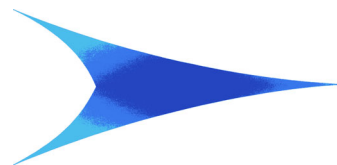


# The Southern Cross Group

*Promoting Mobility in the Global Community*

Brussels, Washington, London and Canberra



The Hon John Howard, MP  
Prime Minister of Australia  
Parliament House  
Canberra ACT 2600  
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2 January 2001

Dear Prime Minister,

The Southern Cross Group is a non-profit organisation formed in response to a growing realisation that there are a number of issues which impact negatively on Australians who are seeking to work effectively within the professions, multinational companies and organisations, or as representatives of Australian businesses outside their country of nationality.

Most recently, we have made representations to you seeking Government agreement to the repeal of Section 17 of the *Australian Citizenship Act 1948* so as to allow Australian-born Australian citizens to take up the nationality of another country without forfeiting their Australian citizenship.

During extensive discussions and meetings that our representatives had with government agencies, professional and business associations, and the media during mid-December in Canberra and Sydney, it became apparent to us that there were two matters on which we should make further representation:

- the concern among some members of the Government that repeal of Section 17 of the *Australian Citizenship Act 1948* would in some way weaken the value of Australian citizenship and/or create a risk of divided loyalty among those who establish dual citizenship.
- the loss of skilled Australians to overseas destinations, which the Government will be addressing in its forthcoming innovation policy statement.

Almost all of the debate in the last decade concerning dual citizenship in Australia has focussed on subsection 44(i) of the Australian Constitution, which prevents individuals holding dual or multiple nationality from being chosen for or sitting as a senator or member of the House of Representatives. The principle of divided loyalties which underlies that Constitutional provision is more relevant in the context of our elected representatives. This issue is separate from that facing many thousands of Australians living and working overseas and impacted by Section 17 of the 1948 Act.

Any individual who wishes to stand for election to Parliament who holds dual or multiple nationality will remain subject to subsection 44(i) of the *Australian Constitution*, even after Section 17 of the *Australian Citizenship Act* is repealed.

Section 17 applies to all Australians, and cannot be sustained in an age of global mobility. In a nation of migration, in which between four and five million Australians already legally hold dual citizenship it is inequitable that the remainder are unable to avail themselves of this advantage.

More detailed views on the question of divided loyalty are contained in **Attachment A**.

We note that the Government plans to make an innovation statement in January and that you have indicated that it will also address “Brain Drain” and skilled immigration. Australia’s competitiveness internationally requires a flow of Australians and non-Australians moving to and from the country as part of their professional development. This is particularly pertinent for Australia’s ability to maintain a reservoir for research and development. Government action should be directed towards creating a policy mix which optimises opportunities within Australia and facilitates the repatriation of Australians with international experience.

Many countries have policies to maximise the value of their nationals abroad. Accordingly, the forthcoming innovation statement could be used as a first step to raise Australian public awareness of the possible benefits of this untapped national resource. Our preliminary thoughts in **Attachment B** as to how this might be done reflect initial comments coming to us from our members and other contacts. A fuller submission could be developed in due course.

The Southern Cross Group continues to urge the prompt introduction of legislation repealing Section 17 of the *Citizenship Act 1948*. We strongly support the objectives of the government’s upcoming innovation statement. With members operating internationally, we look forward to providing constructive input where appropriate, as Australia develops policies maximising all its human resources for the global economy.

Yours sincerely

John Russell  
for the Management Committee

Anne MacGregor

**CC** The Hon John Anderson, MP  
Deputy Prime Minister and Minister for Transport and Regional Services

The Hon Alexander Downer, MP  
Minister for Foreign Affairs

The Hon Philip Ruddock, MP  
Minister for Immigration and Multicultural Affairs

Senator the Hon Richard Alston  
Minister for Communications, Information Technology and the Arts

The Hon Dr Michael Wooldridge, MP  
Minister for Health and Aged Care

Senator the Hon Nick Minchin  
Minister for Industry, Science and Resources

The Hon Mark Vaile, MP  
Minister for Trade

## Dual Nationality, Value of Australian Citizenship, and Divided Loyalty

### **The distinction between Section 17 of the *Australian Citizenship Act 1948* and subsection 44(i) of the *Australian Constitution*.**

The principle of divided loyalties which underlies subsection 44(i) of the *Australian Constitution* is more relevant in the context of our elected representatives. This has little or no impact on the vast majority of Australians, particularly those that seek to live and work overseas. Section 17 of the *Australian Citizenship Act 1948* applies to all Australians and in the context of this provision, the divided loyalties argument cannot be sustained in an age of global mobility.

