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[CONFIDENTIAL.

DEPARTMENT OF IMMIGRATION.

NATIONALITY AND CITIZENSHIP BILL
1948.

EXPLANATORY MEMORANDUM.

The principal features of the Bill are—

- (i) it creates an Australian citizenship ;
- (ii) it provides that a person who is an Australian citizen shall also be a British subject ; and
- (iii) whilst providing for the special position of Irish citizens, it recognizes as British subjects persons who are citizens of other countries of the British Commonwealth.

The Bill also makes other changes in nationality law. In particular, it removes the disabilities of married women under existing nationality law and enables them to make their own choice so far as their national status is concerned.

2. Existing Australian nationality law is based on the United Kingdom Nationality and Status of Aliens Act which was enacted in 1914. United Kingdom nationality legislation was adopted by other British Commonwealth countries (with the exception of Ireland, whose position is referred to later in this memorandum). This provided a common code under which all British subjects had a common status throughout the British Commonwealth.

3. A principle of this common code system was that any alteration should only be made after consultation and agreement between the members of the British Commonwealth. Because of the necessity for consultation and agreement, and because of the delay in bringing in legislation in certain cases where agreement had been reached, it was found that it was not possible to keep the common code completely uniform, with the result that certain classes of people had the status of British subjects in some parts of the British Commonwealth but not in others. In effect, the several British Commonwealth statutes, which in theory should have been identical, were diverging from one another, so that the common code system was becoming unworkable.

4. In 1946 Canada passed the Canadian Citizenship Act which, after prescribing the conditions for the acquisition and loss of Canadian citizenship, provided that a Canadian citizen should be a British subject and that all persons who were British subjects under the law of any other part of the British Commonwealth should be recognized as British subjects in Canada. Canada, therefore, departed from the common code, although it continued to recognize the common status of British subjects.

5. Following on these developments, and after consultations between the Governments of British Commonwealth countries, the United Kingdom Government convened a conference of nationality experts from those countries to consider a draft scheme under which local citizenship and the wider status of British subject

might be combined. The Conference, which met in London in February, 1947, came to the conclusion that the adoption of a scheme of legislation for combining citizenship with the maintenance of the common status of British subjects throughout the British Commonwealth was desirable. This scheme was to be submitted for the consideration of the Governments represented.

6. The following are some of the advantages of such a scheme :—

- (a) The separate identity of the countries comprising the British Commonwealth is clearly recognized ;
- (b) Diplomatic protection will be placed on a more satisfactory basis because each country will know who are its citizens and so entitled to its protection ;
- (c) When making treaties, a Government will be able to define with precision who are the persons belonging to its country and on whose behalf it is negotiating ;
- (d) The nationality laws of each country could in future be altered without having first, as under the “ common code ” system, to consult the other countries of the British Commonwealth.

7. The essential principle of such a scheme is that each Commonwealth country should have its own citizenship law defining who are its citizens, declaring those citizens to be British subjects and recognizing as British subjects the citizens of other Commonwealth countries.

8. The Bill will give effect to that principle and will bring Australia into line with the United Kingdom and New Zealand where similar legislation has already been passed. Other Commonwealth countries have indicated that they are prepared to follow suit.

SUMMARY OF MAIN PROVISIONS.

ACQUISITION OF AUSTRALIAN CITIZENSHIP.

In providing for the new status of Australian citizen two things are necessary, first, to frame *permanent* provisions for the acquisition of the new citizenship by birth or otherwise after the Bill has become law, and, secondly, to prescribe by *transitional* provisions which of the persons who are British subjects at the commencement of the Act are to become Australian citizens.

(a) PERMANENT PROVISIONS REGARDING ACQUISITION. (CLAUSES 10-16.)

After the Act commences, citizenship will be acquired in the following ways :—

- (i) By birth in Australia (subject to the two minor exceptions mentioned in Clause 10 (2.)) ;
- (ii) By descent, that is to say, by birth outside Australia provided that—
 - (a) the father is an Australian citizen, or in the case of a person born out of wedlock, his mother is an Australian citizen or a British subject ordinarily resident in Australia ; and
 - (b) the birth is registered at an Australian Consulate.
- (iii) By the grant of a “ Certificate of Registration as an Australian citizen ”. Application for these Certificates may be made by citizens of other British countries, British subjects without citizenship and Irish citizens who can comply with specified conditions as to residence, character, &c. ;

- (iv) By the grant of a "Certificate of Naturalization as an Australian Citizen". Application for these Certificates may be made by aliens and British protected persons, who can comply with the prescribed conditions.

