



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES



To the Registrar of Members' Interests

**Statement of Member's qualifications relating to
sections 44 and 45 of the Constitution
46th Parliament**

FAMILY NAME	Falinski		
GIVEN NAMES	Jason		
ELECTORAL DIVISION	Mackellar	STATE	NSW

Attestation under paragraph (5) of the resolution adopted on 4 April 2019

The material I provided to the Australian Electoral Commission (AEC) in respect of my last nomination for election, in accordance with Part XIV of the *Commonwealth Electoral Act 1918*, is complete and accurate.

Yes

No

Supplementary material

If you have marked 'no' or wish to provide supplementary material to augment, explain or correct information provided to the AEC, please separately complete the form 'Supplementary material regarding Member's qualifications relating to sections 44 and 45 of the Constitution'.

Signed: _____

Date: 25/07/2019

Notes

1. The requirement to make this statement is contained in a resolution adopted by the House of Representatives on 4 April 2019.
2. Forward the original, signed copy of all pages of this statement to the Registrar of Members' Interests, RG.39 Parliament House, Canberra ACT 2600.

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

Candidate's name

JASON FALINSKI

Please fill out this checklist.

Be aware that completing this checklist does not guarantee that you are eligible to be elected under section 44 of the Australian Constitution or under the *Commonwealth Electoral Act 1918*.

If you have any doubts about your eligibility, you should seek independent legal advice.

If you provide information in this checklist that you know is false or misleading, you may commit an offence against the *Criminal Code* with a maximum penalty of imprisonment for 12 months, \$12,600 or both.

You must answer every question in the checklist that has check boxes by marking one, and only one, of the boxes provided. Your nomination will be rejected if you do not mark any of the boxes, or if you mark more than one of the boxes, provided for any of these questions.

Please provide supporting documentation as appropriate. You may provide additional documents if you are unable to fit all your responses in this checklist.

Note: If you answer 'yes' in question 10 then you **must provide at least one document** in response to question 10a.

You should not include information in this checklist, or in any additional documents you provide, that is inappropriate in any way. If you do, the information may be redacted by the Electoral Commissioner and not published on the Australian Electoral Commission's website.

You may choose to redact information (for example, your own or another person's personal information) from additional documents before providing them. Redactions must be in accordance with any directions of the Electoral Commissioner.

The candidate statement and declaration that you have made elsewhere in this nomination also relate to your eligibility to be elected. In that statement and declaration:

- (a) you have declared that you are qualified under the Constitution and the laws of the Commonwealth to be elected as a Senator or member of the House of Representatives; and
- (b) you have stated that you are an Australian citizen.

Questions marked with an asterisk (*) are mandatory

1. Do you know the place of birth of each of your parents and grandparents (whether biological or adoptive)?*

YES
 NO

- 1a. Please provide any relevant details (for example, why you do not know the place of birth of a parent or grandparent):

Other relevant details relating to your knowledge of your parents' and grandparents' places of birth

[Please provide particulars of, or documents related to, any details provided in response to question 1a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

2. Do you have a parent or grandparent that you know was born in another country? This may be a biological or adoptive parent or grandparent.*
 (If you do not know any of your parents' or grandparents' places of birth, please mark the 'N/A' box.)

<input checked="" type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	N/A

2a. If 'yes', please provide the following details, to the extent known:

Relationship to you (e.g. mother or adoptive father)	FATHER	Relationship to you (e.g. mother or adoptive father)	MATERNAL GRANDFATHER
Place of Birth	USSR	Place of Birth	UNITED KINGDOM
Date of Birth	13 / 12 / 1943	Date of Birth	05 / 07 / 1914
Relationship to you (e.g. mother or adoptive father)	PATERNAL GRANDMOTHER	Relationship to you (e.g. mother or adoptive father)	PATERNAL GRANDFATHER
Place of Birth	USSR	Place of Birth	AUSTRO-HUNGARY
Date of Birth	17 / 06 / 1922	Date of Birth	21 / 04 / 1910
Relationship to you (e.g. mother or adoptive father)		Relationship to you (e.g. mother or adoptive father)	
Place of Birth		Place of Birth	
Date of Birth	/ /	Date of Birth	/ /

2b. Please provide any other relevant details:

Other relevant details relating to your parents' and grandparents' places and dates of birth

REFER TO ANNEXURE A.

[Please provide particulars of, or documents related to, any details provided in response to questions 2a and 2b. These will be published with this checklist on the Australian Electoral Commission's website.]

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

3. Have you provided details in question 2a in relation to each parent and grandparent that you know was born in another country?*
- (If you do not know any of your parents' or grandparents' places of birth, please mark the 'N/A' box.)
- | | |
|--------------------------|-----|
| <input type="checkbox"/> | YES |
| <input type="checkbox"/> | NO |
| <input type="checkbox"/> | N/A |

- 3a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each parent and grandparent that you know was born in another country

4. Do you know which citizenships have been held by each of your parents and grandparents (whether biological or adoptive)?*
- | | |
|--------------------------|-----|
| <input type="checkbox"/> | YES |
| <input type="checkbox"/> | NO |

- 4a. Please provide any relevant details (for example, why you do not know the citizenships held at a particular time by a particular parent or grandparent):

Other relevant details relating to your knowledge of your parents' and grandparents' citizenships

REFER TO ANNEXURE A.

