



Contemporary Australian Citizenship

A U S T R A L I A N C I T I Z E N S H I P C O U N C I L

This paper is intended to stimulate responses
to the Australian Citizenship Council
from all areas of the Australian community
about Australian citizenship matters.

FEBRUARY 1999



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Introduction



The Australian Citizenship Council has been asked to report to me by the end of 1999 on contemporary issues in Australian citizenship policy and law.

In order to undertake its appointed tasks, the Council has prepared this

issues paper which is designed to stimulate community thinking and input into its deliberations. It is not a position paper, nor does it purport to represent the views of either the Council or the Government. Its purpose is solely to raise in a stimulating way many of the issues concerning Australian citizenship that have emerged in public discussion in recent years, often briefly giving the arguments for and against the issues raised. The intention is to encourage members of the Australian community to reflect on the important issues involved, and to write to the Council with comments or proposals.

In my view, the Council report will be greatly enhanced by the breadth and depth of the public submissions it receives. Australian citizenship is

a subject of interest to all Australians, and the issues debated and proposals put forward for consideration in the Council's report will have a direct bearing on future generations of Australians. This is an important opportunity for you to have your say.

Accordingly, I would encourage you to both reflect on the issues outlined in this booklet and consider making your views on the future direction of Australian citizenship known to the Council.

A handwritten signature in black ink, appearing to read 'Philip Ruddock'. The signature is fluid and cursive, with a large, prominent initial 'P'.

Philip Ruddock
Minister for Immigration and Multicultural Affairs
and Minister Assisting the Prime Minister for
Reconciliation

Message from the Council Chair



Australian Citizenship is a fairly recent concept, celebrating its 50th anniversary this year, but one which has come to be of central importance. It represents loyalty to Australia and its people, a shared belief in the

democratic process, respect for the rights and liberties of other Australians and a commitment to uphold and obey our laws.

Most Australians acquire Australian Citizenship automatically at birth, while others, for example migrants to Australia, acquire it by grant through application. For all, Australian Citizenship allows full and equal participation in the Australian community and, especially in a richly multicultural society such as ours, it represents the unifying factor which transcends other differences.

The Australian Citizenship Council, an independent body with broad-ranging representation, was established on 7 August 1998 to advise the Minister for Immigration and Multicultural Affairs on contemporary issues in Australian citizenship policy and law and on how to promote increased community awareness by all Australians of the significance of Australian citizenship. The Council plans to report to the Minister by the end of this year.

To assist the Council in its deliberations on a matter of such fundamental importance, we are keen to obtain your views on broad Australian citizenship matters. To facilitate this the Council has prepared this paper for wide dissemination among the community. The paper provides background information on Australian citizenship, including issues of policy and law, and raises a range of issues for the future. You are invited to consider these issues as well as any others you consider appropriate, and provide the Council with any comments you would like to make. We encourage and look forward to your contribution to this important review of fundamental issues in Australian citizenship.

A handwritten signature in dark ink, appearing to read 'Ninian Stephen'. The signature is fluid and cursive.

Ninian Stephen
Chair
Australian Citizenship Council

The Australian Citizenship Council's Issues Paper

PURPOSE

1 The Commonwealth Government established the Australian Citizenship Council on 7 August 1998 to report on a broad range of matters connected with Australian citizenship. The Council is keen to obtain your views. This paper outlines some of the issues already identified by the Council, and invites you to send your comments and reactions to it on these and related matters.

2 The Council has been given the following Terms of Reference:

The Australian Citizenship Council has been established as an independent body to advise the Minister for Immigration and Multicultural Affairs on Australian citizenship matters that are referred to it by the Government.

Given that the 50th Anniversary of Australian Citizenship will occur on 26 January 1999, the Australian Citizenship Council's first task will be to provide advice to the Minister on appropriate arrangements for celebrating this significant occasion.

The Council is also to prepare and present a report to the Minister by the end of 1999 on:

- contemporary issues in Australian citizenship policy and law to be addressed as Australia moves into the new millennium; and*
- how to promote increased community awareness of the significance of Australian citizenship for all Australians, including its role as a unifying symbol.*

From time to time, the Australian Citizenship Council may also be given other tasks by the Minister relating to Australian citizenship matters.

3 A list of the Council members is at Attachment A.

4 To assist the Council in developing its report to the Government by the end of 1999, the Council wishes to have a broad spectrum of community views on contemporary citizenship issues; issues that have a particular pertinence as we are about to celebrate the Centenary of Federation, further debate the notion of becoming a republic, and enter the new millennium.

BACKGROUND READING

5 Australian citizenship has been the subject of considerable examination over the last decade. In September 1994, the Joint Standing Committee on Migration of the Parliament of the Commonwealth of Australia published a report "Australians All: Enhancing Australian Citizenship" which canvassed many of the issues that relate to Australian citizenship. This, as well as a more recent publication, "Understanding Citizenship in Australia" by John Goldlust (1996), may be useful reference points for people who wish to explore citizenship issues in more detail before they make submissions to the Council. Two other recent publications which may provide useful background information are: "The Ties That Bind" (1995), the then Government's response to the report of the Joint Standing Committee on Migration, and "What It Means To Be An Australian Citizen" (1997). A copy of these publications may be obtained from the Citizenship Policy Section, Department of Immigration and Multicultural Affairs, PO Box 25, Belconnen, ACT, 2616 (tel no (02) 6264 1320).

AUSTRALIAN CITIZENSHIP

6 Australian Citizenship is much more than the natural culmination of the migration process for the many people who have chosen to call Australia home. Indeed, Australian Citizenship

enables full participation in our society, irrespective of whether or not a person is born here. It reflects an underlying commitment to our democratic traditions, a sense of a “fair go”, and our cultural and religious diversity, while emphasising our shared civic values. It is also symbolic of both the inclusive nature of our society and our unity as a nation. It is at the very heart of being Australian.

7 Australian citizenship is itself a term that has both a broad meaning in popular usage and a technical meaning as contained in legislation. Accordingly, it is worth reflecting on the use of the term in order to focus subsequent discussion.

8 Although there will necessarily be some overlap between concepts, throughout this report, when the terms “Australian Citizen” and “Australian Citizenship” are used they refer to the legal status defined in the *Australian Citizenship Act 1948* (see discussion in paragraphs 14-19). When the terms “citizen” and “citizenship” are used, with a lower case “c”, they describe citizenship in its broader meaning—membership of the Australian community (including permanent residents, whether or not they are Australian Citizens) and the civic values of our society. (See also the discussion in paragraphs 9–13).

Australian Citizenship in its Broad Meaning

9 Many consider that Australian citizenship in its broad meaning is concerned with the idea of “civics” and shared “civic values”. Shared civic values are what we hold in common as Australians, despite our diversity in religion, class, beliefs, ways of life, region, national and ethnic origin, and taking into account the special position of our Indigenous people. The term encapsulates an understanding of Australia’s

history, its democratic institutions and laws, its wider social development, and the privileges and responsibilities of Australian Citizenship.

10 Many believe that it is these broad notions of shared civic values and civics that best describe and explain Australian citizenship.