(b) TRANSITIONAL PROVISIONS REGARDING ACQUISITION. (CLAUSES 24-31.)

A person who is a British subject immediately before the date of commencement of the Act will become an Australian citizen automatically on that date if he can comply with any one of the following conditions :—

- (i) if he was born in Australia or New Guinea ;
- (ii) if he was naturalized in Australia ;
- (iii) if he was, immediately before the Act commences, ordinarily resident in Australia or New Guinea for at least five years. (Persons who were British solely by reason of their being Irish citizens are excepted from this provision) ;
- (iv) if he was born outside Australia and New Guinea of a father born in Australia or New Guinea or naturalized in Australia, and entered before the date of commencement of the Act. If he enters after that date, he becomes an Australian citizen from the date of entry only ;
- (v) if in the case of a woman, she has been married to a person who becomes an Australian citizen,

and in certain other special circumstances.

Persons who are prohibited immigrants are not eligible to become Australian citizens under the above provisions.

LOSS OF AUSTRALIAN CITIZENSHIP. (CLAUSES 17-23.)

Citizenship will be lost in the following circumstances :—

- (i) by acquisition of the nationality or citizenship of another country, through any voluntary and formal act other than marriage ;
- (ii) by declaration of renunciation of Australian citizenship. (Such a declaration may be made by a person who, at birth, or whilst not of full age, or on marriage, became a national or citizen of another country, or by a woman whose husband has lost his Australian citizenship. The declaration will have no effect until registered by the Minister and the Minister may refuse to register any declaration made during a time of war) ;
- (iii) by service in the forces of an enemy country in the case of a person who, as well as being an Australian citizen, is a national or citizen of another country ;
- (iv) in the case of a person who became a citizen through registration or naturalization—
 - (a) by residence outside Australia for seven years, unless he notifies the Department or a Consulate of his intention to remain a citizen or unless he is abroad in Government service ;
 - (b) by order of the Minister in certain specified circumstances, and

- (v) in the case of a minor, through his responsible parent or guardian ceasing to be a citizen. Such a child will have the right to make a declaration of resumption of citizenship when he attains the age of twenty-one years.

STATUS OF MARRIED WOMEN.

The position of married women under Australian nationality legislation has been as follows :—

- (i) **BRITISH WOMEN MARRYING ALIENS.**—Until 1946 a British woman who married an alien, and acquired his nationality by reason of the marriage, lost British nationality. In 1946 the Nationality Act was amended to provide, in effect, that such a woman should remain British in Australia if she was resident in Australia at the time of the marriage. However, a British woman marrying an alien and thereby acquiring his nationality still lost British nationality if she was not then resident in Australia.
- (ii) **ALIEN WOMEN MARRYING BRITISH SUBJECTS.**—Under present law, an alien woman who marries a British subject acquires British nationality by reason of the marriage.
- (iii) **ALIEN MARRIED WOMEN SEEKING TO BECOME NATURALIZED.**—Under existing law, married women are regarded as being under disability and have not been able to become naturalized in their own right. They could acquire British nationality only after their husbands became naturalized.

By repealing the provisions of the existing Nationality Act relating to married women the Bill will remove all of the disabilities now imposed on them and will place them in exactly the same position as men or single women with respect to the acquisition or loss of Australian citizenship and British nationality. Briefly, the position of women under the Bill will be as follows :—

- (i) A British woman who marries an alien will not lose British nationality by reason of marriage, whether or not she acquires her husband's nationality ;
- A woman who lost British nationality by reason of marriage to an alien before the commencement of the new Act will be regarded as having been a British subject immediately before the Act and will, in consequence, become an Australian citizen if she can comply with any of the transitional provisions regarding acquisition of citizenship ;
- (ii) Alien women marrying Australian citizens or other British subjects after the commencement of the new Act will not acquire British nationality by reason only of marriage, but may, upon application, be granted naturalization. (Those who have become British subjects by marriage prior to the new Act will not be deprived of British nationality by the Act.)
- (iii) Alien married women will be able to apply for naturalization in their own right.

