

The following article by Fred Brenchley appeared in the Australian weekly news magazine The Bulletin on 6 June 2000. Fred has kindly given his permission for us to reproduce the article here.

"Birth Rights: Subject to Change"

Cabinet will soon consider a plan to allow Australians to hold dual citizenship. Canberra correspondent Fred Brenchley reports on the anomaly in the system that discriminates against native-born Australians.

Welcome home, Citizen Murdoch! Indeed, the Howard government may soon be dusting the mat for all Australians who have been forced to relinquish their Australian citizenship by becoming citizens of another country. Dual citizenship is now an accepted practice in many advanced economies such as the United States and the United Kingdom, and the Howard government will soon consider a recommendation by the Minister for Immigration, Philip Ruddock, to take Australia down the same path.

It will be a major change in Australian citizenship laws, which for more than 50 years have penalised Australians who, for whatever reason, have taken out citizenship of another country. But a glaring anomaly in current laws, coupled with factors such as globalisation, a more outward-looking Australia in employment terms and a political consensus towards dual citizenship, has radically changed the equation.

While the winds are blowing toward dual citizenship, it is no foregone conclusion. Many people feel that allowing dual citizenship somehow diminishes Australian citizenship. As well, there is the divided loyalty argument, which also rears its head in 44(i) of the Constitution preventing Australians of dual nationality holding seats in parliament.

Earlier attempts to end the dual citizenship barrier have foundered, mainly on these nationalistic shoals. Then there is the Murdoch factor. In the Hawke-Keating era, the fear of doing something that could be seen as apparently favouring the media tycoon in buying Australian TV stations was sufficient to kill it off.

Murdoch is far and away the highest profile Australian of the 600 or so every year who relinquish their Australian citizenship by taking out that of another country. Under section 17 of the Australian Citizenship Act (1949), Murdoch in the mid-'80s faced the choice of retaining his Australian citizenship or buying US television stations, which by American law must be owned by US citizens. He opted for the business deal, which was a major part of his global group's transformation from print to electronic media. In retrospect, it seems extraordinary that an Australian citizenship law should act as a barrier to Australian groups expanding abroad.

The "Murdoch factor" is a dead issue in the Howard government's consideration of amending Section 17. Murdoch could easily re-acquire Australian citizenship as it is.

Current rules provide for citizenship to be reissued if a person “intends” to reside to Australia within three years or has maintained “a close and continuing association with Australia.”

Murdoch easily qualifies. The fact that he has not bothered to apply probably speaks more for US broadcasting law than it does for Australian citizenship law. A renewed Murdoch citizenship would not substantially enhance his aim of also becoming an Australian TV operator. While it may help him to jump the initial hurdle of a 15% foreign ownership limit, he would fall at the cross-media hurdle that bars newspaper and television ownership in the one market.

The Murdoch bogey aside, the biggest argument for dual citizenship is the sheer discrimination the current ban puts on all native-born Australians. The original 1949 citizenship law, based on the older Hague rules that a person should have only one nationality, required all migrants taking out Australian citizenship to renounce their former citizenship.

But the Hawke government removed this requirement in 1986 creating a glaring anomaly. It is estimated that about 4.4 million Australians – people who have migrated and taken out citizenship – can now lawfully possess dual citizenship. But Australian-born people lose their citizenship if they do so.

The anomaly angers many Australians living abroad for business or family reasons. Some simply hide the dual passports they acquire through, say, Irish heritage, allowing them to travel freely around the European Union.

Foreign Minister Alexander Downer got some rough questioning at a London luncheon of Australian Business in Europe a few years ago on the issue. The hot complaint was that Australians of, say, Italian or British extraction, could move easily around the European Union courtesy of their former European citizenship while native-born Australian business-people faced multiple visa and cost problems.

Canada, when faced, with a similar anomaly in 1977, opted for dual citizenship. The recent inquiry by the new Australian Citizenship Council, chaired by former governor-general Sir Ninian Stephen, reported that three-quarters of the submissions it received were above the forced loss of Australian citizenship upon acquisition of another. Only a small proportion argued in favour of Section 17.

“The Council believes that as we move into the 21st century, the prevalence of dual citizenship internationally will increase,” the Council reported to Ruddock. “The law and practice of most countries with which Australia likes to compare itself permits citizens of those countries to obtain another citizenship without losing their original citizenship – New Zealand and the United Kingdom for over 50 years; Ireland for over 40 years; Canada and France for over 20 years; and the United States and Italy among others, have changed their practices within the past decade to allow this.

“These countries simply recognize that they have an internationally mobile population and that they can retain connection with this population even if another citizenship is acquired. The council is not aware of any detriment suffered by these countries as a result of their, in some cases, very longstanding practices in this area.

“The council also believes that to hold and enforce the threat of loss of 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.”

The council’s recommendation to repeal Section 17 is the major platform of Ruddock’s submission to Cabinet. But the political winds are also favorable. Labor’s shadow immigration minister, Con Sciacca, has shadow cabinet’s approval to back dual citizenship. Sciacca says that if Ruddock does not repeal Section 17. “It will be one of the first things I will push through as minister for immigration.” “I don’t see why we cannot modernize ourselves and do what the majority of our trading partners do in allowing dual citizenship,” he says, pointing to an earlier 1994 joint parliamentary report chaired by Labor that also recommended dual citizenship.

Labor’s pro dual citizenship stance underlines the increasing mobility of the Australian workforce. In 1998-99 some 35,500 Australians left the country permanently, of whom almost half were Australian-born. This was the highest permanent departure in 26 years, reflecting the citizenship council believes, the increasing internationalization of labor markets and the new opportunities abroad in business and education. Australians now head Ford (Jac Nasser) and Coca-Cola (Douglas Daft).

Any Howard Cabinet move to endorse dual citizenship could be accompanied, perhaps sweetened, by a special 2001 federation centenary package surrounding civic values. The citizenship council has urged federal and state endorsement of an “Australian Compact” of values on fairness, democracy, rule of law, multiculturalism and the “unique status” of Aborigines. It also urges wider use of the new Australian Citizenship Pledge, introduced last year to allow native-born Australians to affirm their loyalty to Australia, as well as schools campaign on civics.

Whatever the flag-waving in 2001, introduction of dual citizenship will not remove the constitutional bar on people with dual nationality holding seats in parliament. The Australian Citizenship Council merely urges government to review how to measure “undivided loyalty to Australia” for intending parliamentary candidates.

Con Sciacca is more frank. Sole Australian citizenship may be something parliamentarians have to bear. “It may be an untidy edge, but it only affects about 220 Australians out of a population of 19 million,” he says.