



# Passport play – *the citizenship* *problems of working abroad*

The immigration minister's recent announcement not to repeal the infamous Section 17 of the *Citizenship Act* means life will be no easier for the thousands of Australian lawyers currently working overseas. Washington DC-based Anne MacGregor, one such lawyer, reports for *Lawyers Weekly* on the implications

**I**ncreasing numbers of Australian lawyers are leaving Australia's shores to practise overseas. My own firm, which has no offices in Australia, has 610 attorneys in its US offices and 29 of those are Australian. There are hundreds of Australian lawyers in the UK at any one time, and now a significant number in Hong Kong and other cities in Asia and the rest of the world. Every one of them, if questioned, would place a high value on their Australian citizenship. Not one would willingly relinquish it.

In a year when Australia is celebrating its centenary of federation, it may be time for lawyers to reflect on what being legally Australian really means.

Many thousands of Australians in Australia have probably never really thought more than fleetingly about their citizenship. However, for those Australians who leave the Island Continent for any period of time to work and travel overseas, being an Australian citizen becomes a crucial and more developed part of your identity while you are physically away from Australia. In my ten years overseas, I have begun to understand that my "Australian-ness" is still my primary frame of reference for viewing the rest of the world. It is sometimes a barely tangible but always a very real distinguishing factor between myself and those around me in my host society.

On 17 May, immigration minister Philip Ruddock announced a package of measures designed to "boost Australian citizenship". The government was presenting its response to the Australian Citizenship Council's February 2000 Report, which had reviewed many aspects of citizenship and made a series of recommendations for changes.

For thousands of Australians overseas, there was only one issue that mattered in the Council's Report. Section 17 of the *Citizenship Act* takes away your Australian nationality when you take on another

citizenship. It means that Australians who have lived overseas for any length of time have a tough choice to make: take on the citizenship of the country where they now live, or remain Australian, and suffer the disadvantages of being resident somewhere without citizenship. The Council unequivocally recommended that Section 17 should be repealed. The overwhelming majority of all the submissions it received concerned Section 17 and there were few voices opposed to repeal.

Expatriate Australians have been lobbying the Howard Government relentlessly for two years to have Section 17 repealed within the framework of the Citizenship Council's review. But on 17 May, the best the government could do was tell us that it needed more time to consult with the community before making a decision, even though it was "disposed" to repeal the provision. The amount of time needed for a further issues paper and responses, and the collation of these new responses followed by a government decision thereafter, especially in an election year, is prohibitive. Thus the Government effectively told us, albeit obliquely, that it was not going to do away with this discriminatory provision. We can only speculate as to the reason. There is no need for further community consultation.

The great injustice of Section 17 within the context of the rest of the *Citizenship Act* lies in the fact that it divides Australian citizens into two classes. Those starting from a base of having only Australian citizenship forfeit their Australian nationality if they acquire another citizenship. On the other hand, Australia already has up to five million legal dual nationals. Those that are naturalised Australians do not have to renounce their original citizenship under Australian law. And many Australians born in Australia have a second nationality by

descent through one or both of their parents. Put simply, one quarter of the Australian people have a legal right to dual citizenship. The other three-quarters do not. Only a small number within that other three-quarters will ever be in a position to exercise that right. But it is nevertheless a right that all Australians should have.

The government's recently announced campaign to encourage migrants to fully participate in society by becoming Australian citizens, at a total cost of more than A\$6m, will mean that even greater numbers of legal dual citizens will soon exist in Australia, underscoring even further the inconsistency on dual citizenship in the *Citizenship Act*.

In the US, one would call for "equal treatment". In Australia, we don't have that concept entrenched in our Constitution. We have to rely on the good graces of the legislature to give all Australians a "fair go".

How does Section 17 really affect Australian expatriates? In the era of globalisation, international mobility is at an unprecedented level. Increasingly, we are finding that people live their lives as members of more than one society for different and perhaps overlapping periods. For example, as an Australian living in the United States, I belong to the Australian community because I am Australian. I was born there, grew up there, was educated there, worked there. All my relatives are still in Australia as well as many friends and I return at least once a year for visits.

On the other hand, I am part of the community in the United States because I am physically present in the United States. I have friends here. I have a career here for the moment. I may be married to an American national. I may have children who are dual US/Australian citizens. But I cannot vote in my host country because I am not a citizen. I also cannot hold certain government jobs, or run for office in my local council. Even if I enjoy permanent residence on a long-term basis, I could be immediately deported for an offence such as driving under the influence. After years of contributing to the US social security system, if I return to Australia in retirement, I will not receive anything from the US system. If my American spouse dies and leaves me his estate in his will, the US Internal Revenue Service will tax me at a ridiculously high rate on that inheritance

because I am not a US national.

If I could take out American citizenship and retain my Australian nationality, this would be a more relevant and modern legal expression of my belonging at two levels. It would also remove a number of financial, personal and practical barriers. But dual citizenship for those starting from a base of having Australian citizenship is not currently possible under Australian citizenship law.

Australia does not demand that those who migrate to Australia excommunicate themselves from their original society even when they become naturalised Australians. It is not logical or fair to require that Australians who join other societies break their legal link with Australia by forfeiting their citizenship. It is also against Australia's best interests.

The Department of Foreign Affairs and Trade in Canberra estimates that there are now approximately 820,000 Australians living overseas. We are all over the globe, in almost every walk of life. We are integrated into our host communities and have specialised and unique skills. We represent, for Australia, an as yet untapped homegrown overseas network resource. But an expatriate Australian who has been stripped of their citizenship and needs a visa to even enter Australia is a fracture in that network which we cannot afford. We are a small if respected country on the world stage and have to preserve all our human capital.

For years, expat Australians have been negatively impacted by Section 17 and unhappy about its existence. But their voices have not been heard in Canberra – for two reasons. The first is that they were never mobilised to work together to achieve repeal. The second is that their voices, even when heard, have minimal impact in Canberra because the *Australian Electoral Act* disenfranchises Australians who have lived outside Australia for more than a few years. Less than 10% of Australians overseas voted in the last federal election.

The Section 17 campaign has shown beyond doubt that we are beginning to conquer the first hurdle in the internet age. We can reach large numbers of Australians in far flung locations cheaply and quickly and communicate and work together on issues of common interest.

But the second hurdle remains, and will remain for the foreseeable future, even once this specific battle to have Section 17 repealed has been won. We have to question whether the current limitations on the fundamental right to vote imposed by the Australian legislature on Australians physically outside Australia are compatible with our notions of the sort of democracy we want Australia to be as we enter our second century as a player in the global community. The once infamous "tyranny of distance" has virtually been annihilated. Today 5% of all Australians do not live within Australia's territorial boundaries but they are more connected to Australia than they have ever been. Food for thought in an election year.

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