate response is provided to those with citizenship inquiries in the hope of terminating a telephone inquiry promptly or sending the person away quickly.

Where overseas staff do not have the time, experience or training to adequately answer citizenship queries, it is suggested that the inquirer might be provided with a form to fill out detailing their query. A dated copy of this form could be then sent to DIMIA Canberra for a considered reply, a copy kept by the mission, and a copy given to the person lodging the query. Over time these queries and their responses would provide an additional useful body of wisdom for the further development of FAQs on the Department's citizenship website and other educational material.

Far greater efforts need to be made by DIMIA to actively publicise the 2002 repeal of Section 17 outside of Australia and to better inform those in the Diaspora generally of the basic Australian citizenship rules which apply to them. Those efforts must go beyond the mere passive display of information on the *www.citizenship.gov.au* website. While the website is a central and key source, many in the Diaspora are currently not aware that the website exists, and as in Australia, not everyone in the overseas community has internet access. Additional efforts might include the availability of brochures at airports and post offices in Australia as well as in missions overseas, as well as posters and citizenship events such as Affirmation Ceremonies or seminars in major centres overseas.

Resumption of Lost Citizenship

Sections 23AA, 23AB, 23A and 23B of the *Australian Citizenship Act 1948* provide for the resumption of citizenship lost in various circumstances. However, as well be seen in the discussion below, the resumption provisions in the Act for Section 17 victims and others do not presently allow all former citizens to regain their Australian citizenship. In the SCG's view, the various limitations on resumption may never have been, and are certainly not appropriate today, following the repeal of Section 17 in 2002 signalling that Australia has embraced dual citizenship as sound policy in its citizenship law.

Resumption for Section 17 Victims

Even before Section 17 of the *Australian Citizenship Act 1948* was repealed with effect from 4 April 2002, it was possible for a person who had lost their citizenship by the acquisition of another citizenship to apply to resume it.

History of Section 23AA

Section 23AA was introduced into the Act in 1984 to cater specifically for Section 17 victims.[37] In its original 1984 version, it read:

> **23AA Persons may resume citizenship lost under Section 17 in certain circumstances**
>
> (1) Where a person does an act or thing, that, under section 17, results in the person ceasing to be an Australian citizen and –
>
> (a) if he did not do the act or thing, he would have suffered significant hardship or detriment; or

[37] In fact, Section 23AA was introduced primarily to cater for a number of Australians who had moved to Israel and inadvertently lost their citizenship under Section 17 by obtaining Israeli residence, and consequently Israeli citizenship status. The wording of Section 17 was also amended in 1984 for this reason.

(b) at the time he did the act or thing he did not know that he would, as a consequence of his doing the act or thing, cease to be an Australian citizen,

the person may make and furnish to the Minister a statement to the effect and a declaration in accordance with the prescribed form that he wishes to resume Australian citizenship.

(2) The Minister may, in his discretion, if he is satisfied as to the truth of the statement made by a person for the purposes of sub-section (1), and, in a case where he person has claimed that, if he had not done the act or thing that resulted in his ceasing to be an Australian citizen, he would have suffered hardship or detriment of an economic nature, that the person's circumstances where such as to compel him to do that act or thing, register the declaration in the prescribed manner and, upon the registration of the declaration, the person making the declaration again becomes an Australian citizen.[38]

This version of Section 23AA only applied to persons who lost their citizenship on or after 22 November 1984. It was not available for those who had lost their citizenship before that date.

In 1986, the Labor government of the time amended Section 23AA to apply retrospectively. That aspect of the amendment in itself was uncontroversial, but the difficulties which those in the Diaspora encounter with this provision today arise almost exclusively from other additional elements introduced into Section 23AA by that 1986 amendment. These additional elements, including a requirement that the person wishing to resume state an intention to return to reside in Australia within three years, were introduced to ensure that those resuming showed a "commitment to Australia". As will be seen below, various Liberal Party MPs, in Opposition at the time, vehemently opposed some of these additional requirements, particularly the three-year requirement.

The *Australian Citizenship Amendment Bill 1986* was presented in the House of Representatives by Mr Hurford, the then Minister for Immigration and Ethnic

[38] Introduced with effect from 22 November 1984, by virtue of the *Australian Citizenship Amendment Act 1984* No 129.

Affairs, on 19 February 1986.[39] In his second reading speech, the Minister stated:

> When the Act was last amended it empowered the Minister to approve resumption of Australian citizenship in certain circumstances. Former Australians who lost their citizenship after 22 November 1984 by acquiring the citizenship of another country under some form of compulsion, economic necessity or without realising the consequences of their actions were able to have it restored.
>
> I have received representations from some former Australian citizens who had lost their citizenship prior to 22 November 1984 requesting that the resumption provisions be made retrospective. The Government has agreed that the provisions of Section 23AA should be applicable to any former Australian citizen, subject to the condition that the person concerned should demonstrate a commitment to Australia. That commitment would be based on the applicant having had two years lawful residence in Australia at any time, and satisfying the Minister that he or she intends to return here within three years to live permanently and that he or she has maintained a close and continuing relationship with Australia.
>
> I would like to add here something which is not in the typed version of this second reading speech but which I have mentioned to the shadow Minister, the honourable member for Mitchell (Mr Cadman), namely that, since the Bill was drafted, I have given further study to the contention that the requirement that a person should intend to return to live in Australia may be unduly onerous as it is presently drawn. There are a number of concerns. One of them I that the Bill could, for example, be read to exclude people who intend to return to Australia to live, but who also expect to live or work overseas again, even for a brief period, at some later stage in their life. I am obtaining advice on this matter, and may propose a minor amendment to the legislation when the Bill is brought on for debate…
>
> These amendments will be effected by clause 7 of the Bill. The clause will also permit a child who had lost its citizenship to resume it with its parent.[40]

The Shadow Minister Mr Cadman weighed in for the Opposition when debate started in the House on 13 March 1986:

> …The Opposition supports these proposals with the exception of clause 7 relating to those people who have inadvertently lost their citizenship. That clause requires additional clarification. I understand that the Minister has amendments. We also have amendments to that clause …
>
> …The Bill before the House allows former citizens to make a statement to the Minister and there is a consequential ministerial discretion to reinstate citizenship. The Government's proposals are not entirely satisfactory. The Opposition does not believe that permanent residency within three years is required. That was an unconscious action which deprived Australians of their nationality and their distress and sense of alienation has been completely justified. All that is necessary is a statement of their intention to ultimately reside in Australia…[41]

[39] House Hansard, Votes & Proceedings, 19 February 1986, page 725.
[40] House Hansard, 19 February 1986, page 868.
[41] House Hansard, 13 March 1986, page 1267.

That the new requirements were necessary to ensure a "commitment to Australia" was stressed again by the Labor MP for Chifley, Mr Price:

> The amendment is that this provision should apply to any former Australian citizen, subject to certain commonsense recommendations. Such people must show a commitment to Australia by having had two years' lawful residence in Australia at any time and satisfy the Minister that they intend to return to Australia within three years to live permanently and that they have maintained a close and continuing relationship with Australia.[42]

But the Opposition was critical. Discussing the 1984 amendments to the Act, the Member for Dundas, Mr Ruddock, stated:

> …in relation to certain amendments made in 1984 there was no capacity for those people who had lost their citizenship before that date to be able to resume it under provisions that were implemented for the resumption of citizenship under Section 23AA of the Australian Citizenship Act when it was amended. I understand it was intended at that time that he legislation act retrospectively to ensure that anybody who lost their citizenship prior to that date would be able to resume it and not just those who list it after the legislation had been implemented, but for some reasons or another the Parliamentary Counsel left it out. I assume, having been bitten in relation to taxation matters, the Government thought that retrospective legislation in relation to citizenship was not appropriate. The fact of the matter is that it was left out…
>
> How has the Government gone about dealing with this problem? It has not simply ensured that Section 23AA can now be of retrospective effect…In the Bill the Government has introduced three additional steps that a person in Israel who was likely to lose citizenship would have to satisfy to resume citizenship. Those new steps have been criticised by Opposition members…
>
> The substantial difference is that a person who wants to resume citizenship after residing outside Australia will still, under the Minister's proposal, have to undertake to commence residing again in Australia within three years from the date from which that person seeks to apply for the return of his or her citizenship. The Minister says that that is a new element. It was not in Section 23AA when amended in 1984. The Minister says he wants it because he wants people to evidence an ongoing commitment to Australia. I am not sure what is so magic about three years but I know that it creates a very inconsistent position between every Australian who goes to Israel and is sufficiently astute to make the appropriate declaration and therefore not lose Australian citizenship and the person who has accepted the advice given by our officials – a very important matter – and lost citizenship before 1984 …
>
> I am disappointed that the Minister is introducing this new element into Section 23AA…I hope that the Minister accepts the amendment proposed by the honourable member for Mitchell because then it would simply ask that a person residing outside Australia who wants, at some future time, to return be not specific as to the time limit by which that decision ought to take place.[43]

[42] House Hansard, 13 March 1986, page 1327.
[43] House Hansard, 13 March 1986, page 1329.

The Liberal member for Cook, Mr Dobie, questioned the meaning of "close and continuing association with Australia" in the Bill:

> In a written statement the person must show that he or she "has maintained a close and continuing association with Australia". Again, I ask the absent Minister: What constitutes "a close and continuing association with Australia"? Does this mean a person must have active business and property interests here, or is it simply good enough to show proof that he or she has written home to mum every three months? I think it is important to state plainly how the proposed legislative changes will be applied and what criteria the Minister would use to judge individual cases.[44]

The Liberal Member for Sturt, Mr Wilson, challenged the government to address the broader question of whether it was appropriate for Australians to continue to lose their citizenship under Section 17 at all:

> I express my disappointment in this legislation. It really makes only a very small change. It does not preserve Australian citizenship to someone who goes to a country that imposes its citizenship upon people and says: "You have lost your citizenship. We will let you resume it on a very narrow basis". For many it is so narrow that resumption of citizenship is denied. This problem affects Australians today. I am aware of Australians who were born in Australia and to my way of thinking they remain Australians for the rest of their lives.[45]

After introducing his amendment, Mr Cadman, speaking for the Opposition, said:

> The only area of disagreement in regard to the amendments…relates to the amount of time that an Australia, who has lost his citizenship and who has then regained it under the provisions of this Bill, has to remain outside Australia before returning to Australia. The Minister is prescriptive in his approach and says that such people must return to Australia within a period of three years from the day on which their statements were first made.
>
> The Opposition does not consider this to be a reasonable approach. We have considered the matter carefully and consulted widely. We feel that citizens who inadvertently lost their citizenship by dint of the 1984 Act should not be treated differently from any other citizens of Australia who are overseas. It was through no fault, intent or action on their won that they lost their Australian citizenship…
>
> It is our feeling that a limitation of time should not be placed on individuals who regain their citizenship …How are those people who have inadvertently lost their citizenship and are to have it restored by this Bill, when it becomes and Act of the Parliament, different from citizens who have not returned to Australia at all? It was not their intent t lose citizenship. It was not as a result of their action. They were not involved in any positive steps to lose it. We restore their citizenship by this Bill properly and rightly, and then the Minister says that, unlike anybody else, these people ought to return to Australia within three years. It is not fair. It is not proper.

[44] House Hansard, 13 March 1986, page 1338.
[45] House Hansard, 13 March 1986, page 1349.

> The Minister has not explained, either in the explanatory notes or in the speech that he has circulated, why there is a need for the three-year limitation. There is no reason for it. We are talking about Aussies who have lost their citizenship under the 1984 Act. We are restoring that citizenship and now the Minister wants to apply to them a condition of time within which they have to return to Australia. I do not believe that we can tolerate this. We are talking about Australians. They have not taken steps to deny that they are Aussies. They have not taken steps in any way which would move them away from the mainstream of Australian life, or acted any differently from other Australians living overseas. I do not believe that the House should accept the Minister's proposal.
>
> …It is no good saying that they must only give an intention that they will return to Australia. What is the Government trying to do? Is it trying to encourage them to make false statements? Is it trying to say to them: "Wink wink, nod, nod, sign this and you do not have to come back to Australia".[46]

Philip Ruddock reiterated his earlier statements as the evening wore on:

> There have been meetings in Israel of many hundreds of people concerned at the impact of the changes made to the Act in 1984. Those people sought, which is the approach that I thought the Minster would take, provisions by way of amendment to the Australian citizenship Act that would simply provide that section 23AA would have retrospective effect to cover those people who thought they retained Australian citizenship and who have now found that it is lost to them. The Government has produced an amendment which contained a number of provisions but which, after being further amended, will simply impose one new condition. That new condition is that a person who applies overseas to have his citizenship restored will have to evidence an intention to return to Australia within three years.
>
> Of the 5,000 people in Israel amongst the 7,000 resident who were formerly Australian citizens there is a group of people who are entitled at any time to return to Australia but who do not have to return within a particular time. Their citizenship is not at risk unless they take some further action which brings them into conflict with the relevant parts of section 17 of the Australian Citizenship Act. Provided they do nothing of that sort, they will retain their Australian citizenship. They might never return, but they will still be Australian citizens. That is one class of people. Those people who have lost their citizenship through poor advice or inadvertence and who we believe ought to have the capacity to have their citizenship restored have to satisfy another condition. That condition is that they will return within three years.
>
> I submit that the Minister is creating two classes of Australian citizens – those people who have taken up permanent residence in Israel and who have taken up the further step of reciting that they do not wish to lose their Australian citizenship and the people who failed to do so and who will have to satisfy this additional provision. It not only imposes a very considerable hardship but also creates classes of citizenship, which I think is undesirable in that sense…There would be a group of people who were born in Australia and who would be able to return and there would be a group of people who were born in Australia or who had taken out Australian citizenship previously and who would not be able to return. I do not think that is fair in any sense whatever…
>
> …we ought to have an element of consistency in the approach we take and we ought to ensure that there are no double standards in relation to these matters.[47]

[46] House Hansard, 13 March 1986, page 1356.
[47] House Hansard, 13 March 1986, page 1358.

As a result of the Opposition's stance Minister Hurford introduced and was successful in achieving an amendment to Clause 7 which removed the requirement in the Bill that a person seeking resumption would continue to live "permanently" in Australia or would return to live "permanently".[48] This at least meant that those who planned to return to Australia but expected to depart again to live and work overseas were not disadvantaged by a permanent residence requirement.

With regard to the "close and continuing association" element in the proposed new Section 23AA, Mr Hurford stated:

> It is envisaged…that the "close and continuing association" requirement will be interpreted liberally so as not to pose an obstacle to resumption of citizenship in cases where individuals have maintained any form of close association with Australia. It is of course impossible to define all the circumstances in which an individual will satisfy the test of having "maintained a close and continuing association with Australia". I believe that the test will generally be satisfied where the individual (a) has family or relatives living in Australia an is able to demonstrate that he or she has maintained contacts with them by correspondence, telephone or by visits to them in Australia or visits to him or her; or, (b), is able to demonstrate that he or she maintains significant economic, financial or business interests within Australia; or, (c), maintains friendships with residents in Australia and visits them in Australia from time to time.[49]

But Mr Hurford was unwilling to give any further ground on the intention to reside in Australia within three years requirement:

> My advice is that a time limit is necessary; otherwise the requirement means nothing. To make a commitment to return in say 20 years, leave alone an unlimited return time as is proposed in the amendment moved by the honourable member for Mitchell, in reality is no commitment at all. Three years has been chosen as a reasonable period. In addition, that period coincides with the three-year period within which a permanent resident who leaves Australia with a return endorsement must return to Australia…
>
> …Honourable members should remember that we are talking about people who are often giving virtually the best years of their lives to another country. They require some consideration which we are giving but too many cases have come to my notice…in which Australian passports are being abused, where people have no commitment to this country whatsoever and are using those passports around the world for their own benefit.

[48] House Hansard, 13 March 1986, page 1359.
[49] House Hansard, 13 March 1986, page 1359. This statement on "close and continuing association" is reflected in paragraph 9.2.10, fifth bullet point of the current version of the *Australian Citizenship Instructions*.

> …in these amendments, we are facilitating their regaining their Australian citizenship provided that they have a commitment to this country.[50]

Mr Macphee, the Liberal Member for Goldstein, had another attempt on behalf of the Opposition:

> I…still support the amendment moved by my colleague the honourable member for Mitchell (Mr Cadman) to remove the time limit…I think the test is too tight.
>
> …We are putting a number of unnecessary complications in our own way by this kind of amendment to the Act. Therefore, I support the amendment to the Bill moved by the honourable member for Mitchell because I think it is also a challenge to our maturity as a nation…
>
> …We have to be part of the world, in more ways than one, and be very mature in the way we look at that matter. Imposing a three-year time limit is not the way to go.
>
> …The test ultimately is what people feel themselves to be. The Australians I met in Israel were no less Australian for having committed themselves for a period of time in their lives to work in Israel. Whether it was three years, six years or thirty years really does not matter. They are no less Australian in the end; they feel that they are Australian.
>
> …I put it to the Minister very seriously that he is achieving nothing by imposing a three-year time limit. His is doing nothing other than obliging people to spend an air fare to come back here for a short period and then go back to the country whence they have come. I have had five continuous years away from this country but I was no less Australian for that.[51]

Mr Wilson, the Liberal member for Sturt, then reiterated that he felt the measure to be a "band-aid approach to the problem".[52] Mr Ruddock again repeated his assertion that that the Government's approach would create two classes of citizens,[53] before the matter went to a vote.