[Please provide particulars of, or documents related to, any details provided in response to question 4a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

5. Do you have a parent or grandparent that you know acquired citizenship of another country by descent, naturalisation or other means? This may be a biological or adoptive parent or grandparent. *

<input checked="" type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	N/A

(If you do not know any of your parents' or grandparents' citizenship, please mark the 'N/A' box.)

5a. If 'yes', please provide the following details, to the extent known:

Relationship to you (e.g. mother or adoptive father)	MATERNAL GRANDFATHER	Relationship to you (e.g. mother or adoptive father)
Country of foreign citizenship	UNITED KINGDOM	Country of foreign citizenship
Period foreign citizenship held	LIFE	Period foreign citizenship held
Relationship to you (e.g. mother or adoptive father)		Relationship to you (e.g. mother or adoptive father)
Country of foreign citizenship		Country of foreign citizenship
Period foreign citizenship held		Period foreign citizenship held
Relationship to you (e.g. mother or adoptive father)		Relationship to you (e.g. mother or adoptive father)
Country of foreign citizenship		Country of foreign citizenship
Period foreign citizenship held		Period foreign citizenship held

5b. Please provide any other relevant details:

Other relevant details relating to your parents' and grandparents' foreign citizenships

REFER TO ANNEXURE A FOR DETAILS IN RELATION TO THE CITIZENSHIPS HELD BY MY PATERNAL RELATIVES.

IN ADDITION TO THE ABOVE, MY MOTHER MAY ALSO HAVE ACQUIRED UK CITIZENSHIP BY DESCENT, BY OPERATION OF UK LAW AS IT WAS AT THE TIME. EVEN IF THIS IS THE CASE, THOUGH, IT IS CLEAR THAT THIS CITIZENSHIP CANNOT HAVE PASSED TO ME.

(Please provide particulars of, or documents related to, any details provided in response to questions 5a and 5b. These will be published with this checklist on the Australian Electoral Commission's website.)

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

6. Have you provided details in question 5a in relation to each parent and grandparent that you know acquired citizenship of another country by descent, naturalisation or other means?*
- (If you do not know any of your parents' or grandparents' citizenship, please mark the 'N/A' box.)
- | | |
|--------------------------|-----|
| <input type="checkbox"/> | YES |
| <input type="checkbox"/> | NO |
| <input type="checkbox"/> | N/A |

- 6a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each parent and grandparent that you know acquired citizenship of another country

7. Do you know which citizenships have been held by each of your current and former spouses and similar partners?*
- (If you do not have a current or former spouse or similar partner, please mark the 'N/A' box.)
- | | |
|--------------------------|-----|
| <input type="checkbox"/> | YES |
| <input type="checkbox"/> | NO |
| <input type="checkbox"/> | N/A |

- 7a. Please provide any relevant details (for example, why you do not know the particular citizenships held at a particular time by a current or former spouse or similar partner):
- Other relevant details relating to your knowledge of the citizenships of your current and former spouses and similar partners

[Please provide particulars of, or documents related to, any details provided in response to question 7a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

8. Do you have a current or former spouse or similar partner who you know is or was a citizen of another country?*
- (If you do not have a current or former spouse or similar partner, or you do not know the citizenship of any of your current or former spouses or similar partners, please mark the 'N/A' box.)
- | | |
|--------------------------|-----|
| <input type="checkbox"/> | YES |
| <input type="checkbox"/> | NO |
| <input type="checkbox"/> | N/A |

8a. If 'yes', please provide the following details, to the extent known:

Relationship to you
(e.g. wife or former de facto partner)

Country of foreign citizenship

Was foreign citizenship held at the time of marriage (if applicable)?

Relationship to you
(e.g. wife or former de facto partner)

Country of foreign citizenship

Was foreign citizenship held at the time of marriage (if applicable)?

8b. Please provide any other relevant details (for example, whether you acquired foreign citizenship because of a spouse's foreign citizenship):

Other relevant details relating to your current or former spouse's or similar partner's foreign citizenship

MY SPOUSE WAS BORN IN AUSTRALIA AND ONLY HAS AUSTRALIAN CITIZENSHIP.

[Please provide particulars of, or documents related to, any details provided in response to questions 8a and 8b. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

9. Have you provided details in question 8a in relation to each current or former spouse or similar partner that you know is or was a citizen of another country? *

(If you do not have a current or former spouse or similar partner, or you do not know the citizenship of any of your current or former spouses or similar partners, please mark the 'N/A' box.)

