

# CHAPTER 5

## THE LEGAL CONCERNS OF OVERSEAS AUSTRALIANS

5.1 This chapter examines the key legal concerns of overseas Australians in the areas of citizenship and voting.

### Citizenship issues

5.2 One of the most substantial issues raised during the Committee's inquiry was the loss of Australian citizenship, or potential to claim Australian citizenship, under provisions of the *Australian Citizenship Act 1948* (Citizenship Act). In particular, the Committee received many submissions from people who wanted to resume Australian citizenship, but had been unable to do so.

5.3 The first part of this chapter therefore considers some of the key issues relating to Australian citizenship, including:

- background and history of Australian citizenship laws;
- dual citizenship: the repeal of section 17 of the Citizenship Act and its consequences;
- dual citizenship: renunciation of citizenship under section 18 of the Citizenship Act;
- other specific citizenship issues; and
- information and education relating to citizenship.

5.4 The Committee acknowledges that, on 7 July 2004, the Hon. Gary Hardgrave MP, the then Minister for Citizenship and Multicultural Affairs (the Minister) announced several proposed changes to the Citizenship Act and released a fact sheet outlining the proposed changes.<sup>1</sup> A representative from DIMIA stated that it was hoped the proposed changes would be incorporated in legislation to be introduced into Parliament in 2005.<sup>2</sup> These proposed changes will be considered where relevant below, particularly as they may resolve some of the specific issues raised in submissions and evidence to the Committee.

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1 The then Minister for Citizenship and Multicultural Affairs, the Hon. Gary Hardgrave MP, Media Release H128/2004, 7 July 2004; see also DIMIA, *Committee Hansard*, 29 July 2004, pp. 28-30.

2 *Committee Hansard*, 29 July 2004, p. 30.

### ***Background and history of Australian citizenship***

5.5 At Federation in 1901, 'Australian citizenship' as a legal status did not exist. There is no mention of citizenship in the Australian Constitution.<sup>3</sup> Rather, Australia's population comprised British subjects who were permanently residing in Australia, British subjects temporarily in Australia, and 'aliens'.<sup>4</sup> The legal status of Australian 'citizen' came into effect on 26 January 1949 under the *Nationality and Citizenship Act 1948*. The title of this Act changed in 1973 to the *Australian Citizenship Act 1948*.<sup>5</sup>

#### *What is citizenship?*

5.6 The Preamble to the Citizenship Act states:

Australian citizenship represents formal membership of the community of the Commonwealth of Australia; and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity; and

Persons granted Australian citizenship enjoy these rights and undertake to accept these obligations

by pledging loyalty to Australia and its people, and

by sharing their democratic beliefs, and

by respecting their rights and liberties, and

by upholding and obeying the laws of Australia

#### *Privileges and responsibilities of Australian citizenship*

5.7 Australian citizenship carries with it a number of privileges and responsibilities. For example, Australian citizenship confers the right to:

- stand for public office or nominate for election to Commonwealth, state or territory parliaments (subject to section 44(i) of the Constitution);
- apply for an Australian passport and leave and re-enter the country without a visa;
- seek consular assistance from Australia's diplomatic representatives while overseas;
- apply for permanent employment in the Australian Public Service or enlist in the armed forces; and

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3 Australian Citizenship Council, *Australian Citizenship for a New Century*, Canberra, 2000, p. 31.

4 K Rubenstein, *Australian Citizenship Law in Context*, Lawbook Co, Sydney, 2002, p. 10.

5 Australian Citizenship Council, *Australian Citizenship for a New Century*, Canberra, 2000, pp. 31-33.

- register children born overseas as Australian citizens by descent in certain circumstances.<sup>6</sup>

5.8 In return, Australian citizens are required to:

- obey the laws and fulfil their duties as an Australian citizen;
- enrol on the Electoral Register and vote at federal, state and territory elections and referenda;<sup>7</sup>
- serve on a jury, if called on; and
- defend Australia, should the need arise.<sup>8</sup>

5.9 These rights and responsibilities are subject to certain conditions and exemptions. For example, there are restrictions on enrolment and voting rights, which will be discussed later in this chapter. The Committee also notes that, for Australian citizens living overseas permanently, the extent to which those citizens can fulfil some of these responsibilities could be questioned.

*How is Australian citizenship acquired?*

5.10 Under the Citizenship Act, a person can become an Australian citizen in several ways, including by:<sup>9</sup>

- birth (if at the time of the person's birth in Australia, at least one parent is an Australian citizen or an Australian permanent resident);<sup>10</sup>
- descent (in certain circumstances, including if a parent is an Australian citizen and registers the child's name at an Australian consulate within 18 years of the birth);<sup>11</sup>
- adoption, if adopted by an Australian citizen;<sup>12</sup> or
- grant of citizenship.<sup>13</sup>

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6 DIMIA, *Fact Sheet 90: Australian Citizenship*, <http://www.immi.gov.au/facts/90citizenship.htm> (accessed 13 September 2004).

7 Enrolment requirements relating to Australian citizens living overseas is discussed later in this chapter.

8 DIMIA, *Fact Sheet 90: Australian Citizenship*, <http://www.immi.gov.au/facts/90citizenship.htm> (accessed 13 September 2004); <http://www.citizenship.gov.au/why.htm#rights> (accessed 13 September 2004); Australian Citizenship Council, *Australian Citizenship for a New Century*, Canberra, 2000, Appendix 4, p. 111.

9 See also K Rubenstein, *Australian Citizenship Law in Context*, Lawbook Co, Sydney, 2002, p. 11.

10 *Australian Citizenship Act 1948*, s 10.

11 *Australian Citizenship Act 1948*, s 10B.

12 *Australian Citizenship Act 1948*, s 10A.

5.11 There are also provisions in the Citizenship Act which provide for resumption of citizenship in certain circumstances.<sup>14</sup> Where relevant, these provisions will be discussed further below.

*How is Australian citizenship lost?*

5.12 Australian citizenship can be lost in several ways under the Citizenship Act, including by:

- serving in the armed forces of a country at war with Australia;<sup>15</sup>
- deprivation – for example, where a person is convicted of migration fraud related to the grant of Australian citizenship;<sup>16</sup> or
- renunciation – a person may renounce Australian citizenship if they are 18 years or older and the holder of citizenship of another country.<sup>17</sup>

5.13 A child may also lose his or her Australian citizenship under section 23 of the Citizenship Act, if that child's responsible parent loses or renounces their citizenship.

5.14 Before 2002, Australian citizenship could also be lost by 'any act or thing, the sole or dominant purpose of which and the effect of which is to acquire the nationality or Citizenship of a foreign country'. This was under the now-repealed section 17 of the Citizenship Act, which will be considered further below.

***Dual citizenship: the repeal of section 17***

5.15 Section 17 was the subject of debate and review for many years prior to its repeal. In 1994, the Joint Standing Committee on Migration recommended that section 17 should be repealed, and that former Australian citizens who had lost citizenship should have the unqualified right to apply for the resumption of their Australian citizenship.<sup>18</sup> In 1995, the Federal Government released policy guidelines to make the requirements for resumption of citizenship lost under section 17 clearer and easier.<sup>19</sup>

5.16 In August 1998, the Australian Citizenship Council (ACC) was established by the then Minister for Immigration and Multicultural Affairs to advise on issues

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13 *Australian Citizenship Act 1948*, s 13.

14 *Australian Citizenship Act 1948*, ss 23AA-23B.

15 *Australian Citizenship Act 1948*, s 19.

16 *Australian Citizenship Act 1948*, s 21.

17 *Australian Citizenship Act 1948*, s 18.

18 *Australians All: Enhancing Australian Citizenship*, September 1994, p. 207.

19 Former Minister for Immigration and Ethnic Affairs, Senator the Hon. Nick Bolkus, *New guidelines on resumption of Australian citizenship*, Media Release B76/1995, 25 August 1995.

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relating to Australian citizenship policy and law.<sup>20</sup> In February 2000, the ACC published a report titled *Australian Citizenship for a New Century*.<sup>21</sup>

5.17 In its report, among other matters, the ACC examined section 17 of the Citizenship Act and considered whether Australian citizens should lose their citizenship on applying for and receiving citizenship of another country. The ACC received some submissions which argued that 'acquisition of another citizenship represented disloyalty to Australia'.<sup>22</sup> However, the majority of submissions received by the ACC were in favour of repealing section 17, arguing that acquiring citizenship of another country 'in no way diminishes' a person's commitment to Australia.<sup>23</sup> The ACC also noted that many other countries allow their citizens to obtain another citizenship without losing their original citizenship.<sup>24</sup> The ACC concluded that:

... to hold and enforce the threat of loss of Australian Citizenship over Australians who wish to live and work overseas in countries where acquisition of another Citizenship is important to their situation is to place a completely unnecessary obstacle in the way of expansion of Australian presence in other societies. The Council does not believe this to be a desirable position for Australia to place its Citizens. And equally important, it does not believe that to do so is in Australia's national interest.<sup>25</sup>

5.18 One of the ACC's key recommendations was therefore to repeal section 17 of the Citizenship Act so that Australian citizens would not lose their Australian citizenship on acquisition of citizenship of another country.<sup>26</sup> The ACC also found that 'existing resumption provisions are adequate for those who have already lost Australian Citizenship under section 17'.<sup>27</sup> As a result of the ACC's recommendations, and those of many others, including the SCG, the Citizenship Act was substantially amended in 2002. In particular, section 17 of the Citizenship Act was repealed.

5.19 Several submissions to this inquiry supported the full recognition of dual citizenship and the repeal of section 17.<sup>28</sup> However, many submissions argued the repeal of section 17 had left some 'residual' issues.<sup>29</sup> In particular, these submissions

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20 ACC, *Australian Citizenship for a New Century*, Canberra, 2000, p. 3.

