



REGISTRY OF
10 APR 2018
SENATORS' INTERESTS

To the Registrar of Senators' Interests,

Statement in relation to citizenship – 45th Parliament

I declare that at the time I nominated for election in this 45th Parliament I was an Australian citizen.

Section 1—Senator's details

Surname: STOKER	
Other Names: AMANDA JANE	State: QUEENSLAND

Section 2—Senator's birth and citizenship details

Place of birth: LIVERPOOL, NEW SOUTH WALES	Citizenship held at birth: AUSTRALIAN
Date of birth: 30 / 10 / 1982 Day Month Year	Date of Australian naturalisation: <i>(if not an Australian citizen by birth)</i> / / Day Month Year

Section 3(a)—Senator's parents' birth details

	Mother	Father
Place of birth:	SWEDEN	AUSTRALIA
Date of birth:	29 / 05 / 1958 Day Month Year	28 / 12 / 1959 Day Month Year

Notes

- (1) The information which you are required to provide is contained in a resolution agreed to by the Senate on 13 November 2017
- (2) If there is insufficient space on this form for the information you are required to provide, you may attach additional pages for that purpose. An electronic file of this form is available on www.aph.gov.au/senators_interests.
- (3) Forward the original, signed copy of all pages of this statement to the Registrar of Senators' Interests, SG.39 Parliament House, Canberra ACT 2600

Section 3(b)—Senator’s grandparents’ birth details

	Maternal grandmother	Maternal grandfather
Place of birth:	GERMANY	POLAND
Date of birth:	10 / 09 / 1934 Day Month Year	23 / 02 / 1931 Day Month Year

	Paternal grandmother	Paternal grandfather
Place of birth:	AUSTRALIA	AUSTRALIA
Date of birth:	30 / 01 / 1937 Day Month Year	3 / 09 / 1931 Day Month Year

Section 3(c)—Other factors that may be relevant eg: adoption, IVF, or assumption of citizenship through marriage.

No other relevant factors. My husband is an Australian citizen by birth, and has not had foreign citizenship.

Section 3(d)—Please list the steps you have taken to assure yourself you have not inherited citizenship of another country from a parent or grandparent.

I made enquiries and satisfied myself that:

(a) Whilst my maternal grandfather was born in Poland, he was not a Polish citizen at the time of my mother's birth, he was a German national and consequently my mother did not take Polish citizenship at birth;

(b) At the time that my mother, maternal grandmother and maternal grandfather emigrated to Australia they were German nationals. My mother, maternal grandmother and maternal grandfather were naturalised in Australia in 1972 (prior to my birth) and naturalisation as Australian citizens had the effect that they were no longer German citizens from that time;

(c) My mother did not acquire Swedish citizenship;

(d) I did not acquire any citizenship as a result of the prior citizenship of my maternal grandparents or mother.

I have sought and received Australian and foreign legal advice to confirm my citizenship status.

Section 4(a)—Foreign citizenship

Have you ever been a citizen of any country other than Australia?

NO — Proceed to Section 6

YES — List the countries that you have been a citizen of, and evidence of the date and manner in which your citizenship was renounced or otherwise came to an end.

Country	Manner of renunciation or other manner in which the foreign citizenship came to an end	Date	Evidence attached

NB: Evidence of the date and manner in which your citizenship was renounced or otherwise came to an end **should** be attached to this form. Please date and initial each page of any attachment.

Section 4(b)—Foreign citizenship at time of nomination

On the date you nominated for election in this 45th Parliament were you a citizen of any country other than Australia?

- NO** — Proceed to Section 4(c)
- YES** — Provide evidence of any steps you have taken to renounce the citizenship of the country prior to the date of nomination:

Country	Action	Date	Evidence attached

NB: Evidence of the steps taken to renounce foreign citizenship prior to the date of nomination **should** be attached to this form. Please date and initial each page of any attachment.

Section 4(c)—Are you now a citizen of any country other than Australia?

