



# RESEARCH NOTE

Number 19, 16 October 1995  
ISSN 1323-5664

## Loss of Australian Citizenship

While the rights and responsibilities applicable to Australians derive from a wide range of laws, the Constitution, Commonwealth and State statutes and the common law, there is only one legal determinant for the acquisition, loss and resumption of Australian citizenship and that is the *Australian Citizenship Act 1948* (the Citizenship Act).

This *Research Note* outlines the rules affecting the loss of Australian citizenship, recommendations relating to the loss of citizenship of the Joint Standing Committee on Migration's (the Joint Committee) 1994 report, *Australians All - Enhancing Australian Citizenship*, and Government response to those recommendations.

### Loss of Citizenship

Australia citizenship can be lost in five ways under the Citizenship Act, namely,

- acquisition of another nationality (section 17);
- renunciation of Australian citizenship (section 18);
- service in the armed forces of an enemy country (section 19);
- ministerial deprivation (section 21); and
- by a child whose parent has lost or been deprived of citizenship (section 23).

#### (a) Acquisition of another nationality

Section 17 of the Citizenship Act provides that a person shall cease to be an Australian citizen where they:

- are 18 years of age or over; and
- do any act or thing the sole or dominant purpose and effect of which is to acquire the nationality or citizenship of a foreign country.

#### (b) Renunciation of Australian citizenship

Section 18 of the Citizenship Act provides that a person shall cease to be an Australian citizen where they:

- are 18 years of age or over and a national or citizen of a foreign country; or
- were born, or normally resident, in a foreign country and under the law of that country are not entitled to acquire the nationality or citizenship of that country because they are an Australian citizen; and
- lodge with the Minister a declaration renouncing their Australian citizenship.

The Minister is accorded a discretion under section 18 to refuse a renunciation where:

- during a war in which Australia is engaged, a declaration is made by a national or citizen of a foreign country;
- the Minister considers it would not be in the interests of Australia to do so; or

- the Minister is not satisfied that the person who made the declaration is a national or citizen of a foreign country, or will not immediately after registration of the renunciation become a national or citizen of a foreign country.

#### (c) Service in the armed forces of an enemy country

Section 19 of the Citizenship Act provides that a person will cease to be an Australian citizen where they:

- are a national or citizen of a foreign country; and
- serve in the armed forces of a country at war with Australia

#### (d) Ministerial deprivation

Section 21 of the Citizenship Act provides the Minister with a discretion to deprive a person of Australian citizenship where:

- the person has been convicted of an offence under section 50 of the Citizenship Act (eg. knowingly made a false or misleading representation or statement) when applying for citizenship; or
- the person at any time after applying for citizenship, but prior to the grant of citizenship, is convicted of an offence under an Australian or foreign law punishable by death, life imprisonment or imprisonment for 12 months or more; and

- the Minister is satisfied that it would not be in the public interest for the person to continue to be an Australian citizen.

Since the commencement of the Citizenship Act, there have been approximately five cases where citizenship has been revoked under section 21. The most recent, in 1987, involved a person who had fled the United States to avoid prosecution for murder. The person had travelled on his cousin's passport and was granted Australian citizenship in his cousin's name.

**(e) Child whose parent has lost or been deprived of citizenship**

Section 23 of the Citizenship Act provides that where a parent of a child under 18 years of age ceases to be an Australian citizen because of:

- the acquisition of another nationality, renunciation, or service in the armed forces of an enemy; and
- their child under the law of a foreign country is a national or citizen of that country from the time they cease to be an Australian citizen;

their child is taken to no longer be an Australian citizen from that time.

Where the Minister deprives a person of Australian citizenship under section 21 of the Citizenship Act, the Minister may direct that all or any of the children of the person who are under 18 years of age shall cease to be Australian citizens.

A child will not lose or be deprived of their Australian citizenship where their other parent remains an Australian citizen, until

that other parent ceases to be a responsible parent or is an Australian citizen, or dies. The term 'responsible parent' is defined by section 5 of the Citizenship Act to mean a person who has guardianship or custody of a child.

**Recommendations of the Joint Committee**

On 26 November 1993, the Minister for Immigration and Ethnic Affairs, Senator Bolkus, referred to the Joint Committee terms of reference for an inquiry into the Citizenship Act.

The recommendations of the Joint Committee in relation to the loss of citizenship included:

- the Citizenship Act be amended to provide the Minister with an explicit power to revoke certificates of Australian citizenship before citizenship is conferred;
- section 17 of the Citizenship Act be repealed and former Australian citizens who have lost Australian citizenship under section 17 have the right to apply for the resumption of Australian citizenship;
- there should be an obligation on the Minister to prosecute and obtain a conviction for citizenship fraud; and
- section 23 of the Citizenship Act be amended to require the Minister when considering whether to revoke the citizenship of a child to consider whether the revocation would make the child stateless.

**Government Response**

On 4 September 1995 the Minister for Immigration and Ethnic Affairs, Senator Bolkus presented to the President of the Senate the Government's response to the Joint Committee's recommenda-

tion. In relation to the Committee's recommendations relating to the loss of citizenship the Government's response was that the recommendations:

raise policy issues which require careful consideration before any legislative amendments are introduced. Consequently, the Government has decided that they should be considered further as a matter of priority either as part of the review of the legislation to be overseen by the Department of Immigration and Ethnic Affairs, or by Government. Decisions on these policy issues will be announced progressively and legislation introduced as necessary. This will occur in advance of the re-drafting of the legislation scheduled to be completed by 1999.

**Ian Ireland**  
**Chris Field**  
**Law and Public Administration Group**  
**Parliamentary Research Service**

Phone: 06 2772438

Fax: 06 2772407

*Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Parliamentary Research Service and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvas all of the key issues.*

© Commonwealth of Australia