11 Our society is guided by fundamental principles of democracy, tolerance and equality of opportunity. As well, Australian Citizens enjoy certain rights that are not available to permanent residents and which enable them to participate fully in all spheres of Australian society. (These rights, and the concomitant responsibilities they impose, are outlined in paragraphs 55-57.) In this way, Australian Citizenship provides formal membership of the Australian community and is a symbol of commitment to Australia.

12 Key questions to be considered in this context, and on which the Council particularly welcomes feedback, include:

- What makes a good citizen in Australia?
- What are the core civic institutions and principles that Australians hold in common?

13 One view that has been suggested places core principles and institutions into four groups:

- Commitment to the rule of law, the Constitution and the equality under the law of all Australians.
- Commitment to maintaining Australia as a liberal, tolerant society and as an active parliamentary democracy.
- Commitment to strengthening Australia as a fair society, concerned with the well-being of the Australian people.
- Commitment to the land we share.

The Legal Status of Australian Citizenship

14 Australian Citizenship status came into existence on 26 January 1949, with the enactment of the *Nationality and Citizenship Act 1948*. Prior to this, Australian Citizenship did not exist and most residents of Australia were British subjects.

15 The impetus for Australia to have its own Citizenship status arose out of a conference of Commonwealth Prime Ministers in the late 1940s. A decision was made that each Commonwealth country, including the UK, should have its own Citizenship status in addition to having British subject status.

16 Accordingly, the *Nationality and Citizenship Act 1948* created the status of Australian Citizen, provided that an Australian Citizen would also be a British subject, and recognised as British subjects persons who were Citizens of other British Commonwealth countries.

17 The evolution of Australian Citizenship law paralleled the opening up of Australia to a large scale managed migration program and the essential issue that has faced legislators has been to determine the degree of inclusiveness: that is, on what basis should a newcomer to Australia be able to become an Australian Citizen.

18 In this context, Australian Citizenship legislation has been amended many times over the last fifty years and such amendments have progressively reflected the increasing awareness of our nationhood and a more inclusive approach to Australian Citizenship.

19 Unnecessary barriers and the discriminatory effects of many provisions have been removed while at the same time there has been a growing sense of national identity and diversity. A summary of key provisions in the *Australian*

Citizenship Act 1948 is at Attachment B.

A historical overview of Australian Citizenship law is at Attachment C.

INDIGENOUS AUSTRALIANS AND AUSTRALIAN CITIZENSHIP

20 An area of misconception has been the Citizenship status of Australia's Indigenous people. Australian Citizenship was automatically extended to Indigenous people at the commencement of the *Nationality and Citizenship Act 1948* in the same way as it applied to all British subjects in Australia. However, because of the operation of other laws and practices, Indigenous Australians were not entitled at that time to the same privileges and responsibilities as other Australian Citizens. The right to vote, for example, was fully extended to Indigenous Australians only in 1962 (although Indigenous people in some parts of Australia, for example South Australia, were able to vote earlier). In 1967 a national referendum gave the Commonwealth the power to make laws for Indigenous people and provided for Indigenous Australians to be counted in the national Census.

COMMUNITY INPUT

21 As Australia moves into the new century and celebrates the first Centenary of Federation, it is appropriate to reconsider the range of issues surrounding Australian citizenship. The Council believes that the public focus on Australian citizenship will greatly increase in the coming months for a range of reasons. A large number of activities to celebrate the 50th Anniversary of Australian Citizenship are to be undertaken over a twelve-month period from 25 January 1999. The creative "*Discovering Democracy Project*" will continue to lay further foundations for ongoing civics and citizenship education across a range of education sectors—and in time will no doubt have a direct impact on the wider

Australian community. The unfinished debate about whether Australia should become a republic will also continue throughout the course of 1999 and beyond.

22 It is therefore most timely to again consider the nature and meaning of Australian citizenship.

EXPLORATION OF CORE ISSUES ASSOCIATED WITH AUSTRALIAN CITIZENSHIP

23 This issues paper canvasses some of the key issues in the current debate about Australian citizenship and outlines some of the main factors involved. The range of views put in this paper does not necessarily reflect the views of either the Council or its members. Rather, the views are designed to explore the issues and present different views that Australians hold in order to stimulate community comment and input into the Council's deliberation.

24 Clearly, any examination of Australian citizenship raises detailed, complex and often sensitive matters. It is also recognised that the actual number of issues is far greater than can be covered in this brief paper. While the paper has identified a number of key matters for consideration, the Council will welcome all comments on issues relating to Australian citizenship.

25 In order to try to encourage community input, the Council has developed a two-Part format, Part A and Part B, under which it would value comments. While it is understood that many issues straddle both Parts, it is felt that this format will help provide the Council with an appropriate framework for considering the issues involved.

PROCESS FOR COMMUNITY INPUT

26 The Council invites your written submissions to be lodged by **Friday, 2 April 1999**.

The address for submissions can be found at the end of this paper. Please include your name, name of your organisation (if appropriate), address and daytime telephone number. Please do not feel that you need to comment on every topic raised in this paper.

27 After examining all the submissions, the Council will consider whether any further consultative process is required (for example, directly meeting with some of the individuals or groups that have lodged submissions). Any further request for public responses or discussion will be announced in the media.

STRUCTURE OF COMMUNITY INPUT

28 While the Council will welcome contributions from members of the Australian community on any and all issues relevant to its Terms of Reference, it is especially seeking comments on the issues raised in this paper. As was mentioned above, the issues are presented in a two-Part format and it would be helpful if submissions could also be developed using this format.

Discussion of Australian Citizenship Issues

PART A:

How to Promote Increased Community Awareness of the Significance of Australian Citizenship for all Australians, Including its Role as a Unifying Symbol.

29 The Council invites community input on issues that are relevant to this far reaching topic. There are many issues that can be addressed under this section including:

- giving consideration to how we should celebrate Australian Citizenship;
- 26 January 1999 is the 50th anniversary of Australian Citizenship and marks a milestone in our national development. A range of celebratory activities is planned for the 50th anniversary year and community suggestions would be welcomed;
- the advantages and disadvantages of conducting a citizenship promotion campaign to engender greater community interest in citizenship;
- better civics education;
- encouraging the some 960,000 eligible permanent residents who are not Australian Citizens to take out Australian Citizenship;
- ways of making the Australian Citizenship acquisition and conferral process more meaningful;
- making available the opportunity for Australian Citizens by birth to affirm their Australian Citizenship publicly (for example, on turning 18 years of age or at Citizenship ceremonies);
- conducting appropriate activities associated with other forthcoming events such as the Centenary of Federation; and
- other means of enhancing and promoting the unifying symbolism of Australian Citizenship.

30 In order to consider these matters, there are several broader issues worth exploring.

How do differing concepts of citizenship impact on the notion of Australian Citizenship in the 21st century? Is Australian Citizenship a limited, historic concept or a core element of Australia's future?

31 As we are about to celebrate the Centenary of Federation, and to consider the very nature of our society in the 21st century, many believe it is timely to consider the meaning of Australian Citizenship.

32 In one sense the term "citizenship" can be used very broadly to mean living together in the Australian community and actively participating in our society. Its usage in this way often relates to democracy, national identity, shared civic values, fulfilling civic duties and civic pride.