- NO** — Proceed to Section 5
- YES** — Provide evidence and details of steps taken to renounce citizenship:

Country	Action	Date	Evidence attached

NB: Evidence of the steps taken to renounce foreign citizenship prior to the date of nomination **should** be attached to this form. Please date and initial each page of any attachment.

Section 5—Senator with foreign citizenship at nomination or now

Complete this section if you answered YES in section 4(b) or 4(c)

Basis on which the Member contends she or he is not disqualified under s 44(i)	Evidence attached

Section 6—General declaration

I declare that I have completed this statement to the best of my knowledge and have attached all evidence relevant to my declarations.

Signed

Date

	<p>9 / 4 / 18 Day Month Year</p>
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EMBASSY OF SWEDEN

Canberra 2 January 2018

Canberra

Amanda Jane Stoker
Twenty Seven Chambers
Level 27, 239 George Street
Brisbane QLD 4000

Dear Amanda

Please find enclosed the Migration Agency's decision regarding Declaration of Swedish citizenship. It has been rejected.

Your mother was born in Sweden by German citizens, and under that current law, a child did not become automatic citizen by birth in Sweden.

If you would like to know the full content, please contact a translation agency as the Embassy of Sweden is not obligated to do translations.

Or, try the following link to translate it:
<http://translate.google.com/?hl=sv#sv|en|>

This decision can be appealed against and should be done so in writing. The letter should state which decision you wish to appeal against and what change you are seeking. The letter should also contain your name, date of birth and address. Sign the letter with your name. The letter of appeal should reach the Swedish Migration Board no later than three weeks from the day the decision was received by you.

Migrationsverket
Medborgarskapsenheten
SE-60170 NORRKÖPING
SWEDEN

The Embassy of Sweden needs to confirm to the Swedish Migration Agency that you have received the document, kindly reconfirm receipt of the decision, either via e-mail to ambassaden.canberra@gov.se or by telephoning +61-2-6270 2700.

Best regards,

Karin Kresse
Consular Officer

Postal Address:
5 Turrana Street
Yarralumla, ACT 2600
Australia

Telephone:
+61 2 6270 2700

E-mail:
ambassaden.canberra@gov.se

Visitors' address:
5 Turrana Street

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+61 2 6270 2755

Stoker, Amanda (Senator)

From: .SYDN RK-11 Lehrburger, Anne-Kathrin <rk-11@sydn.auswaertiges-amt.de>
Sent: Monday, 18 December 2017 7:21 AM
To: Amanda Stoker
Subject: AW: Follow up on letter of 5 November 2017

Dear Ms Stoker

thank you for your enquiry. I went through the information you provided in order to work out a first assessment of your citizenship situation.

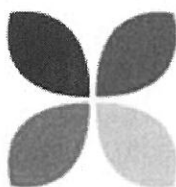
You would have acquired German citizenship through birth if one of your parent was a German citizen at the time of your birth (here your mother). Your mother would have acquired German citizenship through her father (assuming her parents were married at the time of her birth). If both of her parents were German citizen and got naturalized with her in Australia at the same, she would have automatically lost her German citizenship then. This means that at the time of your birth, she would not have been a German citizen anymore and therefore could not pass German citizenship on to you.

Please be informed that this assessment is not legally binding. You can receive a legally binding assessment of your citizenship situation by applying for a Certificate of German citizenship (www.australien.diplo.de/citizenshipcertificate)

Kind regards



Consulate General
of the Federal Republic of Germany
Sydney



GERMANY
FOR UNITED NATIONS
SECURITY COUNCIL
2019-20

Anne-Kathrin Lehrburger

Vice Consul

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SAVE PAPER - THINK BEFORE YOU PRINT

Arnold Bloch Leibler

Lawyers and Advisors

9 April 2018

By E-mail
Confidential & privileged communication

Ms Amanda Stoker
Level Twenty Seven Chambers
Level 27
239 George Street
Brisbane QLD 4000

Your Ref
Our Ref SMF ML
File No.