THE POSITION OF IRISH CITIZENS.

Legislation has been passed in Ireland defining the persons who are Irish citizens and repealing, so far as Ireland is concerned, all laws relating to British nationality. Although until now Irish citizens have been regarded as British subjects in Australia and other British countries, they are not British subjects under Irish law. The continuance of Irish citizens as British subjects under the law of any country presents objections in principle from the point of view of the Irish Government, and it has been agreed that any such continuance should be limited to persons who, by reason of some attachment to the status of British subject, desire to retain that status.

The effect of the provisions of the Bill will be that Irish citizens will cease to be British subjects, unless they give notice to the Minister claiming to remain British subjects on the grounds that they have served with an Australian Government, hold an Australian passport, or have associations by way of descent, residence or otherwise with Australia or New Guinea.

However, it is to be provided that "a law of the Commonwealth or of a Territory in force at the date of commencement of this Act and a law of the Commonwealth or of a Territory which, although passed or made prior to that date comes into force on or after that date shall, until provision to the contrary is made, continue to have effect in relation to Irish citizens who are not British subjects in like manner as they have effect in relation to British subjects".

Thus, Irish citizens who are not British subjects will still be treated as British subjects under all Commonwealth Acts unless and until further alteration is made in any such Act. British subjects in Ireland are exempted from most of the disabilities imposed on aliens. As a reciprocal measure Irish citizens will not under the Bill be regarded as aliens, but will occupy an intermediate position between British subjects and aliens.

NOTES ON CLAUSES OF NATIONALITY AND CITIZENSHIP BILL, 1948.

PART I.—PRELIMINARY.

CLAUSE 1 (SHORT TITLE).—The title is expressive of the two chief aims of the Bill—to continue the existing status of British nationality, common to all subjects of His Majesty, and to create a distinctive Australian citizenship.

CLAUSE 2 (COMMENCEMENT).—The intention is that the Bill should be proclaimed to commence on 26th January, 1949, it being considered appropriate that the status of Australian citizenship should first come into legal existence on Australia Day.

CLAUSE 3 (REPEAL).—Although existing nationality legislation is to be repealed, many of the principles of that legislation are re-enacted in the Bill.

PART II.—BRITISH NATIONALITY.

CLAUSE 7 (BRITISH NATIONALITY BY VIRTUE OF CITIZENSHIP).—This may be described as the “key” clause of the Bill, embodying as it does the new method by which the common status of “British nationality” possessed by all the people of the British Commonwealth is to be preserved.

CLAUSE 8 (CONTINUANCE OF CERTAIN IRISH CITIZENS AS BRITISH SUBJECTS).—This clause which corresponds with a similar provision in the United Kingdom Citizenship Act, provides a simple medium through which Irish citizens who have associations with Australia or New Guinea may retain their status as British subjects.

CLAUSE 9 (LAWS APPLICABLE TO BRITISH SUBJECTS AND IRISH CITIZENS WHO ARE NOT AUSTRALIAN CITIZENS).—The first part of the clause imposes a limitation as regards liability for criminal proceedings against British subjects and Irish citizens, who are not Australian citizens, in respect of acts committed outside Australia.

In regard to the second part there are provisions in many Acts conferring rights or imposing obligations on British subjects or confining specified functions to British subjects. The fact that an Irish citizen has ceased to be a British subject will not be a reason for altering his position in regard to these rights, obligations or restrictions. The clause preserves, as regards Irish citizens, the position as at the date the Bill becomes law. It will be a matter for Parliament to determine whether any provisions of the existing Acts ought to be amended in future in respect of their application to Irish citizens who are not British subjects.

PART III.—AUSTRALIAN CITIZENSHIP.

Implicit in all of the provisions determining what persons shall possess Australian citizenship is the principle that such citizenship should carry with it the right to enter or re-enter Australia at any time as well as to claim the privileges attaching to the status of British subject.

DIVISION I.—CITIZENSHIP BY BIRTH OR DESCENT.

CLAUSE 10 (CITIZENSHIP BY BIRTH).—Birth in Australia is the primary qualification for citizenship. This clause follows the principle of the existing law by which British nationality is acquired by birth on British soil except in the circumstances mentioned in Sub-clause (2). Sub-clause (2) is merely declaratory of existing principles of the common law.