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	N/A

9a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each current or former spouse or similar partner that you know is or was a citizen of another country

MY SPOUSE IS NOT/HAS NOT BEEN A CITIZEN OF ANOTHER COUNTRY.

10. Have you ever been a subject or citizen of any country other than Australia? *

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	UNKNOWN

10a. If 'yes', please provide the following details, to the extent known:

Country of foreign citizenship

Manner in which foreign citizenship was lost (if applicable)

Date of losing foreign citizenship (if applicable) / /

* (If you contend that you have renounced or lost your foreign citizenship, you must provide at least one document that you are satisfied supports your contention. (The document may be an official document, or if you have no official document, a statutory declaration.) This will be published with this checklist on the Australian Electoral Commission's website.)

10b. Please provide any other relevant details (for example, how you lost your foreign citizenship, or why the response to question 10 is unknown):

Other relevant details relating to the loss of your foreign citizenship

(In addition to the requirement to provide at least one document mentioned under question 10a, please provide particulars of, or documents related to, any other details provided in response to questions 10a and 10b. These will be published with this checklist on the Australian Electoral Commission's website.)

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

11. Are you now a subject or citizen of any country other than Australia?*

YES
 NO
 UNKNOWN

11a. If 'yes', please provide the following details, to the extent known:

Country of foreign citizenship

Date of acquiring foreign citizenship / /

Country of foreign citizenship

Date of acquiring foreign citizenship / /

11b. Please provide any other relevant details (for example, why you are prevented from renouncing your foreign citizenship, or why the response to question 11 is unknown):

Other relevant details relating to possible disqualification by reason of section 44(f) of the Australian Constitution

REFER TO ANNEXURES.

[Please provide particulars of, and documents related to, any details provided in your response to questions 11a and 11b. These will be published with this checklist on the Australian Electoral Commission's website.]

12. Are you under sentence or subject to be sentenced, for an offence for which you have been convicted, which is punishable by imprisonment for one year or longer?*

YES
 NO

NOTE: A person convicted of an offence with a maximum penalty of imprisonment for one year or longer may be disqualified even if the sentence imposed on the person for the offence is less than the maximum penalty.

12a. If 'yes', please provide any relevant details:

Relevant details relating to possible disqualification by reason of section 44(i) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 12a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

13. Are you an undischarged bankrupt or insolvent?*

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO

13a. If 'yes', please provide any relevant details:

Relevant details relating to possible disqualification by reason of section 44(iii) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 13a. These will be published with this checklist on the Australian Electoral Commission's website.]

14. Do you hold an office of profit under the Crown, other than an office expressly exempt from section 44(iv) of the Australian Constitution?*

(Offices of profit under the Crown include, for example, many public sector jobs in Australia.)

<input type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	UNKNOWN

14a. Please provide any relevant details, to the extent known (for example, the relevant body in which you hold the office of profit and your role, or why the response to question 14 is unknown):

Relevant details relating to possible disqualification by reason of section 44(iv) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 14a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

15. Do you have a direct or indirect financial interest in any contract or other agreement with the Commonwealth public service?*

Do not count an interest that is expressly excluded from section 44(v) of the Australian Constitution, such as a shareholding in a company that has 25 or more other shareholders.

NOTE: Section 44(v) may disqualify you even if you are not a party to the relevant contract or agreement. A disqualifying financial interest may arise, for example, from an agreement between the Commonwealth public service and a trustee of a family trust of which you are a beneficiary.

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	UNKNOWN

15a. Please provide any relevant details, to the extent known (for example, your direct or indirect financial interests, or why the response to question 15 is unknown):

Relevant details relating to possible disqualification by reason of section 44(v) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 15a. These will be published with this checklist on the Australian Electoral Commission's website.]

16. Please provide any additional details relating to your qualification under the Australian Constitution or the *Commonwealth Electoral Act 1918*:

[Please provide particulars of, and documents related to, any details provided in your response to question 16. These will be published with this checklist on the Australian Electoral Commission's website.]

I confirm the information in the checklist provided above, and any additional information provided in support of my statements, to be true and correct, to the best of my knowledge.

Signature of candidate



Date

16 / 4 / 19



HOUSE OF REPRESENTATIVES

ANNEXURE A

House of Representatives

05 DEC 2017

To the Registrar of Members' Interests,

Citizenship Register

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—Member's details

Surname	Other Names
Falinski	Jason George
Electorate	State
Mackellar	NSW

Section 2—Member's birth and citizenship details

Place of birth	Citizenship held at birth
Manly, Australia	Australian
Date of birth	Date of Australian naturalisation <i>(if not an Australian citizen by birth)</i>
24 / 08 / 1970 Day / Month / Year	/ / Day / Month / Year

Notes

- (1) The information which you are required to provide is contained in a resolution agreed to by the House of Representatives on 4 December 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 version of this form is available at <http://members.parl.net/citizenship> (internal link).
- (3) Forward the original, signed copy of all pages of this statement to the Registrar of Members' Interests, RG.39 Parliament House, Canberra ACT 2600.