21 ACC, *Australian Citizenship for a New Century*, Canberra, 2000.

22 *ibid*, p. 61.

23 *ibid*, pp. 61-62.

24 *ibid*, p. 65.

25 *ibid*.

26 *ibid*.

27 *ibid*.

28 See, for example, Ms Michelle Kelleher, *Submission 600*, pp. 16-17; *Submission 459*, p. 1; SCG, *Submission 665*, p. 52.

29 See, for example, MidAtlantic Australian New Zealand Chamber of Commerce, *Submission 119*, p. 5; Sydney University Graduates Union of North America (SUGUNA), *Submission 193*, p. 5; SCG, *Submission 665*, pp. 51-89.

were concerned that numerous Australian citizens 'unknowingly' lost their Australian citizenship under this provision while it was in force, and had subsequently been unable to resume that citizenship.<sup>30</sup> For instance Ms Camille Hughes, who lost her citizenship under section 17, commented:

I am deeply saddened that my children and I no longer hold Australian citizenship and sincerely hope the Australian government sees fit to allow us to again become Australian citizens. It seems to me that far more inclusive citizenship law and policy ... is a logical and necessary prerequisite to fully embracing the phenomenon that is the Australian diaspora. In fact it is crucial if indeed our great country is ever to reach a full understanding, as a nation, that those of us who are physically outside Australia's territorial boundaries are still an integral part of Australia.<sup>31</sup>

5.20 Some submissions suggested that the repeal of section 17 should be made retrospective – that is, all those who lost their Australian citizenship under section 17 in the past should automatically have that citizenship reinstated.<sup>32</sup>

5.21 However, a representative of DIMIA expressed concern about this proposal:

... there could be some problems for people, given that some people may well have knowingly acquired another citizenship, knowing that they would lose their Australian citizenship. For example, there are some people who took out citizenship of another country for employment purposes and that employment, because of its security nature, required them to have only the citizenship of that country. So retrospective repeal of section 17 could have had an adverse impact on people in those circumstances.<sup>33</sup>

5.22 The Committee notes that the Minister made a similar statement in a recent speech:

Repeal of Section 17 was not retrospective because we could not guarantee that there would not be unintended consequences for Australians who had lost their Australian citizenship under Section 17 prior to April 2002.<sup>34</sup>

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30 See, for example, SCG, *Submission 665*, p. 52; Mr Maxwell Hughes, *Submission 51*, p. 2; Mr Geoffrey Cullen, *Submission 239*, p. 4; Ms Helen Burnard, *Submission 576*, p. 1; SUGUNA, *Submission 193*, p. 7; see also ACC, *Australian Citizenship for a New Century*, Canberra, 2000, p. 60.

31 *Submission 353*, p. 3.

32 See, for example, Mr Geoffrey Cullen, *Submission 239*, p. 4; Ms Helen Burnard, *Submission 576*, p. 1; Sydney University Graduates Union of North America (SUGUNA), *Submission 193*, p. 7.

33 *Committee Hansard*, 29 July 2004, p. 31.

34 "Australian Citizenship: Then And Now", *Speech to the Sydney Institute*, 7 July 2004, [www.minister.immi.gov.au/cam/media/speeches/sydinstitute\\_07\\_04.htm](http://www.minister.immi.gov.au/cam/media/speeches/sydinstitute_07_04.htm) (accessed 9 September 2004), p. 5.

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*Restrictions on resuming citizenship lost under section 17*

5.23 The Committee received several submissions from people who had lost their Australian citizenship under section 17, but had been unable to reacquire that citizenship because of the restrictions in the Citizenship Act.<sup>35</sup>

5.24 Section 23AA of the Citizenship Act allows an adult who has lost their citizenship (under section 17) to apply to the Minister for the resumption of that citizenship. However, to be eligible to resume citizenship, that person must meet certain criteria, including that the person:

- did not know that they would lose Australian citizenship;
- would have suffered significant hardship or detriment if they had not acquired citizenship of another country;
- has been lawfully resident in Australia for a total of at least two years;
- states that they intend to continue to reside in Australia, or intend to commence residing in Australia within three years; and
- has maintained a close and continuing association with Australia.<sup>36</sup>

5.25 Many submissions criticised the requirement to declare an intention to commence residing in Australia within three years of the application.<sup>37</sup> The MidAtlantic Australian New Zealand Chamber of Commerce submitted that:

Persons who lost their citizenship under the provisions of Section 17 are not automatically reinstated to full citizenship and furthermore they are only able to regain their citizenship if they swear that they will return to Australia within three years. Most are not able to make that declaration.<sup>38</sup>

5.26 One submitter affected by the three year requirement, Mr Graeme Hudson, commented that:

It came as quite a shock to me when I had discovered that my Australian Citizenship had been taken away... I reapplied to regain my citizenship. It took approximately 8 months to eventually be rejected as I was unable to state that I would resume residence within three years – I was too honest – had I declared my intent to reside within 3 years I wonder if the outcome

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35 See, for example, Ms Lorraine Buckland, *Submission 651*, p. 1; Mr Graeme Hudson, *Submission 192*, p. 1; Ms Camille Hughes, *Submission 353*, p. 2. In contrast, some had successfully regained their Australian citizenship such as Mr Tim Loreman, *Submission 143*, p. 1.

36 *Australian Citizenship Act 1948*, s 23AA.

37 See, for example, Ms Lorraine Buckland, *Submission 651*, p. 1; Mr Graeme Hudson, *Submission 192*, p. 1; Ms Camille Hughes, *Submission 353*, p. 2; SCG, *Submission 665*, pp. 83-89.

38 *Submission 119*, p. 5; see also SUGUNA, *Submission 193*, p. 5.

would have been different? ... My Australian citizenship was precious to me and I truly and sincerely want it back!<sup>39</sup>

5.27 Similarly, Ms Camille Hughes lamented:

I would dearly love to resume my lost Australian citizenship ... But it is not legally possible at the moment due to the ... requirement that I make a declaration that I have an intention to commence residing in Australia within three years of the day of the resumption application. At present, our lives are firmly in the US. I could not in good faith make such a declaration.<sup>40</sup>

5.28 The SCG alleged that some former citizens were being advised to declare an intention to return to Australia within three years regardless of whether they actually have that intention:

... anecdotal reports suggest that some staff dealing with former citizens at a number of Australian missions overseas may be advising people "off the record" to simply tick the "Yes" box in Question 13 of DIMIA Form 132 regardless of what their future plans may be.<sup>41</sup>

5.29 The SCG continued:

It seems very clear that the issue of intention to return to Australia within three years is to some extent being administered "flexibly" by decision makers to circumvent the barrier it presents. The need for "flexibility" in itself is evidence that the three-year requirement is a hindrance to resumption for many former Australian citizens living overseas.<sup>42</sup>

5.30 The SCG further argued that the three year requirement is 'no longer appropriate' since the repeal of section 17:

Australia now allows dual citizenship for all categories of Australians. A person who has no intention to move back to Australia within three years and who had the good fortune to acquire a second citizenship on or after 4 April 2002 would today be a dual citizen. On the other hand, a person who acquired another citizenship on 3 April 2002 or earlier and who cannot in good faith make such a statement of intention is precluded from formal membership of the Australian family and also prevented from enjoying the benefits of dual citizenship. It is time to recognise that this provision is a discriminatory remnant of the Section 17 era and no longer appropriate for Australia today.<sup>43</sup>

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39 *Submission 192*, p. 1.

40 *Submission 353*, p. 2.

41 *Submission 665*, p. 84.

42 *ibid*, p. 85.

43 *ibid*, pp. 88-89.

5.31 The SCG also believed that 'it is very possible for an individual to remain extremely committed to Australia without living within its territorial boundaries'.<sup>44</sup> Similarly, Ms Lorraine Buckland declared:

... it rankles in principle that former Australians who are based permanently overseas should, under the letter of the law, be judged unworthy of regaining their lost citizenship if they are not going to live in Australia again in the foreseeable future. To have this requirement in our law transmits a message that Australia only wants those who are going to "commit" to it by living within its territorial boundaries. By definition that stance sends a very alienating message that those of us overseas are not valued and might be simply discarded as worthless.<sup>45</sup>

5.32 The SCG also expressed a view that the requirement to have been present in Australia for a total period of at least two years was another inappropriate barrier to the resumption of citizenship lost under section 17.<sup>46</sup>

5.33 The SCG also observed inconsistencies when compared with other resumption provisions in the Citizenship Act. The SCG pointed out that section 23B, which provides for resumption of citizenship lost by minors (under section 23), contains no two year residency requirement.<sup>47</sup>

5.34 During the Committee's inquiry, the Minister announced a number of proposed changes to the Citizenship Act.<sup>48</sup> If they are passed by Parliament, these proposals will remove many of the restrictions on resuming citizenship. In relation to resumption of citizenship lost under section 17, amendments would be introduced to provide that:

The only criterion for resumption of Australian citizenship by people who lost their Australian citizenship when they acquired another country's citizenship will be that the person be of good character.<sup>49</sup>

5.35 These changes were welcomed by the SCG, which commented:

Without a doubt, many in the Diaspora will be able to resume their lost citizenship ... A number of messages have been received by the SCG from around the world in response from individuals who are extremely pleased

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44 *ibid*, p. 88.

45 *Submission 651*, p. 3.

46 *Submission 665*, p. 83; see also *Australian Citizenship Act 1948*, subpara 23AA(1)(b)(iii).

47 *Submission 665*, p. 81.

48 Minister for Citizenship and Multicultural Affairs, the Hon. Mr Gary Hardgrave MP, Media Release H128/2004, 7 July 2004; also DIMIA, *Committee Hansard*, 29 July 2004, pp. 28-29.

