

From: Terry Dwyer [REDACTED]
Sent: Sunday, 30 December 2018 10:54 PM
To: Committee, PJCIS (REPS)
Cc: [REDACTED]
Subject: FW: "Citizenship"

Joint Committee on Intelligence and Security
Parliament House
CANBERRA ACT 2600

Dear Sirs

AUSTRALIAN CITIZENSHIP AMENDMENT (STRENGTHENING THE CITIZENSHIP LOSS PROVISIONS) BILL 2018 – CONSTITUTIONAL LACK OF POWER

I am deeply concerned by this Bill - which appears to lack any Constitutional or constitutional basis, either in the written text of the Schedule to the *Commonwealth of Australia Constitution Act* or in our constitutional legal history as to the meaning of allegiance to the Crown.

Please refer to Quick and Garran on the inherent lack of Commonwealth power in this regard. The Commonwealth belongs to the subjects of the Crown as residents of the federating States, not the other way round. The people of the States are not members of the Commonwealth by reason of any "right" to citizenship conferred by any Bill of the Commonwealth Parliament. I do not need the permission of the Commonwealth Parliament or anyone else's to be an Australian, proud of his country, of his history and of his allegiance.

"Security" is not security when it attacks fundamental rights. I feel very insecure at the preposterous idea that a Minister could conceivably (however remotely) one day declare me a "non-citizen".

I note that Dr Anstey Wynes always referred to "Australian British subjects" as our national status – that is to say, we are subjects of the Crown who are lawfully in Australia whether by birth or migration.

(Many people these days – including many who should know better - seem confused today by long-standing references to "British subjects" in our statutes and case law. In fact, "British subject" is the only national status I have ever acknowledged and was the only national status on most forms I ever filled in. The confusion seems to lie in the misconception that to be a subject of the person who is the King or Queen of the United Kingdom somehow means one is subject to the UK Parliament. Not so. The allegiance is personal to the Crown, not to Her UK Ministers.)

By all means, try people, hang them if found guilty of treason by a jury, or lock them up and throw away the key or send them to a modern Devil's Island (Macquarie Island below was perhaps tongue in cheek) but please, please, do not tell me that, having been born as a New South Welshman into the allegiance of His Late Majesty King George VI, before there was any so-called *Citizenship Act*, that I can be deprived of that personal bond and of my membership of the people of the Commonwealth by some executive act.

This Bill is extremely dangerous in terms of precedent. It threatens the fundamental right of every Australian to be an Australian and rests upon Constitutional misconceptions. It undermines the natural affection we should feel for our country and kinsmen. It is alienating – in the literal sense. It makes our Federal Government less close to us. Yet the real strength of any government lies not in statutes or laws but in those natural affections for our kinsmen, our history and those we see every day. Let juries decide these things in a proper way by trying people for treason. Rather than

seek more "power" for Ministers by increasingly Draconian legislation, please realize that it is in our freely-given affections, not our compelled obedience to inquisitions, that the Commonwealth will find its true security.

I owe no allegiance to "Australia" or "Australian values". I was born a subject of the Crown. It is to Her Majesty that I, and we, all owe allegiance, not the other way round. She, in turn, owes us Her duty to protect our laws and customs and She should not tolerate Her Ministers seeking to release Her subjects from allegiance or otherwise sever that bond. That is our ancient law and I am content to cherish it.

I attach below a letter to the Senate Legal and Constitutional Affairs Committee.

Yours faithfully

Terry Dwyer

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From: Terry Dwyer

Sent: Sunday, 25 November 2018 11:59 PM

To: [REDACTED]

Subject: "Citizenship"

Chairman
Senate Standing Committee on Legal and Constitutional Affairs

Dear Senator Macdonald

DEPRIVATION OF "AUSTRALIAN CITIZENSHIP" LEGISLATION

I assume the Committee will be examining very closely any Bill proposing to deprive any Australian of "citizenship".

I would very like to make submissions to the Committee on any such proposal.

Quick and Garran in their *Annotated Constitution* make it quite clear the Commonwealth Parliament has no power to pass laws depriving a subject of the Queen, born or lawfully resident in a State, of his right to be a member of the Commonwealth. This issue has

never been properly considered by the High Court and, unfortunately, close attention has not been paid to the necessarily implied right to membership of the Commonwealth discussed by Quick and Garran.

Many Australians living today, such as myself, were not born “Australian citizens” but were, and continue to be, born into Her Majesty’s allegiance, whether born here or overseas.

Is the Federal Parliament seriously to assert that it has the right to deprive me, born in Sydney before 1949, of the right to be a subject of the Crown and a New South Welshman? I would very much appreciate a chance to put some fundamental questions to the Committee on this question which goes to the heart of loyalty, allegiance and the political legitimacy of a Federal Government.

Of course, the Crown, through its Ministers and servants, has the right, and the duty, to protect its loyal subjects from the nefarious activities and murderous designs of wicked and criminal persons. But the offence of treason and punishment by banishment or confinement at Her Majesty’s pleasure are ancient and established. Rather than “deriving” wicked and vicious people of “citizenship”, thereby releasing them from allegiance, and then letting them loose upon the unfortunate rest of the world to wreak more harm, may I suggest they be tried for treason and banished to a penal colony on some remote place such as Macquarie Island?

Exposing every Australian to a potentially tyrannical Commonwealth Government is a cure worse than the supposed disease – and, as one former Clerk of the Senate remarked to me, when I served a former much-loved Father of the Senate some years ago, “All Governments are fascists”.

The Senate exists to defend the rights of the peoples of the States within the Federation. Surely their right to be members of the Commonwealth is the most basic right of all?

Yours sincerely

Terry Dwyer

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