33 On other occasions the term Australian Citizenship is used in a more limited sense, reflecting a formal or legal concept of the membership of the Australian community. In this sense, Australian Citizenship has a legal status from which, for example, access to certain entitlements, such as an Australian passport, flow. There are defined reciprocal privileges and responsibilities which attend the status of Australian Citizenship.

34 Either way, Australian Citizenship often has an emotional and symbolic value. The concept of Australian Citizenship has its own inherent value, an intrinsic worth which is not necessarily reflected in legislation, practical outcomes or even tangible form. It may mean different things to different people, but a concept common to most ideas about the meaning of Australian Citizenship is that it signifies a commitment to Australia and shared civic values.

35 Another view is that the concept of Australian Citizenship had been developed primarily with a nationalistic and inward looking focus aimed at defining our sense of community as a nation. Some see it as where we have come from: others see it as where we are going to. Some point to the fact that the basic choice which has faced legislators has been whether to include or exclude — and therefore it represents how inclusive or exclusive we should be.

36 Many note that globalisation and Australia's increasing integration in the international economy force us as a nation to re-examine the mid 20th century view of Australian identity. The notions of allegiance, loyalty and civic participation remain fundamental. However, debate is also focussing on whether loyalty needs to continue to be a singular concept and whether it is possible for individuals to owe different allegiances to different countries or entities simultaneously. In this context, many believe that we should be investigating the nexus between an Australian Citizen as an active participant in a democratic society and an Australian Citizen operating in the global village.

37 At a time when Australia's economic viability is increasingly related to international economic trends and developments, and international competitiveness, there is also discussion about the concept of "global citizenship" especially within the context of international treaties. More concretely, there are moves towards super national groupings, of which the most ambitious is the European Union, with its own parliament and currency and its common border. It should be noted here that the relations between Australia and New Zealand have broken down many of the barriers that can divide countries.

38 On the other hand, Australia is uniquely placed as an island continent with no common land borders, English as its national language, a non-discriminatory immigration program, and a harmonious multicultural society. It is one of the longest continuing democracies in the world and it is about to celebrate the first Centenary of the Commonwealth. Australians are rightly proud of their distinctive contribution in many fields. A sense of national unity is strong, and we take pride in being Australian.

39 There is also the question of whether or not Australian nationality could be defined in civic terms. Some believe that we should no longer look for a national identity but instead we should seek a civic identity where Australians are committed to fundamental tenets such as the rule of law, the Constitution, the principles of parliamentary democracy, and equality under the law of all Australians, irrespective of race, gender, ethnicity or creed.

What is the role of Australian Citizenship in a multicultural society?

40 Australia's heritage, originating with our Indigenous population and built upon by successive waves of migrants, has resulted in one of the most culturally diverse nations in the world. This diversity has helped define our national identity. We are united by a commitment to a common future, and an acceptance of the basic principles and structures of Australian society.

41 Many believe that Australian Citizenship is the basic symbol of this unity. They consider that Australian Citizenship lies at the heart of a unified and cohesive Australian nation. They believe that acquiring Australian Citizenship is a significant expression of a person's loyalty and commitment to Australia—the common bond in a way of life, values, purpose and vision for a shared future with all other Australians.

42 At the same time it can be argued that the basic civic values of a multicultural society must include freedom for individuals and groups to express their own culture and freedom from discrimination on the grounds of race, national or ethnic origin.

Is Australian Citizenship only symbolic or is it an item of substance?

43 In a richly diverse, multicultural society such as Australia's, Australian Citizenship is a unifying factor which transcends other differences among members of the community. It is this intangible, unifying quality which is difficult to define and which, in concert with the reciprocal relationship between Australia and its citizens, many believe is at the heart of Australian Citizenship.

44 Many believe that Australian Citizenship has both symbolic and practical values.

45 For people who acquire Australian Citizenship by grant, there is a tangible process of actively seeking and receiving Australian Citizenship and the awarding of a certificate which give concrete meaning and symbolism to their undertaking. This is not experienced in a similar way by the Australian born or those affected by the now repealed transitional provisions of the *Australian Citizenship Act 1948* (which gave automatic Australian citizenship to British subjects in certain circumstances).

46 In more practical terms, through the privileges that it confers, Australian Citizenship allows full participation in every aspect of Australian society. The rights to vote and stand for election (subject to section 44(i) of the Constitution), in particular, are because of their consequences arguably the most concrete expressions of Australian Citizenship. Another practical value of Australian Citizenship is the

entitlement it gives to an Australian passport. (There are a range of other privileges associated with Australian Citizenship and these are outlined in paragraphs 55–57.)

What should being an Australian Citizen mean in the 21st century?

47 In recent years there has been increasing community interest in what it means to be an Australian Citizen, in the debate about Australia becoming a republic, in national symbols, and in the nature of our society.

48 In a rapidly changing world, many consider that the fundamental tenets of Australian Citizenship should remain unchanged.

49 In particular, many consider that Australian Citizenship should continue to reflect an individual's loyalty and commitment to Australia. As such, they feel that Australian Citizenship should continue to be symbolic of the inclusive nature of our society and our unity as a nation. And it should signify a commitment to Australia and its people, a shared belief in the democratic process, respect for the rights and liberties of other Australians and a commitment to uphold and obey Australia's laws.

50 Many consider that participative Australian Citizenship contributes to a strong, unified and harmonious Australia and that this view should be actively fostered among Australians.

51 But can the current concept of Australian Citizenship remain static?

52 Some maintain that increasing globalisation forces us as a nation to re-examine our notions of Australian Citizenship with particular reference to dual or multiple Citizenship. In this context, many see a tension between being part of an increasingly mobile and interdependent world

and, on the other hand, a desire for national sovereignty. This tension presents both conceptual and practical difficulties.

53 At present, in most cases, an adult Australian Citizen who actively seeks, and acquires, the Citizenship of another country loses their Australian Citizenship. This may be deeply resented, in particular, when one identifies as an Australian Citizen but feels that Australia's formal boundaries are too confining for one's aspirations, whether regarding business or lifestyle.

54 Australia could require its Citizens to have a single Citizenship in the expectation that this would give strength and cohesion to the nation. But there may be a high price to pay. For example, it could be arbitrary and unnecessarily restrictive for individuals who wish to pursue wider experiences in business or other spheres: such limits are not imposed on the Citizens of many competitor countries and thus unfairly disadvantage our own Citizens in their legitimate pursuits.

What rights and responsibilities should be attached to being an Australian Citizen? And how should they differ from other legal residents in Australia?

55 At present, the key formal privileges and responsibilities of Australian Citizenship include:

- Australian Citizens can enrol to vote at Commonwealth, State and Territory elections. (Note that voting is also available to British subjects who were enrolled to vote on 26 January 1984.)
- Australian Citizens can stand for election at Commonwealth, State and Territory level (subject to section 44(i) of the Constitution).
- In both Territories and some States, voting and standing for election at local government level is restricted to Australian Citizens. (Note that voting is also available to British subjects who were enrolled to vote on 26 January 1984.)