49 Minister for Citizenship and Multicultural Affairs, the Hon. Mr Gary Hardgrave MP, Media Release H128/2004, 7 July 2004, p. 1.

that they will be able to be Australian citizens within the foreseeable future.<sup>50</sup>

5.36 The Committee acknowledges that the proposed changes to the Citizenship Act appear to resolve many of the concerns raised in submissions relating to the resumption of citizenship lost under the former section 17.

#### *Children of former Australian citizens*

5.37 A further issue raised in some submissions related to the children of former Australian citizens who lost their citizenship under section 17.<sup>51</sup> For example, in relation to children who were born *after* a parent had lost Australian citizenship under section 17, the MidAtlantic Australian New Zealand Chamber of Commerce was concerned that:

Children born to Australians while they had lost their citizenship cannot be registered as “Australians by Descent” even when their Australian parent or parents have regained their Australian citizenship.<sup>52</sup>

5.38 A representative from DIMIA acknowledged this issue, and explained to the Committee that it was being addressed:

Some of the representations to the Minister ... highlighted the plight of children born to former Australian citizens who had unwittingly lost their citizenship under section 17. These children were therefore unable to register as Australian citizens by descent. A solution for children born to former citizens and still under 18 years of age was possible through the introduction of a change in policy, and this was announced in October 2003. One of the proposed changes to the [A]ct will provide for the grant of citizenship to people over the age of 18 years who are of good character and were born to former citizens.<sup>53</sup>

5.39 Similarly, the fact sheet released by the Minister states:

The Act will be amended to provide for grant of citizenship to a person of good character and over the age of 18 years who was born overseas after their parent lost citizenship under the former section 17.<sup>54</sup>

5.40 While the proposed changes to the Citizenship Act would clearly cover children born *after* a parent had lost Australian citizenship under section 17, the

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50 *Submission 665D*, p. 4.

51 See, for example, MidAtlantic Australian New Zealand Chamber of Commerce, *Submission 199*, p. 5; Ms Camille Hughes, *Submission 353*, pp. 1-3; Mr Maxwell Hughes, *Submission 51*, p. 2; Ms Elizabeth Norton, *Submission 471*, p. 1; SCG, *Submission 665*, pp. 97-100.

52 *Submission 119*, p. 5; see also SUGUNA, *Submission 193*, p. 5.

53 DIMIA, *Committee Hansard*, 29 July 2004, p. 29; see also DIMIA, *Submission 656*, p. 2.

54 Minister for Citizenship and Multicultural Affairs, the Hon. Mr Gary Hardgrave MP, Media Release H128/2004, 7 July 2004, pp. 1-2.

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Committee received evidence of concerns that the situation of children *before* their parents lost citizenship under section 17 was unclear.<sup>55</sup> The SCG pointed out that, under section 23 of the Citizenship Act, many children had automatically lost their Australian citizenship when their responsible parent forfeited their citizenship under section 17.<sup>56</sup> The SCG observed that section 23B of the Citizenship Act may provide for the resumption of citizenship in this situation, but that 'section 23B presents its own limitations as a resumption provision'.<sup>57</sup>

5.41 Under section 23B, a person who has ceased to be an Australian citizen under section 23 of the Citizenship Act can apply to resume Australian citizenship within one year after attaining the age of 18 years.<sup>58</sup> The SCG argued that:

The key limitation within Section 23B is the requirement that the applicant for resumption is required to apply "within one year after attaining the age of 18 years or within such further period as the Minister, in special circumstances, allows".<sup>59</sup>

5.42 For example, one submitter explained that her two children were Australian citizens by descent, but that:

... they automatically forfeited their Australian citizenship ... when I took US citizenship ... while Australian law remains as it is, my children cannot resume their lost citizenship until they reach their 18<sup>th</sup> birthday.<sup>60</sup>

5.43 The SCG also observed that 'it is unclear why the minor children of these individuals should be limited in time as adults from resuming their citizenship'.<sup>61</sup> The SCG further commented that:

The SCG has been contacted by a number of individuals who have lost their citizenship as minors under Section 23, but who have missed the one year window of opportunity for resumption under Section 23B, i.e. they are already aged 19 or older. In these circumstances, it is necessary to look at whether it is advisable for the person to make a Section 23B resumption application outside the one-year window, arguing that "special circumstances" exist. A number of cases in the AAT [Administrative Appeals Tribunal] over the last several years indicate that it is very difficult to show "special circumstances" such that a late Section 23B resumption application will be accepted.<sup>62</sup>

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55 SCG, *Submission 665*, p. 97; see also SCG, *Submission 665D*, pp. 6-9.

56 *ibid.*

57 *Submission 665*, p. 97.

58 *Australian Citizenship Act 1948*, s 23B; see also SCG, *Submission 665*, p. 97.

59 *ibid.*, pp. 97-98.

60 Ms Camille Hughes, *Submission 353*, pp. 1-2.

61 *Submission 665*, p. 100.

62 *ibid.*, p. 98.

5.44 The SCG concluded:

A close reading of the Minister's media release and speech of 7 July 2004 does not provide a clear answer as to whether the Government is now planning to amend Section 23B and specifically provide a simple resumption route for these individuals who lost as minors under Section 23.<sup>63</sup>

5.45 The SCG even suggested that section 23, under which a child automatically loses citizenship if their responsible parent loses citizenship, should be repealed, because '... it is unfair to deprive minor children of their citizenship involuntarily due to a parent's loss.'<sup>64</sup>

*The Committee's view*

5.46 The Committee welcomes the proposed changes to make it easier to resume citizenship lost under section 17 of the Citizenship Act. However, the Committee considers that efforts should be made to ensure that *all* children of citizens who lost their Australian citizenship under section 17 can register for Australian citizenship without unnecessary limitations. In particular, these children should be eligible for citizenship regardless of whether they were born before or after their parent's loss of citizenship.

***Dual citizenship: renunciation of citizenship under section 18***

5.47 Another major citizenship issue raised during the inquiry related to people who had *renounced* their citizenship under section 18 of the Citizenship Act. Indeed, the Committee received over 200 submissions from Maltese individuals or groups. These submissions addressed the issue facing a large number of Australian-born Maltese citizens who had renounced their Australian citizenship under section 18, and had been unable to resume that citizenship.

5.48 According to these submissions, many Maltese migrated to Australia in the period following World War II and had children in Australia. Under citizenship laws of the time, these children became Australian citizens by birth, and Maltese citizens by descent.<sup>65</sup> Some of these children subsequently returned to live in Malta with their parents.<sup>66</sup> Until the year 2000, the Maltese Government required persons, when they reached 18, to choose whether to retain or renounce any foreign citizenship they possessed.<sup>67</sup> If they failed to renounce their foreign citizenship by their 19th birthday,

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63 *Submission 665D*, p. 7.

64 *ibid*, p. 15.

65 SCG, *Submission 665*, p. 95.

66 SCG, *Submission 665*, p. 95; The Malta Cross Group, *Submission 452*, p. 2.

67 Mr Lawrence Dimech, Maltese Welfare (NSW), *Committee Hansard*, 27 July 2004, p. 32; The Malta Cross Group, *Submission 452*, p. 2; Maltese Welfare (NSW) Inc, *Submission 77*, p. 1; SCG, *Submission 665*, p. 95.

they automatically lost Maltese citizenship.<sup>68</sup> This meant they would also lose access to many benefits in Malta including free education; the possibility of employment in the public service; subsidised housing; and access to social security benefits.<sup>69</sup> For financial and practical reasons, many of these people renounced their Australian citizenship. In fact, almost 2000 Maltese people born in Australia are recorded as having renounced their Australian citizenship.<sup>70</sup>

5.49 As noted above, the Committee received a large number of similar submissions from Maltese citizens born in Australia who had found themselves in this situation and who shared their personal circumstances with the Committee. It is not possible to detail them all here, but just one example is the submission from Ms Ann Marie Galea, who stated that:

I was born in Wentworthville in Australia on the 24<sup>th</sup> July 1971. My father and mother migrated to Australia from Malta in 1964 ... When I was only 5 years ... in 1976 my family moved back to Malta. Under Maltese citizenship law I was required to decide between Maltese and Australian citizenship between my 18<sup>th</sup> and 19<sup>th</sup> birthdays ... In the circumstances, opting for the Maltese citizenship was essentially to continue with my studies free of charge, and allowing me to purchase my property. I was extremely unhappy forfeiting my Australian citizenship as I was born in Australia and I consider myself as an 'Australian'. I still maintain close ties with Australia.<sup>71</sup>

5.50 In 2000, the Maltese Government 'accepted the concept of dual citizenship and no longer requires the renunciation of Australian citizenship before the age of 19 years in order to keep the Maltese citizenship'.<sup>72</sup> However, the Committee heard that many Maltese people who renounced their Australian citizenship have faced considerable barriers to regaining Australian citizenship under the current provisions of the Citizenship Act.<sup>73</sup>

5.51 Submissions observed that these Maltese citizens had been unable to resume citizenship under section 23AA of the Citizenship Act. This was because they were deemed to have *retained* their right to Maltese citizenship rather than having *acquired*

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68 SCG, *Submission 665*, p. 95.

69 The Malta Cross Group, *Submission 452*, pp. 4-5; Maltese Welfare (NSW) Inc, *Submission 77*, p. 1; SCG, *Submission 665*, p. 95.

70 The Malta Cross Group, *Submission 452*, p. 3; Maltese Community Council of Victoria, *Submission 214*, p. 1; Mr Lawrence Dimech, Maltese Welfare (NSW), *Committee Hansard*, 27 July 2004, p. 32.

71 *Submission 499*, p. 1.