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

	Mother	Father
Place of birth:	Paddington, Australia	Tokmak, USSR
Date of birth:	04 / 08 / 1946 Day Month Year	13 / 12 / 1943 Day Month Year

Section 3(b)—Member's grandparents' birth details

	Maternal grandmother	Maternal grandfather
Place of birth:	Waratah, Australia	Kent, United Kingdom
Date of birth:	21 / 04 / 1921 Day Month Year	05 / 07 / 1914 Day Month Year

	Paternal grandmother	Paternal grandfather
Place of birth:	Leningrad, USSR	Krakow, Austro-Hungarian Empire
Date of birth:	17 / 06 / 1922 Day Month Year	21 / 04 / 1910 Day Month Year

Section 3(c)—Member's spouse details (if applicable)

	Spouse
Place of birth:	Tamworth, Australia
Date of birth:	02 / 12 / 1969 Day Month Year

Section 3(d)

Please list the steps you have taken to assure yourself you have not acquired citizenship of another country by descent, marriage or other means.

- Retrieved documentation regarding citizenship of all parents and grandparents from available family sources.
- Searched archival material available in Australia regarding parents' and grandparents' citizenship.
- Made inquiries of the Polish Consulate and the UK High Commission in Australia.
- I have further sought legal advice from Arnold Bloch Leibler to confirm my citizenship status solely as an Australian citizen. In making this declaration, I do not intend, and do not, waive legal professional privilege in that legal advice.

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 of any other country was renounced or otherwise came to an end in accordance with the laws of the relevant country.*

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
- YES — *Provide details and evidence of any steps you have taken to renounce the citizenship of the other country prior to the date of nomination.*

Country	Action	Date	Evidence attached

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

Section 4(c) —Foreign citizenship now

Are you now a citizen of any country other than Australia?

- NO
- YES — *Provide details and evidence of any steps taken to renounce the citizenship of the other country.*

Country	Action	Date	Evidence attached

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

Section 5—Member with foreign citizenship at nomination or now

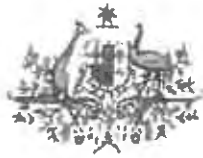
Complete this section if you answered YES in section 4(b) or 4(c)

Basis on which you contend you are not disqualified under s 44(i) of the Constitution	Evidence attached
<i>NB: Please date and initial each page of any attachment.</i>	

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 style="text-align: center;">4 / 12 / 2017</p> <p style="text-align: center;"><small>Day Month Year</small></p>



HOUSE OF REPRESENTATIVES

ANNEXURE A

House of Representatives

06 DEC 2017

Citizenship Register

To the Registrar of Members' Interests,

Statement in relation to citizenship – alterations or additions

Surname	Other Names
Falinski	JASON
Electorate	State
Mackellar	NSW

I wish to alter my statement in relation to citizenship as follows:

Section	Alteration

NB: Any relevant evidence should be attached to this form. Please date and initial each page of any attachment.

I wish to provide additional information for my statement in relation to citizenship as follows:

Section	Additional Information
3d	Legal advice from Arnold Block Leibler

NB: Any relevant evidence should be attached to this form. Please date and initial each page of any attachment.

Notes

- (1) The information which you are required to provide is contained in a resolution agreed to by the House of Representatives on 4 December 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 version of this form is available at <http://members.parl.nsw/citizenship> (internal link).
- (3) Forward the original, signed copy of all pages of this statement to the Registrar of Members' Interests, RG.39 Parliament House, Canberra ACT 2600.

Statement in relation to citizenship - alterations or additions **ANNEXURE A**

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:
	6 , 12 , 2017 Day Month Year

Arnold Bloch Leibler

(Proprietary and Confidential)

6 December 2017

By E-mail
Confidential and privilegedMr Jason Falinski MP
Member for Mackellar
Shop 1
1238 Pittwater Road
Narrabeen NSW 2101Our Ref. ML/SMF
File No. 021906101Contact
Susanna Ford
Direct 61 2 9226 7244
Facsimile 61 2 9226 7120
sford@abl.com.auPartner
Mark Leibler AC
Direct 61 3 9229 9999
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Chifley Tower
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AustraliaDX489 Sydney
www.abl.com.auTelephone
61 2 9226 7100
Facsimile
61 2 9226 7120MELBOURNE
SYDNEYPartners
Mark M Leibler AC
Henry D Langer AM
Joseph Benvenuto
Leon Zwiir
Philip Christie
Ross A Palerson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael H Dodge
Jane C Sheridan
Leanne R Thompson
Zaven Mandrasian
Jonathan M Worley
Paul Schickel
Paul Robinson
Peter M Suter
Alex King
John Mitchell
Ben Mahoney
Sam Odard
Jonathan Miner
John Manganari
Caroline Goulden
Matthew Lee
Genevieve Serian
Jeremy Leibler
Neilson Birn
Jonathan Caplan
Justin Viallet
Clint Harding
Susanna Ford
Tyronne McCarthy
Teresa Ward
Christine FloorSenior Counsel
Counsellor
Robert J HewitsonSpecial Counsel
Lello De Maio
Bridget Little
Henry CollinsSenior Associates
Sue Koo
Kerri-Ann Mackay
Andrea Tauson
Daniel Mott
Dorothy Costello
David Piddell
Kymel Pellow
Jeremy Lander
Cla Curt
Tanya Badick
Emily Simmons
Lisa Thomson
Jason van Oortzen
Elyse Hillen
Margaret Grose
Charles Gardner
Bridget Coning
Sharon Youngson
Rebecca Zwer
Gavin Hammarshlag
Kathie Lander
Lara O'Riordan
Stephanie Campbell
Caira Shuba
Dimitris Delany
Stephen Lloyd
Jonathan Orton
Briely Trollope
Laura Cedrone
Darlan Harman
Rachel Sch
Scott Phillips
Greg Audi