Mr Cadman's amendments on behalf of the Opposition were defeated by 57 to 75 votes, i.e. a majority of 18.[54] The Bill was passed in the House later that

[50] House Hansard, 13 March 1986, page 1359.
[51] House Hansard, 13 March 1986, page 1361.
[52] House Hansard, 13 March 1986, page 1364.
[53] House Hansard, 13 March 1986, page 1365.
[54] House Hansard, 13 March 1986, page 1366.

night, and in the Senate on 6 June 1986.[55] So it was that Section 23AA of the *Australian Citizenship Act 1948* was enacted in its present form, with all the implications it contains for former Australian Citizens overseas to this day.

To this day, despite Mr Hurford's somewhat tenuous statements at the time that those resuming should be required to show a "commitment to Australia", it remains unclear from the evidence available on the public record what the true motivation for the introduction of the extra elements in Section 23AA, including the three year requirement, were. As can be seen in the debates extracted from Hansard above, the primary purpose of the 1986 amendment was to make the existing resumption provision retrospective because Parliamentary counsel had failed to draft the 1984 amendment to achieve this effect two years earlier. Retrospectivity could have been achieved by virtue of a one-line amendment in 1986, but something appears to have led the Government of the time to look again at resumption in principle during 1985.

A number of people have speculated off the record to the Southern Cross Group that the much-publicised loss of Australian citizenship by Rupert Murdoch in 1985 on the acquisition of US citizenship in order to comply with US media ownership laws may have led some in the Labor Government to want to strictly limit the availability of resumption. The SCG is unable to verify this speculation, but makes the point that it would indeed be unfortunate if thousands of every-day former Australians have been prevented from resuming their lost citizenship since 1986 due to what might be dubbed "The Rupert Factor".

The Group is much heartened by the fact that the ALP, in Government when the 1986 amendment was adopted, took the opportunity in 1995 to issue revised guidelines setting out a much wider range of circumstances to be considered as acceptable explanations under Section 23AA for acquiring the citizenship of

[55] Senate Hansard, 6 June 1986, page 3588. The Opposition raised the three year intention requirement unsuccessfully again in the Senate, although debate was not as protracted as in the House.

another country.[56] Most significantly, in January 2003 the ALP gave a public undertaking to "develop a more satisfactory resumption mechanism" for those who have previously lost their citizenship,[57] which has been followed up by more recent media releases.[58]

Of the 57 Liberal Party MPs who voted against the introduction of the three year requirement into Section 23AA in 1986 while in Opposition, ten are today Members of the House of Representatives, albeit now seated on the other side of the chamber.[59] Two of them hold Ministerial portfolios. Ironically, despite their outspoken stance in 1986, representations by the SCG and others to the current Government on the inequities of Section 23AA and other resumption provisions in the Act have yet to be acted upon.

Specific Difficulties with Section 23AA

Today Section 23AA reads:

23AA Persons may resume citizenship lost in certain circumstances

(1) Where:

(a) a person:

(i) has done a voluntary and formal act, other than marriage, by virtue of which the person acquired the nationality or citizenship of a country other than Australia; or

(ii) has done any act or thing:

(A) the sole or dominant purpose of which; and
(B) the effect of which;

[56] "New Guidelines on Resumption of Australian Citizenship", Media Release by Senator Nick Bolkus, Minister for Immigration and Ethic Affairs, 25 August 1995. See also statements by Senator Bolkus on the occasion of the repeal of Section 17, Senate Hansard, 14 March 2002, page 797.
[57] *Fostering Australian Citizenship in a Changing World*, Labor Policy Paper 009, January 2003, page 26, available in the Australian Diaspora folder of the SCG website Archives.
[58] "Citizenship Resumption Anomalies", Media Release by Laurie Ferguson MP, Shadow Minister for Citizenship and Multicultural Affairs, 15 October 2003.
[59] Andrew, Cadman, Downer, Hawker, Jull, McArthur, McGauran, Ruddock, Slipper and Tuckey.

was or is to acquire the nationality or citizenship of a foreign country; being an act or thing that resulted in the person ceasing to be an Australian citizen;

(b) the person furnishes to the Minister a statement, in writing, to the effect that:

(i) if the person had not done the act or thing, the person would have suffered significant hardship or detriment; or

(ii) at the time when the person did the act or thing the person did not know that he or she would, as a consequence of doing the act or thing, cease to be an Australian citizen;

and also stating that the person:

(iii) has been present in Australia (otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, as an unlawful non-citizen, or in contravention of a law of a prescribed territory) for a period of, or for periods amounting in the aggregate to, not less than 2 years;

(iv) intends that:

(A) if the person again becomes an Australian citizen and is residing in Australia at the time when the person so becomes an Australian citizen, the person will continue to reside in Australia after so becoming an Australian citizen; or
(B) if the person again becomes an Australian citizen and is not residing in Australia at the time when the person so becomes an Australian citizen, the person will commence to reside in Australia after so becoming an Australian citizen and before the expiration of the period of 3 years commencing on the day on which the statement is made; and

(v) has maintained a close and continuing association with Australia; and

(c) the person furnishes to the Minister together with the statement a declaration in the prescribed form that the person wishes to resume Australian citizenship;

the Minister may, in the Minister's discretion, if the Minister is satisfied:

(d) as to the truth of the matters contained in the statement; and

(e) in a case where the person has claimed that, if the person had not done the act or thing that resulted in the person ceasing to be an Australian citizen, the person would have suffered hardship or detriment of an economic nature—that the person's circumstances were such as to compel the person to do that act or thing; and

(f) that the person is of good character;

register the declaration in the prescribed manner and, upon the registration of the declaration, the person making the declaration again becomes an Australian citizen.

(2) The Minister may, in the Minister's discretion, upon application in accordance with the approved form, include in a declaration registered under subsection (1), either at the time of registering the declaration or by later amending the declaration, the name of a child:

(a) who has not attained the age of 18 years;

(b) of whom the person who made the declaration is a responsible parent; and

(c) who ceased to be an Australian citizen by reason of the person who made the declaration ceasing to be an Australian citizen;

and, upon the inclusion of the name of the child in the declaration, the child again becomes an Australian citizen.

Present in Australia for Two Years

Section 23AA(1)(b)(iii) requires a person seeking to resume their lost citizenship to make a statement that they have "been present in Australia (otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, as an unlawful non-citizen, or in contravention of a law of a prescribed territory) for a period of, or for periods amounting in the aggregate to, no less than 2 years".

Individuals applying for resumption under Section 23AA are required to set out on DIMIA Form 132[60] the dates on which they were present in Australia and to provide evidence by way of school reports, job references, travel documents etc as to this requirement.

A number of cases brought to the attention of the Southern Cross Group demonstrate that this two year requirement discriminates against Australians born overseas who were Australian Citizens by descent before their loss of citizenship and other young Australians who although perhaps born in Australia, have spent large parts of their lives overseas. With so many Australians now living overseas, increasing numbers of Australian children are born overseas every year or go overseas with their parents at an early age for extended periods of time. A great number of them are spending almost all, if not all, of their lives out of Australia, simply because of the circumstances of the family they happen to be born into. In many cases their parents have accepted employment in

[60] Form 132 can be downloaded at http://www.immi.gov.au/allforms/pdf/132.pdf. All references to the Form in this submission refer to the March 2004 version.

multinational corporations or with international organisations that may keep them away from Australia for many years.

It is important to note that this problem only arises where the person lost their citizenship under Section 17 before 4 April 2003 but as an adult. A former Australian (whether by birth, grant or descent) who lost their citizenship as a minor under Section 23 due to the loss of citizenship by a responsible parent under Section 17, 18 or 19, does not have recourse to Section 23AA resumption. Those individuals would apply for resumption based on Section 23B of the Act.[61] Importantly, Section 23B contains no two year requirement.

The following example demonstrates how a person would be prevented from becoming an Australian citizen again due to the two year requirement in Section 23AA(1)(b)(iii):

> Susie was born to two Australian citizen parents in Beijing in 1966. At the time, her father was engaged in scientific research at a Chinese University. She was registered with the Australian consular authorities as an Australian citizen by descent within one year of her birth. Although the family later moved to Hong Kong, the United States and Britain, the family never resided in Australia again. Her father held a number of academic research positions in leading overseas universities during the course of his career. Susie completed her secondary education in the United States and her tertiary education in Britain, because her parents were living in those countries at the relevant time.
>
> In 2000, Susie applied for and obtained British citizenship, mistakenly believing that she would not lose her Australian citizenship. She consequently lost her Australian citizenship at the age of 34, before Section 17 was repealed with effect from 4 April 2002. Susie now seeks to resume her citizenship using Section 23AA. Resumption under Section 23AB and Section 23B are unavailable to her.
>
> Susie's problem is that she cannot evidence having spent at least two years in Australia since her birth. She has been to Australia many times both with her parents and on her own to visit her grandparents, uncles, aunts and cousins, but only for short trips lasting between one and three weeks. Even if she could now physically document the fact and duration of all those trips to Australia dating back to 1967, her total time spent in Australia would be under 2 years. At this time she is therefore legally prevented from resuming her Australian citizenship.

[61] The AAT has held that Sections 23AA and 23B are mutually exclusive: *Franciscus Hubertus Beertsen and John Peter Beertsen v Minister for Immigration and Multicultural Affairs*, 6 March 1997, at paragraph 18.

It is submitted that such cases are not unknown to DIMIA. The same situation arose in the AAT in the case of *Headford v Department of Immigration, Local Government and Ethnic Affairs* in 1993.[62] There the applicant was born in 1971 in Germany and lost her Australian citizenship at age 19 by acquiring German citizenship. She had made a number of visits to Australia during her lifetime but these did not amount in aggregate to two years. The Tribunal found that as the applicant had not complied with a mandatory requirement of Section 23AA, it was unable to exercise the discretion under Section 23AA to register her declaration of resumption of citizenship.[63]

As was seen above in the examination of circumstances surrounding the 1986 amendments to Section 23AA, this two year requirement was introduced at that time as part of the way in which those wishing to resume would have to evidence their "commitment to Australia". The period of two years may well have been chosen because those seeking Australian citizenship by grant must normally show that they have been present in Australia as a permanent resident for a period of not less than two years.[64]

Whatever the historical motivations for this two year limitation in Section 23AA(1)(b)(iii), it is submitted that today, following the repeal of Section 17, it is no longer appropriate. Australia now allows dual citizenship for all categories of Australians. A person in Susie's circumstances who acquired British citizenship on 4 April 2002 or later would today be a dual citizen. Furthermore, irrespective of the policy behind the repeal of Section 17, if Susie had lost her citizenship as a minor, rather than after she turned 18, she would not have been subject to this two year requirement but would have been able to avail herself of Section 23B.

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[62] *Tanja Christina Headford v Department of Immigration, Local Government and Ethnic Affairs*, 21 July 1993.
[63] The AAT did point out that the applicant could reapply under Section 23AA at a later date were she to spend more time in Australia in the future and accumulate the required two years, see paragraph 14.
[64] *Australian Citizenship Act 1948*, Section 13(1)(e).

Section 23AA(1)(b)(iii) discriminates against individuals who have primarily lived their lives outside Australia and lost their citizenship in adulthood before 4 April 2002.

With almost one million Australians living overseas, many Australians by descent as well as a number of Australians by birth have already found or will in the future find themselves unable to resume their Australian citizenship lost before 4 April 2002 because their particular family circumstances have prevented them from spending two years in Australia. As a multitude of submissions to this Inquiry demonstrate, there are many ways in which Australians overseas actively serve and contribute to Australia from abroad. The contributions of the one million individuals in our Diaspora would be sorely missed if they suddenly ceased. Australia's place in the global community would be significantly weakened. Our citizens are not only Australian citizens but citizens of the world.

In 2004, demanding a period of physical presence in Australia as a prerequisite for the resumption of citizenship lost under a now repealed provision is no longer an appropriate measure of a person's "commitment to Australia". An Australian born outside of Australia into an Australian family can be just as committed to Australia as a person who was born in Australia and has never ventured beyond its shores.

Recommendation 5
That the two years presence requirement in Section 23AA(1)(b)(iii) be repealed.

Intention to Commence Residing in Australia within Three Years

Section 23AA(1)(b)(iv)(B) of the *Australian Citizenship Act 1948* is without a doubt the most troublesome aspect of Australia's law on the resumption of citizenship for those in the Diaspora at present. It requires a person who is not residing in Australia and who wishes to resume their citizenship to state an

intention that they will commence to reside in Australia after resuming their citizenship and before the expiration of the period of 3 years commencing on the day on which the statement is made.[65]

Some of the difficulties inherent in this requirement were identified in Parliament in 1986 by those opposing its introduction, as is evidenced in the Hansard extracts set out above. History has proved the opponents of Section 23AA(1)(b)(iv)(B) correct. The provision continues to act as a real barrier to a large number of former Australians who lost their Citizenship under Section 17 before its repeal with effect from 4 April 2002. Many who have made their lives overseas for a multitude of reasons (in some cases for reasons closely connected with their lack of Australian citizenship due to loss many years earlier), who do not feel they can in good faith make a declaration that they intend to reside in Australia within three years, are presently excluded from formal membership of the Australian community.

It has been put to the SCG that the three year requirement in Section 23AA in actual fact today presents no real practical barrier to resumption. On a number of occasions, the SCG has been asked why it is "making such a fuss" about this requirement when "anyone who wants their citizenship back can have it back".

Indeed, anecdotal reports suggest that some staff dealing with former citizens at a number of Australian missions overseas may be advising people "off the record" to simply tick the "Yes" box in Question 13 of DIMIA Form 132 regardless of what their future plans may be. Although Question 19 on Form 132 points out that "it is an offence under the *Australian Citizenship Act 1948* to deliberately

[65] It should be stressed that the provision requires an intention to commence residing in Australia within three years from the date on which the statement is made on the resumption application, not three years from the date on which resumption actually occurs, which will be some months later. In this respect, the SCG points out that the note in the third diamond bullet point in the last block of text on page 1 of the current version of DIMIA Form 132 is incorrect, as it states that a person must intend to commence residing in Australia within 3 years *after the date of resumption* (emphasis added).

make a false or misleading statement",[66] the SCG is unaware of any cases where DIMIA has checked to see whether a person has in fact commenced residing in Australia again within three years of their statement and then taken action if the person has not done so. The Department would have a difficult task in proving that a person had made a deliberately false statement of intention. An intention may be genuine at the time the statement is made, but may change due to perfectly valid circumstances afterwards, preventing the person from moving back to Australia after they resume their citizenship.

The SCG understands that all resumption applications are processed in Canberra, and that recently overseas missions accepting resumption applications have been instructed by Canberra to ask individuals for an exact intended date of return. This is in many cases written in to the space next to the "Yes" and "No" boxes in Question 13 of the Form, although the Form itself does not require a specific date to be stated.

It seems very clear that the issue of intention to return to Australia within three years is to some extent being administered "flexibly" by decision makers to circumvent the barrier it presents. The need for "flexibility" in itself is evidence that the three-year requirement is a hindrance to resumption for many former Australian citizens living overseas.

The SCG receives many queries from former Australian who are still living overseas and wish to resume their lost Australian citizenship. Some, having already read through Form 132 when they get in touch, are deeply concerned that they cannot genuinely fulfil this legal requirement for resumption. Others have been given Form 132 by an officer at an overseas mission on learning that they forfeited their citizenship under Section 17 some years ago. On going away and reading the Form, they feel they cannot apply for resumption because of the

[66] *Australian Citizenship Act 1948*, section 50. The Section carries a penalty of 12 months imprisonment.

three-year requirement. A number get back in touch with the officer who gave them the Form, querying Question 13. Almost all have then been told that they should just tick the "Yes" box and submit the form if they want to get their lost citizenship back.

The argument that has also been put to the SCG is that the word "reside" in Section 23AA(1)(b)(iv)(B) might be interpreted to mean that a person only has to visit Australia within three years, rather than actually move to Australia. This would allow those still living overseas who intend to physically enter Australia solely for the purposes of a holiday within the next three years to resume their lost citizenship. The SCG does not subscribe to this interpretation. It is recalled that the provision as originally proposed by the Labor Government in 1986 used the phrase "permanently reside" and that the Opposition was successfully able to achieve the removal of the word "permanently" from the provision before it was passed.

As a matter of public record, let there be absolutely no doubt that Section 23AA(1)(b)(iv)(B) is a real and present reason for the continuing exclusion of a large number of former Australian citizens from legal Citizenship. Regardless of how the provision is being administered, or any legal semantics, as a matter of principle the provision should be repealed. It is no longer appropriate policy.