72 Maltese Welfare (NSW) Inc, *Submission 77*, p. 3; see also The Malta Cross Group, *Submission 452*, p. 6.

73 See, for example, The Malta Cross Group, *Submission 452*, p. 2; SCG, *Submission 665*, p. 96; Ms Anne Marie Galea, *Submission 499*, p. 2; Maltese Welfare (NSW) Inc, *Submission 77*, p. 1.

a foreign citizenship.<sup>74</sup> Several submissions suggested that this was discriminatory when compared with people who had lost their citizenship under section 17.<sup>75</sup> For example, the Malta Cross Group pointed out that:

91% of Australian-born citizens who 'acquired' foreign citizenship have been successful in resuming their Australian Citizenship under Section 23AA, yet not one Maltese (who renounced), having applied under the same Section, has ever been accepted to resume their Australian birth-right, despite having the same compelling reasons required under this section ...<sup>76</sup>

5.52 The Malta Cross Group continued:

So here you have the anomalous situation whereby the rights of Australian-born citizens are split into two categories, one group whose application to resume is accepted and the other group whose application is rejected. It is indeed even more anomalous when you think that those Australian-born Citizens, undoubtedly of a more mature age, who freely chose to 'acquire' the citizenship of another country can apply to resume their birth-right under Section 23AA but those Maltese who had no choice, cannot!<sup>77</sup>

5.53 Several submissions highlighted that many of these Australian-born Maltese are also unable to resume Australian citizenship under section 23AB of the Citizenship Act, because that section contains an age limit of 25 years. These submissions pointed out that many affected Maltese are now older than 25 years, and have therefore exceeded this limit.<sup>78</sup> As the Malta Cross Group remarked:

From within a single family you now find siblings who are both under and over the imposed age limit. This means that some are eligible to return to Australia while others are not. This discriminatory amendment gives rise to family isolation, discord and splits family unity.<sup>79</sup>

5.54 Submissions also noted that the requirement to state an intention to return to Australia to live within three years is a further barrier to resuming citizenship renounced under section 18.<sup>80</sup>

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74 The Malta Cross Group, *Submission 452*, p. 2; SCG, *Submission 665*, p. 96.

75 The Malta Cross Group, *Submission 452*, p. 2; SCG, *Submission 665*, p. 96; Ms Anne Marie Galea, *Submission 499*, p. 2; Maltese Welfare (NSW) Inc, *Submission 77*, p. 1.

76 *Submission 452*, p. 2.

77 *ibid.*

78 The Malta Cross Group, *Submission 452*, pp. 2 & 6; Maltese Welfare (NSW) Inc., *Submission 77*, p. 1; Mrs Ann Marie Galea, *Submission 499*, p. 2; SCG, *Submission 665*, p. 96; Mr Lawrence Dimech, Maltese Welfare (NSW), *Committee Hansard*, 27 July 2004, p. 34.

79 *Submission 452*, pp. 2-3.

80 *Australian Citizenship Act 1948*, subpara 23AB(2)(d)(ii); see also The Malta Cross Group, *Submission 452*, p. 7; Maltese Community Council of Victoria, *Submission 214*, p. 2; SCG, *Submission 665*, p. 96.

5.55 However, the proposed changes to the Citizenship Act, announced during the Committee's inquiry, would amend the resumption provisions for citizenship renounced under section 18. The Minister's fact sheet states:

Former Australian citizens who renounced their Australian citizenship to acquire or retain another citizenship, or renounced to avoid significant hardship or disadvantage will also be given the opportunity to resume their Australian citizenship, if they are of good character.<sup>81</sup>

5.56 Once again, the SCG welcomed these proposed changes. At the same time, there were concerns that the proposed changes would not include the children born to individuals after they renounced their Australian citizenship under section 18 of the Citizenship Act.<sup>82</sup> For example, Ms Anne MacGregor from the SCG argued:

... the minister's proposed changes do not currently include the children born to individuals after they were forced to renounce their Australian citizenship using section 18 of the Australian Citizenship Act ... This group, of course, encompasses the children of all those Australian born individuals, almost 2,000 people, who had to renounce their citizenship in Malta as teenagers ...<sup>83</sup>

5.57 Ms MacGregor continued:

We submit that the situation of those children is no different, practically speaking, from the children born to section 17 victims after their loss of citizenship. We see it as being very important that this inquiry recommend that the announced changes be extended to include the children of section 18 victims born after their parents' loss of citizenship.<sup>84</sup>

5.58 The Committee queried whether there was any plan for such children to be covered by the proposed amendments. Representatives from DIMIA responded that 'it is an issue that will be considered'<sup>85</sup> and that 'there may well be further changes down the track, but that is the minister's prerogative'.<sup>86</sup>

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81 Minister for Citizenship and Multicultural Affairs, the Hon. Mr Gary Hardgrave MP, Media Release H128/2004, 7 July 2004, p. 1; see also DIMIA, *Committee Hansard*, 29 July 2004, pp. 28-29.

82 Ms Anne MacGregor, SCG, *Committee Hansard*, 4 August 2004, p. 1; Mr John MacGregor, SCG, *Committee Hansard*, 19 July 2004, p. 8; see also SCG, *Submission 665D*, pp. 4 & 10-13; Mr Lawrence DiMech, *Committee Hansard*, 27 July 2004, pp. 32 & 34.

83 *Committee Hansard*, 4 August 2004, pp. 1-2.

84 *ibid*, p. 2.

85 *Committee Hansard*, 29 July 2004, p. 30.

86 *Committee Hansard*, 29 July 2004, p. 31.

*The Committee's view*

5.59 The Committee considers that notions of Australian citizenship should be more inclusive. The Committee welcomes the proposed changes to make it easier to resume citizenship renounced under section 18 of the Citizenship Act. However, the Committee agrees that children of people who renounced their citizenship under section 18 should also be eligible for Australian citizenship.

***Other citizenship issues***

5.60 Other specific citizenship issues that were raised with the Committee will be considered briefly below. These include:

- restrictions on dual citizenship in other countries;
- children born overseas before 1949 to Australian mothers;
- former child migrants; and
- other issues.

*Restrictions on dual citizenship in other countries*

5.61 While both Malta and Australia now allow for dual citizenship in all circumstances, some submissions pointed out that a number of other countries do not allow for dual citizenship. As a result, some Australian citizens may still be required to renounce their Australian citizenship under section 18. The SCG submitted that:

... in some countries where Australians live and seek to be naturalised, local law may still require the formal renunciation of Australian citizenship under Section 18 of the *Australian Citizenship Act 1948*. Failure to produce evidence of a Section 18 renunciation as part of a naturalisation application in particular countries prevents Australian citizens in those countries from becoming dual citizens.<sup>87</sup>

5.62 The SCG noted Germany and Denmark as examples of countries which restrict dual citizenship.<sup>88</sup> The Committee also heard from Australians living in countries which restrict dual citizenship. For example, Dr Jill Walker submitted:

I'm very glad that Australia now accepts dual citizenship. However, Norway doesn't, and giving up my Australian citizenship to become a Norwegian citizen would be a very difficult decision. It would feel like giving up my identity.<sup>89</sup>

5.63 Similarly, Ms Jane Kristensen, who lives in Denmark, commented:

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87 *Submission 665*, pp. 91-92.

88 *ibid*, p. 92.

89 *Submission 399*, p. 2.

Once I acquire my resident visa here, it is valid for 7 years ... After the 7 years, one is requested to apply for citizenship and upon doing so in Denmark means to forsake your own citizenship. I would have to become a Danish citizen to live here indefinitely and forgo my Australian citizenship.<sup>90</sup>

5.64 The SCG observed that:

Citizens of countries with no citizenship renunciation provisions are placed in a much more favourable position when applying for naturalisation in countries such as Denmark and Germany. As formal renunciation of their original citizenship is simply legally impossible under the law of their country of original citizenship, they are often able to become dual citizens.<sup>91</sup>

5.65 For this reason, the SCG suggested that 'it is time to review the current relevance of Section 18'.<sup>92</sup> The Committee agrees that a review of section 18 of the Citizenship Act should be conducted.

#### *Children born overseas before 1949 to Australian mothers*

5.66 Another specific citizenship issue raised during the inquiry was the five year limit (1991-1996) for registration of citizenship by descent by children born overseas before 1949 to Australian citizen mothers. The Committee received submissions from two individuals directly affected by this issue.<sup>93</sup> However, the Committee notes that the changes proposed by the Minister would provide for Australian citizenship by descent for people born overseas before 26 January 1949, to a mother who became an Australian citizen on commencement of the Citizenship Act (on 26 January 1949).<sup>94</sup>

#### *Former child migrants*

5.67 The Committee also received submissions from some individuals who could be described as 'former British child migrants'.<sup>95</sup> These individuals had migrated to Australia as children from the UK (or another Commonwealth country), lived in Australia for some time, but subsequently moved overseas.<sup>96</sup> In terms of their legal

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90 *Submission 70*, pp. 1-2.

91 *Submission 665*, p. 92.

92 *ibid.*

93 Mr Clive Pillinger, *Submission 534*; Mr Anthony Alexander, *Submission 548*; see also DIMIA, *Submission 656*, p. 2.

94 DIMIA, *Committee Hansard*, 29 July 2004, p. 29; see also Minister for Citizenship and Multicultural Affairs, the Hon. Mr Gary Hardgrave MP, Media Release H128/2004, 7 July 2004.

95 Mr Michael Young, *Submission 156* and *156A*; Mr Phillip Cheetham, *Submission 326*; Mr Michael Jack, *Submission 455*; see also SCG, *Submission 665D*, pp. 16-20.