- Australian Citizens can serve on juries. (Note that jury service is also available to British subjects who were enrolled to vote on 26 January 1984.)
- Australian Citizens can obtain an Australian passport and, therefore, leave and re-enter Australia without a visa. Permanent residents require a resident return visa if they wish to return to Australia after a period of time overseas.
- Australian Citizens can obtain permanent employment in the Commonwealth Public Service.
- Australian Citizens can serve in the Australian Armed Forces. (Note that permanent residents who are in the process of obtaining Australian Citizenship, or who are eligible for Australian Citizenship, may serve in the Australian Armed Forces contingent on their acquiring Australian Citizenship.)
- Australian Citizens can register a child under 18 years of age born to them overseas, as an Australian Citizen by descent.
- Persons who acquired Australian Citizenship by birth cannot be deprived of this Citizenship and cannot be deported from Australia. Persons who acquired Australian Citizenship by grant can only be deprived of this Citizenship and be removed from Australia in strictly limited circumstances (eg where fraud was involved in their migration to Australia or their acquisition of Australian Citizenship). Permanent residents can be deported from Australia in some circumstances. (See paras 90-95 for more details.)

56 In recent years Australian Citizenship has conferred benefits in the context of the migration process. For example, priority processing is available in some categories of the Migration Program where the sponsor is an Australian Citizen. These initiatives flow from the argument

that, at a time when the Migration Program has been reduced but demand for places remains high, priority should be given to people whose sponsor has a commitment to Australia as evidenced by Australian Citizenship.

57 As well, there are Government initiatives in place which, while not directly related to Australian Citizenship, have nonetheless made a statement about Australian Citizenship. Eligibility to access certain concessions in relation to the Higher Education Contribution Scheme, for example, was set with a degree of reference to the two-year residential qualifying period for Australian Citizenship.

58 It must be noted that Australian Citizenship policy has been developed over the years within the broader concept of an inclusive Australian society. People with permanent resident status but who are not Australian Citizens can participate in most other aspects of Australian society and some permanent residents are entitled to vote.

59 Some have argued in favour of further restricting access to public and other benefits (eg social security payments) to Australian Citizens, and feel that this would help enhance the value of Australian Citizenship and thus encourage an increased Australian Citizenship take-up rate.

60 Others have noted that such an approach would be inconsistent with a fair society and may impinge on individuals' fundamental human rights. Equally importantly, the decision to acquire Australian Citizenship, an important life decision, is one that should be undertaken voluntarily, thus indicating a clear commitment to Australia and its people—rather than just being an expedient step in order to obtain access to a particular benefit/s.

61 A related issue, espoused by many Australians, is that Australian Citizenship is more than the sum total of a set of individual privileges

and responsibilities: rather it serves a deeper philosophical role of defining membership of the Australian community.

How can Australian Citizenship be made more meaningful?

62 Australian Citizenship legislation has been amended many times since its inception some fifty years ago to reflect progressively a more inclusive approach to acquisition of Australian Citizenship. Undue barriers and the discriminatory effect of many provisions which gave preference, for example, to British subjects compared to people of other nationalities, have been gradually removed. The broad policy is now inclusive and non-discriminatory, and seeks to encourage all migrants to become Australian Citizens on the basis of a simple set of criteria and without undue barriers. This approach reflects the role and contribution of Australian Citizenship to nation-building in a major migrant-receiving country. Australian Citizenship law is, in this context, quite different from the more restrictive approaches favoured by many countries overseas which effectively seek to discourage newcomers from becoming Citizens.

63 Today, some believe that eligibility for Australian Citizenship should be more stringent as they consider that current criteria may be too easy and believe that this tends to erode its value. Rather, they argue that Australian Citizenship should only be granted after stricter eligibility criteria than are currently required have been satisfied. They point out that Australian Citizenship is the highest award that we as a nation can give and that, therefore, tighter eligibility criteria are justified.

64 They advocate, for example, a longer residence requirement (two years at present) or higher English language requirements (basic English is at present required for acquisition of

Australian Citizenship). Note: more details on the formal requirements for Australian Citizenship are available at Attachment B.

65 Some also note that many countries restrict access to a range of benefits, such as social welfare, health care, property ownership and others, to their Citizens. Such an approach, many believe, would considerably enhance the value of Australian Citizenship.

66 Others argue that Australian Citizenship should remain inclusive and welcoming, that our inclusive approach to Citizenship has been an essential element of building an inclusive harmonious society. They believe that migrants should continue to be encouraged to acquire Australian Citizenship as soon as they have been in Australia for an appropriate period which allows them to familiarise themselves with their new country of choice, but that they should not feel compelled to do so. They argue that migrants have made a deliberate and often difficult decision to move from their country of origin to their new homeland. At the same time, it needs to be recognised that the migrant's settlement experience takes time and migrants should not be expected to instantly shed their feelings and associations with their country of origin. They believe that to restrict access to services and benefits for permanent residents who pay taxes and are otherwise fully engaged in the community—but have not taken out Australian Citizenship—would in some ways devalue the meaning of Australian Citizenship and would risk the creation of a second class of Australian in our community.

67 Many believe that developing a better understanding of Australian Citizenship and what it means to be an Australian Citizen would significantly enhance its value to the Australian people. As well, a greater understanding of Australian Citizenship can foster and enhance pride in Australia and a true sense of nationhood.

68 One suggestion has been to develop a clear public declaration or statement on the rights and obligations of Australian Citizenship. Such a declaration or statement, some argue, could identify our commitment to accepted civic institutions and values, including parliamentary democracy, the rule of law and equality before the law, freedom of the individual, freedom of speech, freedom of the press, freedom of religion, equality of women, equal opportunity for all, freedom for individuals and groups to express their own culture and freedom from discrimination on the grounds of race, national or ethnic origin. If favoured, this raises the question of how this declaration should be brought about (for example, enshrined in the Constitution, a Bill of Rights, or the Preamble to the *Australian Citizenship Act 1948*).

How can Australians better appreciate and celebrate their Citizenship? How should Australians demonstrate their Citizenship?

69 Many believe that Australians should be encouraged to take more pride in Australian Citizenship. One view is that a key strategy must be to increase public awareness and understanding of citizenship and civics issues including, in particular, the privileges and responsibilities of Australian Citizenship.

70 One issue is whether there should be a concerted public information and education program on citizenship and civics issues, building on existing efforts in schools: and if so, what the appropriate target audience for it should be. Programs could be broadly based and aimed at both Australian Citizens and non-Citizens, children, youth and adults. They could be across a range of environments including the home, school and the media. Alternatively, they could be directed specifically at migrants.

71 Others believe that persons who choose to migrate to Australia and seek Australian Citizenship are, through the Australian Citizenship grant process, better prepared to exercise the privileges and responsibilities of Australian Citizenship than persons who obtain these rights at birth or on turning 18 years of age. Some believe that the latter often need further education in civics. Is this fair? Or is it an area in which all Australians would benefit from further education?

72 Another issue is the nature of community information and education that would most appropriately suit the target audience. In this context, the celebrations planned for the 50th Anniversary of Australian Citizenship will provide an important opportunity for all Australians to more fully appreciate the significance of their Citizenship. There may be other appropriate avenues as well. Are there other ways in which Australian Citizenship could—or should—be celebrated by the Australian community?