The SCG has asked officials in the Citizenship Policy Section of DIMIA in Canberra whether and why it refuses Section 23AA resumption applications. Those officials have admitted that in the overwhelming majority of negative Section 23AA decisions, the person has not been able to evidence an intention to return to reside in Australia within three years. A number of individuals have simply ticked the "No" box in Question 13 of Form 132, not understanding that this step will legally preclude them from resumption.

A number of submissions have been made to the current Inquiry by individuals negatively impacted by this provision. Their stories speak for themselves. Further, a series of cases in the AAT over the last few years plainly evidence the fact that Section 23AA(1)(b)(iv)(B) is a real problem.

For example, in *Smout*, the applicant lost his Australian citizenship by naturalisation as a British citizen in 1997. He could not satisfy the requirement of an intention to return to Australia to live within three years and so his resumption application failed.[67]

In *Finn*,[68] an applicant for resumption, a doctor living in the United Kingdom, had his application refused because the Department found that he did not satisfy the three-year requirement. The AAT confirmed the original decision on appeal. It stated that there were a number of conflicting statements from the applicant as to his real intention. Dr Finn had stated that his return to Australia was predicated upon suitable work being available. The AAT decided that Dr Finn's stated intention was by no means a "definite intention". It found that "until such time as the applicant took any steps towards actually applying for such work, or indeed, made any steps towards moving back to Australia, the Tribunal cannot be satisfied that there is an intention on his behalf to commence living there…Were he to secure employment in Australia, for example, and have demonstrable evidence of an intent to return to take up such employment within the required time limits, he would not have a problem in having his Australian citizenship restored. As at the present time however, the applicant does not satisfy the mandatory legislative requirements."[69]

[67] *Smout and Minister for Immigration and Multicultural Affairs* [2000] AATA 370, 12 May 2000.
[68] *Finn and Minister for Immigration and Multicultural Affairs*, [2000] AATA 823, 14 September 2000.
[69] *Finn*, paragraphs 18-21.

Most recently, in the 2002 AAT case of *Glick*, the applicant had inadvertently lost his Australian Citizenship in April 1999 on obtaining Israeli citizenship.[70] He submitted an application for resumption under Section 23AA on becoming aware of the loss while still outside Australia. At the time of application for resumption in October 2001, the applicable version of Form 132 asked, in Question 12, "When do you intend to return to Australia?" Mr Glick answered that he intended to return in January 2002. Question 12 also asked "Do you intend to continue living in Australia after your return?" Mr Glick answered "No". The question itself made no mention of the three-year requirement. Athough the AAT observed that Form 132 was inappropriately drafted, it nevertheless found that the evidence indicated that Mr Glick had not formed an intention to return to reside permanently in Australia that the Act requires. The AAT pointed out that the Act allows no discretion on that point.[71]

It has been seen above that the introduction of the three year requirement into Section 23AA in 1986 was at least partially motivated by a feeling that those wanting their citizenship back should demonstrate a "commitment to Australia". For the reasons stated above in the discussion pertaining to the two-year requirement, it is very possible for an individual to remain extremely committed to Australia without living within its territorial boundaries.

Whatever the true historical motivations for the three year limitation in Section 23AA(1)(b)(iv)(B), it is submitted that today, following the repeal of Section 17, it is no longer appropriate. Australia now allows dual citizenship for all categories of Australians. A person who has no intention to move back to Australia within

[70] *Glick and Minister for Immigration and Multicultural and Indigenous Affairs* [2002] AATA 1228, 28 November 2002.

[71] It is noted that there is an element of Ministerial discretion as to whether the Minister may register the declaration for resumption once the mandatory requirements of Section 23AA have been fulfilled, under Section 23AA((1)(d) to (f). See *Postiglione and Minister for Immigration and Multicultural Affairs* [2002] AATA 37, 22 January 2002. In that case the discretion was exercised to refuse registration of Mr Postiglione's declaration with the effect of denying his resumption of Australian citizenship. The pre-eminent considerations were the need to protect the Australian community and the community's expectations. Mr Postiglione had a criminal record and was serving a sentence in Long Bay Jail at the time of the case.

three years and who had the good fortune to acquire a second citizenship on or after 4 April 2002 would today be a dual citizen. On the other hand, a person who acquired another citizenship on 3 April 2002 or earlier and who cannot in good faith make such a statement of intention is precluded from formal membership of the Australian family and also prevented from enjoying the benefits of dual citizenship. It is time to recognise that this provision is a discriminatory remnant of the Section 17 era and no longer appropriate for Australia today.

Finally, it is noted that a number of individuals presently precluded from resuming their Australian citizenship under Section 23AA(1)(b)(iv)(B) continue to consider challenging the constitutional validity of the now-repealed Section 17. Were such individuals to be successful in obtaining a Declaration from a court that Section 17 was constitutionally invalid in the period 29 January 1949 to 4 April 2002, the necessary result would be that they would never have lost their citizenship, regardless of how they might have been dealt with by the Department in those years. In such circumstances restrictions in the law concerning resumption would become irrelevant. It is noted that the late Ron Castan QC provided advice to Senator Nick Bolkus in June 1995 that Section 17 may well have been unconstitutional.[72]

Recommendation 6

That the requirement in Section 23AA(1)(b)(iv)(B) that an applicant have an intention to commence residing in Australia within three years of making the statement be repealed.

[72] This advice is reproduced in full in the Senate Hansard of 14 March 2002, pages 788 to 797.

Resumption for Section 18 Victims

Applicability of Section 23AA to Certain Section 18 Victims

Section 23AA was originally intended to enable those who lost their citizenship under the now repealed Section 17 to resume their Australian citizenship in certain circumstances. Indeed, the original 1984 version of Section 23AA was headed "Persons may resume citizenship lost under Section 17 in certain circumstances". Further, the 1984 version of Section 23AA(1) stipulated that the section applied to people who did an act or thing *under Section 17* (emphasis added) that resulted in loss of citizenship.

The debates extracted from Hansard above concerning the 1986 amendments to Section 23AA also appear to indicate that the Section was specifically intended to apply only to Section 17 victims. Indeed, in the current version of Section 23AA, sub-section 23AA(1)(a)(i) mirrors the pre-22 November 1984 wording of Section 17, and sub-section 23AA(1)((a)(ii) mirrors the post-22 November 1984 wording of Section 17.

But Section 23AA can in fact be used by those who have renounced their Australian Citizenship under Section 18 in certain very limited circumstances. This "extra applicability" of Section 23AA has arisen as the result of the use of the word "acquire" in Section 23AA(1), as it has been interpreted in a series of cases where those who have used Section 18 have sought to resume under Section 23AA.

Put succinctly, a person who had only Australian citizenship, and then renounced their Australian citizenship using Section 18 in order to acquire from scratch a new citizenship would be able to use Section 23AA. [73] The limited availability of

[73] See *Re Desira and Minister for Immigration and Multicultural Affairs* [2000] AATA 32, where the AAT found that an applicant born in Australia of Maltese parents, who acquired both Australian and Maltese citizenship at birth, did not qualify to make an application for resumption of

Section 23AA resumption to certain Section 18 victims is today reflected in the Australian Citizenship Instructions.[74]

The SCG has not been made aware of any instances of individuals who have used Section 18 in order to acquire a new citizenship from scratch thereafter applying to resume their Australian Citizenship under Section 23AA. This may be because, even if such persons understand that Section 23AA resumption is available to them, they may feel that they do not qualify to use it due to the two year or three year limitations in Section 23AA discussed above.[75]

The SCG believes, though, that cases of such Section 23AA resumption for Section 18 victims "acquiring" rather than "retaining" another citizenship might feasibly arise in the future for those in the Diaspora in countries which discourage dual citizenship and still require a formal renunciation of original citizenship by those seeking naturalisation.

Although many countries today fully embrace dual citizenship, it is not widely understood that despite the repeal of Section 17, in some countries where Australians live and seek to be naturalised, local law may still require the formal

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Australian citizenship under Section 23AA after she had renounced her Australian citizenship under Section 18, because when she renounced her Australian citizenship, she was not "acquiring" Maltese citizenship, but merely "retaining" it. The AAT commented in paragraph 24 that the applicant was the victim of an unfortunate anomaly in the law and suggested that the Act be amended. *Re Paraskevopoulou and Department of Immigration and Multicultural Affairs* [2001] AATA 244 confirms *Re Desira*, except that in that case the applicant in question was a Greek citizen before renunciation of Australian citizenship. See also *Cho and Minister for Immigration and Multicultural Affairs* [2002] AATA 238, 3 April 2002 where the applicant had renounced her Australian citizenship under Section 18 in order to keep her existing Korean citizenship acquired shortly beforehand automatically by act of marriage to a Korean citizen.

[74] *Australian Citizenship Instructions*, paragraph 9.2.8. states: Note: Those people who renounced their Australian citizenship in order to acquire another citizenship under Section 18 may also apply to resume their Australian citizenship under Section 23AA.

[75] It would appear that DIMIA Form 132 unnecessarily muddies the waters on this point. The second diamond bullet point in the second column of instructions on page 1 of the current version of the form speaks of individuals who have "renounced their Australian citizenship in order to *retain* (emphasis added) another citizenship". Section 23AA resumption is not presently available to Section 18 victims who renounced in order to "retain", but only those who renounced in order to "acquire". If the said bullet point refers to the requirements in Section 23AB of the Act, it is submitted that it should include a reference to the 25 years age limitation in Section 23AB.

renunciation of Australian citizenship under Section 18 of the *Australian Citizenship Act 1948*. Failure to produce evidence of a Section 18 renunciation as part of a naturalisation application in particular countries prevents Australian citizens in those countries from becoming dual citizens.[76]

The SCG is aware that Australians in Germany who have sought German citizenship since 4 April 2002 in the hope of becoming dual citizens are being asked by the German authorities to provide evidence of formal renunciation of Australian citizenship under Australian law in order to qualify for naturalisation there. Danish rules on naturalisation are similar, except that an applicant will not be forced to formally renounce their current citizenship if they are still living in their country of current citizenship, or *if it is not possible under the laws of country of current citizenship to renounce citizenship*.

While Section 18 of the *Australian Citizenship Act 1948* continues to provide a route for formal renunciation under Australian law, the SCG notes that some countries have laws that prevent citizens giving up their nationality under any circumstances whatsoever. Their laws have no renunciation provisions.

Citizens of countries with no citizenship renunciation provisions are placed in a much more favourable position when applying for naturalisation in countries such as Denmark and Germany. As formal renunciation of their original citizenship is simply legally impossible under the law of their country of original citizenship, they are often able to become dual citizens.

It is submitted that it is time to review the current relevance of Section 18 of the *Australian Citizenship Act 1948*. As part of this Inquiry the Department should be asked to provide full statistics of the numbers of individuals who have availed

[76] Other countries, despite the fact that they may not overtly or positively embrace dual citizenship as a matter of policy, do not require a formal act of renunciation from those wishing to naturalise. This is the case for example in Belgium, where a number of Australians have become dual citizens since 4 April 2002 without having to use Section 18 of the *Australian Citizenship Act 1948*.

themselves of Section 18 renunciations since 10 February 2000 when Maltese law changed. These statistics should also detail the other country of citizenship pertinent to the each resumption. The SCG believes that the number of Section 18 renunciations since 10 February 2000 must be extremely limited. The number of renunciations taking place each year should be weighed against the number of Australians in countries such as Denmark and Germany who qualify for naturalisation in those countries but who are prevented from taking an additional citizenship due to the existence of Section 18. The provisions in the citizenship laws of those countries would also need to be carefully scrutinised.

While the continued existence of Section 18 in the Act may be necessary to a very small minority of persons, it is nevertheless a matter of fact that following the repeal of Section 17, in some circumstances today Section 18 prevents Australians achieving naturalisation and thereby dual citizenship in a limited number of other countries. Were Section 18 to be repealed, making renunciation of Australian citizenship simply impossible, dual citizenship would become possible for Australians under the national laws of at least some of those countries.

Section 23AA resumption is available in principle to individuals who have to renounce their Australian citizenship in order to naturalise locally in such countries. However, unless it is amended to remove the three year intention to reside in Australia requirement it will remain inaccessible to most facing the choice of renunciation for naturalisation purposes in countries such as Germany and Denmark. After all, a person seeking naturalisation in a particular country can be expected to be intending to go on living in that country, i.e. outside Australia, for some years. Otherwise the individual would probably not be seeking naturalisation.

Recommendation 7

That DIMIA be asked to provide to the Inquiry full statistics of the use of Section 18 of the *Australian Citizenship Act 1948* since 10 February 2000, detailing the other country of citizenship concerned, and that a review of the relevance of Section 18 in the Act be undertaken once those statistics are available. Any policy decision to keep Section 18 in the Act should only be taken in conjunction with the repeal of the three year and two year requirements in Section 23AA.

Resumption for Remaining Section 18 Victims: Age Limitation in Section 23AB

The applicability of Section 23AA resumption to those who have had occasion to use Section 18 of the *Australian Citizenship Act 1948* has been discussed above. Essentially, Section 23AA resumption is only available to Section 18 victims who renounced their Australian citizenship to "acquire" another citizenship from scratch. Until 1 July 2002, this excluded from resumption all those who renounced using Section 18 in order to "retain" one of two existing citizenships.

In 2002, in the package of legislation which repealed Section 17, as a result of a recommendation by the Australian Citizenship Council, a new Section 23AB was introduced into the Act. This allows those Section 18 victims who could not previously avail themselves of Section 23AA resumption to pursue resumption under new rules. However, the great difficulty with this provision is that *it can only be used by people who have not attained the age of 25 years*.

Several hundred Australian-born Maltese citizens have made individual submissions to the present Inquiry on this matter. They are supported by a number of organisations in the Maltese-Australian community both in Australia and in Malta. The individuals concerned are primarily the Australian-born

children of Maltese who migrated to Australia in the 1950s and 1960s. Under Australian law, they became Australian citizens by birth because they were born in Australia. They also became Maltese citizens by descent automatically under Maltese law through their parents, thereby enjoying dual citizenship as minors. For various reasons, almost 2,000 such persons returned to live in Malta with their parents before their 19th birthdays.[77]

Until 10 February 2000, when Malta amended its Constitution and other laws to allow dual citizenship, these individuals were compelled to renounce their Australian citizenship by their 19th birthdays if they wished to remain Maltese citizens in adulthood. The Maltese authorities actively chased many people in this situation and required hard evidence that the person had made a formal renunciation under Section 18 of the *Australian Citizenship Act 1948*. Those Section 18 documents remain on file with the Maltese citizenship authorities today. Failure to make such a renunciation would have resulted in automatic loss of Maltese citizenship. For those intending to remain in Malta, life without Maltese citizenship would have been extremely difficult. Access to free education was impossible, employment was unavailable unless one could obtain a work permit, which was very difficult, and social security benefits were limited, among other factors. The submissions of many Australian-born Maltese citizens to this inquiry set out the various hardships encountered and the emotional turmoil many of these people faced in renouncing their Australian citizenship at so young an age.

A small handful of isolated cases have come to the SCG's attention whereby an Australian-born Maltese person resisted making a Section 18 renunciation in the

[77] In preparation for this submission, the SCG contacted the Maltese Minister responsible for citizenship matters, Mr Tonio Borg, seeking information as to the numbers of Australian-born Maltese who had used Section 18 before 10 February 2000. While the Minister responded that he supported the SCG's initiative in this area, information as the actual number of affected individuals was obtained indirectly via the Australian High Commission in Malta. It is understood that an Australian High Commission official may at some point over the last several years had access to the files of the Maltese citizenship department and at that time gone through and counted the number of Section 18 renunciations on file.

period before their 19th birthday. This led to automatic loss of their Maltese citizenship, leaving the person as an Australian, and a foreigner, in Malta. Almost without exception, these few individuals, within a few years, found life in Malta so difficult without Maltese citizenship that they formally applied to reacquire their lost Maltese citizenship, thereby losing their Australian citizenship under Section 17 of the *Australian Citizenship Act 1948*. These few individuals are in the special position that they can use Section 23AA to resume their lost citizenship, if they can satisfy the three year and two year limitations in Section 23AA discussed above.

But the vast majority of Australian-born Maltese, i.e. those who renounced their Australian citizenship using Section 18 before 10 February 2000, due to the fact that they enjoyed dual citizenship as children, are excluded from the use of Section 23AA. Their renunciation was done to "retain" one of two existing citizenships, rather than to "acquire" another citizenship from scratch.

These people are in addition excluded from resumption under the new Section 23AB due to the fact that they were already 25 years old or over when that Section commenced on 1 July 2002. A small number were also under the age of 25 on 1 July 2002 when Section 23AB commenced, but have since reached their 25th birthdays, and have missed their window of opportunity to apply for resumption because they were not aware that the law had been amended.

