



# RESEARCH NOTE

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## Disloyal Australians? - Dual Citizenship in Australia

It has been estimated that more than three million Australians hold dual citizenship. Australian law is anachronistic in that it allows naturalised Australians to hold dual citizenship yet in most cases prevents Australian citizens at birth from acquiring the citizenship of another country.

The Constitution also places limitations on holders of dual citizenship. Section 44(i) provides for the disqualification of a person from being chosen or sitting as a Senator or a Member of the House of Representatives if they are a dual citizenship holder.

### What is a dual citizen?

A dual citizen is a person who is the holder of citizenship of two countries.

### The law

The *Australian Citizenship Act 1948* (the Citizenship Act) does not overtly recognise dual citizenship. 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.

A person can, however, hold Australian citizenship and another citizenship in a number of circumstances including:

- where that other citizenship was acquired before he or she became an Australian citizen.

### Overseas Practice

The examination of citizenship laws of other countries undertaken by the Joint Standing Committee on Migration (the

Joint Committee) in its September 1994 Report, *Australians All - Enhancing Australian Citizenship* indicated an increasing acceptance of dual citizenship. The Joint Committee found that dual citizenship is increasingly permitted because of the perceived domestic needs of individual states, the greater choice and freedom it offers for individuals and acceptance that loyalty and commitment to a country is not solely the virtue of single citizenship holders.

Countries which allow dual citizenship include the United Kingdom, Canada, United States, New Zealand, France, Italy and Switzerland. Countries which prohibit dual citizenship include Japan, India, Germany, Indonesia, Sweden, Denmark and Singapore.

### Why does Australia not overtly recognise dual citizenship?

One of the legal reasons for Australia not overtly recognising dual citizenship is because Australia is a signatory to the *Convention on Certain Questions Relating to the Conflict of Nationality Laws* (1930) [the Hague Convention], the basis of which is single citizenship. For example, Article 5 of the Hague Convention provides:

Within a third State, a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any conventions in force, a third State shall, of the nationalities which any such person possesses, recognise exclusively in its territory either the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he

appears to be in fact most closely connected.

As noted by the Joint Committee, dual citizenship has also not been recognised in Australia because of a belief that citizenship reflects a person's allegiance. As noted by the Department of Immigration and Ethnic Affairs in evidence to the Joint Committee:

The main argument for retaining the current approach to dual or plural citizenship is that holding more than one citizenship is a deduction from the ideal of a single citizenship for all Australians. It may be argued that a person's loyalty to the country of residence should be without question. ... . Similarly it is said that citizenship status should not be treated as a commodity which is sought for example, for purely economic reasons or the convergence of travel arrangements, employment opportunities and tax advantages (p. 189).

### Arguments for dual citizenship

Arguments for recognising dual citizenship include:

- section 17 of the Citizenship Act discriminates against Australian citizens by birth as compared with person who become naturalised Australians (eg. persons born in Australia are not allowed to acquire a foreign citizenship, while those who acquire Australian citizenship can retain their existing nationality);
- dual citizenship is consistent with an acceptance of multiculturalism;
- dual citizenship is consistent with an acceptance that loyalty and commitment to a country is not solely the virtue of single citizenship holders;

- simpler procedures for revisiting former homelands;
- enhancement of employment opportunities in both countries of nationality, particularly where one country imposes employment restrictions on non-citizens;
- improved access to social security benefits, rights of ownership of land and property and rights of inheritance; and
- promoting Australia's reputation abroad as a tolerant multicultural society.

### Arguments against dual citizenship

Arguments against recognising dual citizenship include:

- a person's loyalty to the country of residence should be without question;
- the status of citizenship should reflect a person's total commitment to a nation;
- dual citizenship does not contribute to the evolution of a national identity;
- dual citizenship implies disloyalty to Australia; and
- dual citizenship encourages the treatment of citizenship status as a commodity which is sought for example, for purely economic reasons or the convergence of travel arrangements, employment opportunities and tax advantages.

### Recommendations of the Joint Committee

On 26 November 1993, the Minister for Immigration and Ethnic Affairs, Senator the Hon N. Bolkus, provided the Joint Committee with terms of reference for an inquiry into the Citizenship Act. The terms of reference of the Joint Committee included section 17 in relation to dual citizenship, any inconsistencies in the opera-

tion of the section and how such inconsistencies could be overcome.

The recommendations of the Joint Committee in relation to dual citizenship were that:

- section 17 of the Citizenship Act be repealed; and
- former Australian citizens who have lost Australian citizenship under section 17 of the Citizenship Act have the right to apply for the resumption of their Australian citizenship.

### 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 recommendations on dual citizenship. He said that it raises:

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 redrafting of the legislation scheduled to be completed by 1999. (Government Response to the report by the Joint Standing Committee on Migration's report, *Australians All - Enhancing Australian Citizenship*, 4 September 1995, pp. 5 and 6.)

### Constitutional issues

The Constitution places limitations on holders of dual citizenship. Section 44(i) of the Constitution provides for the disqualification of a person from being chosen or of sitting as a Senator or a Member of the House of Representatives if they are:

... under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power.

Section 44(i) was considered by the High Court in *Sykes v. Cleary* [1992] 176 CLR 77. By a majority of five to two, the High Court found two candidates in the 1992 Wills by-election ineligible under s. 44(i). All seven judges found that s. 44(i) required a person to take 'all reasonable steps' to renounce their other citizenship. The majority of the court held this required the use of the renunciation procedures of the other country if there were such procedures. Where there were no such procedure or where the other country refused renunciation, proof of requesting renunciation was sufficient. Because such procedures were available in relation to countries of birth of the two major party candidates they had not taken 'all reasonable steps' to renounce their other citizenship and were therefore ineligible under s. 44(i). (See: S. O'Brien, *Dual Citizenship, Foreign Allegiance and s. 44(i) of the Australian Constitution*, Background Paper No. 29, Parliamentary Research Service, December 1992.)

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