Dear Mr Falinski

Citizenship Advice

You have asked us to consider whether, for the purposes of section 44 of the *Commonwealth Constitution*, birth in Australia to parents of other than Australian heritage in your circumstances renders you a citizen of a foreign country or entitled to the rights and privileges of such citizenship and therefore incapable of sitting as a member of the House of Representatives.

Based on your instructions, and our review of academic commentary, of UK citizenship law and of English translations of Polish, Kyrgyz, USSR and Russian citizenship law, our advice is that for the purposes of section 44, you are not a citizen of the United Kingdom, Poland, Russia or Kyrgyzstan and are therefore capable of sitting as a member of the House of Representatives.

As previously discussed, we cannot conclusively advise on foreign law and recommend that you seek independent advice from foreign law experts to confirm our views set out in this advice.

Instructions

You have given us the following instructions:

- (a) your father, Stanislaw (Stanley) Falinski, was born on 10 December 1943 in Tokmak in the former Union of Soviet Socialist Republics (USSR), a city that is now located in modern day Kyrgyzstan. Around 1948 he and his family moved to Krakow, Poland, and then emigrated to Australia in 1958. He arrived in Australia on 10 April 1958 and became a naturalized Australian citizen on 27 July 1967;
- (b) your paternal grandfather, Leon, was born in Krakow, (then the Austro-Hungarian Empire, and now Poland), on 21 April 1910. Leon was of Jewish faith and fled Poland to Tokmak, USSR, at the time of the Nazi invasion of Poland in 1939, where he served in the Red Army as an engineer. He arrived in Australia on 18 August 1958. It

¹ Certificate Evidence of Australian Citizen, Stanley Falinski (provided by Jason Falinski to ABL); NAA series number K269, control symbol 10 APR 1958 TOSCANA, barcode 30132402.

appears he became a naturalized Australian citizen on 27 July 1967, at the same time as Stanley and Maria;

- (c) your paternal grandmother, Maria, was born in Leningrad, USSR, on 17 June 1922. She arrived in Australia with your father, age 15 on 10 April 1958. It is unknown when she became naturalized a Australian citizen;
- (d) Leon and Maria met in Tokmak but never married;
- (e) your mother, Jill, was born in Australia on 4 August 1946 and is a dual Australian-British citizen. Your mother acquired a British passport in 2006 which states she is a British citizen;
- (f) your maternal grandfather, Roy Brittain-White (Roy) was born on 5 July 1914 in Kent, United Kingdom, and emigrated finally to Australia in or around 1945 having lived there for some time before.

Consideration of your circumstances in the context of Section 44

Because your father Stanley was born out of wedlock (and therefore would have been considered illegitimate under Polish law), he did not inherit your paternal grandfather Leon's citizenship on that basis and it is therefore unlikely that you have acquired Polish citizenship by virtue of your paternal grandfather's nationality.¹

It is also likely that Leon would, as a matter of Polish law, be considered to have lost his citizenship by virtue of his enrolment into the Soviet military service, the Red Army, during World War II sometime between 1939 and 1942.² Stanley was born in 1942 and, on the basis that Leon had lost his citizenship by virtue of his service in the Red Army, Stanley either would never have inherited Polish citizenship, or would have lost it because Polish law at the time extended the loss of citizenship to a wife and his children under 18 of a man who has lost Polish citizenship.³

Finally, based on your instructions from your father's clear recollection, it appears unlikely that Leon, Maria or Stanley sought Polish citizenship following their return to Poland in the late 1940s, and as such would not be considered Polish citizens as a matter of Polish law.⁴

As such, if our understanding of Polish law is correct, you would not be considered under Polish law to be a citizen of Poland, nor are you entitled to the rights and privileges of 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 House of Representatives.