73 Suggestions which have been raised in the past include children taking part in “citizenship ceremonies” at school, affirmation ceremonies for young Australian Citizens on turning 18 years of age, affirmation ceremonies for adult Australian Citizens, declaring and celebrating an Australian Citizenship week or day each year, and changes to Citizenship ceremonies.

PART B:

Contemporary Issues in Australian Citizenship Policy and Law to be Addressed as Australia Moves into a New Century.

74 This topic focuses on the policies underlying the *Australian Citizenship Act 1948* and the structure and coverage of the Act.

75 Australian Citizenship is enshrined in legislation in the *Australian Citizenship Act 1948*. As written, this Act, in common with similar legislation overseas, relates to how Citizenship can be obtained, how it can be lost, and how it can be regained. An Australian Citizen, whether by birth, descent or acquisition, cannot turn to this Act to find out his or her rights and obligations as an Australian Citizen. These are contained in the Constitution, legislation and the common law. Many Australian Citizens, especially those affected by now repealed transitional provisions, will not even be able to find from reading the Act, the legal basis of their becoming an Australian Citizen. Some believe that the *Australian Citizenship Act 1948* as currently drafted is inadequate in dealing with core contemporary Citizenship issues affecting all Australians. If this is a widespread view:

- Should these problems be remedied by amending the *Australian Citizenship Act 1948* or by some other means? If so, what?
- The lead up to the Centenary of Federation in 2001 provides an opportunity to reconsider what it means to be an Australian Citizen. One option being considered is to rewrite and simplify the *Australian Citizenship Act 1948*.
- If so, the revised Preamble to the *Australian Citizenship Act 1948* could become a mechanism for setting out the privileges and responsibilities of Australian Citizenship. What issues should it cover? Could this objective be achieved more effectively or

appropriately through, for example, amending the Constitution, other legislation provisions, or other mechanisms relevant to Australian Citizenship?

- Is there a desire to simplify the Act and make it more accessible to the public, or would some other means (for example, a new publicly available booklet) be a preferable approach to informing people about Australian Citizenship matters?
- Should there be changes to the policy criteria underlying acquisition and loss of Australian Citizenship in the *Australian Citizenship Act 1948*:
 - What provisions should the *Australian Citizenship Act 1948* include in regard to the need or otherwise for a person acquiring Australian Citizenship to speak English, and to what level?
 - Are the existing residence requirements for a person acquiring Australian Citizenship appropriate? If not, what should they be?
 - Are the current provisions for the deprivation of Australian Citizenship appropriate?
 - Should Australian Citizens continue to lose their Australian Citizenship on applying for and receiving the Citizenship of another country?

76 The following provides a brief summary of some of the issues behind these questions.

Is there a desire to simplify the Australian Citizenship Act 1948 and produce a new publicly available booklet which will inform people about the legal aspects of Australian Citizenship?

77 The Act, like all other pieces of legislation, is a technical, legal document prescribing legal rights, duties and penalties. Apart from the

Pledge, and the recent insertion of the Preamble, the Act historically has not referred to wider issues of Australian Citizenship.

78 One view is that the current Act is complex and awkwardly drafted and not sufficiently accessible to the public and, therefore, it would benefit from redrafting, using simple English and a modern legal drafting style.

79 Some have argued in favour of preparing and making available a booklet or guide to the legislation. This would inform Australians about key aspects of the Act in comprehensive, accessible and clear terms. It could include, in particular, the requirements for grant of Australian Citizenship, information on discretions pertaining to the grant of Australian Citizenship, as well as revocation and resumption provisions. Other aspects may also need to be incorporated.

80 As well, it has been suggested that there is a need to recast the Preamble to the *Australian Citizenship Act 1948*. Some issues that have been identified as important elements in a redrafted Preamble include the significance of Australian Citizenship, the features that unite us as Australians, and the privileges and responsibilities of Australian Citizenship.

What provisions should the Australian Citizenship Act 1948 include in regard to the need or otherwise for a person acquiring Australian Citizenship to speak English, and to what level?

81 Under the existing legislation, to be approved for the grant of Australian Citizenship a person must, among other requirements, demonstrate a basic knowledge of the English language (unless the applicant is over 50 years old) and an adequate knowledge of the responsibilities and privileges of Australian Citizenship (unless over 60 years old).

These requirements are assessed at interview. Under policy guidelines, the requirements may be satisfied if a person is able to respond in simple English to questions about personal particulars and factual questions on the responsibilities and privileges of Australian Citizenship. If the applicant is not able to successfully demonstrate a basic knowledge of English at their initial assessment, their application can be deferred for a period of up to twelve months to give the applicant the opportunity to improve their English.

82 It has been suggested by some that the current English language requirements are too low. These people argue that to undertake the responsibilities of Australian Citizenship, Australians require a level of English language attainment that is higher than “basic”. To be able to effectively perform jury service is sometimes referred to in this context.

83 On the other hand, a lower English language requirement is often justified on the grounds of inclusiveness. That is, some feel that Australian Citizenship should not be denied to individuals who have been accepted as permanent residents of Australia, have lived here in some cases for many years, paid taxes, and have in many cases made a valuable contribution to Australia. Older people can have greater difficulty in learning a new language. Other migrants may arrive in Australia as refugees having experienced torture and trauma, resulting in a diminished capacity to learn a new language. These people will, in all probability, spend the rest of their lives in Australia, often raising families here. Some would argue that they should not be denied the security and peace of mind guaranteed by Australian Citizenship because of difficulties they may have in learning English.

Are the existing residence requirements for a person acquiring Australian Citizenship appropriate? If not, what should they be?

84 Under current legislation, a person may be eligible for grant of Australian Citizenship if they have been physically present in Australia as a permanent resident for a total of at least two years in the last five years immediately before making their application, including a total of at least twelve months in the last two years before application. Some discretionary provisions provide for the grant of Australian Citizenship in limited circumstances where the normal residence requirement is not met. One example is a person who is not present in Australia for the full residency period because they are engaged in “activities beneficial to the interests of Australia”.

85 The key principle underlying the current residence requirements is the demonstration on the part of the applicant of a connection with Australia. Few people would argue with this basic tenet. More at issue is the length of the residence period.

86 Current provisions seek to provide a balance between the inclusive approach to Australian Citizenship adopted by successive Australian governments and the need for applicants to familiarise themselves with Australia, its language and institutions, and fully understand the privileges and responsibilities which acquisition of Australian Citizenship confers. Some, however, would prefer a longer residence period.

87 Australia’s residence requirements are somewhat shorter than those of other migrant receiving countries, although the differential is less than it first seems when requirements relating to actual presence in the country are taken into account. The USA, for example, requires five years permanent residence immediately before application. The applicant must be physically

present in the USA for at least half of the five years, including at the time of the grant of Citizenship. Canada requires three years legal residence in the four years immediately before application. The original intent of the Canadian legislation was that a person should be physically present for three years in Canada within the four-year period. Because “residence” is not defined in the Canadian Citizenship Act, it has been interpreted by the Federal Court of Canada to mean “principal mode of living” rather than physical residence. New Zealand requires three years permanent residence immediately before application.