CLAUSE 11 (CITIZENSHIP BY DESCENT).—In past and present legislation regarding the acquisition of British nationality by descent, the nationality of the father has always been the determining factor. A committee of women, appointed by the Minister for Immigration in 1946, to consider problems arising from the possession of different nationalities by husband and wife, recommended that British nationality should continue to be derived from the father, in cases of persons born outside British territory, but that children born out of wedlock of British mothers should be deemed British. These recommendations are embodied in this clause. Also, as citizenship will carry with it the right of entry to Australia, it is considered that citizenship should not be acquired by a child unless he is eligible to be admitted to Australia for permanent residence.

The provision that acquisition of citizenship by descent should be dependent in all cases upon registration of the birth at a Consulate, is a departure from present legislation regarding acquisition of British nationality. The present Act requires registration of the birth only if the child is born in foreign territory of a father who was himself British by descent only. The reason for this departure is the necessity to ensure that only persons, whose parents have some attachment to Australia, become Australian citizens by descent. Registration will be simple and granted as a matter of course provided that a child is eligible for admission to Australia as a permanent resident.

The purpose of Sub-clause (2) is to cut down as far as possible the number of cases in which the citizenships of two British countries are acquired at birth. A child who is born in another British country of an Australian father and who thereupon acquires the citizenship of that country will not also acquire Australian citizenship unless his father, in addition to being an Australian citizen, is ordinarily resident in Australia.

DIVISION 2.—CITIZENSHIP BY REGISTRATION.

CLAUSES 12 AND 13.—This Division deals with the conditions under which citizens of other British countries, British subjects without citizenship (see Clause 26 (6.)) and Irish citizens, may acquire Australian citizenship. It is considered that the conditions will place little difficulty in the way of persons who genuinely desire and deserve Australian citizenship. It is to be noted that although it is provided that five years residence in Australia or New Guinea should normally be required as a qualification for registration as a citizen, the Minister would have power in special cases to accept twelve months' residence as sufficient.

The requirements for registration of British subjects as citizens are less stringent than those for the naturalization of aliens, dealt with in Division 3. A British applicant for citizenship is not required to make a declaration of his intention to apply for citizenship or to take the Oath of Allegiance, as aliens are, and there is no provision for the qualifying period of residence of aliens to be reduced to twelve months. It may be observed that, in the case of aliens provision is made, under Clause 15 (1.) (b), for residence in another British country or service under a British government to be accepted as equivalent to residence in Australia, but that no such provision appears in the clauses regarding registration of British subjects as citizens. This does not place British applicants in a less favourable position than aliens, as might be thought, because such service or residence outside Australia does not exempt an alien from residence in Australia for twelve months immediately preceding the application, but can only be counted towards the additional four years residence which the alien must have had within the eight years before the application. In the case of a British applicant who had had such service or residence, the Minister could exercise the special power given to him and accept twelve months residence in Australia as sufficient.

Sub-clauses (2.) and (3.) of Clause 12 make provision for the registration of minors and of wives of Australian citizens under conditions less stringent than those prescribed for other persons.

DIVISION 3.—CITIZENSHIP BY NATURALIZATION.

CLAUSE 14 (DECLARATION OF INTENTION TO APPLY FOR NATURALIZATION).—The requirement of a declaration of intention is a new one in Australian law, though it is already in force in Canada and in the United States of America. The reasons for its introduction here are—

- (a) In the past it has been evident that many persons applied for naturalization only when it suited their business interests or for other reasons of material advantage, without due appreciation of the responsibilities and significance of the change in their national status. It is considered that this "opportunistic" attitude to the step should be discouraged, and the declaration of intention will at least ensure that the application is not submitted on the spur of the moment merely with the object of immediate material gain, but is the result of mature consideration.
- (b) The submission of the Declaration of Intention will facilitate the instruction of the alien in the responsibilities and privileges of citizenship, during the period of at least two years which must pass between the Declaration and the final application.
- (c) During that period also it will be possible to have thorough inquiries made as to the applicant's suitability for the privileges of citizenship and when the final application is received there will be no delay in completing the matter.

Provision is made in sub-clause (3.) for the exemption from this requirement of a person whose residence in another British country, or whose service under a British government, has been accepted as equivalent to residence in Australia.

