

Aux armes, non-citizens

Individual federal politicians have just achieved a notable victory for democracy and individual human rights by initiating and securing the Australian Citizenship Amendment Act, 1990. ROBIN FITZSIMONS argues that they should turn their attention to other causes of injustice in our citizenship law*

One of the most blatant injustices of Australian laws regarding citizenship is an anomalous "own goal" which discriminates against native-born Australians and especially against such women.

By section 17 of the Citizenship Act, we ruthlessly remove Australian citizenship from any Australian-born person who applies for that of another country. Yet, at the same time, we actively encourage (positively evangelise!) newcomers to Australia to become Australian citizens after only two years here (it used to be five, as in Britain) while understandably – and, in my view, properly – allowing them to retain their original citizenship. It has been estimated that, around London alone, at least 200 Australians (the majority of whom are women) annually lose their citizenship – often inadvertently – because of section 17. In addition, many cases are concealed (and therefore not officially documented).

The notorious section 17 was introduced against the wishes of Britain (which had otherwise drafted much of our citizenship act for us) by the Chifley government in 1948. The clause was recast, with some reforms and some "tightening up", by the Hawke government in 1984. On both occasions, its inclusion was overshadowed by more voluminous citizenship legislation.

For an illiberal provision which causes so much misery to Australians, it has been the subject of remarkably little parliamentary debate. Inconsistently, the 1984 Citizenship Amendment Act also deleted the citizenship oath promise to renounce other allegiances. Prime Minister Bob Hawke may care to explain why his government so actively encourages people newly arrived here to take out Australian citizenship and, at the same time, just as readily and much more painfully, removes citizenship from many Australians born and bred here.

The government may also care to examine our anomalous law in the light of long-changed international attitudes.

The 1930 Hague Convention on Conflict of Nationality Laws is often quoted as justification for section 17. This is a nonsense. Its preamble does refer to the general desirability (for reasons not stated) that no person should have more than one citizenship but it most emphatically does not prescribe man-



datory enforceable destruction of citizenship (except in the very limited circumstance of certain formerly married women). Given our many migrant dual nationals, as well as those Australian citizens "born with" dual nationality, it is a manifest absurdity to punish one cohort of our own people as a means of making token adherence to an outdated principle. No other "old Commonwealth" country has such legislation by which the government can deprive its own people of citizenship.

In the context of internationally mixed marriages, our legislation selectively impacts on Australian women. This is because of social mores (and, until recently, legal requirement) by which a married woman has usually been expected to acquire her husband's domicile.

If an Australian woman living overseas with her husband should yield to a corresponding encouragement to acquire his citizenship, she is likely to find herself cut off from her Australian home precisely when her Australian identity is most greatly valued. Worse, the "sins" of the parent are visited upon the children who forfeit their Australian citizenship. Also, children born during periods of parental non-citizenship do

not become Australian citizens. Later, they may well not be able to join their families in Australia.

In the case of the Australian woman married to a non-Australian, her husband's country may – like Australia – exert sanctions which diminish the employability (or superannuation) of non-citizen residents. Furthermore, more than any other group, married women will face the greatest difficulty should they wish to reacquire accidentally forfeited Australian citizenship. The tough regulations for such reacquisition make it impossible for women whose immediate family commitments preclude an imminent resumption of Australian residence.

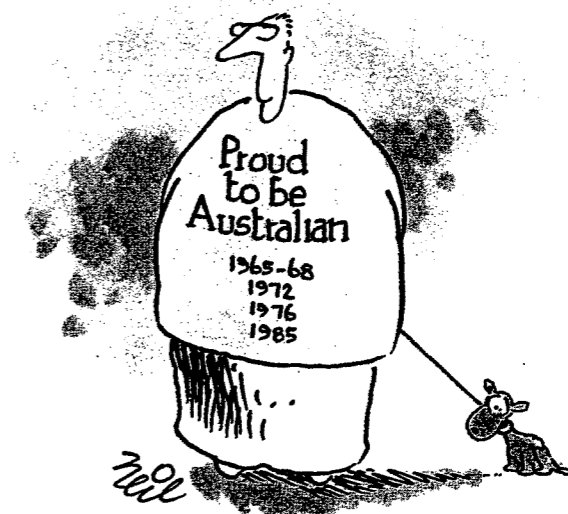
In 1948, there was bipartisan support for the notion that the law should never impose a conflict between marriage and citizenship. This is a civilised concept which we should continue to uphold. The principle was enunciated as Australia led the old Commonwealth when, in 1948, it legislated to outlaw the automatic removal of our nationality from Australian women who married foreigners overseas. The subsequent development of Australian legislation has, ironically, resulted in the 1948 Citizenship Act having precisely the gender discriminatory effect

which its framers sought to remove.

It is a fact of life, universally acknowledged, that it is not possible to be in two places at once. It is surely proper that a person whose marriage necessitates living abroad should not therefore be required to forfeit either a full ability to contribute to their surrounding community or else their Australian identity and citizenship. Before 1948, our law had defined "disability" – in the Nationality Act 1920, section five – as meaning "the status of being a married woman, or a minor, lunatic or idiot".

Some might argue that that definition still pertains!

Other Australians disadvantaged by the legislation include those in "international" occupations – for example, "public service" scientists – where maximal individual contribution may, for a time, depend on interaction with



other highly specialised workers. Their employability can be curtailed if they are legally "alien".

Section 17 should be repealed and our citizenship returned to those who, but for it, would be citizens.

Like most proud Australians, I feel miffed when an Australian (particularly an eminent Australian) acquires another loyalty. But surely we have grown beyond the stage where we need to translate such a superficial affront to our national *amour-propre* into unjust retaliation against our fellow-Australians and their families. The human cost of this cruel piece of nationalism is simply unacceptable. One would like to think that it is also un-Australian! ■

** Robin Fitzsimons is a physician and an Australian citizen now living overseas who alerted politicians to other injustices subsequently redressed in the 1990 Citizenship Amendment Act*