It should be noted, in addition, that those under the age of 25 years who do satisfy the age requirement in Section 23AB still face a two year presence in Australia requirement and the hurdle of stating an intention to return to reside in Australia within three years. Section 23AB mirrors the requirements discussed above in relation to Section 23AA. As is obvious, those limitations present the same obstacles to resumption in the context of Section 23AB as under Section 23AA, and as recommended above for Section 23AA, should be repealed.

Recommendation 8

That the requirement in Section 23AB(1)(b) that an applicant for resumption be under the age of 25 years be repealed. Resumption under Section 23AB should be available to individuals of any age, in line with Section 23AA. Further, the two years presence in Australia requirement in Section 23AB(2)(c) should be repealed, along with the requirement to state an intention to commence residing in Australia within three years from the date of application in Section 23AB(2)(d)(ii).

Resumption under Section 23B: Loss of Citizenship While a Minor

Section 23B has been in the *Australian Citizenship Act 1948* since 1958, and continues to provide for the resumption of citizenship lost by individuals under Section 23 while they were minors, once they reach the age of majority and can make an application in their own right. Section 23 provided for the automatic loss of citizenship by minor children when their responsible parent forfeited citizenship under Section 17 until 4 April 2002. It still provides for the automatic loss of citizenship by minor children when their responsible parent renounces their citizenship under Section 18 today or by reason of service in the armed forces of an enemy country under Section 19.[78]

Section 23B presents its own limitations as a resumption provision, and like Sections 23AA and 23AB, presently excludes certain individuals from rejoining the Australian family in the formal sense.

The key limitation within Section 23B is the requirement that the applicant for resumption is required to apply "within one year after attaining the age of 18

[78] It should be noted that if both parents were Australian citizens, and only one lost their citizenship, no loss by the minor child takes place. Further, the child does not lose their Australian citizenship if this would render them stateless, i.e. if they are not already the citizen of another country or will become the citizen of another country "immediately after" the parent's loss.

years or within such further period as the Minister, in special circumstances, allows".

The SCG has been contacted by a number of individuals who have lost their citizenship as minors under Section 23, but who have missed the one year window of opportunity for resumption under Section 23B, i.e. they are already aged 19 or older. In these circumstances, it is necessary to look at whether it is advisable for the person to make a Section 23B resumption application outside the one-year window, arguing that "special circumstances" exist.

A number of cases in the AAT over the last several years indicate that it is very difficult to show "special circumstances" such that a late Section 23B resumption application will be accepted. It is established law that simply not being aware of the availability of Section 23B between one's 18th and 19th birthdays in itself is not enough to amount to "special circumstances".[79] Rather, the "special circumstances" must be unusual, uncommon or exceptional. The Australian Citizenship Instructions state at paragraph 9.2.17 that in determining whether there are special circumstances, the delegate should consider:

- Why the declaration was not lodged earlier and why it is being lodged now;
- The periods of time the person has spent outside Australia;
- What family, business or other connections the person has maintained with Australia;
- Whether the person intends to remain in Australia or, if overseas, intends to return to Australia; and
- The person's current citizenship status and usual country of residence.

[79] *Antonio Catanzaro v Department of Immigration, Local Government and Ethnic Affairs*, 11 July 1994; *Franciscus Hubertus Beertsen and John Peter Beertsen v Minister for Immigration and Multicultural Affairs*, 6 March 1997; *Ibrahim and Minister for Immigration and Multicultural and Indigenous Affairs* [2003] AATA 154, 14 February 2003.

It is noted that although the AAT is not obliged to apply a policy formulated by a decision-maker,[80] it should ordinarily do so in the absence of cogent reasons against the application of the policy in question, especially where, as in these cases, the policy has been adopted by a Minister of the Crown.[81] For this reason, we have seen the AAT apply the guidelines stated above in Section 23B cases.

But it is submitted that paragraph 9.2.17 of the ACI may not be wholly appropriate. Indeed, some of the elements in paragraph 9.2.17 in effect introduce new requirements into Section 23B for those seeking to show special circumstances which were not intended by the legislator. The guidelines may be *ultra vires* for this reason. While these requirements may be reflected in other resumption provisions in the Act (such as Section 23AA), they do not appear in Section 23B as such.

The period of time that a person has spent outside Australia should not be relevant in determining whether a person satisfies the "special circumstances" requirement. Similarly, the issue of whether the person intends to return to Australia should not be a determining factor. As has been argued above, many Australians today spend large parts of their lives overseas for valid reasons. Residence in Australia should not be a test of worthiness for the resumption of citizenship. It is inequitable to impose, by virtue of guidelines, a *de facto*, albeit ill-defined residence or presence in Australia test for Section 23B victims who have missed the one-year window. These individuals lost their citizenship in the first place simply by virtue of their minor status and through no direct act of their own.

Furthermore, the SCG questions the relevance of a person's current citizenship status and usual country of residence in determining "special circumstances".

[80] *Drake v Minister for Immigration and Ethnic Affairs* (1979) 46 FLR 409.
[81] *Re Drake v Minister for Immigration and Ethnic Affairs* (No. 2) (1979) 2 ALD 634 at pages 639 – 645.

Are applicants holding certain citizenship or residing in certain countries accorded more favourable treatment than others? Surely this would amount to discrimination on the ground of nationality in applying Section 23B. Paragraph 9.2.17 of the ACI should be reviewed and revised to make sure that no requirements are imposed on "special circumstances" applicants under Section 23B which were not intended by the wording of the Act itself.

The fact of the matter is, of course, that the requirements for "special circumstances" would be irrelevant if the one-year window for normal use of Section 23B were repealed. Section 23AA of the Act imposes no age limitation for resumption on those who have lost their citizenship as adults under Section 17 or Section 18. It is unclear why the minor children of these individuals should be limited in time as adults from resuming their citizenship, when their responsible parent concerned, who caused the child's loss of citizenship in the first place, may choose to wait many years to avail themselves of Section 23AA resumption, or indeed may chose never to resume. Many who seek to use Section 23B do so because their responsible parent did not take steps to use Section 23AA and include them in their resumption application while they were still minors. The one year window for application by these children in their first year of adulthood unnecessarily penalises them vis-à-vis their own parents, and indeed vis-à-vis many other groups in the Diaspora who may now enjoy dual citizenship.

Recommendation 9

That the words "within one year after attaining the age of 18 years or within such further period as the Minister, in special circumstances, allows" be deleted from Section 23B(1) of the *Australian Citizenship Act 1948*, so that all individuals who lost their citizenship while minors under Sections 17, 18 and 19 may resume their Australian Citizenship at any time in adulthood.

Resumption of Citizenship under Section 23A: Loss of Citizenship under Section 20

Section 20 of the *Australian Citizenship Act 1948* operated between 26 January 1949 and 8 October 1958. It provided that an Australian citizen who was naturalised, and who had "resided outside Australia and New Guinea for a continuous period of seven years shall cease to be an Australian citizen" unless certain conditions had been met.[82]

Section 23A remains in the Act today as the resumption provision applicable to such persons. Its provisions are similar to Section 23B, in that a limited window of time is provided for making an application (until the person's 19th birthday), and outside this window "special circumstances" must be shown. The same arguments set out above for Section 23B apply in relation to Section 23A.

Recommendation 10

That the words "within one year after the date of commencement of this section or the date on which the person attains the age of 18 years, whichever is the later, or within such further period as the Minister, in special circumstances, allows" be deleted from Section 23A(1) of the *Australian Citizenship Act 1948*, so that all individuals who lost their citizenship under Section 20 may resume their Australian Citizenship at any time in adulthood.

The "Quality" of Resumed Citizenship

A further issue arises in the context of any discussion of the current resumption provision in the *Australian Citizenship Act 1948*. It is unclear whether, on resumption, a person gets back citizenship of the same "quality" as he or she had before they lost it, regardless of how the loss occurred.

[82] See Rubenstein, *op cit*, pages 145 and 146.

Australian Citizenship by descent is of a lesser "quality" than citizenship by birth, grant or adoption because it can only be transmitted to child born outside of Australia in certain circumstances.[83] It is unclear whether Australian citizens by descent who have lost their citizenship resume only Australian citizenship by descent on availing themselves of one of the resumption provisions discussed above, or whether they obtain a new quality of citizenship, "citizenship by resumption", which is equal in quality to citizenship by birth, grant or adoption.

The SCG notes that the *Australian Citizenship Instructions* provide for citizenship by resumption to be registered in the relevant departmental register, and that the person again becomes a citizen on that date, rather than the date on which the declaration of desire to resume was filed. A new citizenship record is created and a certificate of evidence of Australian citizenship is issue to the applicant as documentary evidence of Australian citizenship. It is understood that the same certificate is issued to all those who resume, and that nothing on the face of the certificate indicates the quality of the person's original citizenship before loss.

Such factors would seem to support the view that "citizenship by resumption" is a new citizenship status of its own, equal in quality to citizenship by birth, grant or adoption. On the other hand, one might question whether a person who was originally an Australian Citizen by descent should be entitled, by virtue of loss followed by resumption, to end up with an enhanced quality of citizenship. This issue will be of increasing importance as more and more children are born to Australian citizens by descent overseas. The SCG has recently sought clarification from the Department on this matter, but as yet a response has not been received.

Such a discussion also raises more fundamental issues as to the appropriateness of limiting the transmission of citizenship to a second generation

[83] *Australian Citizenship Act 1948*, Section 10B.

born overseas in today's world. Those issues will be addressed in a separate and supplementary submission to this Inquiry by the Southern Cross Group examining the current provisions in the *Australian Citizenship Act 1948* dealing with citizenship by resumption.

Finally, it is understood that DFAT has now instructed at least one post that a new passport be issued to individuals following resumption. On some occasions in the past it appears that the passports of Section 17 victims, still valid on their face after the date of loss under Section 17, were "impounded" by the Australian mission concerned until the person's resumption application was approved and then given back. Now it would seem that DFAT is requiring the return of such passports when it is discovered that loss has occurred. It does not seem possible to simply cancel these passports from the date of acquisition of the other citizenship, cut off the corners and return to cancelled document to the person concerned. It is understood that these procedures are upsetting to a number of people, who would like to keep their old Australian passport for sentimental reasons, or to be able to evidence that they were Australian citizens for a certain period.

Applicants for resumption who still possess a passport issued before their loss of citizenship are for this reason best advised to present a full birth certificate as evidence of Australian citizenship for their resumption application if they wish to keep their old Australian passport.

Delays in the Processing of Resumption Applications

The SCG notes that DIMIA Form 132 advises applicants that "the processing of the declaration form usually takes 3 months from receipt of the application (and the required documentation) by the Department".

Anecdotal evidence suggests that in many case, resumption applications lodged both within Australia and abroad are presently taking significantly longer than three months, and may be taking six months or longer. At least two resumption applications filed with the Australian High Commission in London are now entering their ninth month.

It is submitted that DIMIA should put in place procedures for the processing of all resumption applications within the stated three-month time frame. In many cases, a resumption application is made shortly after the discovery that citizenship has been lost perhaps many years before. Many applicants for resumption suffer additional emotional distress from delays in the processing of their applications.

In addition, even once citizenship is resumed, the person may be delayed in returning to Australia if they have a non-citizen spouse or partner for whom a spouse or de factor visa is required. Such partner visas can only be applied for once Australian citizenship has been resumed, so that the Australian-citizen spouse can act as a sponsor. Long processing times for resumption applications encourage the entry into Australia by such people on tourist visas when their intention is to stay longer, and entry on a tourist visa is frowned upon when entry should really occur on another visa.

Recommendation 11
That DIMIA set strict time limits for the prompt processing of all resumption applications within or under three months from the date of lodgement.

Conclusions – Citizenship Reform

Australia's Minister for Citizenship and Multicultural Affairs, the Hon Gary Hardgrave MP, recently stated that Australian "citizenship legislation is evolving

to reflect the changing realities of the Australian community and is helping to create an even more robust Australian citizenship for the 21st century".[84]

But citizenship legislation, it is submitted, does not "evolve" in the same sense that an organism in the natural world evolves over time without human interference. Rather, active steps must be taken to amend the law when it no longer reflects the needs of the community it serves or when it operates to discriminate between different groups of individuals.

At the present time, while the Australian Diaspora continues to live with the legal legacies of Section 17, many would dispute the Minister's contention that Australian citizenship is "robust" enough for the 21st century. Urgent action must be taken to address the needs of those who remain excluded from legal Citizenship due to the historical development of citizenship law in our country.

Regrettably, in Australia, unlike many other democracies, legal citizenship is an entirely statutory rather than constitutional concept.[85] The SCG has argued elsewhere that Australian citizenship should be constitutionally protected.[86] It renews its call here that any future discussion concerning constitutional reform must necessarily involve an examination of Australian citizenship.

In the meantime, much can be done to reform Australia's citizenship legislation to reflect the growing dynamics of Australia's substantial Diaspora. Such reform is an essential prerequisite to any broader policies of "inclusion" that it is hoped will be developed over time in a number of areas in the future to fully embrace the asset that is the Australian Diaspora.

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[84] Media Release of 16 December 2003.
[85] Gaudron J in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 at 54.
[86] "Section 17 of the *Australian Citizenship Act 1948*: Grounds for Repeal and Associated Issues", Submission to the Australian Department of Immigration and Multicultural Affairs, Brussels and Washington DC, 6 July 2001, page 11 ff. See also Rubenstein, op cit, page 44, who argues that "a desire to exclude was a formidable reason for not referring to citizenship in the Constitution."

Other Factors To Be Addressed in the Fostering of Inclusion

Voting Rights for Overseas Citizens

Many Australian Citizens living overseas are concerned about the provisions in the *Commonwealth Electoral Act 1918* which relate to their status as voters in Australia's federal elections. Put bluntly, those provisions have operated to disenfranchise most Australians living overseas. As a consequence, and is evidenced by a number of submissions to the present Inquiry, many in the Diaspora feel robbed of an important right that attaches to their Australian Citizenship. The SCG estimates that as many as 500,000 overseas Australian citizens aged 18 or over may presently be prevented from voting due to the overseas enrolment provisions concerned.

The SCG has made known its views on the inadequacies of the *Commonwealth Electoral Act 1918* elsewhere,[87] and the Group's most thorough analysis and recommendations on this subject are contained in its July 2002 primary submission to the Parliament's Joint Standing Committee on Electoral Matters (JSCEM) made as part of that Committee's Inquiry into the 2001 Federal Election.[88] Approximately one hundred overseas Australians, for the most part disenfranchised, also made individual submissions to the same JSCEM Inquiry. Their submissions comprised half of all those received for the Inquiry.

[87] See in particular the document "Section 17 of the *Australian Citizenship Act 1948*: Grounds for Repeal and Associated Issues", Submission to the Australian Department of Immigration and Multicultural Affairs, Brussels and Washington DC, 6 July 2001, pages 42-50, available in the Dual Citizenship folder of the SCG website archives.

[88] See http://www.aph.gov.au/house/committee/em/elect01. All submissions made to that Inquiry can be viewed at: http://www.aph.gov.au/house/committee/em/elect01/subs.htm. The SCG's primary and supplementary submissions and other relevant material can also be found in the Overseas Voting folder in the Archives of the SCG website.

Among our recommendations to that Committee were:

- *Recommendation 1:* That Section 94(1B) of the *Commonwealth Electoral Act 1918* be repealed so that an application to be treated as an eligible overseas elector may be made at any time after an Australian citizen ceases to reside in Australia.

- *Recommendation 2:* That Section 94A(2)(d) of the *Commonwealth Electoral Act 1918* be repealed so that an application for enrolment from outside Australia can be made at any time after an Australian citizen ceases to reside in Australia.

- *Recommendation 3:* That Section 94(1)(c) of the *Commonwealth Electoral Act 1918* be repealed so that any Australian citizen who has ceased to reside in Australia, or intends to cease to reside in Australia, may apply to be treated as an eligible overseas elector without having to state an intention to resume residing in Australia within any period of time.

- *Recommendation 4:* That Section 94A(1)(d) of the *Commonwealth Electoral Act 1918* be repealed so that an Australian citizen who has ceased to reside in Australia and is not on the Electoral Roll can apply for enrolment without having to state an intention to resume residing in Australia within any period of time.

- *Recommendation 5:* That Section 94A(1)(a) of the *Commonwealth Electoral Act 1918* be amended by removing the words “for reasons relating to the person’s career or employment or for reasons relating to the career or employment of the person’s spouse”, so that any Australian citizen residing overseas who is not on the Electoral Roll may apply for enrolment regardless of their reasons for leaving Australia.

- *Recommendation 6:* That the Application Form for Enrolment from Outside Australia and the Application Form for Registration as an Overseas Elector be amended so as to make it necessary for the applicant to provide to the AEC a postal address either in Australia or overseas, or an e-mail address at which the applicant is sure he or she can be reliably and directly reached without undue delay.

- *Recommendation 7:* That Section 94(4) of the *Commonwealth Electoral Act 1918* be amended so that where a person applies to be treated as an eligible overseas elector and the person’s name is not on the Electoral Roll, the Divisional Returning Officer is required to inform that person in writing at their most reliable contact address that the

person should instead apply for enrolment from outside Australia and provide the person with the appropriate application form for such enrolment.