96 *ibid.*

status, these people were permanent residents in Australia, and were entitled to apply for Australian citizenship while they were living in Australia, but did not do so. In some cases, since they were 'British subjects', these individuals thought they were Australian citizens when they left Australia.<sup>97</sup> However, on living overseas for several years, they lost their permanent residence status, and were no longer able to apply for Australian citizenship. In their submissions, these individuals expressed a desire to gain Australian citizenship. For example, Mr Phillip Cheetham submitted:

... I had never taken Australian citizenship because I had always thought that it didn't matter and being a British citizen was "the same thing" ... I was a child immigrant to Australia and had no idea of the immigration rules when I left. If I had known, I would have taken Australian citizenship before I felt. I certainly consider myself Australian as I remember very little of England.<sup>98</sup>

5.68 Mr Michael Young, who was in a similar situation, suggested that people in these circumstances should be able to obtain citizenship – subject to certain conditions, such as a minimum period of residence, and having maintained close connections with Australia.<sup>99</sup>

5.69 The SCG was concerned that the proposed changes to the Citizenship Act would not assist these former British child migrants and suggested that these individuals should be 'allowed to rejoin the Australian family'.<sup>100</sup> The SCG suggested that these people should be able to apply for Australian citizenship subject to being able to show good character, maintaining close and continuing ties with Australia. The SCG also proposed that:

... a full examination should be undertaken as to the other limitations which might appropriately be imposed on any citizenship by grant concession for such cases, at the same time taking care not to arbitrarily exclude groups of individuals due to legislation deadlines for application or other dates.<sup>101</sup>

5.70 The SCG further acknowledged that 'this issue is a highly complex one, which deserves further study'.<sup>102</sup>

#### *Other issues*

5.71 The SCG also raised a number of other circumstances which it was concerned may not be resolved by the proposed changes to the Citizenship Act.<sup>103</sup> However, the

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97 For example, Mr Michael Young, *Submission 156A*, p. 1.

98 *Submission 326*, p. 2.

99 *Submission 156*, p. 1 and *Submission 156A*, p. 3.

100 *Submission 665D*, p. 18.

101 *ibid*, p. 19.

102 *ibid*, p. 20.

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Committee received little other evidence on these issues, and it was thus difficult to ascertain how many people were affected by these particular situations.

5.72 Another concern raised by the SCG related to delays, of six months or longer, in processing resumption applications. The SCG suggested that a time limit of three months or less should be set for processing all resumption applications from the date of lodgement.<sup>104</sup>

### ***Information and awareness relating to citizenship***

5.73 The role of government in providing information to expatriates has been considered in Chapter 4. Some submissions suggested that the information and services available to Australian expatriates specifically in relation to citizenship issues could be substantially improved.<sup>105</sup> For instance, one submitter related that they had received misleading information in relation to citizenship:

Until recently I was under the impression that if, in order to facilitate my career prospects I became a US citizen, I would lose my Australian citizenship. This misconception was reinforced by information I received from the Australian Consulate in Chicago when I applied for a new Australian passport in October 2003. At the time I was told that if as an adult I took up citizenship in another country, I would lose my Australian citizenship ... Luckily I've since discovered that this is no longer the case ... The Australian government should ensure that all of its representative arms are providing the correct information to Australians abroad.<sup>106</sup>

5.74 Similarly, the SCG noted that it:

... receives many anecdotal reports of encounters on citizenship matters at Australian missions around the world from those in Diaspora ... Many report that the information they have received either on the telephone or in person was unclear, confusing, or insufficient. In some very unfortunate instances, individuals have relied on incorrect or unclear advice obtained from a mission and subsequently taken steps which it later emerges were to their significant legal detriment.<sup>107</sup>

5.75 The SCG offered several suggestions for improving the information made available to Australian expatriates. These suggestions included:

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103 *Submission 665D*, p. 5; see also Ms Anne MacGregor, *Committee Hansard*, 4 August 2004, p. 1.

104 *Submission 665*, p. 104.

105 See, for example, Ms Camille Hughes, *Submission 353*, p. 3; Mr Maxwell Hughes, *Submission 51*, p. 2; SCG, *Submission 665*, pp. 56-64.

106 *Submission 459*, pp. 1-2.

107 *Submission 665*, pp. 65 & 67.

- enhancing and improving the DIMIA citizenship website to include more detailed and specific advice in relation to citizenship issues for Australian expatriates;
- using an internationally accessible phone number for the Citizen Information Line; and
- improving citizenship advice and services at overseas missions, and in particular that DIMIA conduct regular training for staff in overseas missions to enable them to handle queries about citizenship from expatriates.<sup>108</sup>

5.76 In response to the Committee's questions on this issue, a representative from DIMIA acknowledged its responsibility to keep expatriates informed in relation to changes to citizenship legislation:

We clearly accept responsibility for citizenship issues ... we certainly enhance the web site on a regular basis. It is something we will increasingly focus on because it is the most efficient way for mass communications on a global basis. We could have done it better in the past, and we will endeavour to do it better in the future.<sup>109</sup>

5.77 However, the representative from DIMIA also argued:

At the end of the day, the onus is on the person who is taking a life decision to fully inform themselves from available sources as to the consequences of their potential decision.<sup>110</sup>

5.78 The Committee agrees that greater efforts could be made to improve the information available in relation to citizenship to overseas Australians. As suggested by the SCG, these improvements could be made to information available through a number of different mediums, including online information, telephone services and at Australian consular missions. In particular, a web portal designed specifically for expatriates, as discussed in Chapter 4, could provide citizenship information relevant to expatriates.

## **Voting issues**

*The issue ... of whether citizens who reside abroad should be allowed to vote, under what conditions and for how long, is a perplexing one which raises deep questions about the meaning of democracy in a world environment in which people are becoming increasingly mobile.*<sup>111</sup>

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108 *ibid*, p. 67; see also *Submission 665D*, p. 31.

109 *Committee Hansard*, 29 July 2004, pp. 31-32.

110 *ibid*, p. 32.

111 A Blais, L Massicotte and A Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws', *Electoral Studies*, Vol 20, No 1, March 2001, p. 59.

5.79 Another legal concern of overseas Australians raised during the Committee's inquiry related to enrolment and voting in Australian elections. Key issues which will be discussed further below include:

- low voter turnouts for Australians living overseas;
- current requirements under the *Commonwealth Electoral Act 1918* (Commonwealth Electoral Act);
- whether voting and enrolment provisions should be extended for Australians overseas; and
- education and information available about enrolment and voting for overseas Australians.

### *Statistics on overseas voters*

5.80 Several submissions noted with concern the low levels of expatriate Australians voting in federal elections.<sup>112</sup> During the 2001 federal election, 63,036 sets of ballot papers were issued at overseas posts.<sup>113</sup> However, it appears that most of these overseas votes were cast by Australians on short-term travel. On 15 October 2001, there were 10,636 Eligible Overseas Electors registered on the electoral roll.<sup>114</sup> However, the Australian Electoral Commission (AEC) reported that only 5,822 (54.7 per cent) of these voted at the 2001 federal election.<sup>115</sup>

5.81 Professor George Williams suggested the low number stemmed from two main causes:

We think that very small number—5,822—reflects the lack of information provided to expat Australians and also the great difficulty in navigating your way through a very complex legal regime that has not been subject at any point in its history to a thoughtful and detailed policy analysis as to what the objects are and where the balances should lie.<sup>116</sup>

5.82 The SCG also expressed concern that many Australians overseas are:  
 ... disenfranchised and have no possibility at the moment under the law as it stands to get themselves back on the electoral roll.<sup>117</sup>

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112 SCG, *Submission 665*, pp. 106 & 115-116; Gilbert & Tobin Centre of Public Law, *Submission 286*, p. 4; Professor George Williams, *Committee Hansard*, 27 July 2004, p. 46.

113 AEC, *Behind the Scenes: the 2001 Election Report*, Canberra, 2002, pp. 15 & 59; see also Joint Standing Committee on Electoral Matters, *2001 Federal Election: Report of the inquiry into the 2001 Federal Election and Matters Related Thereto* (JSCEM report), 23 June 2003, pp. 64-65.

114 AEC, *Election 2001: Behind the Scenes: the 2001 Election Report*, Canberra, 2002, p. 9; see also JSCEM report, p. 67.

115 AEC, *Submission 186* to the JSCEM inquiry into the 2001 Federal Election, p. 6; see also JSCEM report, p. 67.

116 *Committee Hansard*, 27 July 2004, p. 46.

117 *Submission 665*, pp. 115-116.

5.83 The SCG submitted that, in their estimates, up to 500,000 overseas Australians are prevented from voting because of the overseas enrolment restrictions in the Commonwealth Electoral Act.<sup>118</sup> Indeed, many submissions received by the Committee were from expatriate Australians who expressed a desire to be able to vote, and who felt that they had been disenfranchised by the restrictions in the Commonwealth Electoral Act.<sup>119</sup>

5.84 For example, Mr Mark Pennay commented that:

The disenfranchised status of those removed from the Australia[n] electoral roll is felt acutely, especially by the politically active and informed. I have been ineligible to vote anywhere for the past ten years ...<sup>120</sup>

5.85 Similarly, Mr Michael Laird submitted that:

I have been disenfranchised for around 15 years. I felt my disenfranchisement most acutely at the time of the 1999 referendum on an Australian republic.<sup>121</sup>

5.86 In the same vein, Mr John Griffin declared:

I am well informed on Australian politics, I have an enormous interest in, pride in and love for the country of my birth, and I just want to vote.<sup>122</sup>

### ***Current requirements under the Commonwealth Electoral Act***

5.87 The grounds on which Australians living overseas may vote depends on the enrolment requirements set out in sections 94 and 94A of the Commonwealth Electoral Act.<sup>123</sup> As Professor George Williams stated in evidence, the current law is 'complex, bureaucratic and difficult'.<sup>124</sup>

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118 *ibid*, p. 106.

119 See, for example, Mr Jeff Bowman, *Submission 78*, p. 2; Ms Sharon Readon, *Submission 196*, p. 2; Mr Simon Robinson, *Submission 79*, p. 2; Mr Michael Laird, *Submission 298*, p. 1; Dr Anthony Linden, *Submission 375*, p. 5; Mr John Griffin, *Submission 512*, p. 1; Mr Mark Pennay, *Submission 623*, p. 3; Mr Michael Garrett, *Submission 627*, p. 2; Ms Doris Schulze, *Submission 517*, p. 1; Mr Julian Callachor, *Submission 520*, p. 3; Mr Neil McLaurin, *Submission 528*, p. 1; Ms Maria Butler, *Submission 586*, p. 1.