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sford@abl.com.au

Partner
Mark Leibler AC
Direct 61 3 9229 9999
mleibler@abl.com.au

Dear Ms Stoker

Citizenship Advice

You have asked us to consider whether, for the purposes of section 44 of the *Commonwealth Constitution*, birth in Australia to a parent of German heritage born in Poland in your circumstances renders you a citizen of Poland or entitled to the rights and privileges of such citizenship and therefore incapable of sitting as a member of the Senate.

Our advice is that for the purposes of section 44, you are not a citizen of Poland and are therefore capable of sitting as a member of the Senate.

Instructions

You have instructed us that:

- (a) You were born in Australia on 30 October 1982 and are Australian citizen.
 - (b) Your father, Mark Fell, was born in Australia to parents who are Australian citizens born in Australia. There are no concerns about citizenship arising from the paternal side.
 - (c) Your mother, Cornelia Ingrid Fell (nee Dlugon) (**Cornelia**), was born on 19 May 1958 in Sweden to parents of German nationality, and that Swedish authorities have confirmed that Cornelia did not acquire citizenship of Sweden as a consequence of being born in Sweden. No further enquiry into this issue is required.
- (a) Cornelia's mother, Ingrid Renate Dlugon (nee Siemsen) (**Ingrid**) was born on 10 September 1934 in Hemsén, Germany. She was a German citizen until naturalised as an Australian, at which point she lost her German citizenship. German authorities have confirmed this and no further enquiry into this issue is required.

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Gavin Hammerschlag
Kaitlin Lowdon
Lara O'Riordan
Stephanie Campbell
Clare Stubbe
Dominic Delany
Stephen Lloyd
Jonathan O'Neil
Briely Trollope
Laura Cochrane
Dorian Hemmeron
Rachel Soh
Scott Phillips
Greg Judd

- (b) Cornelia's father, Ernst Dlugon (**Ernst**), was born legitimately on 23 February 1931 in Jaegerfeld, Poland, to a German national father.
- (c) In approximately 1945, Ernst left Poland together with his family in the exodus from the Wartheland, which took place at the end of World War Two, and settled in West Germany.
- (d) No birth certificate or citizenship documents for Ernst exist beyond the details set out in his certificate of Australian citizenship.
- (e) The direct recollections of your family members are that between the years 1945 and 1952:
 - (i) Ernst and his family lived in the "Wartheland" being that part of Poland annexed by Germany prior to the Second World War, and settled in West Germany in 1945;
 - (ii) Ernst left West Germany as a young man and went to work in Sweden, prior to meeting Ingrid;
 - (iii) Ingrid went to Sweden in 1952, at the age of 18; and
 - (iv) Ingrid and Ernst met whilst working in the same factory in Sweden.
- (f) On 25 August 1955, Ernst made a declaration to German authorities that includes the following information:
 - (i) Ernst's father was on the German People's List (Volkliste) and was a German citizen; and
 - (ii) Ernst did not have a birth certificate and could not obtain one because of the exodus from the Wartheland.
- (g) Ingrid and Ernst married in Schneverdingen, Germany, on 9 September 1955.
- (h) At the time that the Dlugon family emigrated to Australia in 1960, all of the members of the family were described on the passenger list as being of German nationality. The birthplace of the children Charlie (then age 4), Harry (then age 3), and Cornelia (then age 1) is noted as Sweden. The birthplace of Ernst is noted as Poland; however, his nationality is noted as German. You have also instructed us that prior to naturalisation as an Australian citizen Ernst was understood by the family to be a German citizen.
 - (i) On 2 March 1971, Ingrid was naturalised as an Australian citizen.
 - (j) On 3 March 1971, Ernst and the children of the family, including Cornelia, were naturalised as Australian citizens.
 - (k) Ernst Dlugon died on 3 October 1978.
 - (l) Your parents were married in Australia on 29 August 1981.

- (m) You have not registered yourself as a Polish citizen or taken any other steps to acquire a Polish or any other passport.
- (n) You have been not registered by yourself or any member of your family as a Polish citizen at birth or at any other time.
- (o) No application for citizenship or request for certification or registration as a Polish citizen has been made by or on behalf of you.