- *Recommendation 8:* That the Australian Electoral Commission make available a Notification of Change of Contact Address Form so that eligible overseas electors who change their place of residence outside Australia, are facilitated in notifying the AEC of this change of overseas address.

- …

- *Recommendation 11:* That Section 94(13)(c) of the *Commonwealth Electoral Act 1918* be repealed so that an eligible overseas elector does not cease to be entitled to be treated as an eligible overseas elector simply because a general election is held at which he or she neither votes nor applies for a postal vote.

- …

- *Recommendation 13:* That further research into electronic voting and enrolment methods be pursued as a matter of urgency with a view to their introduction and use as a way of supporting the exercise of the right to vote by Australians overseas.

- *Recommendation 14:* That regardless of the outcome in respect of other recommendations in this submission, the AEC establish a Register of Overseas Electors as an online database, accessible by registered individuals, to maintain up-to-date voter details; to notify the calling of elections; and to facilitate the control of postal and absentee votes by overseas electors.

In May 2003, in a Supplementary Submission to the same Inquiry,[89] the SCG set out a number of additional very practical recommendations it felt would help to minimize the number of overseas Australians who might become disenfranchised in the future. In its view, these recommendations could be implemented immediately, independently of any legislative amendments to the *Commonwealth Electoral Act 1918*, to at least partially alleviate the current situation.

[89] SCG Supplementary Submission to the JSCEM Inquiry dated 5 May 2003 and available as Submission No. 202 at http://www.aph.gov.au/house/committee/em/elect01/subs/sub202.pdf

For the record, and in the wider context of this Inquiry, those practical recommendations are set out again here:

SUPPLEMENTARY RECOMMENDATIONS ON OVERSEAS VOTING MADE TO THE JSCEM BY THE SOUTHERN CROSS GROUP IN MAY 2003 (SUBMISSION 148)

- ***Recommendation S1****:* That the Australian Electoral Commission (AEC) have a permanent shopfront at all international departure terminals in Australia to advise Australian citizens who are departing Australia on the procedures and options for enrolment and voting from overseas, to provide relevant accompanying information leaflets and forms, and to enable the voluntary on-the-spot completion and submission of the Application Form for Registration as an Overseas Elector before an Australian citizen departs Australia.

- ***Recommendation S2****:* That the Commonwealth *Electoral Act 1918* be amended so that airline check-in personnel in international departure terminals in Australia must give every Australian citizen passenger aged 18 or over who checks in for an overseas-bound flight or sea voyage a leaflet which sets out basic information on overseas voting and enrolment as well as the AEC website address and contact details, and details the existence, location and opening hours of the AEC Shopfront in the particular terminal.

- ***Recommendation S3****:* That the AEC set up a 24-hour telephone support line dedicated to overseas voting and enrolment queries and manned by personnel who have been specially trained which can be accessed by Australian citizens anywhere in the world through an international toll free number or by calling collect.

- ***Recommendation S4****:* That basic information on overseas voting and enrolment be made available alongside passport application forms in post offices and passport offices throughout Australia.

- ***Recommendation S5****:* That basic information on overseas voting and enrolment be made available to Australian citizens overseas who request a passport application form from an Australian consular post overseas, whether such request is made in person, by telephone, or in writing.

- ***Recommendation S6****:* That Passports Australia, and Australian consular posts overseas simultaneously provide every Australian citizen issued with a passport with an AEC information leaflet on enrolment and voting from overseas.

- ***Recommendation S7****:* That consular staff at Australian overseas posts be required to provide Australian citizens who register a child as an Australian citizen by descent, Australian citizens who apply for a certificate of evidence of Australian citizenship, and former Australian citizens who resume their Australian citizenship, as well as all other Australian citizens with whom they deal in an official consular capacity, with an AEC information leaflet on enrolment and voting from overseas.

- ***Recommendation S8****:* That the AEC engage in a comprehensive and ongoing training program for consular and other staff at Australian overseas missions so that any Australian citizen overseas who contacts an Embassy, consulate or

mission with questions on enrolment and voting will receive friendly, competent and complete advice.

- ***Recommendation S9****:* That the DFAT booklet Hints for Australian Travellers be revised to provide clearer and more extensive information on enrolment and voting from overseas.

- ***Recommendation S10****:* That travel agents and airlines be required to provide each outbound Australian citizen passenger with the AEC leaflet at the time of issuance of international tickets.

- ***Recommendation S11***: That a full range of AEC literature and forms on overseas voting and enrolment be permanently available in the public areas of all Australian missions overseas so that Australian citizens visiting the mission for whatever purpose can pick up and take away proper information.

- ***Recommendation S12****:* That posters be prominently displayed in international departure terminals throughout Australia drawing attention to the AEC Shopfront in the terminal and raising awareness among departing Australian citizens on the subject of overseas voting and enrolment.

- ***Recommendation S13****:* That the AEC make available a Notification of Resumption of Residence in Australia Form for use by eligible overseas electors who are planning to shortly move back to Australia or who have recently again become resident in Australia, to facilitate the fulfilment of the obligation on eligible overseas electors in Section 94(5) of the *Commonwealth Electoral Act 1918* to give written notice to the Divisional Returning Officer of their change in circumstances.

- ***Recommendation S14****:* That carriers operating flights and sea lines into Australia be required to give Australian citizens returning to Australia a Notification of Resumption of Residence in Australia Form before landing, along with the immigration and customs forms which are currently distributed on board.

- ***Recommendation S15****:* That Notification of Resumption of Residence in Australia Forms be available in the immigration arrival area, baggage collection area and arrival meeting areas of international terminals throughout Australia.

- ***Recommendation S16****:* That AEC Collection Boxes for the voluntary free on-the-spot lodgement of the Notification of Resumption of Residence in Australia Forms be prominently displayed in the immigration, baggage collection and arrival areas of international terminals throughout Australia.

- ***Recommendation S17****:* That posters be prominently displayed in the immigration arrival area, baggage collection area and arrival meeting areas of international terminals informing returning eligible overseas electors of the opportunity to voluntarily complete and lodge the Notification of Resumption of Residence in Australia Form before they leave the terminal.

- ***Recommendation S18****:* That the Australian Tax Office (ATO) issues a Guidance Note clearly stating that a person's inclusion on or exclusion from the Electoral Roll shall have no bearing in any way on the determination of whether a person is resident or non-resident for taxation purposes.

- ***Recommendation S19****:* That information provided by the AEC on overseas voting and enrolment include a clear statement that a person's inclusion on or exclusion from the Electoral Roll while they are resident overseas is not a factor which will be considered by the ATO in any determination of their status as a non-resident or resident for Australian taxation purposes.

- ***Recommendation S20****:* That the *Commonwealth Constitution 1901* be amended to include a broad and explicit constitutional right to vote for all Australian citizens.

- ***Recommendation S21****:* That, in addition, the *Commonwealth Constitution 1901* be amended to include a provision that any legislative condition or limitation on the constitutional right to vote, which may at any time be laid down by the Australian Parliament, shall be based on objective and reasonable criteria, thereby making any such legislative limitation unambiguously subject to constitutional review by the High Court of Australia.

- ***Recommendation S22***: That the Department of Foreign Affairs and Trade missions in countries in which there is a significant number of Australian expatriates arrange, on behalf of the Australian Electoral Commission, the placement of newspaper advertisements drawing attention of Australians to forthcoming elections. The advertisements should include guidance on voting procedures available to Australians in that country.

It is clear from the Group's experiences as part of the JSCEM's Inquiry that there is considerable resistance among parliamentarians to implementing changes in this area which would re-enfranchise all those in the Diaspora who are currently unable to vote.

An examination of the Hansard record of the JSCEM's public hearings in September 2002 and its final Report tabled in June 2003 suggests that of primary concern to its members, and perhaps the body politic in general, is the worry that the sudden re-instatement of such a large body of electors on the electoral roll could unduly distort the structure of the Australian electorate in general and lead to an imbalance of the numbers in many electoral Divisions. There was also some indication of a concern that there would be a rush of new electors to the marginal seats, and that perhaps those overseas would "forum shop" and deliberately enrol themselves in marginal electorates in order to disproportionately influence a close election.[90]

[90] See the Hansard record of 20 September 2002, pages EM 105 to EM 116 at http://www.aph.gov.au/hansard/joint/commttee/j5772.pdf and

As a result of comments made by various members of the JSCEM during the 20 September 2002 JSCEM hearing at which the SCG's representative gave evidence, the SCG circulated an e-bulletin which sought expatriate reaction to the comments by Committee members. It forwarded these on to the JSCEM in a supplementary submission dated 2 March 2003.[91]

It is the SCG's view that some of the concerns expressed by JSCEM members, while genuinely held, do not withstand closer examination or in fact present legitimate reasons for continuing to disenfranchise approximately half a million Australian citizens.

The requirements for enrolment from overseas even today limit the electorate in which a person can enrol, so that "forum shopping" is already prevented by law. Further, even if the right to vote were returned to all overseas Australians tomorrow, it is unrealistic to expect that more than a few thousand would exercise that right. First, many would not realise that they had been re-enfranchised, as at present virtually no avenues exist for the AEC to reach overseas Australians. Second, not all those who were aware that they could vote would exercise their right to vote because they would not feel informed or interested enough to make the effort from so far away.

Voting for overseas Australians is at present non-compulsory and would have to necessarily remain non-compulsory due to the simple practicalities of reaching those abroad.

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the Committee's Report, pages 64 to 81 at
http://www.aph.gov.au/house/committee/em/elect01/report/fullreport.pdf

[91] SCG Supplementary Submission dated 2 March 2003 accepted by the Committee as Submission No. 187 which is available at
http://www.aph.gov.au/house/committee/em/elect01/subs/sub187.pdf

While the numbers of overseas Australians who might exercise the right to vote if all were re-enfranchised would probably be small, the SCG remains strongly of the view that those Australian citizens overseas aged 18 or over who have a genuine desire to exercise their right to vote should not be prevented from doing so, regardless of how long they have been away from Australia or when they might return. That the number of new voters actually exercising their right to vote would probably be limited is no justification for denying a large group of Citizens a fundamental right.

In the event, in its June 2003 Report, the JSCEM chose not to take up the bulk of the SCG recommendations or their general thrust of extending the right to register and to vote to all overseas Australia Citizens. Although the JSCEM's Report ran to 334 pages, and despite the fact that almost half the submissions to the Inquiry concerned the disenfranchisement of overseas Australians, only 18 pages in the final Report were devoted to overseas electors. The JSCEM's recommendations in relation to overseas voters, and the Government's responses to them in October 2003,[92] were as follows:

> **Recommendation 4**
> The Committee recommends that subsection 94A(1) of the Commonwealth Electoral Act 1918 be amended so that expatriate Australians applying for Eligible Overseas Elector status are not required to state the reason why they left Australia.
>
> **Response**
> Supported.
>
> **Recommendation 5**
> The Committee recommends that subsection 94A(2) of the Commonwealth Electoral Act 1918 be amended so that the current two-year cut off point for application for Eligible Overseas Elector status be extended to three years.
>
> **Response**
> Supported.
>
> **Recommendation 6**
> The Committee recommends that the AEC provide comprehensive information on overseas voting entitlements and enrolment procedures to all electors who contact the AEC about moving overseas.
>
> **Response**
> Supported. The AEC will review its approach to providing information to persons who contact it about moving overseas and amend staff training accordingly. The

[92] Senate Hansard, 16 October 2003, page 16332.

> AEC website already provides a substantial amount of information including frequently asked questions, and information about eligibility and forms for overseas electors. As these people include travellers, who may be mobile and difficult to contact personally for some period of time, the AEC would propose to use its website as the key vehicle for providing information. The AEC is also working closely with the Department of Foreign Affairs and Trade to provide better service at the next federal election through the provision of ballot papers electronically to diplomatic posts.

Much was made of the fact that the JSCEM's June 2003 Report was the first cross party consensus post election report the Committee had produced in thirteen years.[93] Despite these claims of consensus, on the subject of overseas voting the Report does not appear to have been truly consensual. Supplementary remarks at the end of the Report by Democrat Senators Andrew Bartlett and Andrew Murray stress that individual Australians living overseas should be allowed to donate to Australian political parties or candidates.[94] But most importantly, and of key significance, Senators Bartlett and Murray make the following statement:

> A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote. It is a right that attaches to citizenship of this country, and should not be removed.[95]

It is submitted that such a statement is wholly incompatible with the limited nature of the JSCEM's recommendations in the body of the report, which even when implemented, will continue to exclude many overseas Australians from the franchise.[96] The SCG remains disappointed with the outcome of the JSCEM Inquiry process.

The Group has recently learned that legislation is expected to be introduced in mid to late March 2004 which would amend the Commonwealth Electoral Act

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[93] JSCEM Media Release of 23 June 2003, "Unanimous Report on 2001 Election", available at: http://www.aph.gov.au/house/committee/em/elect01/tablingmedia.pdf.
[94] JSCEM Report of the Inquiry into the conduct of the 2001 Federal Election, and matters related thereto, June 2003, pages 282 and 283.
[95] JSCEM Report of the Inquiry into the conduct of the 2001 Federal Election, and matters related thereto, June 2003, page 294.
[96] For a discussion of the current limitations in the law, see http://www.southern-cross-group.org/overseasvoting/currentlimitations.html.

1918 to give effect to the limited recommendations in the JSCEM's Report as accepted by the Government. It is to be hoped that the amendments will be enacted promptly so that they are in force by the time Australia goes to the polls in 2004.

For those who have very recently moved overseas or may move overseas in the future, it is hoped that the forthcoming amendments will assist in preventing them from suffering the loss of the right to vote in the future. The period for already enrolled voters to register as Eligible Overseas Electors on leaving Australia will be extended from two to three years. And for those who are not on the electoral roll when they leave, or who are wiped off shortly thereafter, enrolment from overseas will also be possible for up to three years after leaving the country, rather than two. This should mean that expatriates who have left Australia in the more recent past have less chance of being disenfranchised in the future.

As a postscript to the above, in December 2003 the SCG was approached by a public affairs consultancy firm in Australia which was "…putting some concepts to the AEC regarding communicating with overseas/travelling Australians". The firm sought comments as to how the SCG might help.

Our response, in part, was

> "…Generally we do not allow commercial advertising by businesses in e-bulletins, as we feel that people might then begin to treat our mailings as junk mail or see it as unsolicited advertising. We also have a privacy policy which you can view at http://www.southern-cross-group.org/general/privacy.html.
>
> Having said that, we are keen to work with the AEC because we want expats to be better informed about Australian elections.
>
> We can perhaps come to an arrangement with you which includes both website advertising and a certain number of e-bulletins with AEC material in them."

While the SCG can assist in helping the AEC to reach overseas Australians regarding the 2004 federal election and future elections, it is stressed that many people overseas are already disenfranchised and have no possibility at the

moment under the law as it stands to get themselves back on the electoral roll. Information about an election is of no practical use to these people at the current time because they have lost the right to vote.

For that reason, the SCG stresses that the AEC's financial outlay and practical efforts would perhaps be better channelled into implementing some or all of the practical "on the ground" recommendations put forward by the Group to the JSCEM in May 2003 and set out above. In this way fewer Australians departing Australia in the future will become disenfranchised, even if the law as it currently stands is not amended or amended only slightly along the lines of the JSCEM's June 2003 recommendations.

In its efforts to date on the subject of overseas voting, the SCG has perceived a general lack of understanding in many quarters as to the nuts and bolts of the disenfranchisement problem. It is clear that greater public debate and media coverage are required to put this significant fundamental rights issue on the national agenda. The SCG will continue to work on this matter as a priority issue.

While hundreds of thousands of Citizens in the Diaspora are denied the right to vote, any efforts at other levels to develop "inclusive" policies embracing the Diaspora and aimed at allowing Australia to "exploit" the Diaspora resource will be undermined at the most basic philosophical level. It is naïve to expect that those in the Diaspora will ever truly feel part of the Australian nation if they are prevented from exercising their democratic right to elect those who govern.

Elsewhere in this submission the SCG puts forwards its proposal for the establishment of an umbrella organisation for the Australian Diaspora (the Australian Diaspora Council) which it believes should be charged with servicing the needs of those in the Diaspora and the needs of Australia in relation to its Diaspora. One of the primary tasks of the Council would be to closely examine issues of direct and indirect representation for those overseas.

Recommendation 12

That the Australian Parliament through its Joint Standing Committee on Electoral Matters, and in conjunction with a newly-established Australian Diaspora Council, re-examine the voting rights of overseas Australian Citizens in the wider context of developing and harnessing the role of the Australian Diaspora in furthering Australia's national interest.

Taxation and Investment

A much repeated theme that arises in the SCG's contact with Australian expatriates is the concern that Australia's taxation and investment laws and policies impact, or will potentially impact, unfairly on the non-resident expatriate as compared with Australian residents.