88 Countries which do not have a tradition of actively receiving migrants tend to have non-inclusive approaches to Citizenship acquisition and therefore longer residence requirements. For example in Europe, the UK requires five years legal residence immediately before application of which the last year must be as a permanent resident. The applicant must have been physically present in the UK for at least 450 days of the five years. France requires five years permanent residence immediately before application. Germany has a 15-year eligibility requirement for naturalisation, although the Government has recently decided to reduce this to eight years.

89 There are also issues relating to the appropriateness of the discretionary provisions under which people may be granted Australian Citizenship without meeting the normal residence or other requirements.

Are the current provisions for the deprivation of Australian Citizenship appropriate?

90 Australians who have acquired Australian Citizenship by birth can never be deprived of their Australian Citizenship (although they can lose it by operation of law by applying for, and

obtaining, the Citizenship of another country (see paragraph 53). They have a right to enter and remain in Australia and cannot be deported.

91 Migrants who have acquired Australian Citizenship after making a full and frank disclosure of all relevant factors are on an equal footing with any other Australian Citizen. Like all Australian Citizens, their Citizenship cannot be removed and they have a right to remain in Australia. Therefore, migrants who become Australian Citizens and *subsequently* commit crimes cannot be deprived of their Australian Citizenship and cannot be deported from Australia.

92 If, however, migrants are *convicted* of a serious offence after becoming an Australian Citizen and the offence was committed *before* becoming a Citizen, or are convicted of fraud in connection with their migration or Citizenship application, then they may be liable to be deprived of their Australian Citizenship and may also be removed from Australia.

93 More specifically, under current legislative provisions, the Minister can deprive a person of their Australian Citizenship if the person is:

- convicted of knowingly making a false or misleading representation or statement, or concealing a material circumstance, either at the time of entry to Australia or application for Australian Citizenship. The provisions relating to migration-related fraud only apply to offences committed on or after 10 April 1997. For offences committed before that date (which only relate to Citizenship fraud), prosecution must be commenced within 10 years of the offence occurring;
- at any time after applying for the grant of Australian Citizenship, they are convicted in Australia or overseas of an offence committed

before the grant of Australian Citizenship and they are sentenced to death or imprisonment for a period of 12 months or more for that offence.

94 Furthermore, in addition to a person being convicted for any of the offences mentioned above, the Minister must consider that it would be contrary to the public interest for that person to continue to be an Australian Citizen.

95 It should be noted that legislative provisions and international Conventions relating to statelessness place limits on deprivation of Australian Citizenship where the person so deprived would become stateless. It also should be noted that deportation is not a necessary consequence of deprivation of Australian Citizenship. A person who is deprived of their Australian Citizenship whilst in Australia automatically receives permanent resident status. Any question of deportation is a matter which then depends on the operation of the provisions of the Migration Act.

Should Australian Citizens lose their Citizenship on applying for and receiving the Citizenship of another country?

96 Under the *Australian Citizenship Act 1948* any adult Australian Citizen who applies for, and acquires, the Citizenship of another country will automatically lose their Australian Citizenship.

97 Developments in Citizenship laws in other countries, the increasing international mobility of the work force, and specific changes to Australian immigration law raise issues in relation to loss of Australian Citizenship upon acquisition of another Citizenship.

98 Some feel that Australian Citizens who take out another Citizenship should continue to lose their Australian Citizenship on the basis that there

has been some loss of loyalty and commitment to Australia and the existing policy will help to give strength and cohesion to the nation.

99 Others consider that in the current international marketplace this requirement may place unnecessary and restrictive limits on individuals — often engaged in activities beneficial to Australia — who wish to pursue wider global goals in business or other spheres. They argue that for a wide variety of reasons it can also be advantageous to be the Citizen of another country in addition to being an Australian Citizen; that many countries now do not have a legal requirement that their Citizens lose their Citizenship on gaining another; that many people born overseas can retain the Citizenship of their country of origin and be able to take out Australian Citizenship (with up to five million dual Citizens already existing in Australia); and that in this respect, the current Australian legislation effectively discriminates against Australian-born Citizens by denying them the opportunity to have dual Citizenship. They say that it is not about questioning their loyalty to Australia but about the very nature of the changing international environment.

100 In considering these two seemingly opposite views, it is important to bear in mind that there is now greater movement of people internationally than ever before. Australians themselves now travel extensively for business, employment and personal reasons, sometimes taking up residence, on either a short or long term basis, in other countries. In 1997-98, for example, there were 14.9 million movements of people into and out of Australia, compared with 7.5 million movements in 1987-88. This trend will no doubt continue to rise at an exponential rate with the further internationalisation of the labour market and demand for skilled workers, cheaper fares, the tendency for temporary rather than

permanent movements — and even migration, and changing international opportunities both in Australia and overseas.

101 Some argue for maintaining the current legislative provisions on the following basis:

- The notion that a person cannot owe allegiance to more than one country.
- A person should be totally committed in a legal and emotional sense to one country.
- Having more than one Citizenship conflicts with notions of national identity and cohesion.

102 Arguments for removing the current restrictions include:

- The current restrictions can be arbitrary or discriminatory in their practical application. The existing law impacts most heavily on Australian-born as compared with the perhaps up to five million mostly foreign-born dual national Australian Citizens. This is because migrants becoming Australian Citizens can, subject to the laws of the country of their prior nationality, retain that nationality, and Australian-born children with migrant backgrounds often acquire two (or occasionally more) Citizenships.
- There is no evidence to suggest that those Australians who currently possess dual Citizenship are disloyal or lack commitment to Australia.
- There is an international trend towards dual Citizenship: the UK, Canada, NZ, France, USA and Italy all allow their Citizens to acquire the Citizenship of another country without this affecting their existing Citizenship status.

OTHER ISSUES

103 The Council would also welcome your comments about any other issues related to Australian Citizenship that have not been covered in this brief issues paper. Any comments on these matters would need however to clearly demonstrate the association to Australian Citizenship and the relationship to the Council's Terms of Reference.

PROCESS

104 The Australian Citizenship Council invites your **written submissions to be lodged by Friday 2 April 1999**. Submissions should be forwarded to:

**The Australian Citizenship Council Secretariat
Department of Immigration and
Multicultural Affairs
PO Box 25, Belconnen, ACT, 2616**

105 Please include your name, name of your organisation (if appropriate), address and daytime telephone number.

Attachment A

Australian Citizenship Council Members

- Sir Ninian Stephen—Chair
- Mrs Sallyanne Atkinson AO
- Mr Mark Ella AM
- The Hon Robert Ellicott QC
- Ms Mirta Gonzalez
- Archbishop Barry Hickey OAM
- Professor Donald Horne AO
- The Hon Gary Johns
- Mr Bernard Kilgariff AM
- Miss Tan Le
- Ms Caryl McQuestin
- Mr Robert Manne
- Ms Marilynne Paspaley
- Professor Judith Sloan

Attachment B

Summary of key provisions of the *Australian Citizenship Act 1948*

1 The following provides an overview of some provisions of the *Australian Citizenship Act 1948*. It does not provide full details nor does it incorporate information on all legislative provisions.