Factual enquiries

You have provided to us a number of original documents relating to your maternal and paternal lineage. You have not instructed us to make any further independent inquiries on your behalf.

Consideration of applicable foreign law

Polish citizenship law

The following is based on our review of academic commentary and English translations of Polish citizenship law. As previously discussed, we cannot advise on Polish law and note that you have sought and received independent advice from a Polish law expert which confirms our views set out below.

The Polish expert concluded:

"[I]n the light of our review of the Polish laws and regulations set out in Section II, we are of the view that:

- (a) *Ms Stoker's grandfather, Mr Ernst Dlugon, would not be deemed a Polish citizen at the time of birth of Ms Stoker's mother, Ms Cornelia Fell (maiden name: Cornelia Ingrid Dlugon), on 29 May 1958, because (despite being born in Poland) he was of German nationality and at that time he had constantly lived outside of Poland;*
- (b) *since at the time of birth of Ms Stoker's mother, Ms Cornelia Fell, neither her father (Mr Ernst Dlugon) nor her mother (Ms Renate Ingrid Dlugon) held Polish citizenship, Ms Cornelia Fell did not acquire Polish citizenship by operation of law, including the Previous Laws (as defined below), when she was born;*
- (c) *since at the time of birth of Ms Stoker neither her father nor her mother held Polish citizenship, Ms Stoker did not acquire Polish citizenship by operation of law, including the Previous Laws, when she was born"*

The Polish citizenship Act of 20 January 1920 (**1920 Citizenship Act**), was the first act promulgated under the newly formed Polish State. The 1920 Citizenship Act was followed by the Polish Citizenship Act of 8 January 1951 (**1951 Citizenship Act**), and then the Polish Citizenship Act of 15 February 1962 (**1962 Citizenship Act**).

Relevant in the circumstances are:

- Article 4 of the 1951 Citizenship Act, which provides that a Polish citizen is not a person who permanently resides abroad, even though on August 31st

1939 the person had Polish citizenship, and is of German nationality unless his/her spouse is a Polish citizen and resides in Poland.

- Article 5 of the 1920 Citizenship Act, which provides that legitimate children acquire their father's citizenship by birth.
- Article 6 of the 1951 Citizenship Act, which provides that a child acquires Polish citizenship if:
 1. both parents are Polish citizens; or
 2. one of the parents is a Polish citizen and the other parent is unknown or his/her citizenship is unknown or undefined.
- Article 7 of the 1951 Citizenship Act, which provides that a child born or found in Poland acquires Polish citizenship if both parents are unknown or their citizenship is unknown or undefined.
- Article 8 of the 1951 Citizenship Act, which provides that:
 3. A child of parents of whom one is a Polish citizen and the other is a citizen of another country, acquires Polish citizenship, unless both parents within one month from their child's birth submit the application in which they will choose for their child the citizenship of the foreign country of which one of the parents is a citizen, on condition that the law of that country allows acquiring its citizenship in such a way.
 4. In case of a lack of agreement between the parents, each of them can turn to court for a resolution within one month from their child's birth.
 5. A child who has acquired a foreign citizenship in accordance with the two previous sections and turned 13 years old can choose to be a Polish citizen after submitting a proper declaration to a proper authority.
- Article 9 of the 1951 Citizenship Act, which provides that the regulations of the previous article apply also to children born abroad of whom one parent is a Polish citizen and the other is a citizen of another country if the other parent's country has the same citizenship regulations concerning children born in Poland to parents of different citizenships.

Application of section 44 of the Commonwealth Constitution

Section 44 of the *Commonwealth Constitution* (**section 44**) provides:

Any person who:

(i) is 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;

...

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Section 44 has been considered by the High Court in several cases which confirm that persons are ineligible to sit as a senator or as a member of the House of Representatives in circumstances where they have acquired dual citizenship, including in circumstances such as those which apply to you, and failed to renounce that foreign citizenship.¹

The section was most recently considered by the High Court in *Re Canavan & Ors* (2017) 349 ALR 534 (**Re Canavan**) where it was unanimously held that the proper construction of section 44(1) is that it:

[...] operates to render "incapable of being chosen or of sitting" persons who have the status of subject or citizen of a foreign power. Whether a person has the status of foreign subject or citizen is determined by the law of the foreign power in question. Proof of a candidate's knowledge of his or her foreign citizenship status (or of facts that might put a candidate on inquiry as to the possibility that he or she is a foreign citizen) is not necessary to bring about the disqualifying operation of s 44(i).

