

# Stripping citizenship from Australians is needless and harsh

**Robin Fitzsimons** argues that Australians who become citizens of another country should no longer have their Australian nationality cancelled.

**T**WO APPARENTLY disparate issues have attracted concern in recent weeks. One is a 1993 Citizenship Amendment Bill, now before Parliament. It prescribes a pledge of commitment to Australia and fellow-Australians to be sworn at citizenship ceremonies.

The other issue, which has attracted substantial international civil rights attention, is the fate of the Chinese dissident Mr Han Dongfang. After a year of medical treatment in the US, Mr Han has had his Chinese passport cancelled so he cannot return home.

What have an international human rights issue and our humble Citizenship Act to do with each other? More than meets the eye.

Mr Han supports democracy, and is accused of damaging the prestige of China. He also allegedly belongs to organisations that oppose the Chinese Government. His return to China seems to depend on repentance and evidence of "good behavior". The incident has raised questions about whether Hong Kong citizens will be able to travel freely after 1997.

By cancelling his passport, China is widely held to have violated clause 13 of the Universal Declaration of Human Rights, which provides that everybody has the right to return to his or her home country.

Different from Australian practice? Not so very.

Consider what our Government is not now amending. The notorious section 17 of the Citizenship Act, by which many thousands of loyal Australians overseas have lost citizenship on acquiring another, remains glaringly intact.

The Government expects to spend \$230,000 next year explaining to us all the real difference between a pledge of commitment and an oath of allegiance, which is replaced. But just how significant is the Government's new pledge of loyalty to Australians when, with the ink not yet dry on the coming act, those Australian citizens who form the very same Government are stripping other Australians of their citizenship?

Australia is alone among old Commonwealth countries in cancelling the nationality of its citizens who acquire another. The corresponding American legislation was overthrown by the US Supreme Court (*Afroyim v. Rusk*, 387 US 253; *Vance v. Terrazas* 444 US 252). The court ruled that the Congress could not destroy the American citizenship of dual citizens.

The democratic principles that the US court enunciated are universal. It declared: "The Government cannot sever its relationship to the people by taking away their citizenship. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship." This is exactly what temporary Australian governments — from Chifley to Keating — have done, and continue to do.

Whatever argument there may be against dual nationality (and it is pretty flimsy), there can be no argument in favor of a punitive law that applies to only one group of Australians (the — quite literally — Australian-born-and-bred). Migrants to Australia and their children are generally unaffected by section 17. In 1984, we acknowledged some human reality and abolished the requirement for our new citizens to forswear other allegiances. It is a general principle of the "rule of law" that all persons are equal under the law.

Some of those "exiled" by our law, such as Rupert Murdoch, are well-known. But of utmost concern should be those thousands of affected Aus-

traliens whose family commitments (often marriage, sometimes work) have taken them overseas but whose hearts will always remain Australian.

In an increasingly "international" world, strict rules concerning exclusivity of citizenship can restrict Australian participation.

When subjected to persuasion (such as we ourselves exert on non-citizen residents) concerning the desirability of taking on the same citizenship as those in their new community, these overseas Australians often make the fatal application and inadvertent mistake that costs them and their children their Australian identities and their family links. Australian women who have been expected to acquire their husband's nationality have been especially vulnerable to the act's provisions.

The Government must now also examine our anomalous citizenship law in the light of long-changed international attitudes.

Opposition to dual nationality was a development of the second half of the 19th Century, and has its origins in a rivalrous squabble between Britain and America. It was reflected in the 1870 Convention on Naturalisation signed by Queen Victoria and the then President of the United States. The Convention, which until 1953 (when it was "unilaterally" denounced) also formally bound former colonies such as Australia, outlawed dual nationality between British and American people.

That which the American Congress would not then countenance, its own Supreme Court later enforced!

Spring 1993 is not the first occasion on which the Australian Citizenship Act has been the subject of showy "politically correct" semantic window-dressing, while matters of substantive discrimination have been — very deliberately — left intact.

A 1986 Citizenship Amendment Act produced no fewer than 72 (!) gender-corrective linguistic amendments to the Citizenship Act. When I pointed out to the Department of Immigration and Ethnic Affairs that they had altered the act everywhere except where the sex discriminatory language actually resulted in injustice, I was solemnly told that the excluded clause — restricting pre-1949 citizenship descent to the paternal line — was of such "historical importance" that it could not possibly be altered. (Later it was, on the democratic instigation of MPs, in 1990.)

Our Citizenship Act should specify not only a language of loyalty to Australians, but exemplify that reality in its substance; the amended act will embrace a contradiction.

There is a strong argument that section 17 is in breach of the spirit of article 13 of the Declaration of Human Rights. This article is rendered meaningless if a government can circumvent it by the technicality of removing citizenship. Or if inadvertent loss of citizenship can only be recovered under impossible conditions (leaving one's family overseas, for instance).

Some people argue that section 17 is inoffensive because it renders no one stateless, and that loss of Australian citizenship by this clause is "deliberate". The US Supreme Court exposed the fallacy there when it held (in *Terrazas*) that acquisition of another citizenship could not possibly be deemed to constitute voluntary renunciation of US citizenship.

Patriotism implies a proper love of and care for our fellow people. Nationalism can mean an oversensitive and punitive defence of our national ego. In a conflict between patriotism and nationalism, we should opt for patriotism.