ACQUISITION OF AUSTRALIAN CITIZENSHIP

Birth Provisions

2 A person who is born in Australia obtains Australian Citizenship by birth if, at the time of their birth:

- a parent of the person was an Australian Citizen or permanent resident; or
- the person has been ordinarily resident in Australia for the 10 year period commencing on the day of the person's birth.

Adoption Provisions

3 A person who is living in Australia as a permanent resident and is adopted by an Australian Citizen becomes an Australian Citizen automatically at the time of the adoption.

Descent Provisions

4 The Act provides for the acquisition of Australian Citizenship by overseas-born children of Australian Citizens in certain circumstances, through registration at an Australian consulate. The person must be:

- under 18 years of age at the time of application; or
- born between 26/1/1949 and 15/1/1974.

5 A parent who is an Australian Citizen by virtue of the descent provisions can only register a child under 18 years of age if the parent has an aggregate of two years residence in Australia (before the registration of the child).

Grant Provisions

6 A person may be granted Australian Citizenship if he or she meets the following requirements:

- is a permanent resident; and
- has attained the age of 18; and
- understands the nature of the application; and
- has been present in Australia as a permanent resident for a total of 2 years in the 5 years immediately prior to application, including a total of 12 months in the 2 years before application; and
- is of good character; and
- is able to speak and understand basic English (not applicable to those aged 50 years or over or whose ability is affected by a permanent physical or intellectual impairment); and
- understands the responsibilities and privileges of Australian Citizenship (this does not apply to those aged 60 years or over or whose understanding is affected by a permanent physical or intellectual impairment); and
- intends to reside in Australia or maintain a close and continuing association with Australia.

Residence Requirements

7 Lesser residence requirements are applicable in limited circumstances:

- where a person has served in the permanent Defence Forces of Australia for at least 3 months, or has been medically discharged prior to 3 months (no residence requirement);
- where a person is a former Australian Citizen (the residence requirement is 12 months presence in Australia as a permanent resident in the 2 year period immediately prior to lodgement of the application);

- where a person is a permanent resident and the legally married spouse, widow or widower of an Australian Citizen (as a matter of policy, a person is normally required to have been continuously present in Australia as a permanent resident for 12 months immediately prior to application and demonstrate that they would experience significant hardship or disadvantage if not granted Australian Citizenship).

Discretions

8 There is scope in certain limited circumstances to count other periods towards meeting the residence requirements, including where a person:

- can demonstrate that during periods of time outside Australia as a permanent resident he or she has engaged in activities which were beneficial to the interests of Australia; and
- has periods of temporary residence in Australia and can demonstrate that he or she would experience significant hardship or disadvantage if not granted Australian Citizenship.

C i t i z e n s h i p C e r e m o n y

9 People aged 16 years and over who are approved for grant of Australian Citizenship become Australian Citizens when they take the Pledge at a Citizenship conferral ceremony.

T r a n s i t i o n a l P r o v i s i o n s

10 Under the Transitional Provisions of the *Australian Citizenship Act 1948*, certain persons who were British subjects immediately before the introduction of the Act on 26 January 1949 acquired Australian Citizenship automatically on that date. Principally, these were people ordinarily resident in Australia for the five year period 26/1/1944 and 25/1/1949 (including people whose home was in Australia, notwithstanding temporary absence). The repeal of this provision on 1 May 1987 did not affect the Australian Citizenship status of these people.

L O S S O F A U S T R A L I A N C I T I Z E N S H I P

11 An adult Australian Citizen who does any act or thing, the sole purpose of which is to acquire the Citizenship of another country, will automatically lose their Australian Citizenship upon acquisition of that other Citizenship.

D E P R I V A T I O N O F A U S T R A L I A N C I T I Z E N S H I P

12 Where a person is an Australian Citizen by virtue of a certificate of Australian Citizenship, that person may be deprived of their Australian Citizenship (subject to certain timing limitations as to when the Citizenship was granted or when a fraud conviction occurred) if he or she:

- is convicted of providing false information in their application for Australian Citizenship; or
- committed a serious offence before applying for Australian Citizenship, but was not convicted until after becoming an Australian Citizen; or
- was granted a certificate of Australian Citizenship as a result of migration related fraud.

R E N U N C I A T I O N O F A U S T R A L I A N C I T I Z E N S H I P

13 A person may renounce their Australian Citizenship if he or she:

- has attained the age of 18 years and is a national or Citizen of a foreign country; or
- was born in, or is ordinarily resident in, a foreign country and cannot acquire the nationality or Citizenship of that country because he or she is an Australian Citizen.

RESUMPTION OF AUSTRALIAN CITIZENSHIP

14 A person is eligible to resume Australian Citizenship if he or she:

- did not know that they would lose their Australian Citizenship when applying for the Citizenship of another country; or
- would have suffered significant hardship or detriment if he or she had not acquired the other Citizenship;

and

- has been lawfully resident in Australia for a total of at least 2 years in their life;
- intends to reside in Australia;
- has maintained a close and continuing association with Australia.

Attachment C

Historical overview of Australian Citizenship Law

CONCEPT OF AUSTRALIAN CITIZENSHIP

1 The modern concept of Australian Citizenship embraces the notion that all Citizens, regardless of background, have full and equal membership of the nation state, encompassing all the legal privileges and responsibilities attendant to such status.

2 Australian Citizenship defines an individual's relationship with others and to some degree defines personal identity. It is a legal status and usually an emotional attachment as well.

ORIGINS OF AUSTRALIAN CITIZENSHIP

3 Prior to the enactment of the *Nationality and Citizenship Act 1948* there was no concept of Australian Citizenship. While there were several other Acts in place relating to naturalisation, they generally involved giving British subject status to certain persons, maintaining the British common code of nationality.

4 The impetus for Australia to have its own Citizenship status arose out of a conference of Commonwealth Prime Ministers in the late 1940s. A decision was made that each Commonwealth country, including the UK, should have its own Citizenship status in addition to having British subject status.

5 Australian Citizenship is therefore a relatively recent concept, only becoming a legal reality on 26 January 1949. The *Nationality and Citizenship Act 1948*, as it was then titled, was enacted with the purpose of creating the status of Australian Citizenship. It also provided that an Australian Citizen would also be a British subject and recognised persons who were Citizens of other British Commonwealth countries as British subjects.

6 This Act reflected Australia's origins from separate British colonies and its early orientation within the British Empire. At that time, Australia was a relatively monocultural society and, not surprisingly, Australian Citizenship laws reflected prevailing attitudes by favouring British migrants.

7 The essential choice that has faced governments during the short evolution of Australia's Citizenship law has been to determine the degree of inclusivity, that is, on what basis should a newcomer to Australia be able to become an Australian Citizen.

8 In addition, governments have from time to time needed to consider what practical distinctions might need to exist between Citizens and permanent residents. However, responsibility for the quick and successful settlement of migrants led governments to the view that permanent residents, regardless of whether they were Australian Citizens, generally needed to access government services and benefits available to other Australians.