The withdrawal of the tax free threshold from those deriving relatively small amounts of Australian income generated from rent on an Australian property purchased and/or maintained against the expatriate's eventual re-entry to Australia, and the imposition of related land taxes, is a particularly irksome issue for many non-resident taxpayers. Rather than encouraging the repatriation of the expatriate's surplus overseas income as a capital inflow, it discourages many from such investment and can be seen as one of the factors which detract from plans to return to live in Australia at some point in time.

The relatively high level of income taxes in Australia compared with the much lower levels applying in many of the countries in which members of the Diaspora live, is identified as one of the major reasons why those expatriates who have attained success in their career choose not to repatriate to a country where job prospects commensurate with their experience and qualifications are limited and a large part of their earnings is taken in tax.

While the SCG does not have available to it data indicating the level of capital flows from expatriates back into Australia, it is probable that it is below its potential level. Taking note of the Indian approach to attracting capital inflows from its diaspora,[97] it could be expected that, with some concessions as an incentive, the level of expatriate contribution to Australia's economic development could be targeted to a much higher level.

The SCG, while understanding that there are real concerns in the Diaspora community about Australian taxation and investment policy, recognises the complexity of the issue and considers that it is not competent to make detailed recommendations for changes in Australia's taxation and investment legislation and policies.

Recommendation 13

That the Government initiate a review of Australia's taxation and investment regimes so as to identify the nature and level of disadvantages suffered by non-resident Australian Citizens vis-à-vis those who are resident in Australia. The review to include an assessment of any concessions that could be granted to expatriates as a means of enhancing their sense of inclusion in the Australian nation and its economic development.

[97] Report of the High Level Committee, pages 415 to 434

Superannuation

There is much anecdotal evidence of losses suffered by repatriates when repatriating superannuation credits form overseas superannuation funds, particularly those in the United Kingdom, to funds in Australia. The losses are tied to the inability to meet the six-month's timeframe allowed to take up concessional taxation provisions and a number of other factors.

The SCG notes that this issue was extensively examined by the Senate Select Committee on Superannuation in its Inquiry into the Taxation of Transfers from Overseas Superannuation Funds which reported in July 2002.[98] There were a number of recommendations made by the Committee and accepted by the Government in September 2003[99] which will alleviate the concerns of those within the Diaspora. The SCG is unaware as to whether legislation to give rise to these changes has been introduced into the Parliament.

While applauding the recommendations of the Committee and the Government's response, the SCG suggests that the fact that few of those who live overseas are aware of these pending changes, is further evidence that the Diaspora is poorly served in relation to the dissemination of information which is of vital concern to them. Many in the Diaspora considering retirement or re-entry to Australia in the near future may well be unaware that they should defer their return until the necessary legislation is enacted.

It would also seem that another issue for repatriates in respect of superannuation would be the laws of other countries which act to prevent or inhibit the transfer of superannuation credits accrued in those countries to Australia. The detail of this

[98] The report of the Committee is available at http://www.aph.gov.au/senate/committee/superannuation_ctte/overseas_transfers/report/report.pdf

[99] The Government response is available at http://www.aph.gov.au/senate/committee/superannuation_ctte/govt_response/gv40.doc

concern is not well known to the SCG but it is oft mentioned in conversation. While three of the recent Social Security Agreements with other countries have included provisions in relation to employer/employee contributions to superannuation schemes, there is no apparent attempt to cover the transfer of funds from locked superannuation funds to superannuation funds in Australia.

Recommendation 14

That when the Department of Family and Community Services is considering the terms for negation in establishing new International Social Security Agreements that it consult with the Treasury on whether or not there is a need to cover the repatriation of superannuation or other retirement funds in the proposed agreement.

Census

There are no firm figures available on the size of the Australian Diaspora.

The generally accepted figure of “around 1 million” reflects the estimates of Australian Citizens thought to be resident in the areas of responsibility of our overseas missions managed by the Department of Foreign Affairs and Trade (DFAT). The estimates are based on the level of consular activity at each post. They relate to the number of Citizens and do not adequately reflect the numbers in the wider definition of the Diaspora favoured by the Southern Cross Group. There is also some doubt as to whether the estimates include short-term expatriates and/or Australians touring overseas.

A Southern Cross Group compilation of the figures provided to us by DFAT as their estimates of overseas Australian citizens as at 31 December 2001 is at Appendix C. It would be appropriate for DFAT to submit to the Inquiry details of its most recent estimates on a country-by-country basis.

We have long felt that it is important to have a more reliable count as the basis for initiating Diaspora programs and that it is appropriate that overseas Australians be included in the national census. This view is reiterated in the Hugo Report.[100]

In July 2003 the Australian Bureau of Statistics (ABS) issued an information paper[101] in which it sought input to the design of the 2006 census.

The SCG response to this request is reproduced at Appendix G

We are unaware of any publicly available response from ABS on the outcome of its deliberations on the responses it received.

In December 2003 the Senate's Foreign Affairs, Defence and Trade Committee presented its report into the Government's White Paper *Advancing the National Interest*[102] to which the SCG had been invited to make a submission.[103] The Committee addressed the question of determining the size of the Australian Diaspora and made the following recommendation:

> Recommendation 4
> The Committee recommends that the Australian Bureau of Statistics develop mechanisms for accurately enumerating the numbers of Australian citizens living overseas, with a view to facilitating their full participation in the Australian Census.

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[100] **Australia's Diaspora**. Its Size, Nature and Policy Implications. Graeme Hugo, Dianne Rudd and Kevin Harris. CEDA Information Paper No.80, December 2003, pages 19 to 23

[101] Australian Bureau of Statistics 'Information Paper, Census of Population and Housing, ABS Views on Content and Procedures 2006, ABS Catalogue Number 2007.0, ISBN 0 642 47898 8 which is available at:
http://www.abs.gov.au/ausstats/abs%40.nsf/dc358a1cd2f7f8e3ca256a1e00045aa7/c390f553b19e05e3ca25688900206a85!OpenDocument

[102] Foreign Affairs, Defence and Trade References Committee, **The (not quite) White Paper,** Australia.s foreign affairs and trade policy, *Advancing the National Interest* at
http://www.aph.gov.au/Senate/committee/FADT_CTTE/white_paper/report/report.pdf

[103] SCG Submission to the Senate Foreign Affairs and Trade Reference Committee, 10 August 2003 available at
http://www.aph.gov.au/Senate/committee/FADT_CTTE/white_paper/submissions/sub11.pdf

Recommendation 15

That the Government direct the ABS to examine the means by which members of the Diaspora may be included in the national census and that the 2006 census be used to trial systems for the collection of that data.

Recommendation 16

That the Department of Foreign affairs and Trade be asked to submit to the Inquiry details of its current country-by-country estimates of Australian Citizens living overseas on a permanent basis.

Advancing the National Interest

In its report[104] on its Inquiry Into the Government's white paper *Advancing the National Interest* the Senate's Foreign Affairs, Defence and Trade References Committee indicated that it had considered the issues raised by the SCG in relation to the failure of the white paper to adequately address the needs of the Australian Diaspora. It commented:

> 5.11 The Southern Cross Group raised in its submission several matters that the Committee wishes to bring to the attention of the government. These include:
>
> a) the seemingly high cost of basic notarial services, many of which only take a matter of seconds for consular staff to provide a stamp and a signature;
>
> b) the need for enhanced online services for passport applications;
>
> c) the tendency for DFAT services to be focused heavily on *travellers*, when those services are equally needed by resident expatriates;
>
> d) extremely low levels of outreach by missions to expatriate Australians. One Japanese expatriate notes: .My cat has a better status in Japan, at least the local vet contacts us on a regular basis.;
>
> e) more effort should be devoted by DFAT to negotiating reciprocal agreements on drivers licences;

[104] Committee Report, page 65

f) lack of clarity and detail in relevant brochures about medical insurance, and reciprocal agreements that may operate between countries; and

g) ongoing confusion about the citizenship status of expatriates who acquire another citizenship by naturalisation, or of the spouses of expatriates who marry abroad.

5.12 The Committee reiterates the view that it expressed in its earlier Discussion Paper that the White Paper does not appear to recognise that, in a globalised economy, a diaspora which involves 40,000 Australians leaving each year to live, work or study abroad might require a rethinking of concepts of citizenship, voting rights, or even eligibility for awards such as .Australian of the Year. (which has until recently been restricted to residents). The White Paper provides no vision as to how Australia might harness its expatriate capital to assist in advancing the national interest or to ensure that our global citizens retain strong ties to Australia.

Banking and Credit Services

A number of expatriates recently arrived in their new country of residence have commented to the SCG about the difficulties of setting up bank accounts and obtaining various forms of credit.

While we recognise that this is a matter beyond the control of the Parliament or the Government, it is still a problem to which there should be a relatively simple solution given the high standing of the Australian banking industry in the global environment and the international basis of many of the credit card agencies.

Recommendation 17

That the Australian Bankers Association be asked to examine the problems faced by Australian expatriates on arrival in their new country of residence in relation to the arrangement of banking and credit services, and where possible, enter into arrangements with their international counterparts to eliminate any such difficulties.

The Irreversible Reasons for Emigrating

Biting the Bullet

While the reasons for emigrating quoted by expatriates are many and varied, overwhelmingly it is the attraction that other countries have in terms of employment and remuneration, and/or the broader scope for professional and scientific development that are the most quoted.

It has to be accepted that, given the relative smallness of the Australian marketplace in those fields, it will be impossible for Australia to significantly reverse the pull of those factors at any time in the foreseeable future.

Thus we need to develop strategies which will harness the skills and assets of individual expatriate Australians and other members of the Diaspora during that period they are resident overseas to the best advantage for our national interest. Those strategies must be perceived by individual expatriates as having a personal advantage to them in the short to medium term, while at the same time collectively enhancing the Australian economy on a continuos basis.

From the long-term perspective the most successful strategies are likely to be those which provide ongoing financial returns to expatriates and/or ease their eventual re-entry to the Australian scene.

An important factor in this regard is that many expatriates who have been lured by greater opportunities overseas retain a strong intention to return to Australia at some time in the future. The reasons quoted here are again varied but for many the factors are family ties, a desire to pursue the education and upbringing of their children in Australia, a desire to return to the Australian lifestyle, the peaking of their career associated with an adequate level of financial assets, or retirement. Often re-entry for these reasons is delayed because of a perceived

and real fear that the problems of cultural shock and loss of financial wellbeing are likely to be significant.

From an individual's short-term perspective we will need strategies that are seen by highly skilled members of the Diaspora as reinforcing their skills and their ability to contribute to the Australian community, while continuing to live in the comfort zones they have established for themselves in their country of residence.

Possible Strategies

Probably as an underpinning of the strategies for the longer-term perspectives, it will be necessary to develop a system of registration as an eligible member of the Diaspora as the basis for participation in any of the schemes developed for this purpose. The SCG believes that this might best be done by the issue of a Diaspora Card by the proposed Council for Overseas Australians – see later - in similar manner to Tax File Numbers (TFN) by the Taxation Office or Medicare numbers by the Health Insurance Commission. The card would only be issued after the applicant had satisfied the Council as to their bona fides against defined criteria.

Strategies for the longer-term perspective which should be considered include:

- the application of the tax threshold available to resident taxpayers to income from property and other investments held by a registered member of the Diaspora, while at the same time protecting from Australian taxation the overseas-derived income of the registered member;
- programs to encourage the flow of expatriate investment and innovation to Australia possibly by the introduction of taxation regimes commensurate with those applying to Australian residents. For many registered members the ability to buy an Australian residence in advance of retirement would be a desirable element of their retirement planning;

- allowing registered members the right to contribute to Australian superannuation schemes on the same basis as Australian residents without requiring the application of the employer contribution arrangements;
- fostering the transfer of credits accrued in overseas superannuation or pension funds as part of the retirement planning process. This may well involve the negotiation of bilateral agreements with other countries. Retirement funds accrued in the US are a particular case in point;
- extending the network of social security agreements to allow the payment of social security pensions to expatriates who have returned to Australia, where such rights have accrued in the expatriate's country of former residence.
- extending the network of double taxation agreements to include those countries with which there is no agreement and for whom there is a recognisable component of Australian expatriates within their population. Countries in the Middle East warrant examination in this respect.
- the development and support of Australia-based organisations which have the objective of facilitating the re-entry of expatriates.

Strategies for the short-term perspective which should be considered include:

- the establishment of diaspora knowledge networks.

  The SCG has been attracted to the idea of diaspora knowledge networks (known as the "diaspora option" in combating the effects of the "brain drain" as opposed to the "return option") by the discussion in a paper prepared for the UNESCO – ICSU World Conference on Science in Budapest, Hungary in 1999.[105]

[105] Scientific Diasporas: A New Approach to the Brain Drain by Jean-Baptiste Meyer and Mercy Brown, Discussion Paper No. 41, UNESCO – ICSU World Conference on Science, Budapest, Hungary, 26 June – 1 July 1999 available on the Internet at http://www.unesco.org/most/meyer.htm

While the paper was developed as a study of the emigration of scientists and engineers from the less developed countries to the developed countries, identified as the US, France and Japan, the SCG believes that the paper addresses the same issues as those faced by Australia in relation to its brain drain in the sciences and the professions.

To quote from the paper:

> "The diaspora option … proceeds from a different strategy. It takes for granted that many of the expatriates are not likely to return. They have often settled abroad and built their professional as well as their personal life there. However, they may still be very concerned with the development of their country of origin, because of cultural, family or other ties. The objective, then, is to create the links through which they could effectively and productively be connected to its development, without any physical temporary or permanent return."
>
> …
>
> "A crucial advantage of the diaspora option is that it does not rely on a prior infrastructural massive investment, as it consists in capitalising on already existing resources. It is thus at hand for any country which is willing to make the social, political, organizational and technical effort to mobilise such a diaspora. A promising perspective in such a strategy is that through the expatriates, the country may have access not only to their individual embodied knowledge but also to the socio-professional networks in which they are inserted overseas. It is quite an extensive version of a connectivity approach."

- fostering programs which facilitate the short-term placement of appropriate registered members in educational bodies, research and development positions, public and private sector entities, etc. located in Australia as a means of transferring accumulated knowledge to the Australian scene in a timely manner. A direct spin off from such programs would be the opportunity for both the member and potential Australian employers to assess employment possibilities for those expatriates considering re-entry;

Recommendation 18

That the Committee should recognise the inevitability of the fact that the brain drain of Australia's well-educated and highly skilled citizens is unlikely to be slowed or reversed in the foreseeable future and that an approach along the lines of the diaspora option is more likely to be successful.

> Once this fact is accepted by the Government, the Australian media and the Australian populace generally, we will be able to move forward with strategies which emphasis the inclusiveness of Australia's approach to its Diaspora.

Recommendation 19

That the Committee recommend to the Parliament and the Government that the need for a number of policy reforms to taxation, expatriate investment in Australia, superannuation, and a range of other relevant matters should be addressed without delay.

Recommendation 20

That the network of Australia's bilateral social security and international taxation agreements be expanded as quickly as possible so as to avoid the many inequities Australian expatriates face in regard to pension portability and taxation liability.

Recommendation 21

That a concerted effort be made to identify, develop and support Australia-based entities which facilitate the re-entry of members of the Diaspora to Australia on a permanent basis.

Recommendation 22

That government programs be established to develop and nurture expatriate knowledge networks and the short-term placement of appropriately qualified members of the Diaspora in Australian organisations.

Broadening Australia's Perception of Its Diaspora

There needs to be a range of Government supported initiatives aimed at broadening the perceptions of the Australian populace in matters relating to its Diaspora.

Working Holiday Scholarships for Parliamentary Research Staff.

Australia's Working Holiday agreements with a growing number of countries represents an excellent opportunity for young Australians to gain experience in the cultures, and living and working environments of other countries.

To take this a step further and to strengthen the general knowledge of the Diaspora at the Parliamentary level, the Southern Cross Group suggests that the Australian, State and Territory Parliaments should establish a number of annual working holiday scholarships for eligible research staff within the employment of the Parliamentary Departments.

Such scholarships could cover the costs of travel and some initial accommodation costs with the recipients possibly expected to partly fund their stay overseas by local employment. Further, it would be appropriate for some recipients to be placed with Australian Expatriate groups and/or work under the aegis of our overseas posts as expatriate liaison officers. It should also be possible to co-opt the support of the overseas offices of Australian-based companies or expatriate-owned businesses in part-time placement of scholarship holders again as a means of fostering links with Australian expatriates in the local community.

Briefings for Australian Holders of New Working Holiday Visas

Large numbers of young Australians travel overseas with visas from other countries with which Australia has signed Working Holiday Agreements.

Apart from the need to obtain or hold Australian passports prior to departure most working holidaymakers would have little or no contact with Australian Government agencies in preparing for their trip. We believe that a Government agency, preferably the proposed Council for Overseas Australians, should be made responsible for developing a set of briefing materials for our departing working holidaymakers. The briefing material would include:

- advice on taxation, taxation agreements, superannuation, voting, welfare, health and health insurance issues which may impact upon the visa holder;
- details of Internet addresses of Government agencies and other relevant bodies which may be consulted both before and after departure;
- contact details for consular services and expatriate organisations in the destination country.
- contact details of organisations in the destination country which have indicated to the Council that, from time to time, they may have vacancies suited to the needs of working holiday makers.
- Details of employment laws, taxation, superannuation and pension contribution schemes, and other financially important matters in the host country.