CLAUSE 15 (CITIZENSHIP BY NATURALIZATION).—For comparison of the requirements for alien applicants for citizenship with those laid down for British applicants, see notes on Clauses 12 and 13 above.

The chief differences between the present and the proposed qualifications for naturalization are as follows—

- (i) Under the existing Act, only the twelve months immediately preceding the application need have been spent in Australia, and the further four years required could be spent in any British country. It is now proposed that, normally, the full five year period of residence should be spent in Australia, though the Minister has power to accept residence in other British countries, in such cases as he thinks fit.
- (ii) The alien is now to be required to satisfy the Minister that he has an adequate knowledge of the responsibilities and privileges of Australian citizenship. As mentioned above in remarks upon Clause 14, past experience, especially during the war years, has shown that many aliens applied for naturalization without realizing its deeper implications and the new provision seeks to give emphasis to true assimilation into the community, as a prerequisite to naturalization.
- (iii) The Oath of Allegiance is now to include the words "and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen". The object of this amendment is the same as that outlined in (ii).

Sub-clauses (3.), (4.) and (5.) make special provision, comparable to that made in Division 2 regarding registration, for the naturalization of minors and of wives of Australian citizens.

DIVISION 4.—LOSS OF CITIZENSHIP.

CLAUSE 17 (LOSS OF CITIZENSHIP ON ACQUISITION OF ANOTHER NATIONALITY).—This clause corresponds with the provision of the existing Act under which a British subject, upon becoming naturalized in a foreign country, ceases to be British. This principle is extended by this Clause so as to result in the loss of Australian citizenship by any person who whilst abroad, voluntarily acquires the citizenship of any other country, whether British or foreign, by any formal act other than marriage.

CLAUSE 18 (RENUNCIATION OF CITIZENSHIP).—The principle embodied in this Clause is contained in the existing Nationality Act. Clause 18 (1.) adopts that principle and extends it to British women who acquire another nationality on marriage. Under the existing Act such a woman, if married outside Australia would have automatically lost British nationality upon marriage. British Commonwealth countries have agreed that married women should no longer suffer such involuntary loss of British nationality and one effect of this Bill will be to remove that disability. However, although Australian women on marriage to aliens will no longer lose Australian citizenship automatically, they will be given an opportunity to renounce it if they so desire and the Clause provides accordingly.

Clause 18 (3.) applies the same principle to women whose husbands, after marriage, cease to be Australian citizens, or are deprived of their citizenship, and who themselves thereupon acquire the new nationality of their husbands.

Clause 18 (4.) provides that a declaration of renunciation is not to be effective until registered.

Clause 18 (5.) has been inserted because it has been laid down by the courts that a person may not, in time of war, divest himself of British nationality, by a declaration of alienage, so as to become solely a citizen of an enemy state. It is considered that the Minister should therefore be able to exercise discretion as to whether a declaration of renunciation of Australian citizenship, made in time of war, should be registered.

CLAUSE 19 (LOSS OF CITIZENSHIP BY REASON OF SERVICE IN ARMED FORCES OF AN ENEMY COUNTRY).—During the war years a number of cases came under notice in which persons possessing dual British and (e.g.) German nationality served in enemy forces. It is considered desirable that in such circumstances Australian citizenship should automatically be lost. A similar clause appears in the Canadian Act.

CLAUSE 20 (LOSS OF CITIZENSHIP BY RESIDENCE OUTSIDE AUSTRALIA).—In recent years many cases have come under notice overseas in which it has been evident that persons, who were naturalized in Australia, have shortly afterwards taken up residence abroad and have severed all connexion with Australia, but have not hesitated to claim the protection and assistance of the Australian Government when it was to their advantage to do so. As these persons had retained British nationality the protection and assistance they sought could not be denied them.

Clause 20 will have the effect of causing such persons to cease to be Australian citizens and British subjects after seven years absence, unless they indicate an intention to retain their ties with Australia, by the simple method of registering annually at a Consulate. Persons abroad in the service of an Australian Government or firm are exempted, as are children residing abroad with parents who register or are in such service as is mentioned. In accordance with the principle that the nationality of a married woman should no longer be dependent upon action by her husband, it will be necessary for women (if they are Australian citizens by registration or naturalization) to take independent action to register annually at a Consulate, whether or not their husbands are in the service of an Australian Government or firm. If the woman herself is in such service, she will of course be exempted from registration.