KEY PROVISIONS OF THE NATIONALITY AND CITIZENSHIP ACT 1948 AT ITS INCEPTION

9 The *Nationality and Citizenship Act 1948* provided for the acquisition of Australian Citizenship by:

- inclusion of transitional provisions which gave automatic Citizenship to British subjects if they had a definite association with Australia;
- birth in Australia;
- descent;
- registration in the case of British subjects other than Australian Citizens or Irish Citizens;
- grant of naturalisation in the case of aliens.

10 Other key provisions were as follows:

- *Acquisition*—British subjects and Irish Citizens could acquire Australian Citizenship by registration while aliens (non-British subjects and non-Irish Citizens) could acquire Australian Citizenship by the process of naturalisation.
- There was a mandatory requirement that applicants declare their intention to apply for naturalisation at least two years before lodging their application.
- *Residential requirements*—British subjects and Irish Citizens were required to reside in Australia for five years during the eight years preceding the date of application. However, the Minister could approve a shorter period but not less than twelve months in certain specified cases. As a matter of policy during that time, however, the Minister approved all such applicants that met the residence requirements after twelve months residence in Australia. Aliens were required to reside continuously in Australia for a period of one year immediately preceding the date of application. In addition to that, they were required to reside in Australia for four years during the eight years preceding the date of application.
- *Oath or Affirmation of Allegiance*—Aliens were required to affirm allegiance. There was no requirement for British subjects or Irish Citizens to do so.
- *English language*—an adequate knowledge of the English language was required. A person met this criterion if he or she could engage in any ordinary occupation among English speaking people, procure easily his or her everyday requirements and explain the responsibilities and privileges of Australian Citizenship.

11 An area of misconception has been the Citizenship status of Australia's Indigenous people. Australian Citizenship was automatically extended to Indigenous people at the commencement of the *Nationality and Citizenship Act 1948* in the same way as it applied to all British subjects in Australia. However, because of the operation of other laws and practices, Indigenous Australians were not entitled at that time to the same privileges and responsibilities as other Australian Citizens. The right to vote, for example, was fully extended to Indigenous Australians only in 1962 (although Indigenous people in some parts of Australia were able to vote earlier). In 1967 a national referendum gave the Commonwealth the power to make laws for Indigenous people and provided for Indigenous Australians to be counted in the national Census.

DEVELOPMENT OF THE ACT

12 Australian Citizenship legislation and policy has been amended on many occasions over the last fifty years and has progressively reflected a stronger sense of Australian identity and a more inclusive approach to grant of Citizenship. Undue barriers and the discriminatory effect of many provisions have been gradually removed. Changes to the Act paralleled Australia's growing diversity. Changes of a significant nature are outlined below.

Title of the Act and British Subject Status

13 In 1973 the title of the Act was changed to the *Australian Citizenship Act 1948* and in 1984 the status of British subject was removed from the Act.

Birth Provisions

14 A significant change to the birth provisions was introduced on 20 August 1986. Prior to its commencement all children born in Australia were Australian Citizens unless one of the parents was a foreign diplomat, a consular representative of a foreign country or an enemy alien at the time of birth. The amendment provided that a child born in Australia should only acquire Australian Citizenship if at least one parent was an Australian Citizen or permanent resident at the time of the birth.

Descent Provisions

15 From 1949 until 1969 the Act enabled a male Australian Citizen parent to pass on their Australian Citizenship to their child born outside Australia. From 1969 Australian Citizen mothers were also able to pass this status to their children. Other changes to the descent provisions included extending the period within which the birth could be registered and the introduction of a requirement that parents who acquired Citizenship by descent have spent at least two years lawfully present in Australia. In 1991 there was a reinstatement of a discretion to register a person at any age where there is an acceptable reason for the delay in registration, the person is of good character, the parent was an Australian Citizen at the time of the person's birth and at the time of application, and the person was over the age of 18 on 15 January 1992. These changes effectively reduced discriminatory and undue barriers for persons seeking Australian Citizenship by descent.

English Language

16 In 1984 the requirement that prospective Australian Citizens have an 'adequate' knowledge of the English language was reduced to that of a 'basic' knowledge. This was changed on the

grounds of inclusiveness, that is, that Australian Citizenship should not be denied to individuals who have been accepted as permanent migrants, have lived in some cases for many years in Australia and have made a contribution.

Residence Requirements

17 At the inception of the Act, British subjects and Irish Citizens were required to reside in Australia for five years during the eight years preceding the date of application but could be approved for Australian Citizenship after twelve months in certain cases. As a matter of policy however, the Minister approved all such cases after twelve months residence in Australia. On the other hand aliens, that is, those who were not British subjects or Irish Citizens, were required to reside continuously in Australia for a period of one year. In addition, they were required to reside in Australia for four years during the preceding eight years (totalling five years). In 1969 the residence requirement for aliens who could read and write English was reduced from five years to three years. In 1973, discrimination between British subjects and aliens in respect of the residential requirements was removed, becoming three years for both. Finally, in 1984, the residential qualifying period was reduced from three years to two years to encourage migrants to become Australian Citizens as soon as possible after settling in Australia.

Pledge of Commitment

18 Another example of changes which have acknowledged a more inclusive approach to Australian Citizenship relates to changes to the Act in the area of the Australian Citizenship Pledge or, as it was previously known, the Oath or Affirmation of Allegiance taken by new Citizens. The original requirement that only aliens (not British subjects or Irish Citizens) affirm allegiance to the Crown has been changed to a

requirement that all new Citizens, regardless of origin, take the Oath or affirm their allegiance. The requirement that new Australian Citizens renounce foreign allegiances has been dropped. This requirement was removed in recognition of the emotional misgivings it created among those who wanted to become Australian Citizens but who found it difficult to renounce the culture and language of their former homeland. The most recent change was in 1994 with the introduction of the new Australian Citizenship Pledge incorporating a distinctly Australian form of words focussing on loyalty to Australia and its people.

Dual/Plural Citizenship/ Resumption of Australian Citizenship

19 The Act was changed in 1984 to make it easier for people to retain or resume their Australian Citizenship, when it became apparent that some Australian Citizens were losing Australian Citizenship because they were acquiring other Citizenships unwittingly or by coercion. A further review of policy guidelines in 1995 gave more clarity and certainty for people wishing to resume Australian Citizenship by outlining the circumstances in which Citizenship could be resumed. This enabled people to provide relevant information in their applications and allowed people to refrain from lodging an application (and paying the application fee) where it was clear that they did not meet the relevant criteria.

Deprivation

20 The original Act conferred broad powers to the Minister to deprive a naturalised person of his or her Australian Citizenship. Progressive changes to the deprivation provisions over the years indicate a legislative intention to restrict the powers to deprive a person of their Australian

Citizenship. However, provisions enacted in 1997 allow deprivation of Australian Citizenship, without time limitation, where a person has acquired Australian Citizenship as a result of fraud, whether at the time of immigration or when applying for Australian Citizenship. These amendments reflect the Government's commitment to the principle that a person granted Australian Citizenship after making a full disclosure of relevant factors should be on an equal footing with other Australian Citizens, and that the value of Australian Citizenship should not be undermined by allowing the grant of Australian Citizenship to stand where it has been granted as the result of fraud or deception.