It is also our view that it is unlikely that Stanley was a citizen of Kyrgyzstan on two bases. First, being born on Kyrgyz territory is not sufficient to acquire Kyrgyz citizenship. Second, during the period of the USSR, Soviet law was the primary source of citizenship status. As such, if our understanding of Kyrgyz and Soviet law

² See Affirmation or Oath of Allegiance by Leon Falinski sworn on 27 July 1967.

³ Certificate Evidence of Australian Citizen, Stanley Falinski (provided by Jason Falinski to ABL); NAA series number K269, control symbol 10 APR 1958 TOSCANA, barcode 30132402.

¹ The Polish Citizenship Act of 20 January 1920 Article 5.

² The Polish Citizenship Act of 20 January 1920 Article 11(2).

³ The Polish Citizenship Act of 20 January 1920 Article 13.

⁴ The Polish Citizenship Act of 20 January 1920 Article 3.

is correct, we advise that you are not a citizen of Kyrgyzstan, nor are you entitled to the rights and privileges of a Kyrgyz citizen, and therefore section 44 of the Constitution does not apply to you, so as to render you incapable of sitting in the House of Representatives.

It is more likely that Stanley was a citizen of the USSR and later Russia as both he and Maria were born within its territory. At the time of his birth, USSR citizenship was largely, although not explicitly, informed by the principle of *ius soli*.⁵ This means that persons born within the territory were automatically citizens of the USSR.⁶

On this basis, and on the basis of the consideration of USSR and Russian law, Maria and Stanley were likely to be USSR citizens by virtue of being born within its territory. It is unclear to us whether Maria and Stanley ever acquired Polish citizenship and we have proceeded on the basis that they did not.

Stanley became a naturalized Australian citizen as an adult, around 24 years of age, in 1966. In 1966, the legislatively prescribed Australian citizenship oath included a renunciation of "all other allegiance". If our understanding of USSR is correct, Stanley's renunciation was sufficient for him to lose USSR citizenship, if he had acquired any. We also note that dual citizenship was only permitted under USSR law in certain prescribed circumstances which do not arise on the facts relevant to your citizenship.

In the alternative that Stanley's renunciation was not sufficient to expunge Stanley's status as a citizen of the USSR or the 1991 Citizenship Law restored this status to him, it is nonetheless unlikely that you are a Russian citizen. Citizenship laws enacted since your birth in 1970 have generally provided that a child born outside of the territory to "mixed parents", neither of whom are ordinarily resident in the territory, is either ineligible for citizenship or required that both parents agree in writing that the child is to take USSR or Russian citizenship and then take steps to formalise the child's status with the relevant authorities. You have instructed us that your parents have not taken any such steps.

Therefore, if our understanding of USSR and Russian law is correct, we advise that because you are not a citizen of Kyrgyzstan or Russia, nor are you entitled to the rights and privileges of a Kyrgyz or Russian citizen, section 44 of the Constitution does not apply to you so as to render you incapable of sitting in the House of Representatives.

Finally in relation to British citizenship, you were born in Australia in 1970 to a mother who is a British citizen by birth by virtue of the British law which applied at the time of her birth.

Under the 1981 British Nationality Act you would have been entitled to acquire British citizenship by registration if you had registered with the UK, and under the *British Nationality Act 1948* (which applied at the time of your birth) you would have automatically become a citizen of the United Kingdom and Colonies by descent if women had been able to pass this citizenship on to their children in the same way as men. Because your instructions are that no steps were taken to register you as a British citizen when you were a minor nor as an adult pursuant to section 4C of

⁵ *Constitution of the Russian Socialist Federated Republic 1918 Article 2; Constitution of the Russian Socialist Federated Republic 1918 Article 2; Constitution of the Russian Socialist Federated Republic 1936 Chapter 2.*

⁶ *Constitution of the Russian Socialist Federated Republic 1936 Chapter 2.*

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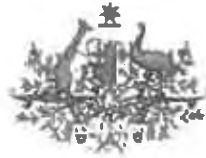
the 1981 British Nationality Act, nor have you taken any such steps, you will not have acquired British citizenship by registration.

Therefore, if our understanding of British law is correct, we advise that because you are not a citizen of the United Kingdom, nor are you entitled to the rights and privileges of a British citizen, section 44(i) of the Constitution does not apply to you so as to render you incapable of sitting in the House of Representatives. Please do not hesitate to contact us if you would like to discuss this advice.

Yours sincerely

Mark Leibler AC
Senior Partner

Susanna Ford
Partner



HOUSE OF REPRESENTATIVES

ANNEXURE A

House of Representatives

09 MAY 2018

Citizenship Register

To the Registrar of Members' Interests,

Statement in relation to citizenship – alterations or additions

Surname	Other Names
FALINSKI	JASON GEORGE
Electorate	State
MACKELLAR	NEW SOUTH WALES

I wish to alter my statement in relation to citizenship as follows:

Section	Alteration

*NB: Any relevant evidence **should** be attached to this form. Please date and initial each page of any attachment.*

I wish to provide additional information for my statement in relation to citizenship as follows:

Section	Additional Information
3(d)	Received confirmation from the Polish Government that confirms I am not entitled to the rights and privileges of Polish citizenship. Receipt of updated Legal advice from Arnold Bloch Leibler.

