

## **Loss of Australian Citizenship on Acquisition of Another Citizenship**

Discussion Paper on Section 17 of the *Australian Citizenship Act 1948*,  
June 2001

**This discussion paper follows the 17 May 2001 launch of the Government's response to the report of the Australian Citizenship Council.**

In relation to section 17 of the *Australian Citizenship Act 1948*, the Government is disposed to supporting the Council's recommendation to repeal section 17 of the Act, which provides for loss of Australian citizenship on acquisition of another citizenship.

However, given the significance of this change to longstanding Australian citizenship law and practice, it is important that the community has a further opportunity to express its views.

The Government has now issued this discussion paper to facilitate input from the community on this issue. It presents background information on the legislation and policy which provides for loss of Australian citizenship. People are asked to comment by Friday 6 July either by letter or by email.

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# **Loss of Australian Citizenship on Acquisition of Another Citizenship**

## **Foreword**

In *Australian Citizenship... A Common Bond* (May 2001), the Government Response to the report of the Australian Citizenship Council (*Australian Citizenship for a New Century*, February 2000), the Government indicated a disposition to support the Council's recommendation to repeal section 17 of the *Australian Citizenship Act 1948*.

Section 17 provides for loss of Australian citizenship on acquisition of another citizenship. Its repeal, therefore, would ensure that adult Australian citizens do not lose their Australian citizenship on acquisition of another citizenship.

Given the significance of this change to longstanding Australian citizenship law and practice, however, the Government considers it important that the community has a further opportunity to express its views before a final decision is made.

This Discussion Paper presents background information on the legislation and policy which provides for loss of Australian citizenship on acquisition of another citizenship, including its origins and operation, and raises a range of considerations for discussion.

You are invited to consider these issues, as well as any others you consider appropriate, and provide the Government with any comments you would like to make. Loss of Australian citizenship on acquisition of another citizenship is an important issue with the potential to directly affect every Australian. At the same time, a Government decision on this matter will impact on many Australians as well as future generations of Australians. It is deserving of serious and detailed consideration.

The Government is keen to obtain your views and I encourage and look forward to your contribution to this review of an important aspect of Australian citizenship.

**Philip Ruddock**  
**Minister for Immigration and Multicultural Affairs**  
**June 2001**

# Loss of Australian Citizenship on Acquisition of Another Citizenship

## How Current Citizenship Law Works

Section 17 of the Australian Citizenship Act 1948 provides that:

*"17 (1) A person, being an Australian citizen who has attained the age of 18 years, who does any act or thing:*

*(a) the sole or dominant purpose of which; and*

*(b) the effect of which;*

*is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.*

*(2) Sub-section (1) does not apply in relation to an act of marriage."*

Accordingly, an Australian citizen aged 18 or over who does 'any act or thing' in order to acquire the citizenship of another country, ceases to be an Australian citizen when the other citizenship is acquired. This provision works by operation of law and takes effect when the Australian citizen acquires the new citizenship.

Section 17 does not apply in situations where another citizenship is acquired automatically (usually because of marriage).

## What Happens in Practice

It is not known how many Australians lose their Australian citizenship annually through the operation of section 17. It is believed that many Australians acquire another citizenship, and therefore lose their Australian citizenship, without the Australian Government ever becoming aware of this fact. In many cases, the people affected continue to conduct their lives as Australian citizens, even though they are not Australian citizens any longer. Many of these people are not aware that they have lost their Australian citizenship.

However, it is reasonable to assume that the number of Australians acquiring another citizenship and therefore losing Australian citizenship is on the increase.

Australia's population is becoming increasingly mobile. More and more Australians travel overseas, or leave Australia for significant periods of time to live and work overseas. At the same time, more people than ever before choose to travel to Australia, either for short or longer periods.