It should be possible to issue the information packs to the holders of working holiday visas before departure through appropriate liaison arrangements with the issuing foreign consulates in Australia.

Australia's International Agreements Directly Relevant to Expatriates

Australia has entered into International Agreements with a number of countries in relation to Working Holidays, Social security, Medicare and Taxation which are directly relevant to individual expatriates.

A comparative table of these agreements on a country by country basis is at Appendix H**.** The table includes links to more detailed information.

The Committee will note that there is an imbalance in the types of agreement which exist on a country by country basis.

While there is a common thread in each type of agreement, the text of the agreement varies from one agreement to another reflecting the age of the agreement and the circumstances pertaining at the time the agreement was negotiated.

Working Holiday Agreements

Australia currently has Working Holiday Agreements with 15 countries:

- Canada
- Cyprus
- Denmark
- Finland
- France
- Germany
- Hong Kong
- Ireland
- Italy
- Japan

- Malta
- The Netherlands
- Norway
- South Korea
- Sweden
- United Kingdom

An agreement with Belgium has been signed but awaits ratification by the Belgian Parliament. It is expected to come into force in 2004 or 2005.

Negotiations, frequently of an extended nature, are in hand with a further 11 countries:

- Austria
- Estonia
- Greece
- Iceland
- Malaysia
- Singapore
- Spain
- Switzerland
- Taiwan
- United States

The SCG sees the working holiday schemes as an important element of the Diaspora arrangements. They:

- Provide young Australians, between the ages of 18 and 30, with an opportunity for an extended stay in the destination country.
    - The UK agreement allows temporary residence in the UK for a period of two years, with the option for some visa holders to convert to permanent resident status at the end of that period.

  - The agreements with other countries allow for twelve months temporary residence.
  - The number of visas available is unlimited, except for Canada where an annual quota applies.
- Expose visa holders to the culture, language, lifestyle and working environment of the host country.
- Enhance the significance of the Diaspora to family and friends of the visa holder and the Australian public generally, particularly through those returning to Australia on the termination of their visas.
- Provide long-term Expatriates with the opportunity to host family members and others in a friendly environment thus enhancing the expatriates' continuing links with family in Australia and Australia in general.

Recommendation 23

That the Australian Government;

- **take steps to hasten the finalisation of those agreements currently under negotiation; and**
- **mount a pro-active campaign to establish working holiday agreements with other countries where there is an existing or potentially significant Australian Expatriate community**

Social Security Agreements

Australia currently has bilateral Social Security Agreements with:

- Austria
- Belgium (expected to come into force in 2004-2005)
- Canada
- Chile (from 1.7.2004)
- Croatis (from 1.7.2004)
- Cyprus

- Denmark
- Germany
- Ireland
- Italy
- Malta
- The Netherlands
- New Zealand
- Portugal
- Slovenia
- Spain
- United States

Negotiations are taking place for Social Security Agreements with Finland, Greece, Norway, Switzerland and Turkey.

A notable omission from the above is an agreement with the United Kingdom. The former agreement with the UK was terminated by Australia in 2001 following the failure of the UK Government to agree to the indexation of British pensions payable in Australia and some other countries. While those who become eligible for British pensions may elect to have the pension paid to them in Australia, it will not be indexed in line with pensions paid in the UK and a range of other countries. This has been of great concern to, and the subject of much lobbying by, expatriate groups representing the recipients of British pensions.

The SCG believes that the current momentum that has built up in establishing bilateral Social security Agreements be maintained.

Double Taxation Agreements

The countries with which Australia has International Taxation Agreements are listed in Appendix J. The agreements play a key role in maintaining equitable taxation arrangements for many in the Diaspora.

Medicare Agreements

Australia has Reciprocal Health Care Agreements with a limited number of countries:

- Finland
- Ireland
- Italy
- Malta
- The Netherlands
- New Zealand
- Norway
- Sweden
- United Kingdom

These agreements are long standing and generally exclude long-term members of the Diaspora. The SCG understands that no new agreements are in prospect.

The existing agreements vary considerably from one agreement to another.[106]

[106] Details of the agreements are available at http://www.hic.gov.au/yourhealth/services_for_travellers/to.htm

Measures Taken By Other Countries To Respond To The Needs Of Their Diaspora

The research by the SCG in this area has been at two levels.

At the more general level the research looked at websites identified by search engines as being related to non-Australian expatriate activities.

A narrower based research effort has concentrated on several of the better known examples of countries which have developed a more robust structure of programs in support of their Diaspora.

Our research endeavoured to identify, in each case, information about:

- citizenship, particularly in relation to acquisition and resumption of citizenship by those living outside a country's borders;
- the generally accepted definition of the country's Diaspora and whether it extended beyond those who were citizens of the country;
- the structures formally established to support and recognise the Diaspora by the Government, Government supported and/or the non-government sectors; and
- the rights of members of the Diaspora to take part in elections in their country of citizenship; and any other matters identified as of special interest in relation to the Diaspora.

Results of the General Search of the Internet

The general search of the Internet produced a mixed bag of results. The schedule at Appendix K records our findings across more than 200 countries. We were unable to find any relevant information on some countries, but were surprised by the number of countries for which there has been some organised effort in respect of their diaspora.

Given the fact that many such countries are seldom mentioned as key players in the emerging diaspora movement, they represent another driver in hastening Australia's constructive recognition of the Australian Diaspora.

European Union

The Summit of European Diasporas[107] was an initiative of Greek Foreign Minister George Papandreou and the Greek Presidency of the European Union.

The Summit was the first-ever gathering of distinguished members of the diasporas of the 28 member-states, accession and candidate countries of the EU. In all, approximately 60 diaspora members met in Thessaloniki on June 19-21, concurrently with the 2003 Chalkidiki European Council.

The Summit debated ways for Europe to strengthen relations with its diasporas and to draw on their experience, knowledge, and networks to advance European Union policies.

Canada

About 1.5 million Canadians live and work abroad out of a population estimated at 31.5 million as at December 2002.

Some notes relating to the arrangements applicable to Canadians living abroad are at Appendix L

[107] See the website of the Summit at http://www.europeandiasporas.org/index.stm which outlines the agenda for the meeting. Unfortunately the website does not contain any reports on the outcome of the proceedingd. The SCG is endeavouring to locate any reports that might have been prepared

Finland[108]

To quote from the English Language pages of the Finnish Expatriate Parliament's website

> "There are 600,000 first and second generation expatriate Finns in the world. Including third and fourth generation descendants, the total number of Finnish expatriates is estimated to be 1.3 million. More and more Finns leave their home country in order to study or work abroad or spend their family life of retirement in another country."
>
> "The Finnish Expatriate Parliament (FEP) was founded in 1997. At the Parliament the Finns living around the world come together and decide collectively on issues that they deem important to them. The Secretariat if the FEP is Finland Society and Mr Pertti Paasio, chairman of Finland Society, is Speaker of the Parliament.
>
> "The FEP is open to all Finnish expatriate organizations. The organization can get involved by ratifying the FEP by-laws. There are no costs for participation, nor are there any specific benefits with respect to the FEP. At the moment 405 organizations from 32 countries have ratified the by-laws of the Parliament.
>
> "The FEP convenes every 2 or 3 years to a Parliament Session in Helsinki. Every organization involved in the FEP activity has right to send at least one representative to the Parliament. There is the Speakers' Council which is responsible for the interest promoting between the Sessions. The Speakers' Council has meetings twice a year and there are 8 Vice Speakers representing all the regions in the world."
>
> "The Finnish Parliament passed the Citizenship Bill on 24 January 2003, which allows dual citizenship. According to the Bill Finnish citizens may retain their Finnish citizenship if the state whose citizenship they apply for permits it as well. In addition, the former Finnish citizens and their children may resume Finnish citizenship upon notification. The new law comes into force 1 June 2003"
>
> "According to the new Law, Finnish citizens may resume Finnish citizenship upon notification of their desire to do so. A notification should be given by filling in a form from the Directorate of Immigration. The Directorate of Immigration will make a decision on the notification and inform the person concerned of its decision in writing. Descendants of present and former Finnish citizens may acquire citizenship on notification. Citizenship is granted on the basis of father's or mother's citizenship, even if the applicants themselves have not had Finnish citizenship before. Both former Finnish citizens and their descendants wishing to give notification under the terms of the Act must do so within five years of its entry into force."

:

[108] Detailed information on many aspects of Finland's arrangements for its Diaspora are available on the website of the Finnish Expatriate parliament at http://www.usp.fi/indexukt.htm

France[109]

France has a structured set of arrangements flowing from its Constitution.

The right to vote in France for all citizens is enshrined in the French Constitution. Voters are defined as "all French citizens of both sexes who have reached the age of 18 years, and having the benefit of their civil and political rights".[110] The constitutional right to vote in France attaches merely by virtue of a person's legal citizenship status and is not in any way dependent on whether a citizen resides in France or not.

French citizens living abroad are actively encouraged to register at their nearest French Embassy or Consulate, although this is not compulsory. This allows them, among other things, to vote directly at the embassy or consulate in Presidential and European elections and referenda, if their embassy/consulate is established as a polling station, and to vote for the members of the High Council for French Expatriates. They can (in fact, they are encouraged) to be both registered at their embassy or consulate and enrolled in a municipality in France.

Under Article 24 of the French Constitution of 1958 (the Fifth Republic), "French nationals settled outside France shall be represented in the Senate".[111] The Senate in France, unlike in Australia, is not elected directly by French citizens but by "indirect universal suffrage". Its members are elected by an electoral college made up essentially (95%) of municipal council delegates, the number of which depends on the number of inhabitants in each municipality. Thus, they are

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[109] Information in English about the French arrangements is difficult to find. An English language summary of the arrangements was prepared by an SCG Committee member long-time resident in France for submission to the Australian Parliament's Joint Standing Committee on Electoral Matters Inquiry into the conduct of the 2001 Australian federal election. That submission is reproduced in Appendix M of this submission.

[110] French Constitution of 1958, as updated in 1992, Article 3, Section 4. Translation into English by Janet Magnin.

[111] http://www.legifrance.gouv.fr/html/constitution/constitution2.htm#titre4

elected by elected representatives, according to the principle of proportional representation.[112] The 12 Senators representing French citizens abroad (of a total of 321 Senators) are elected in a similar way: indirectly, according to a system of proportional representation. But instead of municipal delegates, French citizens abroad elect members to the Conseil Supérieur des Français de l'Etranger (C.S.F.E.), the "High Council for French Expatriates", which then elects the Senators. In addition, this Council is much more than simply an electoral college, as it operates in both directions for the benefit of expatriates, by representing expatriates and their special interests in relation to the French government and also with governmental and other bodies in their host country.

The C.S.F.E. is a body consisting of 150 members, elected directly by registered French nationals living abroad. The Council elects 12 Senators, who thus become *ex officio* members of the Council, to represent expatriate French citizens in the Senate, where they can propose laws and amendments for the benefit of expatriates. On the Council, there are also twenty personalities appointed by the Minister of Foreign Affairs "by reason of their competence in matters concerning the general interests of France abroad". The President of the Council is the Minister for Foreign Affairs, (who can directly advise the Cabinet), and there are three vice-presidents elected by the Council.

The full Council meets once a year, but there is a permanent bureau and various committees (social affairs; economic, fiscal and customs affairs; education, culture and information; for French expatriates' representation and rights; war veterans; employment and vocational training; C.S.F.E. reform; plus various working groups established for specific needs as they arise) whose meetings and actions continue all year round. The Committees report to the full Council meeting and every Council member must be a member of a Committee but one only.

[112] For more detailed information in English about the French Senate and the Electoral College see: http://www.senat.fr/english/role/colleg.html

Council members can also be elected to various national boards, including the Economic and Social Council, the Social Security Fund for French Expatriates, the Agency for French Teaching Abroad, the National Study Grants Commission, the Standing Committee for Employment and Vocational Training for French Expatriates, the National Legal Aid Council, the Paris Departmental Rights Entitlement Council, the Council for the Social Protection of French Expatriates, and the National Association of French Schools Abroad.

The Council also reports to the Government on its research into the problems that affect French expatriates in the areas of education (schooling and training), law, social security, foreign trade, taxation, and more. It also has the role of giving its opinion and expressing its wishes on the actions of the administration on behalf of French citizens living outside of France. Members of the Council also provide liaison between diplomatic personnel abroad and local French communities[113].

[113] Further information about the CSFE is available in English from http://www.csfe.org/.

Greece[114]

The Greek Diaspora is a long recognised and widespread example of a nation's approach to its diaspora. The Greek Ministry of Foreign Affairs indicates that citizens of Greek origin live in more than 140 countries around the world. The report of the Indian High Level committee suggests that there is an estimated 6.7million members of the Greek Diaspora while noting that the resident population of Greece is 10.6 million.

Several extracts from the **Foreign Ministry statement** encapsulate the attitude of Greece towards its Diaspora:

- "They are an active and dynamic element of their new countries as well as of Hellenism."
- "Greeks abroad and citizens of Greek origin constitute a pool from which Greece can draw invaluable resources to shape a common future for Hellenism in the 21st century. They are bridges of inter-cultural dialogue and international cooperation."
- "Every man that shares a Greek education should be considered as Greek."
- "Greece is endowed with an invaluable resource, its culture. In the new world order of open frontiers, trans-national cooperation, and large population movements, the need for immediate and constant information is imperative."
- "Today it is considered important for a nation to be able to put into use the presence of its Diaspora in its effort to become more active in the world. In this context, the role of Greeks abroad is important in defending Greek national interests, but also in forming a bridge of friendship and cooperation with the countries where they live."
- "The Ministry of Foreign Affairs supports programmes and actions in the fields of education, culture, etc. for all Greeks living abroad …"

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[114] The comments on the Greek arrangements for its diaspora have been gleaned form several Internet sources:

The Greek Diaspora is a brief summary of the official approach to the Diaspora available in English, on the website of The Ministry of Foreign Affairs of the Hellenic Republic at http://www.mfa.gr/english/satelites/diaspora/

Information regarding the World Council of Hellenes Abroad (SAE) is available, in English, on the Council's website at http://www.sae.gr/en/default.asp. Additional information on Diaspora arrangements is to be found on the Council's "About Us" pages beginning at http://www.sae.gr/EN/Sae/Default.asp

We found information on the Acquisition of Greek Nationality By Naturalisation on the website of the Greek Embassy in the UK at http://www.greekembassy.org.uk/pages_en/citizenships.html . An Internet search for the "Code of Greek Nationality" mentioned in the Embassy material, found a copy of the code at http://www.geocities.com/nationalite/greek-eng.txt . However, the SCG has been unable to ascertain the current status of the document as presented at that site. Consequently we have felt constrained in commenting on matters relating the acquisition of Greek nationality by birth or naturalisation.

- "… the role of the General Secretariat for Greeks Abroad is very important. It shapes and carries out activities in order to implement the overall government strategy for the Diaspora, decided in 1983."

The World Council of Greeks Abroad (SAE) "… is a world, autonomous, non-governmental organization that unites Hellenes and Philhellenes, with its headquarters in Thessaloniki, Greece."

It is the vehicle by which the Greek Diaspora maintains its contacts and influence with the Greek state. To quote from its website:

VISION - MISSION:

- To unite, enhance and promote Hellenism in becoming a powerful and influential power around the world.
- To assist all Hellenes in their efforts to effectively meet their needs and to improve their economic, social and political status.
- To inspire and motivate every Hellene and Philhellene to join, contribute and support the efforts of SAE in any way that they can.

SAE'S ROLE:

SAE's role in reaching individual Hellenes in their everyday existence and to provide a world Network to serve their aspirations and interests is best understood through its two main roles that constitute its very mission:

- It's role as the Consultative and Advisory body to the Hellenic State on matters pertaining to the Omogeneia,
- Its role in initiating and executing programs and projects with and for the benefit of the Omogeneia.

Members of the SAE are the appointed representatives of the organisations of the diaspora. The 11 member SAE Board includes the five SAE's regional co-ordinators representing the SAE's four geographical regions (North and South America, Europe, Oceania, Asia-Africa) and Cyprus. The regional directors and the Coordinating Council for each region are elected by the members in each geographical region. The interests of members are met by proposals submitted to the SAE Board. Regional conventions are held each two years in between the World Conferences.

The SAE has established five thematic networks for Youth, Women, Culture, Scientists, and Business. The main focus point of each network is the common interest or characteristic of its members.

Examination of the SAE website indicates that the Council is a vibrant, pro-active organisation which places current issues before the Diaspora.

Three related entities complement the work of the SAE:

- The Special Permanent Committee of the Parliament for Issues of Hellenism Abroad;
- World Inter-parliamentary Association of Hellenes (PADEE); and
- Friends of SAE.