Clause 20 will have no effect until seven years after the new Act commences, so that no person now abroad will lose citizenship suddenly and without notice.

CLAUSE 21 (DEPRIVATION OF CITIZENSHIP).—The grounds for deprivation and the right of the person concerned to claim special inquiry into his case are similar to the provisions of the existing Nationality Act regarding revocation of Certificates of Naturalization.

CLAUSE 22 (DEPRIVATION OF AUSTRALIAN CITIZENSHIP OF PERSONS DEPRIVED OF CITIZENSHIP ELSEWHERE).—It may happen that an alien before coming to Australia will become naturalized in another British country and after arrival here will become registered as an Australian citizen (or he may if ordinarily resident here for five years before the Act commences, become an Australian citizen by reason of the Transitional Provisions). If the authorities in the country concerned deprive such a person of his naturalization on grounds similar to those set out in the preceding clause, it seems desirable that the Minister should have power to order that the person concerned be deprived of his Australian citizenship. This power would be conferred by Clause 22, and a similar power is contained in the British Act (Section 21).

CLAUSE 23 (CHILDREN OF PERSONS WHO LOSE OR ARE DEPRIVED OF CITIZENSHIP).—This Clause is based on the principle that the nationality of a child should follow that of the responsible parent with the qualification that on reaching majority the child should have the opportunity of resuming Australian citizenship.

Sub-clause (1.) relates to children of persons who lose their citizenship through the operation of Clauses 17, 18, 19 or 20.

Sub-clause (2.) relates to children of persons deprived of citizenship by order of the Minister under Clauses 21 or 22.

PART IV.—TRANSITIONAL PROVISIONS.

CLAUSE 25.—This clause will determine what persons now living are to become Australian citizens automatically upon commencement of the Act. The clause has been designed so as to require, not only that a person shall be a British subject immediately before the Act commences, but shall have some right to be regarded as a member of the Australian community. It is considered that birth or naturalization in Australia, or birth in New Guinea, should be accepted as establishing such a right. For persons not born or naturalized here, it becomes necessary to select some other qualifications and those adopted in Clause 25 are permanent residence in Australia for a period of five years (25 (1.) (d)), birth abroad of a father born or naturalized in Australia or New Guinea (25 (3.)), or, in the case of a British woman, marriage to an Australian citizen before the commencement of the Act (25 (4.)).

The agreement reached on the subject of the non-continuance of Irish citizens as British subjects has already been referred to in Page 5. It follows from this agreement that Irish citizens should not become Australian citizens by reason of the Transitional Provisions. To prevent this, sub-clause (2.) has been inserted.

Considerations connected with Australia's immigration policy require special provision to ensure that persons not eligible to settle here do not acquire Australian citizenship, and it is for this reason that provisions preventing prohibited immigrants from acquiring citizenship have been inserted in sub-clauses (6.) and (7.).

CLAUSE 26 (BRITISH SUBJECTS WITHOUT CITIZENSHIP).—It is intended that eventually British nationality should be secured only through the "gateway" of citizenship of one of the countries of the British Commonwealth. However until all of those countries have enacted citizenship legislation, a transitional provision is needed to permit continued recognition, as British subjects, of all persons who possess British nationality immediately before the Act commences, but who have not by then become citizens of a British country. Clause 26 seeks to achieve this by creating an interim class of "British subjects without citizenship", to whom the existing nationality law should continue to apply, except that, in accordance with the new principle embodied in the Bill generally, the nationality of women should not be affected by reason only of marriage. This exception is provided for in sub-clauses (3.) and (4.).

Sub-clause (5.) is necessary to provide for the recognition as British subjects of children who are born after the Act commences and who are regarded as British subjects by other British countries although they are not Australian citizens or citizens of other British countries.

Sub-clause (6.) will permit British subjects without citizenship to become Australian citizens by the same process as citizens of other British countries.

CLAUSE 27 (WOMEN WHO HAVE CEASED TO BE BRITISH SUBJECTS BY REASON OF MARRIAGE).—This clause will restore British nationality to those women who lost it by reason of marriage or of action by their husbands. This gives retrospective effect to the principle embodied in the Bill as a whole, that marriage alone should not affect a woman's nationality. Women regaining British nationality by virtue of this clause will also become Australian citizens if they can comply with the conditions mentioned in Clause 25.

