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AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1986

Date introduced: 19 February 1986  
House: House of Representatives  
Presented by: Hon. Chris Hurford, M.P., Minister  
for Immigration and Ethnic Affairs

DIGEST OF BILL

Purpose

To amend the law relating to the granting of Australian citizenship to children of illegal immigrants and visitors; the resumption of citizenship. The Bill will also alter the oath or affirmation of allegiance.

Background

The Australian Citizenship Act 1948 (the Principal Act) provides the legal basis for Australian citizenship and governs the ways in which citizenship can be acquired or lost. As the Principal Act currently stands, Australian citizenship is automatically acquired by children born in Australia other than to diplomats or consular officials (section 10 of the Principal Act).

The right to automatic citizenship was examined on two occasions by the Human Rights Commission (HRC) in 1985.[1] Both cases related to the rights of children born in Australia when their parents were forced to leave Australia. In both cases the HRC concluded that the decision to deport the parents effectively meant that the child, an Australian citizen, was also deported. This conclusion was rejected by the Minister, who has stated that he did not consider that 'the deportation of prohibited non-citizens amounts, in practice, to the deportation of Australian citizens if the parents choose to take their Australian-born children out of the country with them'.[2] In both cases the HRC concluded that the expulsion of the family was inconsistent with and contrary to the human rights of the children involved.[3]

In these reports the HRC also made recommendations to alleviate this problem. The HRC recommended that the law be changed to remove the right to automatic citizenship through birth in Australia except in cases where the child would otherwise be stateless.[4] Regarding Australia's international obligations the HRC concluded that 'nothing in the ICCPR (International Covenant on Civil and Political Rights) or the Declaration of the Rights of the Child requires the children of prohibited non-citizens to become Australian citizens merely because they are born in Australia'.[5]

Under section 17 of the Principal Act a person will lose their Australian citizenship if, by a voluntary and formal act, other than marriage, they acquired the nationality or citizenship of another country. Amendments to the Principal Act which came into force in October 1984 eased this position so that a person who would suffer significant hardship or detriment if they did not become a citizen of a foreign country, or who became a citizen of a foreign country without realising the consequences (i.e. the loss of Australian citizenship), could resume their citizenship with the Minister's approval. The amendments applied to people who lost their citizenship after 22 November 1984 (section 23AA of the Principal Act). Following representations from people who lost their citizenship prior to this date, the Government decided to extend the amendments to people who lost their citizenship prior to 22 November 1984, so long as such people demonstrated a commitment to Australia.

Changes to the oath or affirmation of allegiance follow consultations with various bodies and follows a recommendation of the HRC. The oath or affirmation will be streamlined and the requirement to renounce all other allegiances will be deleted. The latter requirement is largely symbolic as the relationship of a person to another country will largely depend on the laws of that country.

### **Main Provisions**

Section 10 of the Principal Act is to be amended to remove the automatic granting of citizenship to people born in Australia. In future, automatic citizenship will only be granted if a parent was an Australian citizen or a permanent resident of Australia or if the child has been ordinarily resident in Australia for a period of 10 years after their birth (clause 4).

The rules relating to the resumption of citizenship will be altered by clause 7 which substitutes a new section 23AA into the Principal Act. The new section will allow persons who, at any time, have lost their citizenship through the acquisition of another nationality or citizenship to regain citizenship in certain circumstances. In order to regain citizenship, such people must furnish a statement to the Minister stating:

- . that if they did not take the action that resulted in the loss of citizenship they would have suffered significant hardship or detriment or that they took the action without knowing it would result in the loss of citizenship; and
- . that they have been in Australia for a period or periods of at least two years; and
- . that they intend to continue to reside permanently in Australia or to commence residing permanently in Australia within three years; and
- . that they have maintained a close and continuing association with Australia.

The decision to grant citizenship will be at the Minister's discretion.

Clause 8 will amend section 23D of the Principal Act to provide that children born in Australia who would generally not be Australian citizens will gain Australian citizenship if they would otherwise be stateless.

Clause 11 will amend Schedule 2 of the Principal Act to remove the requirements for a person taking the oath or affirmation of allegiance to announce their name and to renounce all other allegiances.

The Schedule to the Bill contains a number of formal amendments that remove sexist language from the Principal Act.

For further information, if required, contact the Law and Government Group.

3 April 1986

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### References

1. Human Rights Commission, The Human Rights of Australian-born Children: A Report on the Complaint of Mr and Mrs R.C. All Yeung, Report No. 10, January 1985 and Human Rights Commission, The Human Rights of Australian-born Children: A Report on the Complaint of Mr and Mrs Yilmaz, Report No. 15, August 1985 (Report No. 15).
2. Explanatory Statement by the Hon. Lionel Bowen, M.P., Attorney-General, relating to Report No. 15.
3. Report No. 10, p.5 and Report No. 15, p.4.
4. Report No. 10, p.5 and Report No. 15, p.5.
5. Report No. 15, p.5.

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