A person who, at the time that he or she nominates for election, retains the status of subject or citizen of a foreign power will be disqualified by reason of s 44(i), except where the operation of the foreign law is contrary to the constitutional imperative that an Australian citizen not be irremediably prevented by foreign law from participation in representative government. Where it can be demonstrated that the person has taken all steps that are reasonably required by the foreign law to renounce his or her citizenship and within his or her power, the constitutional imperative is engaged.²

The Court also explained that the structure of the text of section 44(i) is such that there are two bases for disqualification under the section. The first looks to the conduct of the person concerned. That is, whether there has been a voluntary act of allegiance, obedience or adherence to a foreign power.³ The second is concerned with a state of affairs involving the existence of a status or of rights under the law of the foreign power, irrespective of whether a candidate is in fact minded to act upon any duty of allegiance they may have.⁴

We have not found any case law which specifically considers what it means to be "under an acknowledgement of allegiance, obedience or adherence to a foreign power". The Court in *Re Canavan* did not consider the issue.

We note that the above analysis is subject to any findings of the High Court of Australia sitting as the Court of Disputed Returns in the matter of questions referred to the Court of Disputed Returns pursuant to section 376 of the *Commonwealth Electoral Act 1918* (Cth) concerning Senator Katy Gallagher (**Re Gallagher**). In *Re Gallagher* the Court has been asked to consider whether the constitutional imperative has been engaged so that the ordinary operation of section 44(i) is rendered inapplicable in the circumstances. The matter was heard by the Full

¹ See, for example, *Nile v Wood* (1988) 167 CLR 133; *Sykes v Cleary* (1992) 176 CLR 77.

² *Re Canavan & Ors* (2017) ALR 534 (*Re Canavan*) at 552 [71]-[72].

³ *Re Canavan* at 541 [21], 542 [23] and [25].

⁴ *Re Canavan* at 541 [21], 542 [23] and [25]-[26].

Court on 14 March 2018, and submissions were made in relation to what constitutes "reasonable steps" so as to engage the constitutional imperative in the context of section 44(i). The Court has reserved their decision and a date for judgment has not yet been set.

Consideration of your circumstances in the context of Section 44

It is our view that even though Ernst was born in Poland, he was at all times a German, and not Polish, citizen because he was born legitimately to a German national father and lived continuously outside of Poland after 1945. On this basis, because Cornelia was not born to a Polish citizen and not born on Polish territory, she never acquired Polish citizenship. Therefore, you have not acquired Polish citizenship by virtue of your paternal grandfather's birth on Polish territory.⁵

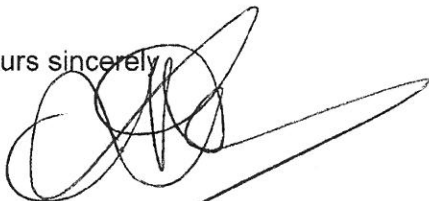
The opinion of the expert in Polish law which you separately retained confirms that as a matter of Polish law, you are not a Polish citizen. In particular, the Polish expert concluded:

"since at the time of birth of Ms Stoker neither her father nor her mother held Polish citizenship, Ms Stoker did not acquire Polish citizenship by operation of law, including the Previous Laws, when she was born".

On that basis, we advise that you are not a citizen of Poland, nor entitled to the rights and privileges of being a Polish citizen, and therefore section 44 of the Constitution does not apply to you, so as to render you incapable of sitting in the Senate.

Please do not hesitate to call us if you would like to discuss this advice.

Yours sincerely,



Mark Leibler AC
Senior Partner



Susanna Ford
Partner

⁵ The Polish Citizenship Act of 20 January 1920 Article 5.