It may be mentioned here that not many women in Australia will be affected by this clause, because an amendment (Section 18B) of the Nationality Act, made in 1946, provided for the retention or restoration of British nationality (whilst in Australia) by or to women who married aliens whilst they were resident in Australia. The women for whom this clause is necessary are those who were not resident in Australia at the time of marriage and who acquired the nationality of their husbands by reason of marriage, thereby losing British nationality by virtue of Section 18 (1.) and (2.) of the existing Nationality Act.

CLAUSE 28 (PERSONS WHO HAVE CEASED TO BE BRITISH SUBJECTS BY FAILURE TO MAKE DECLARATION OF RETENTION OF BRITISH NATIONALITY).—Section 6 of the existing Nationality Act provides in effect that a child, born in foreign territory of a father who was a British subject by descent only, should not acquire British nationality unless the birth is registered at a British Consulate. The second proviso to Section 6 stipulates that a child whose British nationality is conditional upon such registration shall cease to be a British subject unless, upon reaching his majority, he makes a declaration of retention of British nationality and divests himself of any foreign nationality possessed by him.

No such provision is embodied in this present Bill and it is considered that those persons who have lost British nationality by reason of ignorance of the necessity to make declarations of retention should not be penalized for such ignorance and should be allowed to become Australian citizens if they have been admitted to Australia and are resident here in the manner required by Clause 25 (1.) (d). This is the effect sought in Clause 28.

Sub-clause (2.) applies to this class of case the principle of Clause 27. A girl who became British by reason only of the registration of her birth at a Consulate may have married an alien outside Australia before the Act commences, and may have acquired his nationality. In these circumstances sub-clause (1.) would not apply to the girl because her failure to make a declaration of retention would not be the only reason for her not being a British subject; her marriage also would have resulted in her losing British nationality, and so sub-clause (2.) provides that in such cases the marriage shall be disregarded.

CLAUSE 29 (CHILDREN OF PERSONS NATURALIZED BEFORE 1ST JANUARY, 1921).—The existing Nationality Act defines a Certificate of Naturalization as a "Certificate of Naturalization granted under this Act". Section 6 of that Act states that a person born out of His Majesty's dominions shall be deemed to be a British subject if at the time of that person's birth his father was British and "was a person to whom a Certificate of Naturalization had been granted". Thus the definition of "Certificate of Naturalization" has prevented recognition as British subjects of children born in foreign territories to fathers naturalized under previous Acts. This fact has resulted in a number of anomalous cases which it is desired to clear up by means of Clause 29.

CLAUSE 30 (CHILDREN WHO CEASED TO BE BRITISH SUBJECTS ON THE LOSS OF BRITISH NATIONALITY OF PARENT).—Broadly, the effect of Section 20 of the existing Nationality Act is that where a person loses British nationality, his minor children cease to be British also. Section 20 also provides that a child so ceasing to be British may make a declaration of resumption of British nationality when he attains the age of twenty-one years. The purpose of Clause 30 is to enable such children to continue to have the right to make declarations of resumption.

CLAUSE 31 (APPLICATIONS FOR NATURALIZATION PENDING AT COMMENCEMENT OF ACT).—Sub-clause (1.) proposes that applications lodged before the new Act should be accepted as applications under that Act.

Sub-clause (2.) exempts aliens who lodged or lodge their applications before or within two years after the commencement of the Act from the requirement of making Declarations of Intention to apply for naturalization. The reason for this exemption is that the immediate enforcement of the requirement regarding declarations of intention would mean that aliens who have completed the required five years' residence in Australia would be penalized as they would not be able to become naturalized for at least another two years.

PART V.—MISCELLANEOUS.

CLAUSE 32 (CERTIFICATE OF CITIZENSHIP IN CASE OF DOUBT).—This clause is a continuation of the principle of an existing provision in the Nationality Act.

CLAUSE 33 (CITIZENSHIP BY INCORPORATION OF TERRITORY).—This provision will have no immediate effect but has been inserted to deal with the situation which would arise if territory were acquired by Australia by treaty or otherwise.