All Australians should be on an equal footing with regard to dual nationality. Any individual who wishes to stand for election to Parliament who holds dual or multiple nationality will remain subject to subsection 44(i) of the *Australian Constitution*, even after Section 17 of the *Australian Citizenship Act* is repealed.

### **Apparent concerns regarding loyalty if equal rights to take out dual citizenship are allowed under the *Australian Citizenship Act 1948***

Our research suggests that the concern over divided loyalty in Australia has been concentrated on discussions related to subsection 44(i) of the Constitution. At the Constitutional Convention in 1998 the issue was discussed in the context of the qualifications that might be expected of a future head of state if Australia became a republic.

Many Australians may not have realised that Section 17 of the *Citizenship Act* is a separate and distinct provision to that in the Constitution dealing with dual nationality for Federal elected representatives.

Concerns about the related issues of loyalty and the value of citizenship will always be difficult to allay, as they are matters which go to the core of an individual's perceptions of their roots; family and cultural ties; national pride; past experience of political stability or instability; and actual experience of, or perceived position in relation to, Government policies.

For any individual, the question of loyalty may change over time and that the answer will be determined according to the circumstances under which, and the basis on which, the question is asked. In these times of relative world stability, very few individuals will ever be put to the test on loyalty couched in terms of national security.

If the question of national security is at the heart of concerns over divided loyalties, then it would seem that the solution would be better addressed by establishing protocols and rules for the placement of people in positions of trust vis-à-vis national security. For example, that under US citizenship law, which allows dual citizenship, one of the ways in which US citizenship may be forfeited is that the individual takes up a position in the military forces of a foreign power at officer level.

Recent well-publicised breaches of national security suggest that the motivating force for the individuals concerned has been that of material gain rather than any sense of loyalty to a country for which they hold dual citizenship.

Australia's multicultural policy has been an outstanding success and is much admired by many other countries. Yet there appears to be no widespread evidence that the four to five million people who are legally entitled to hold both Australian citizenship and that of another country by right of birth or descent, are seen to pose difficulties in relation to divided loyalties. Or that they do not place a high value on their Australian citizenship.

The Australian Citizenship Council received many submissions advocating the repeal of Section 17. The few voices against repeal cited such issues as compromising the defence of one's country. Yet, as the National President of the RSL said in a presidential message in April 2000 "Perhaps the ultimate test of a good citizen is their preparedness to fight for the defence of their country. Why ask less?" It is worth noting that those Australians who already have legal standing as dual citizens are readily accepted into the armed forces of Australia. No change to this policy is envisaged and indeed would be ill advised.

Most of those who have surrendered their Australian citizenship by taking another nationality have taken that step under pressure or duress to overcome the barriers and disadvantages that they face in their country of residence.

Since the Southern Cross Group was formed, we have received a stream of communications and comments from Australians living and working both overseas and in Australia. There has been not one message expressing opposition to our quest to have Section 17 repealed. Overwhelmingly, the messages both express support for our aims and request to be kept informed of developments. Many of the messages contain personal case histories that demonstrate a pride in Australian citizenship and catalogue the problems that are created by refusing to surrender that citizenship in favour of citizenship of the country in which they have resided for many years.

We have been unable to identify any evidence in those countries that allow dual citizenship - for example, the United Kingdom, the United States, Canada and New Zealand - that dual citizenship raises serious questions of divided loyalty or a cheapening of the value that is placed on the citizenship of those countries.