120 *Submission 623*, p. 3.

121 *Submission 298*, p. 1.

122 *Submission 512*, p. 1.

123 There is no express right to vote for Australian citizens in the Australian Constitution. The SCG suggested that the Constitution be amended to include a broad and explicit constitutional right to vote for all Australian citizens: *Submission 665*, p. 111.

124 *Committee Hansard*, 27 July 2004, p. 49.

5.88 Currently, under section 94, Australian citizens moving overseas who are *already* on the electoral roll can remain enrolled by registering with the AEC as an 'Eligible Overseas Elector' (EOE) if they:

- are leaving Australia within three months, or left Australia less than three years ago (and are still enrolled at their previous Australian address); and
- intend to resume living in Australia within six years of their departure.

5.89 Under section 94A, Australian citizens living overseas who are *not* on the electoral roll (but would be eligible to enrol if they were in Australia) can apply to enrol as an EOE from outside Australia if they:

- left Australia in the previous three years; and
- intend to resume residence in Australia within six years of their departure.

5.90 People enrolling from outside Australia are generally enrolled in the electoral division for their last address in Australia. If that is not relevant, they are enrolled in the division of their next of kin, or the division in which they were born, or the division with which they have the 'closest connection'.<sup>125</sup>

5.91 If persons registered as an EOE are away from Australia for longer than six years, they can apply to have their EOE status extended by one year at a time.<sup>126</sup> Enrolment and voting by Australians overseas is not compulsory. However, if they do not vote or apply for a postal vote at a federal election, their EOE status is forfeited and their enrolment cancelled.<sup>127</sup>

#### *Recent amendments to the Commonwealth Electoral Act*

5.92 The Committee notes that recent amendments to the Commonwealth Electoral Act made some changes in relation to overseas voters.<sup>128</sup> In particular, the two-year cut-off point for application for EOE status was extended to three years. The requirement for applicants to have left Australia for a purpose related to their career or employment, or their spouse's employment was also removed. These amendments were in line with recommendations by the Joint Standing Committee on Electoral Matters (JSCEM) in its report in relation to the 2001 federal election.<sup>129</sup>

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125 Commonwealth Electoral Act, subs 94A(3).

126 Commonwealth Electoral Act, subs 94(8) and 94(9).

127 Commonwealth Electoral Act, subs 94(13).

128 *Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Act 2004*, Schedule 1, cls 10-12.

129 JSCEM report, p. 76.

### *Should the enrolment restrictions be relaxed for Australians overseas?*

5.93 A considerable number of submissions received by the Committee argued that the right to vote should be extended much further in relation to Australians living overseas.<sup>130</sup> The submission from the Gilbert & Tobin Centre of Public Law observed that the reasons underlying the restrictions in the Commonwealth Electoral Act were unclear, and that:

In the absence of historical record or a clear justification for the measure, it might be assumed that Australians living overseas were originally given limited voting rights because it was felt that they would lose touch with Australian society and not be knowledgeable enough to make an informed decision. Such a justification may have been valid in years past, but in the current interactive, online society, such reasoning is not as persuasive.<sup>131</sup>

5.94 Indeed, as outlined in Chapter 2, many Australians overseas maintain considerable connections with Australia, and are well-informed in relation to Australian current affairs. In particular, many submissions pointed out that internet technology means it is easier than ever for Australians overseas to keep informed of events and issues in Australia.<sup>132</sup> For example, Mr Mark Pennay argued that:

The internet has brought with it a sea change in terms of the maintenance of bonds with Australia ... the current diaspora is perhaps more up to date on what is happening at home than are many resident Australians.<sup>133</sup>

5.95 Similarly, Professor George Williams of the Gilbert & Tobin Centre of Public Law observed:

It may indeed be that a young Australian who has gone overseas ... to study for a period of time is more aware and more able to be aware of current Australian events through a good Internet connection than someone who is in a remote Australian community, who does not have a decent broadband connection, who does not get the newspapers and who cannot check the Internet. Isolation can sometimes be greater internally than externally.<sup>134</sup>

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130 See, for example: Gilbert & Tobin Centre of Public Law, *Submission 286*, p. 4; SCG, *Submission 665*, pp. 106-117; *Submission 466*, p. 5; Ms Georgina Wright, *Submission 496*, p. 1; Mr Michael Laird, *Submission 298*, p. 1; Dr Anthony Linden, *Submission 375*, p. 5; Mr John Griffin, *Submission 512*, p. 1; Mr Ronald Delmenico, Australian New Zealand-American Chambers of Commerce, *Committee Hansard*, 28 July 2004, pp. 39 & 41-42; Mr Richard Baxter, *Submission 538*, p. 2; Mr Julian Callachor, *Submission 520*, p. 3; Mr Shannon Tobin, *Submission 480*, p. 2.

131 *Submission 286*, p. 2.

132 See, for example, Mr Mark Pennay, *Submission 623*, p. 2; Mr Michael Garrett, *Submission 627*, p. 2; Mr Bryan Mercurio, *Committee Hansard*, 27 July 2004, p. 48; Professor Graeme Hugo, *Committee Hansard*, 28 July 2004, p. 2.

133 Mr Mark Pennay, *Submission 623*, p. 2.

134 *Committee Hansard*, 27 July 2004, p. 48.

5.96 Several submissions also suggested that voting should simply be a right of Australian citizenship, rather than being connected to residency in Australia.<sup>135</sup> The Gilbert & Tobin Centre of Public Law submitted that:

The right to vote is not only a fundamental right and privilege, but a basic entitlement of citizenship. It should not be withdrawn without strong overriding justification.<sup>136</sup>

5.97 Mr Simon Robinson submitted that:

I find it strange that Australia, one of the few countries that has made it mandatory to vote, effectively shuts out hundreds of thousands of voters who live overseas and may not have the ability or the kind relatives to be able to maintain an Australian address and thus stay on the electoral roll.<sup>137</sup>

5.98 Others pointed to other justifications for extending the right to vote, such as the fact that many overseas Australians still pay tax in Australia.<sup>138</sup> For example, Mr Jeff Bowman submitted:

I own a house in Australia, I have taxation on rents without a vote; I thought the Boston Tea party sought to correct this?<sup>139</sup>

5.99 Some submissions also suggested that extending the ability to vote may encourage expatriates to maintain connections to Australia.<sup>140</sup> In particular, the SCG suggested that:

While hundreds of thousands of Citizens in the Diaspora are denied the right to vote, any efforts at other levels to develop 'inclusive' policies embracing the Diaspora and aimed at allowing Australia to 'exploit' the Diaspora resource will be undermined at the most basic philosophical level. It is naïve to expect that those in the Diaspora will ever truly feel part of the Australian nation if they are prevented from exercising their democratic right to elect those who govern.<sup>141</sup>

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135 See for example, SCG, *Submission 665*, p. 106; Mr Michael Laird, *Submission 298*, p. 1; Gilbert & Tobin Centre of Public Law, *Submission 286*, p. 1; *Submission 466*, p. 4; Dr Anthony Linden, *Submission 375*, p. 5; Mr John Griffin, *Submission 512*, p. 1; Mr Ronald Delmenico, Australian New Zealand-American Chambers of Commerce, *Committee Hansard*, 28 July 2004, pp. 41-42; Mr Richard Baxter, *Submission 538*, p. 2.

136 *Submission 286*, p. 1.

137 *Submission 79*, p. 2.

138 See, for example, Mr Jeff Bowman, *Submission 78*, p. 2; Ms Sharon Readon, *Submission 196*, p. 2; Australian Chamber of Commerce, Singapore, *Submission 369*, p. 7.

139 *Submission 78*, p. 2.

140 SCG, *Submission 665*, p. 116; Mr Ronald Delmenico, Australian New Zealand-American Chambers of Commerce, *Committee Hansard*, 28 July 2004, p. 39; see also A Blais, L Massicotte and A Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws', *Electoral Studies*, Vol 20, No 1, March 2001, pp. 41-61 at p. 56.

141 *Submission 665*, p. 116.

5.100 In the same vein, Mr Mike Garrett submitted that:

Despite going to some trouble to make sure I was registered to vote as an overseas elector when I first left Australia, I was extremely disappointed at missing out on voting in a state election because of ridiculous bureaucratic convolutions that somehow meant I was dropped from the electoral roll without being aware of it. And that had a really terrible effect on my sense of being Australian at the time.<sup>142</sup>

5.101 The Committee notes that the JSCEM report raised concerns that some Australian expatriates may be able to vote in two nations if they also have a right to vote in their country of residence or dual citizenship.<sup>143</sup> In contrast, some submitters remarked that, having been removed from Australian electoral rolls, they were unable to vote anywhere in the world.<sup>144</sup>

#### *Overseas examples*

5.102 The Gilbert & Tobin Centre of Public Law (the Centre) pointed out that many other countries have arrangements for voters living overseas.<sup>145</sup> Professor George Williams noted that:

One academic study looked at 63 nations and found that a majority of those—33 of the 63—did not have any time limitations on overseas citizens being able to vote. Many of the remaining 30 nations were more liberal than the Australian regime. We think there is a problem, because our regime is one of the more restrictive in the world. That seems ... inconsistent with the sort of aspirations we have for Australian citizenship.<sup>146</sup>

5.103 The Centre also outlined several specific overseas examples. In Canada, electors who have been living outside Canada for less than five years, and who intend to return to Canada in the future, can remain on the electoral roll.<sup>147</sup> In the UK, an elector can remain on the electoral roll for up to twenty years after leaving the UK and

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142 *Submission 627*, p. 2.