CLAUSE 34 (LEGITIMATED CHILDREN).—In Clause 11 (1.) of the Bill provision is made for the acquisition of Australian citizenship by children born out of wedlock outside Australia to Australian mothers after the commencement of this Act. Clause 25 (5.) provides also that a child born out of wedlock before the Act commences, in a foreign territory, to a British mother who was then ordinarily resident in Australia, shall become an Australian citizen.

Clause 34 contemplates the case of a child born out of wedlock in a foreign territory of an alien mother and British father who subsequently legitimate the birth by marriage. The effect of the clause will be that such a child, if born before the Act commences, will be regarded as being British for the purpose of the Transitional Provisions, and, if born after the Act commences and his father is an Australian citizen, will become an Australian citizen.

CLAUSE 35 (POSTHUMOUS CHILDREN).—In a number of clauses of the Bill reference is made to the status of a person's father at the time of that person's birth. Thus, in Clause 11 acquisition of Australian citizenship by descent is dependent upon, amongst other things, the father's being an Australian citizen at the time of the child's birth. It is considered that the death of the father before the child's birth should not affect the national status of the child, and this is the effect sought by Clause 35.

CLAUSE 36 (EVIDENCE IN SUPPORT OF APPLICATION FOR REGISTRATION OR NATURALIZATION).—The personal details to be supplied by applicants will be very similar to those required under the existing Act. Sub-clause (2.) (b) gives the Minister power to accept certificates of character from such classes of person as he may think fit. This amendment of existing provisions in the Nationality Act is necessary, to eliminate the anomaly of rejecting certificates of character given by obviously suitable citizens.

CLAUSE 37 (REPRESENTATIONS TO MINISTER WITH REGARD TO ANY PERSON WHO HAS APPLIED FOR REGISTRATION OR NATURALIZATION).—This clause is somewhat similar to Section 26 of the existing Nationality Act.

CLAUSE 38 (CONFINEMENT IN GAOL NOT TO BE RECKONED AS RESIDENCE).—The period of residence in Australia required of applicants for citizenship may be described as one of probation—a period during which an applicant may demonstrate his ability and willingness to become a worthy citizen. It is not considered that any part of this period spent in confinement in a gaol or hospital for the insane should be accepted as residence. A similar provision appears in the Canadian Citizenship Act.

CLAUSE 39 (DETERMINATION OF QUESTIONS OF RESIDENCE, ETC.).—Questions as to whether a person is ordinarily resident in Australia or New Guinea will necessarily have to be determined with reference to the facts in each individual case, and it would not be possible to frame any comprehensive definition which would cover every case. In order to resolve doubts in relation to residence, it is considered that some simple procedure should be provided. Accordingly, the clause empowers the Minister to decide questions of this character.

CLAUSE 40 (DISCRETION OF MINISTER).—Since 1844, it has been a uniform feature of naturalization legislation to give a wide discretion to the Executive to grant or refuse naturalization. Clause 40 continues this principle.

CLAUSE 41 (FORMALITIES REGARDING OATH OF ALLEGIANCE).—Reference was made in the comments on clauses 14 and 15 to the desirability of ensuring that persons who become citizens by registration or naturalization should sufficiently appreciate the significance of the change in their status. In the past, applicants for naturalization have been permitted to take the Oath of Allegiance with very little formality, by appearing before a Magistrate, a Clerk of a Court of Petty Sessions or a Clerk of a Local Court. Although this arrangement has been convenient to applicants, it did little to impress on them the importance of their being naturalized. It is proposed that, for the future the ceremony of the taking of the Oath should be in public before a judicial officer and should be the occasion for an address by the presiding judge or magistrate, designed to impress upon applicants the responsibilities, as well as the privileges, of citizenship.

CLAUSES 42–51.—These clauses call for no comment. They are largely based on provisions and procedure under the existing Nationality Act which have operated satisfactorily.

CLAUSE 52 (PROVISIONS OF THE ACT TO BE EXCLUSIVE OF STATE LAWS).—The provisions of the 1903 and 1920 Acts in relation to naturalization gave, in effect, an exclusive operation to Commonwealth law. In view of the definition of British nationality and Australian citizenship in the new Act, it seems desirable that all the provisions of the new Act and not only the naturalization provisions should apply to the exclusion of any State laws which may purport to deal with the same matters.