*NB: Any relevant evidence **should** be attached to this form. Please date and initial each page of any attachment.*

Notes

- (1) The information which you are required to provide is contained in a resolution agreed to by the House of Representatives on 4 December 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 version of this form is available at <http://members.parl.nsw/citizenship> (internal link).
- (3) Forward the original, signed copy of all pages of this statement to the Registrar of Members' Interests, RG.39 Parliament House, Canberra ACT 2600.

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:
	9 , 5 , 2018 Day Month Year

ANNEXURE A

Embassy
of the Republic of Poland
in Canberra

Canberra, 27 April 2018

Mr Jason Falinski MP
House of Representatives
Parliament House
Canberra ACT 2600

Dear Mr Falinski,

In response to your inquiry regarding your citizenship status in relation to Poland please be advised that, as a general rule, there are three documents which enable Polish diplomatic and consular missions to state someone's Polish citizenship status: a valid Polish passport, a valid Polish ID (dowód osobisty), and a decision of the relevant province governor on the possession of Polish citizenship.

I can confirm that according to our records you have never had a Polish passport, or a Polish identity card, and you have never applied through our Embassy to relevant Polish authorities to confirm the possession of Polish citizenship or to be bestowed with Polish citizenship.

Unless you submit at least one of the above mentioned documents you are not entitled to the rights or privileges of Polish citizenship, including a Polish passport.

Yours faithfully

Michał Kołodziejcki
Ambassador of Poland to Australia

[Signature] 9.5.18

Arnold Bloch Leibler

LAWYERS AND ACCOUNTANTS

9 May 2018

By E-mail
Confidential and privilegedMr Jason Falinski MP
Member for Mackellar
Shop 1
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Narrabeen NSW 2101Our Ref ML/SMF
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SYDNEY

Dear Mr Falinski

Citizenship Advice

You have previously asked us to consider whether, for the purposes of section 44 of the *Commonwealth Constitution*, birth in Australia to parents of other than Australian heritage in your circumstances renders you a citizen of a foreign country or entitled to the rights and privileges of such citizenship and therefore incapable of sitting as a member of the House of Representatives.

We have previously advised, including in written advice given on 6 December 2017, that for the purposes of section 44, you are not a citizen of the United Kingdom, Poland, Russia or Kyrgyzstan and are therefore capable of sitting as a member of the House of Representatives (**December advice**).

Our December advice stands in light of the recent receipt of independent advices from a Polish law expert, Piotr Stączek, the Polish Ambassador to Australia, Mr Michał Kolodziejcki, and Mr David Bennett AC QC.

Instructions

You instructed us as follows.

- (a) You were born in Australia on 24 August 1970, and are an Australian citizen.
- (b) Your father, Stanisław Falinski (**Stanley**), was born on 13 December 1943 in Tokmak in the former Union of Soviet Socialist Republics (**USSR**), a city that is now located in modern day Kyrgyzstan. Around 1948 he and his family moved to Krakow, Poland, and then emigrated to Australia in 1958. He arrived in Australia on 10 April 1958 and became a naturalized Australian citizen on 27 July 1967.
- (c) Your paternal grandfather, Leon Falinski (**Leon**), was born in Krakow, (then the Austro-Hungarian Empire, and now Poland), on 21 April 1910. Leon was of Jewish faith and fled Poland to Tokmak, USSR, at the time of the Nazi invasion of Poland in 1939, where he served in the Red Army as an engineer. He arrived in Australia on 18 August 1958. It appears he became a naturalized Australian citizen on 27 July 1967, at the same time as Stanley and Maria.

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Craig Judd

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- (d) Your paternal grandmother, Maria Falinski (nee Ummicyn) (Maria), was born in Leningrad, USSR, on 17 June 1922. She arrived in Australia with your father, when he was aged 15, on 10 April 1958. It is unknown when she became a naturalized Australian citizen.
- (e) Leon and Maria met in Tokmak but never married.
- (f) Leon and Maria returned to Poland in the late 1940s, but Stanley's instructions are they never declared that they wished to become Polish citizens or renounced any Russian citizenship, nor did they make any such declaration on behalf of Stanley.
- (g) Your mother, Jill Falinski (nee Brittain-White) (Jill), was born in Australia on 4 August 1946 and is a dual Australian-British citizen. Your mother acquired a British passport in 2006 which states she is a British citizen.
- (h) Your maternal grandfather, Roy Brittain-White (Roy), was born on 5 July 1914 in Kent, United Kingdom, and emigrated finally to Australia in or around 1945 having lived there for some time before.
- (i) Your parents were married in Australia on 19 January 1970.
- (j) You have not registered yourself as a Polish citizen or taken any other steps to acquire a Polish or any other passport.
- (k) You have been not registered by yourself or any member of your family as a Polish citizen at birth or at any other time.
- (l) No application for citizenship or request for certification or registration as a Polish citizen has been made by you or on your behalf.