143 JSCEM report, pp. 79-80; see also A Blais, L Massicotte and A Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws', *Electoral Studies*, Vol 20, No 1, March 2001, pp. 41-61 at p. 56.

144 See, for example, Dr Anthony Linden, *Submission 375*, p. 5; Mr Mark Pennay, *Submission 623*, p. 3; Dr Jill Walker, *Submission 399*, p. 2.

145 Gilbert & Tobin Centre of Public Law, *Submission 286*, pp. 3-4; JSCEM report, p. 73; see also A Blais, L Massicotte and A Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws', *Electoral Studies*, Vol 20, No 1, March 2001, pp. 41-61 at p. 56.

146 Professor George Williams, *Committee Hansard*, 27 July 2004, p. 47; see also see also A Blais, L Massicotte and A Yoshinaka, 'Deciding who has the right to vote: a comparative analysis of election laws', *Electoral Studies*, Vol 20, No 1, March 2001, pp. 41-61.

147 *Submission 286*, p. 4.

taking up residency elsewhere.<sup>148</sup> In New Zealand, 'the question is not how long has the elector resided elsewhere, but has the elector returned to New Zealand (for any period of time) within the last three years.'<sup>149</sup>

5.104 Finally, the Centre noted that in the US, there are no limits on the voting rights of citizens overseas: 'the question is simply one of citizenship'.<sup>150</sup> Some submissions suggested that Australia should take a similar approach.<sup>151</sup> For example, Mr Ronald Delmenico from the Australian New Zealand-American Chambers of Commerce suggested that Australia should follow this US example:

Without such rights it is easy to see how an Australian might transfer loyalty over time to the country that affords them voting rights—the single greatest expression of citizenship participation. Positively addressing issues like that would help them retain a strong, constant tie between Australia and its expatriate community.<sup>152</sup>

5.105 Similarly, the SCG suggested that Australian citizens living overseas should be able to enrol *at any time* after they cease to reside in Australia, and without having to state an intention to return to Australia within any period of time.<sup>153</sup> However, Mr Bryan Mercurio and Professor George Williams felt the US model went too far.<sup>154</sup>

5.106 Mr John MacGregor from the SCG suggested that the UK approach might also be suitable:

I would favour something like the UK experience, with the possibility of demonstrating further that you do have a continuing economic interest in Australia or other ties or that you are regularly returning to Australia.<sup>155</sup>

5.107 However, Professor George Williams felt that the 20-year period used in the UK model '... is too long for someone to be outside of the country without any form of return and still be able to vote'.<sup>156</sup>

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148 Gilbert & Tobin Centre of Public Law, *Submission 286*, p. 4; Professor George Williams, *Committee Hansard*, 27 July 2004, p. 47.

149 *Submission 286*, p. 4.

150 *ibid.*

151 Mr Julian Callachor, *Submission 520*, p. 3; Mr Ronald Delmenico, Australian New Zealand-American Chambers of Commerce, *Committee Hansard*, 28 July 2004, p. 39; Mr Shannon Tobin, *Submission 480*, p. 2.

152 *Committee Hansard*, 28 July 2004, p. 39.

153 *Submission 665*, p. 107.

154 Mr Bryan Mercurio, *Committee Hansard*, 27 July 2004, p. 49; Professor George Williams, *Committee Hansard*, 27 July 2004, pp. 49-50.

155 *Committee Hansard*, 29 July 2004, p. 12.

156 *Committee Hansard*, 27 July 2004, pp. 49-50.

5.108 Mr Bryan Mercurio and Professor George Williams favoured the New Zealand approach, because it required a continued connection with Australia.<sup>157</sup> Mr Bryan Mercurio commented that, for example:

... the New Zealand model is probably a better model: showing close ties, one of which is returning to the country within a set period of time. I am not necessarily saying that three years, as in New Zealand, is the correct model. Maybe it should be five years, six years or longer, but that model clearly shows you still have an interest ...<sup>158</sup>

5.109 Similarly, Professor George Williams expressed the view that:

I think that there ought to be some level of connection with Australia required, beyond mere citizenship ... For me, the question is what connection there ought to be and ... it ought to be something that is easy to administer.<sup>159</sup>

5.110 In response to the Committee's queries as to how a system similar to the New Zealand system might be administered in Australia, Professor Williams responded:

I think administratively the way it would work is that someone would simply tick a box indicating that they have actually done so [returned to Australian within a certain number of years]. The Electoral Commission may audit some of those or, if it has particular reasons to do so, it may require evidence. But otherwise I do not think there should be a requirement for evidence.<sup>160</sup>

5.111 When questioned whether some form of statutory declaration could accompany an enrolment application, Professor Williams responded:

It may be good ... to require a witness to that, because it adds a level of formality and makes it clear to someone that this is a document of some importance ... Of course, when you compare that type of declaration to how you enrol to vote in the first place, it is not markedly different. It is not as if you have to go through any more significant hoops to enrol in the first place, so I cannot see why you would add an extra limitation to it in terms of that sort of declaration.<sup>161</sup>

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157 Mr Bryan Mercurio, *Committee Hansard*, 27 July 2004, p. 49; Professor George Williams, *Committee Hansard*, 27 July 2004, pp. 49-50.

158 *Committee Hansard*, 27 July 2004, p. 49.

159 *ibid.*

160 *ibid.*, p. 51.

161 *ibid.*

5.112 Another suggestion in some submissions was that a special electorate could be created for expatriate Australians.<sup>162</sup> This is considered further in Chapter 8.

### *The Committee's view*

5.113 The Committee agrees that the Commonwealth Electoral Act should be extended to allow a greater number of expatriate Australian citizens to enrol and therefore to vote. The Committee believes that the current restrictions are increasingly redundant in modern society. The Committee recognises that many Australians living overseas are increasingly mobile, and many return to Australia on a regular basis. Many expatriates also maintain their connections to Australia, and are able to keep informed in relation to Australian affairs through improved communication technologies.

5.114 The Committee therefore considers that the enrolment provisions should be relaxed to make it easier for Australian citizens overseas to maintain their electoral enrolment (or 'EOE status'). At the same, the Committee supports the notion that such Australians should be required to demonstrate some form of continuing connection with Australia, such as having returned to Australia in recent years, along the lines of the approach taken by New Zealand.

5.115 The Committee therefore considers that Australian citizens moving or living overseas should be entitled to register as an EOE if they:

- either left Australia in the previous three years or have returned to Australia (for any length of time) in the past three years; and
- intend to resume residence in Australia within six years of their departure.

5.116 The Committee recognises that, under the current provisions, it is particularly difficult to maintain enrolment once an Australian has been living overseas for over six years. Therefore, in the case of Australian citizens who have been living overseas for over six years, the Committee recommends that they should be entitled to renew their enrolment for up to three years at a time if they have returned to Australia (for any length of time) within the last three years.

### *Administrative considerations*

5.117 The SCG considered that any potential administrative issues created by extending the ability to enrol and vote to overseas Australians would not be significant enough to justify rejecting such amendments. The SCG felt the existing provisions in the Commonwealth Electoral Act prevent 'forum shopping' or 'electorate stacking' by overseas Australians. As outlined earlier, these provisions limit the electorate in which

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162 Mr Simon Robinson, *Submission 79*, p. 2; Ms Sharon Readon, *Submission 196*, p. 2; Mr Andrew Wettern, *Submission 457*, p. 2; *Submission 466*, p. 5; China-Australia Chamber of Commerce, *Submission 637*, p. 4; *Submission 459*, p. 3.

a person can enrol to that of their last address, their next of kin, or where they were born.<sup>163</sup> The SCG also argued that:

Further, even if the right to vote were returned to all overseas Australians tomorrow, it is unrealistic to expect that more than a few thousand would exercise that right. First, many would not realise that they had been re-enfranchised, as at present virtually no avenues exist for the AEC to reach overseas Australians. Second, not all those who were aware that they could vote would exercise their right to vote because they would not feel informed or interested enough to make the effort from so far away.<sup>164</sup>

5.118 On the other hand, the Gilbert & Tobin Centre of Public Law recognised that changing the current laws may involve some administrative considerations:

We do not suggest that such a change would be easy or cheap to implement. Increasing the number of overseas voters would require at the very least that the Australian Electoral Commission be given sufficient resources to manage the process. Maintaining an accurate and up-to-date electoral roll will be challenging ... Nevertheless, recognising and giving effect to the citizenship rights of all Australians is an important and worthy goal.<sup>165</sup>

### *Compulsory voting?*

5.119 A related issue is whether voting for overseas Australians should be compulsory. Currently, voting is not compulsory for overseas Australians, although failure to vote may result in cancelled enrolment. It was generally felt that voting should continue to be non-compulsory for overseas Australians.<sup>166</sup> For example, Professor George Williams, while supporting compulsory voting for the general Australian electorate, expressed his view that:

I do not think you could apply compulsory voting in its current form to overseas electors. The impediments to doing so are too high, technologically and administratively, and also I think there are reasons why certain overseas Australian citizens ought not be required to vote.<sup>167</sup>

5.120 He further suggested that registration as an Australian overseas elector should be voluntary, but voting should be compulsory once registered, as this would:

... maintain some of the integrity of the compulsory voting system without running into the problems of trying to track down 900,000 Australians

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163 *Submission 665*, p. 112; see also Commonwealth Electoral Act, subs 94A(3).

164 *Submission 665*, p. 112.

165 *Submission 286*, p. 5.

166 See, for example, Mr Ronald Delmenico, Australian New Zealand-American Chambers of Commerce, *Committee Hansard*, 28 July 2004, p. 38; SCG, *Submission 665*, p. 112.

167 *Committee Hansard*, 27 July 2004, p. 52.