Greek expatriates are currently not able to vote in national elections from outside Greece. However, it is reported[115] that absentee voting will be allowed in the next election after the March 2004 election.

India

The *Report of the High Level Committee on the Indian Diaspora*[116] contains a very detailed analysis of issues relevant to the Indian Diaspora. The High Level Committee consulted with members of the Diaspora in many countries, including Australia, and provides in its report a region-by-region analysis of the nature of the Diaspora resident in those regions, their actual or potential contribution to the Indian nation, and their needs and concerns as expatriates.

The Indian Diaspora is in the order of 20 million worldwide. It is recognised as including two main groups :

- ***NRIs*** or ***Non Resident Indians*** are Indian citizens, holding Indian passports and residing abroad for an indefinite period, whether for employment, or for carrying on any business or vocation, or for any other purpose;

[115] The Australian Newspaper, 2 March 2004, page 2

[116] Report of the High Level Committee on the Indian Diaspora, Indian Ministry of External Affairs, 19 December 2001 available at http://indiandiaspora.nic.in/contents.htm

- ***PIOs*** or ***Persons of Indian Origin*** is applied to foreign citizens of Indian origin or descent. Technically they would belong to one of the following three categories, namely:
    - person who, at any time, has held an Indian passport;
    - persons, either of whose parents or any of whose grandparents or great-grandparents was born in, and was permanently resident in India as defined in the Government of India Act 1935 and other territories that became part of India thereafter, provided he/she was not at any time a citizen of the countries referred to in para 2 (b) of MHA notification No. 26011/4/98-1C. dated 30th March, 1999:
    - The spouse of a citizen of India or a person of Indian origin covered in the above two categories."

The opening statement in the Executive Summary of the Committee's report at pages xi and xii, and its conclusions and recommendations at pages 555 to 570 are recommended to the Senate Inquiry Committee for close examination as, to the SCG, they have striking parallels to issues applicable to the Australian Diaspora.

The report also provides a snapshot as at December 2001, of the diaspora features and support arrangements in a number of other countries, together with an assessment of their relevance to the Indian Diaspora. The diaspora groups are:

- Chinese - at page 304 of the report
- Greek – page 318
- Italian – page 322
- Japanese – page 326
- South Korean – page 328
- Jewish – page 330
- Lebanese – page 339
- Filipino (Philippines) – page 342

- Polish – page 348
- Irish – page 355

The SCG notes that while the Indian report mentions the presence of elements of its own and other countries' diaspora in Australia, there was no attempt made to recognise, or assess the importance of, the Australian Diaspora. This is another indication that the concept of the Australian Diaspora had not been developed or recognised either in Australia or internationally as late as 2001.

The Person of Indian Origin Card (PIO Card)[117] is a feature of the Indian Diaspora arrangements which could well translate to the Australian scene in support of increased inwards tourism and investment by the non-citizen members of an expanded Australian Diaspora which includes non-citizens who have at least one grandparent or great-grandparent that was an Australia citizen, or a British Citizen resident in Australia prior to 26 January 1949 when Australian citizenship was introduced.

We would suggest that, if such a card were to be introduced, its cost should be more closely aligned with the fee structure for Australian visas rather than the relatively high cost indicated on the website of the Indian High Commission in Canberra.

The report of the High Level Committee also contains, at pages 509 to 533, an interesting discussion on the benefits of dual citizenship in support of its recommendation that the then (Indian) Citizenship Act 1955 be amended to allow dual citizenship. The Act was subsequently changed in recognition of the Committee's recommendation.

[117] For full details of the card scheme see "Person of Indian Origin Card (PIO) Card Scheme 2002" on the website of High Commissioner for India in Australia at http://www.highcommissionofindiaaustralia.org/PIO_pg_.htm

Another feature of the Indian Diaspora arrangements is the establishment of the Centre for the Study of the Indian Diaspora (CSID) at the University of Hyderabad as a research organisation separate to the Indian Government's initiative on their diaspora. It is understood that the CSID has also made a submission to the Senate Inquiry.

Recommendation 24

That the research and recommendations contained in the report of the Indian High Level Committee on the Indian Diaspora be assessed by the Senate Inquiry Committee for its relevance to the Australian Diaspora.

Ireland

The website of the Summit of European Diasporas mentioned above lead the SCG to two useful documents about the Irish Diaspora.[118]

Italy

There are roughly 60 million persons of Italian origin living outside Italy while the population of Italy was approximately 58.1 million in 2002.

The Italian Government has established an organised framework for regular interaction with its Diaspora. In 1985 the Italian Government encouraged the establishment of the Committees of Italians Abroad (COMITE) in geographic

[118] Ireland and the Irish Abroad – Report of the Task Force on Policy Regarding Emigrants to the Minister for Foreign Affairs, August 2002 at http://foreignaffairs.gov.ie/policy/FINREP1.pdf

A study of the existing sources of information and analysis about Irish emigrants and Irish communities abroad, Bronwyn Walter, Anglia Polytechnic University, Cambridge, with Breda Gray, University College, Cork; Linda Almeida Dowling, New York University; and Sarah Morgan, University of North London, August 2002 at http://www.europeandiasporas.org/articles/taskforcestudy.pdf

areas with a minimum of 3000 Italian nationals. They are expected to collaborate with the Italian diplomatic and consular missions , Italian associations and other COMITEs for the protection of citizen's rights and interests, and promote cultural and social activities, school services, and cultural , social and economic ties with Italy.

In 1989, the Italian Government set up a General Council of Italians Abroad (CGIE) consisting the consisting of 95 members, 65 of whom are elected by the Italian communities abroad and 29 are appointed by the Government to represent several interests within the Italian domestic community. The Council is chaired by the Minister for Foreign Affairs, and advises the Government on the problems of Italian communities abroad, the need for educational and professional training, how to enhance the national identity, and prepares an Annual report which is presented to its Parliament.

With a view to foster closer links with Italians abroad, the Italian Parliament passed a Citizenship law in 1992 which explicitly allows Italian citizens who possess, acquire or gain foreign citizenship to retain their Italian citizenship.[119]

Italian citizens resident in Australia have the right to vote to elect Members of the Chamber of Deputies and of the Senate of the Italian Parliament. They also have the right to vote when popular referenda for the abrogation or confirmation of existing laws are held.

In the case of political elections, voters participate in the election of 12 Deputies and 6 Senators for the Single Global Overseas Constituency (*"Circoscrizione*

[119] The SCG is indebted to the report of the High Level Committee on the Indian Diaspora which contains a detailed English language description of the Italian arrangements and from which the foregoing information was extracted. The report is available at http://indiandiaspora.nic.in/contents.htm

Other English language information on the Italian arrangements is available at
http://www.esteri.it/eng/foreignpol/italstra/index.htm
http://www.ambitalia.org.au/faq-answers.htm#Q1
http://www.mondotrentino.net/guida1/inglese/guidaesING.htm
http://www.ambitalia.org.au/ElectionComites.htm and
http://www.ambitalia.org.au/voteabroad.htm

Estero") which is subdivided into 4 geographical groups: a) Europe; b) South America; c) Northern and Central America; d) Africa, Asia, Oceania and Antarctica.[120]

[120] The information on voting by Italians abroad is taken from the website of the Italian Embassy in Canberra at http://www.ambitalia.org.au/voteabroad.htm

An Umbrella for the Diaspora

An examination of the information available about the arrangements other countries have established in respect of their diaspora clearly indicates that those countries which have set up Government-managed or Government-supported umbrella organisations to meet the needs of their diaspora are the most successful. Finland, France, Greece, India and Italy are outstanding examples.

From our experience in the contacts we have in the nature of the concerns expressed to us by members of the Australian Diaspora, our input to several Parliamentary Inquiries, our contacts with the staff of government agencies, and our research for information on Government websites, the SCG is convinced that the establishment of an umbrella agency for the Australian Diaspora is desperately needed.

While the standard of the individual Australian Government websites is very high by world standards there are very few links between websites and to the uninitiated seeker of information they represent a tangled web which is difficult to penetrate without a detailed understanding of the Administrative Arrangements Order and the machinery and structure of Government. This is so even for people living in Australia who in many cases are able, through their local knowledge and leads through media coverage, community organisations or Government advertising campaigns, to find their way to an appropriate shopfront or Internet portal.

For those living outside Australia the situation is much worse. They do not enjoy the advantage of local knowledge etc., cannot drop into a shopfront, and probably have difficulty in finding the right Internet address. It is well established that a level of information available through the consular arms of our overseas posts is in most areas non-existent unless you happen to be in trouble with the local law enforcement agencies. We have much anecdotal evidence of wrong

advice being given by consular staff in respect of citizenship and immigration matters in particular.

Compounding the problem for those in the Diaspora is the fact that responsibility for the many and varied issues of concern to them are fragmented across a wide range of Commonwealth Government agencies. Frequently one feels there is a culture in the agencies that follows the "over there, out of mind" philosophy that seems to be prevalent in the general populace.[121] Add to this the difficulty in tracking down information at the State and local government level, and it is not surprising that many in the Diaspora have a feeling of exclusion from their homeland.

The Southern Cross Group believes that the Government should move without delay to establish an umbrella organisation for the Diaspora which would act as a fulcrum point between members of the Diaspora on the one hand and Government and non-government entities in Australia on the other. For ease of reference in this submission we will refer to the proposed umbrella body as **The Australian Diaspora Council** (the Council).

Given that the issues are complex, that there are cross-agency and/or cross-government hurdles to be overcome, many Government policy decisions to be made and, in terms of possible direct Parliamentary representation, constitutional issues to be solved, the SCG accepts that the role and responsibilities of the Council will take time to coalesce. We nevertheless believe that it would be

[121] A recent example will serve to illustrate this point.
On 17 February 2004 the Minister for Foreign Affairs and Trade issued a media release, FA24 - Boost to Passport Security, in which he indicated changes are to be made to the Australian Passports Act to incorporate security and other provisions.
The release indicated that a background paper had been made available on the DFAT website. The background paper indicated that public consultations are to be held through meetings in Melbourne, Sydney and Canberra during March. No mention was made of any efforts being made to consult with expatriates, which considering they would, all one million of them, be passport holders is a staggering omission.

possible to set its initial structure and develop its basic information giving roles in a relatively short time frame.

We foresee that the role of the Council would encompass:

- the development of an information website catering to the needs of the Diaspora;
- the development of a Diaspora Data Base to record information about individuals and organisations volunteering to be in the database:
    - it would probably emerge that the database would be cast at several levels to meet the varying privacy requirements of those involved;
    - an examination of Australia's privacy legislation would probably be necessary to ensure that the information in the database is able to be best used in meeting the needs of the Diaspora and Australian organisations in the public and private sector;
    - the place of the database in the cross-matching network of the Commonwealth would need to be established to the satisfaction of would-be participants;
- the development of a regular E-Bulletin service to those in the database notifying them of the continuing stream of changes to legislation, administrative procedures, embassy and consular appointments, security alerts, cultural events, arrangements for forthcoming elections, etc., that are relevant to the Diaspora.
    - Ii is not envisaged that this would be a general news service covering the type of news, sports results, etc., available on a daily basis from the normal media services in Australia. (For the record it should be noted that most expatriates seeking to keep abreast of current affairs in Australia are avid users of the Internet pages of the Australian media – but not all in the Diaspora are Internet users)
- Liaison with State and local governments to establish the willingness of those entities to be recognised in the role of the Council;

- the collection of Diaspora input to the development of proposed changes in Government policy, legislation and administrative procedures affecting those in the Diaspora as the basis of a Diaspora Impact Statement prepared by the Council.
- liaise with Australian Universities to establish and support a Centre(s) for the Study of the Australian Diaspora;
- the development of procedures to assess the acceptability of applications from members of the Diaspora for the issue of an Australian Diaspora Card. The concept of the card is discussed later in this submission;
- the development, support of, and liaison with, expatriate organisations both overseas and in Australia;
    - of particular relevance here are those organisations in Australia that provide advice and support for those in the Diaspora seeking permanent re-entry to Australia.
- the development and fostering of Scientific, Professional and Common Interest Knowledge Networks to link individuals in the relevant stream with those individuals and organisation of a like calling in Australia. That is, actively pursue the "diaspora option" as a means of achieving positive results from the inevitability of the brain drain phenomenon;
- the convening of regular conferences of expatriate representatives from around the world to consider the issues of then concern to the Diaspora:
    - this should be linked with an "Australian Diaspora Week" along the lines of the India Day for the Indian Diaspora[122] and the Overseas Americans Week organised by the American Citizens Abroad[123] expatriate group;

[122] The Festivals of India are discussed at page 413 of the High Level Committee on the Indian Diaspora.
See also the extensive website at http://www.indiaday.org/

[123] See the American Citizens Abroad submission to this Inquiry – Submission No. 458.

The composition of the Board of the Council would need to include appropriate representatives of the Government(s) and the Diaspora. The Diaspora representatives would need to be selected/elected on a region by region basis reflecting the dispersion of the Diaspora.

An early task for the interim board of the Council would be to explore the means by which the Council might be seen as properly responsible to the members of the Diaspora. There are several models which could be examined:

- the French system;
- the Finnish system;
- the Greek system;
- the Indian system;
- the Italian system.

Each of those models can be seen to provide their diaspora with, in some cases direct, and in other cases, indirect representation at the Parliamentary level.

The SCG's preference would be for direct representation in both the House of Representatives and the Senate but we accept that the achievement of that aim has many hurdles to jump and is probably not feasible in the short to medium term. We would therefore opt for a system that provides for members of the Diaspora to directly elect the members of the Council's Board and that allows the Board to have a direct input to the development of those government policies which affect members of the Diaspora.

Recommendation 25

That an umbrella organisation be established by the Government without delay to service the needs of the Diaspora and the needs of Australia in relation to the Diaspora.

Recommendation 26

That the umbrella organisation, while initially having a limited development role, be required to expand its activities so as to represent and address the full range of programs necessary to meet the needs of the Diaspora. That full expansion to be achieved within an initial time frame of, say, three to five years.

Recommendation 27

That one of the primary initial tasks of the umbrella organisation would be to put to Government a proposal to enfranchise those in the diaspora to vote for the Board or Governing Council of the organisation and eventually for direct representation in the Australian Parliament

Australian Diaspora Card

Mention is made above of a proposed Australian Diaspora Card (ADC) to be issued by the Council

The SCG was drawn to this idea by the use of the Person of Indian Origin (PIO) Card which is a feature of the Indian arrangements for its diaspora.[124]

We envisage that the ADC would be issued by the Council to applicants from the Diaspora who are able to meet stringent criteria set for the issue of the card. Its underlying purpose would be to identify those Australian Citizens living overseas, and others in the Diaspora, who qualify for the various rights attached to the card. What those rights might be depends, to some extent, on the outcomes flowing from this Inquiry. If the Government concludes that some concessions can be made to expatriates and others counted within the Diaspora in the fields of taxation, superannuation, capital investment, immigration visas, voting rights,

[124] Report of the High Level Committee, pages 357 to 374.

etc., then the ADC would establish a primary case for claiming those concessions.

The ADC might be issued at several levels, for example:

- ADC – Australian Citizen
  Issued to Australian Citizens who qualify as non-residents under rules similar to those used by the Australian Taxation Office which would entitle the holder to the full range of concessions:
- ADC – Family
  Issued to those immediate family members of an Australian Citizen living overseas, who are not Australian Citizens which would entitle the holder to visa and residency privileges leading to naturalisation;
- ADC – Associate
  Issued to those others in the Diaspora not covered above which would entitle the holder to visa and entry privileges. The number of potential card holders in this group depends on how the Diaspora is defined for the purpose.

We would hope that the Committee and the Government accept our recommendations in relation to resumption of citizenship lost under the former Section 17, or renounced under Section 18 of the Australian Citizenship Act 1948, so as to avoid the need for a class of the ADC for issue to Former Australian Citizens.

Recommendation 28

That the umbrella organisation develop a proposal for the issue of Australian Diaspora Cards to identify those entitled to such concessions as may be available to members of the Diaspora.

A Research Facility

Another element of the successful diaspora arrangements developed by other countries is the presence of academic research facilities to flesh out the information available in respect of their diaspora and to formulate proposals for changes in the arrangements.

It is an accepted fact that little research has been done in respect of our Diaspora and the SCG believes that the establishment of research facilities at one or more Australian University is necessary to provide the Council with research support.

Recommendation 29
That the Government initiate action to establish a Research Facility for the Study of the Australian Diaspora at one or more of the Australian Universities.

Conclusion

The Southern Cross Group recognises, as will most readers of this submission, that the path to a proper and fulfilling recognition and utilisation of the Australian Diaspora is a long one. It will not occur tomorrow, nor in the time frame of a couple of years. There are many ideas, strategies and programs which need to be explored in greater depth than was possible in this submission.

We trust that the report that will flow from this Inquiry will be a first and very public step in the right direction.

The Southern Cross Group

Brussels, Canberra
and many other locations around the world.

27 February 2004.