Factual enquiries


You have previously provided us with a number of original documents relating to your maternal and paternal lineage.

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 recently received independent advice from a Polish law expert that confirms our views set out below.

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).

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Relevant in the circumstances are Article 5 of the 1920 Citizenship Act, which expressly provided that legitimate children acquired their father's citizenship by birth and illegitimate children acquired their mother's, and Article 4 of the 1962 Citizenship Act, which provided that the acquisition of Polish citizenship by birth occurred either when both parents are Polish citizens, or when only one of them is a Polish citizen and the other is unknown or his/her citizenship is undetermined or he/she has no citizenship.

It continues to be our view that because Stanley was born out of wedlock (and therefore would have been considered illegitimate under Polish law), Stanley did not inherit Leon's citizenship on that basis and it is therefore unlikely that you have acquired Polish citizenship by virtue of your paternal grandfather's nationality.

This view is confirmed by the Polish expert, who concluded:

According to art. 5 of the Act of 20th January 1920 on citizenship of the Polish state, which was binding on the day of when Stanislaw (Stanley) Falinski was born, namely, 14th December 1943 - legitimate children obtained their father's citizenship by birth, while illegitimate children obtained their mother's citizenship. Hence, if Leon Falinski and Maria Falinski never got married, whereas Maria Falinski was not a Polish citizen, then at the moment of birth, namely, on 13th December 1943, according to art. 5 of the Act on citizenship of 1920 Stanislaw (Stanley) Falinski did not obtain Polish citizenship.

[...]

Jason Falinski was born in Manly, New South Wales, Australia, on 24 August 1970 as a legitimate child. The act binding then was the act of 15 February 1962 on Polish citizenship. According to art. 4 of this act, a child obtains Polish citizenship if at least one of the parents holds Polish citizenship. In the case of the parents of Jason Falinski, neither of the parents held Polish citizenship. This means that he did not obtain Polish citizenship.

Application of section 44(i) of the Commonwealth Constitution

Section 44(i) of the Commonwealth Constitution (section 44(1)) 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.

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Section 44(i) 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 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(i) 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* and *Re Gallagher* did not consider the issue.

On 9 May 2018, the High Court of Australia handed down its judgment in *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)*.⁵ In *Re Gallagher*, the Court considered the operation of the constitutional imperative in the context of section 44(i). The 'constitutional imperative' is expressed to be "that an Australian citizen not be irremediably prevented by foreign law from participation in representative government."⁶

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

² *Re Canavan & Ors* (2017) ALJR 1209 (*Re Canavan*) at 1223 [71]-[72].

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

⁴ *Re Canavan* at 1215 [21], 1216 [23] and [25]-[26].

⁵ [2018] HCA 17.

⁶ *Re Canavan* at 1214 [13], 1223 [72], cited with approval in *Re Gallagher* at [11].

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In ruling that Ms Gallagher was ineligible to stand for election to Parliament by reason of her being a foreign citizen at the time of her nomination, it was unanimously held that:

[F]or s 44(i) to be read as subject to the exception two circumstances must be present. The first arises from the terms of the constitutional imperative. It is that a foreign law operates irremediably to prevent an Australian citizen from participation. The second is that that person has taken all steps reasonably required by the foreign law which are within his or her power to free himself or herself of the foreign nationality.⁷

Consideration of your circumstances in the context of section 44

It remains our view that because Stanley was born out of wedlock (and therefore would have been considered illegitimate under Polish law), Stanley did not inherit Leon's citizenship on that basis and, therefore, you have not acquired Polish citizenship by virtue of your paternal grandfather's nationality.

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

Jason Falinski does not hold and has never held Polish citizenship.

This finding is supported by the Polish Ambassador to Australia, who confirmed on 27 April 2018:


[T]hat according to our records you have never had a Polish passport, or a Polish identity card, and you have never applied through our Embassy to relevant Polish authorities to confirm the possession of Polish citizenship or to be bestowed with Polish citizenship.

Unless you submit at least one of the above mentioned documents you are not entitled to the rights or privileges of Polish citizenship, including a Polish passport.

David Bennett AC QC, whose independent advice you have sought and received, likewise concludes that that you 'are not a dual citizen of the United Kingdom, Poland, Russia or Kyrgyzstan.'

On these bases, we advise you that section 44 of the *Commonwealth Constitution* does not apply to you so as to render you incapable of sitting as a member of the House of Representatives.

⁷ Ibid at [26] per Kiefel CJ, Bell, Keane, Nettle, and Gordon JJ (Gageler J (at [41]) and Edelman J (at [69]) agreeing).

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

Yours sincerely

~~Mark Leibler AC~~
Senior Partner

Susanna Ford
Partner

 9.5.18