## **Dual citizenship and the innovation statement**

Australian Governments, business and the wider community generally have underestimated the true potential that is represented by Australians who live and work overseas. The forthcoming innovation statement could be used as a first step to raise Australian public awareness of the possible benefits of this untapped national resource.

“Brain drain” is a popular emotive term that can be used glibly to gloss over the real issues of why Australia loses so many of its skilled workers. The underlying factors, or some combination of them, are the relative size of Australia’s economy, the attraction of high overseas salaries and more readily available funds for research and development.

It is probable that for most skilled Australians the real attraction in moving overseas is the high level of remuneration available and a broader range of opportunities within larger markets to support entrepreneurial skills. While the Government no doubt has before it a number of ways in which greater emphasis might be placed on expanding Australia’s research and development capability, it is unlikely that it can do much to directly stem the remuneration-driven exodus of skilled workers. Thus, the outflow of such people is something that will remain an established fact over the foreseeable future. The key is to have a policy mix which promotes the return of professionals with international experience.

Australians living and working overseas are:

- expanding the country’s professional skills and experience base in an international environment.
  - for example the World Economic Forum, Davos and IMD Lausanne, which benchmark international competitiveness, rate Australia in the mid rank amongst developed countries. However, both give Australia a poor ranking year after year in the classification of the international orientation of Australian business management.
- frequently developing or consolidating business opportunities for Australia in the global economy.
  - One factor in the success of US businesses overseas is the way in which US Government policies and US business practice have long recognised the importance of placing its citizens as long-term residents in other countries – and allowing them to take out dual citizenship.
- obviously well regarded by overseas employers and places of learning and research, as a work force that is well trained and highly reliable and productive with a good work ethic.
  - An example of the attraction of Australians is the case of the liberal professions, where graduates and experienced personnel are increasingly recruited in Australia by overseas firms and head hunters.
  - working unofficially as private ambassadors for Australia and the Australian way of life.

The Government could consider the following suggestions:

- increase the level of engagement felt by many Australians overseas by
  - allowing all Australians to hold dual citizenship.
  - running a program within Australia which highlights the worth to Australia of Australians living and working overseas.
  - recognise in a timely manner the day-to-day achievements in science, business and academia of overseas Australians, by government statements and honours.
  - consider the extension of voting rights to non-resident Australian citizens.
- work with other governments and international organisations to establish a series of bilateral or plurilateral agreements to ensure that Australians are not disadvantaged as a result of working overseas for part of their careers, in areas such as social security and health cover.
  - that is, facilitate Australians participating in the global work force.
- encourage Australian business and professional associations to promote overseas experience as a desirable part of skills development for their members.
- develop a program that identifies Australians living and working overseas and the areas of their expertise
  - the program should cover who are either medium or long-term non residents
  - develop a communications methodology for the Australian diaspora which allows the government to collate their views and draw on their experience.
  - encourage a program that allows Government, professional, business and educational authorities to bring to Australia such people for short-term experience sharing visits.
- develop and promote an “Always Call Australia Home” program.
  - encourage overseas Australians to return home for regular holiday and reunion visits.
  - provide incentives for Australian parents abroad to place their children back in Australia for secondary and tertiary education.
  - implement the Citizenship Council recommendation to extend to 25 the age for registration as Australian citizens of overseas born children of Australian citizens.
  - shorten or abolish the Australian citizenship qualifying period for former Australian citizens who have forfeited their Australian citizenship under the existing provisions of Section 17 of the *Australian Citizenship Act 1948*.
    - consider allowing Australian born citizens of another country to re-establish Australian citizenship without requiring a period of actual or promised residence in Australia.
  - examine methods by which overseas Australians can be encouraged to repatriate their capital to Australia for investment purposes.
    - given that Australians working overseas do not represent a full burden on the Government budget, some form of tax incentive might be available and appropriate to establish a competitive basis with overseas tax regimes.
    - investment in Australia as a means of establishing a nest egg for return to an easier or more desirable working environment, or in the longer term as a retirement destination.

A more complete catalogue of suggestions could be compiled from the membership of the Southern Cross Group if requested.