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living overseas and saying, 'Why didn't you vote?' when it would never have been possible in many circumstances to do so.<sup>168</sup>

5.121 However, Mr John MacGregor from the SCG felt that:

... the administrative arrangements for the conduct of overseas voting would have to change considerably before you could think about compulsory voting for overseas electors.<sup>169</sup>

5.122 The Committee agrees that voting should continue to be non-compulsory for overseas Australians.

*Logistical issues and electronic voting*

5.123 Currently, voting overseas is achieved by either voting in person at an overseas polling place (which includes Australian Diplomatic Missions) or by postal vote. Australians overseas at the time of an election may cast a pre-poll vote or apply for a postal vote at designated Australian Embassies, High Commissions, Consulates-General and Consulates. Postal vote applications are also available from the AEC website once an election has been announced. The application is completed and then sent or delivered to the nearest overseas polling place. Ballot papers are then sent to the applicant, and returned by the elector to the Divisional Returning Officer or the Assistant Returning Officer.<sup>170</sup>

5.124 Mr Mike Garrett expressed some dissatisfaction with this process:

I had to take a day off work to travel to the Australian embassy in London to vote in the last national elections, which was annoying. (Postal votes had to be sent in some weeks in advance, as I recall). Sure there could be an easier way!?!<sup>171</sup>

5.125 Similarly Mr Shannon Tobin felt that the process for voting while overseas was too complicated:

Whilst I have been away from Australia I have not voted in any election, due to the complicated process involved of overseas voting ... The voting process needs to be made simpler in order to encourage the expat community to vote and not discourage them...<sup>172</sup>

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168 *ibid*, pp. 52-53.

169 *Committee Hansard*, 29 July 2004, p. 3.

170 [http://www.aec.gov.au/content/what/faqs/vote\\_os.htm#3](http://www.aec.gov.au/content/what/faqs/vote_os.htm#3) (accessed 7 September 2004).

171 *Submission 627*, p. 2.

172 *Submission 480*, p. 2.

5.126 Some submissions suggested that electronic voting should be investigated to facilitate voting for Australians overseas.<sup>173</sup> For example, AustCham Beijing asked:

When will we be able to vote in Australian elections over the internet, rather than by snail mail, or via physically attending an Embassy or Consulate?<sup>174</sup>

5.127 Similarly, the SCG recommended that:

... further research into electronic voting and enrolment methods be pursued as a matter of urgency with a view to their introduction and use as a way of supporting the exercise of the right to vote by Australians overseas.

5.128 The Committee notes that an AEC report has recommended that federal, state and territory Electoral Acts be amended to enable a trial of electronic voting for overseas electors (among others).<sup>175</sup> On the other hand, the Committee notes that the JSCEM report into the 2001 federal election rejected a possible trial of electronic voting by the AEC.<sup>176</sup> The JSCEM report concluded that the AEC should provide that Committee with a detailed implementation plan before any approval for pilot trials.<sup>177</sup>

5.129 While the Committee received little evidence on the issue of electronic voting, the Committee notes electronic voting is being trialled in a number of jurisdictions around the world.<sup>178</sup> The Committee recognises that there are a number of technical and logistical issues, particularly in relation to security and authentication, which may need to be overcome before electronic voting is a viable option.<sup>179</sup>

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173 SCG, *Submission 665*, p. 108; *Submission 466*, p. 5; AustCham Beijing, *Submission 637*, p. 4; Professor George Williams, *Committee Hansard*, 27 July 2004, p. 47.

174 *Submission 637*, p. 4.

175 AEC and Victorian Electoral Commission, *eVolution not revolution, Electronic Voting Status Report 2*, September 2002, p. 20.

176 JSCEM report, p. 267.

177 *ibid.*

178 AEC and Victorian Electoral Commission, *eVolution not revolution, Electronic Voting Status Report 2*, September 2002, p. 2, 17; see also B Mercurio, 'Beyond the Paper Ballot: Exploring Computerised Voting', in G Orr, B Mercurio, G Williams (eds), *Realising Democracy: Electoral Law in Australia*, The Federation Press, Sydney, 2003, p. 241.

179 Australian Electoral Commission and Victorian Electoral Commission, *eVolution not revolution, Electronic Voting Status Report 2*, September 2002, pp. 16-17; see also [http://www.aec.gov.au/content/what/faqs/vote\\_os.htm](http://www.aec.gov.au/content/what/faqs/vote_os.htm) (accessed 7 September 2004).

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### *Education and information on voting for overseas Australians*

5.130 Once again, lack of information for overseas Australians was a common concern when it came to enrolment and voting issues.<sup>180</sup> For example, Ms Georgina Wright stated in her submission:

I have no concerns with the exception of the very silent but deadly law removing one's right to vote if an application for registration as an overseas voter is not applied for. I was lucky enough to find out about the existence of this rule just before the 2 year period was up. Otherwise I'd be 'disenfranchised' for this year's federal elections, which would be a personal disaster.<sup>181</sup>

5.131 Professor George Williams commented that:

... there needs to be improvement in the way information is given to expat Australians about the current legal regime. Information is not easily accessible other than via the Internet, if you already know to look at the Internet. It is not provided in other obvious ways that might assist. That might involve funding issues for the Australian Electoral Commission.<sup>182</sup>

5.132 In its submission, the SCG suggested several ways to increase and improve the information made available to Australians overseas about enrolment and voting, including provision of information at various locations to Australian citizens leaving Australia, and at Australian overseas missions.<sup>183</sup> For example, the SCG suggested that information leaflets could be made available alongside passport application forms at post offices and consular posts.<sup>184</sup> While acknowledging that improved information would prevent future Australians from becoming disenfranchised, the SCG reiterated its concern that many overseas Australians are 'already disenfranchised'. According to the SCG, as a result:

Information about an election is of no practical use to these people at the current time because they have lost the right to vote.<sup>185</sup>

5.133 The Committee notes that the JSCEM report also discussed the low level of awareness of the overseas enrolment provisions.<sup>186</sup> Recommendation 6 of the JSCEM

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180 See, for example, SCG, *Submission 665*, pp. 109-111; Ms Georgina Wright, *Submission 496*, p. 1; Mr Peter Thompson, *Submission 531*, p. 1; Professor George Williams, *Committee Hansard*, 27 July 2004, p. 47; Advance, *Submission 676*, p. 37; Ms Jo Anne Ray, *Submission 370*, p. 16; see also Lowy report, pp. 66-69.

181 *Submission 496*, p. 1.

182 *Committee Hansard*, 27 July 2004, p. 47.

183 *Submission 665*, pp. 109-111; see also Lowy report, which also suggests that the AEC should notify EOs automatically when an election is called: p. 69.

184 *ibid*, p. 109.

185 *ibid*, pp. 115-116.

186 JSCEM report, pp. 76-78.

report suggested that the AEC provide comprehensive information on overseas voting entitlements and enrolment procedures to all electors who contact the AEC about moving overseas.<sup>187</sup> The Federal Government responded to this recommendation as follows:

The AEC will review its approach to providing information to persons who contact it about moving overseas and amend staff training accordingly. The AEC website already provides a substantial amount of information including frequently asked questions, and information about eligibility and forms for overseas electors ... The AEC is also working closely with the Department of Foreign Affairs and Trade to provide better service at the next federal election through the provision of ballot papers electronically to diplomatic posts.<sup>188</sup>

5.134 The Committee understands that the AEC has made efforts to improve the level of education and availability of information since the JSCEM report. This has included an initiative targeting travellers and expatriates,<sup>189</sup> and information and training sessions for consular staff in Canberra and staff in overseas missions.<sup>190</sup> The Committee also notes that the most recent AEC Annual Report states that its customer inquiry email service received more than 1,375 inquiries from Australians living, travelling, or about to depart overseas.<sup>191</sup>

5.135 In response to the Committee's questioning, a representative from DFAT explained its role in providing information to Australians overseas about voting:

We have a very close role with the Australian Electoral Commission in the provision of voting facilities overseas for elections and in doing that we act in effect as an agent of the AEC. When we fulfil that role at the time of elections ... we provide a lot of information about policy, voting procedures and so on. When it comes to information about ongoing changes to legislation in relation to elections that impact on the rights and interests of Australians overseas, I think that is principally an issue for the AEC. We are certainly always happy to provide that information and to use our networks overseas to disseminate that information, but I do not think we would be the initiators of that process.<sup>192</sup>

5.136 A related issue raised in submissions was that some expatriates had removed their name from the electoral roll due to a belief that the Australian Taxation Office

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187 *ibid*, p. 78.

188 Government Response to the Report of the Joint Standing Committee on Electoral Matters: *The 2001 Federal Election, Senate Hansard*, Thursday 16 October 2003, p. 16687; see also SCG, *Submission 665*, pp. 113-114.

189 "AEC launches campaign to get expatriates to vote", *Australian Financial Review*, 31 May 2004, p. 5.

190 AEC, *Annual Report 2002-2003*, p. 58.

191 AEC, *Annual Report 2003-2004*, p. 54 & 193.

192 *Committee Hansard*, 29 July 2004, p. 18.

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(ATO) refers to the roll in assessing a person's residency for tax purposes.<sup>193</sup> The SCG suggested the ATO should issue a Guidance Note stating that a person's inclusion on the electoral roll shall have no bearing on the determination of whether a person is resident or non-resident for taxation purposes.<sup>194</sup> It also suggested that information provided by the AEC should include a clear statement that a person's enrolment status is not a factor to be considered by the ATO in determining their residency status.<sup>195</sup> The Committee received little other evidence on this issue, but notes that, during the JSCEM's inquiry into the 2001 federal election, the ATO undertook to clarify the relevance of registration on the electoral roll in determining residency status.<sup>196</sup>

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193 JSCEM report, p. 81; Dr Anthony Linden, *Submission 375*, p. 5; AustCham Singapore, *Submission 369*, p. 7.

194 SCG, *Submission 665*, p. 110.

195 *ibid*, p. 111.

196 JSCEM report, p. 81.