For example, the total number of arrivals to Australia (from all sources, including travelling Australians) increased from some 94,000 in 1947-48 to over 8.3 million in 1999-00 and, over the same period, the total number of departures from Australia increased from 65,000 to over 8.2 million. In 1999-00, some 85,000 Australian residents left Australia on a long term basis (12 months or more) and some 41,000 Australian residents left Australia permanently, of whom nearly half were Australian-born. The

permanent emigration figure is the highest in 27 years and reflects increasing internationalisation of labour markets and greater overseas opportunities for Australians in fields such as business and education.

These trends make it more likely that greater numbers of Australians will seek to acquire another citizenship.

In practice, the Government is able to give effect to the law in relation to loss of Australian citizenship on acquisition of another citizenship, only when it comes to notice that individuals have lost their Australian citizenship. This is usually when those affected require a service from the Government, such as renewal of a passport, or attempt to register a child born abroad as an Australian citizen.

In many cases, loss of Australian citizenship may come to notice many years after it was lost. Frequently, the Department of Immigration and Multicultural Affairs may have to advise a person that they have ceased to be an Australian citizen some years previously. Many of these notifications cause significant distress to the individuals concerned.

On average, around 600 to 700 people come to the notice of the Department of Immigration and Multicultural Affairs each year as having lost their Australian citizenship through the operation of section 17. In 1999/00, 624 people were registered as having lost their Australian citizenship in this way.

The majority of people affected by section 17 are born in Australia. In 1999/00 Australian-born people represented 68 per cent of those who came to official notice as having lost their Australian citizenship through the operation of section 17.

Where loss of Australian citizenship occurs while the individual is in Australia, the individual retains permanent resident status. They can live and work in Australia permanently, although they have no access to the privileges of Australian citizenship, such as voting and an Australian passport. They may seek to resume their Australian citizenship under the resumption provisions of citizenship law.

Where loss of Australian citizenship occurs when the individual is overseas, the individual automatically has no citizenship or visa status. It is possible, however, for these individuals to resume their Australian citizenship under resumption provisions.

### **Other Related Provisions**

A child under 18 years of age who acquires another citizenship in their own right is not affected by section 17. The child will, therefore, not lose their Australian citizenship when another citizenship is acquired.

Should one of the child's parents lose Australian citizenship under section 17 (ie through acquisition of another citizenship), the child will also lose their Australian citizenship - unless the child's other parent is an Australian citizen or the loss would render the child stateless (section 23(1)(a) of the Act).

People who lose their Australian citizenship under section 17 are eligible to resume it if they meet the relevant eligibility criteria. Many people, however, are not prepared to lose their Australian citizenship or risk refusal of their application for resumption. At present

around 540 people seek to resume their Australian citizenship annually. Of those, almost 90 per cent are approved.

### **Historical Background**

Section 17 came into effect on 26 January 1948, on the enactment of the Australian Citizenship Act 1948. The legislation in force at the time provided that:

*"An Australian citizen of full age and of full capacity, who whilst outside Australia and New Guinea, by some voluntary and formal act, other than marriage, acquires the nationality or citizenship of a country other than Australia, shall thereupon cease to be an Australian citizen."*

At the time, Australia was a signatory to *The League of Nations Convention on Certain Questions relating to the Conflict of Nationality Laws* adopted at The Hague in 1930. The Convention sought to ensure that all persons would have only one nationality. It was drafted at a time when difficulties associated with dual citizenship were particularly prominent as a result of the changes of nationality arising out of the Peace Treaties of 1919.

In the decades following the introduction of section 17 there was some adjustment of the provision. For example, on 1 December 1973 the age from which loss of Australian citizenship would occur following the acquisition of another citizenship was lowered from 21 years to 18 years to reflect contemporary views of adulthood.

Further change occurred on 22 November 1984: the effect of section 17 was widened to also encompass situations where acquisition of another citizenship took place whilst the adult Australian citizen was in Australia. (Up until 22 November 1984, loss of Australian citizenship would occur only where acquisition of another citizenship took place whilst the Australian citizen was outside Australia.)

In more recent years, there has been an underlying trend towards liberalisation.

The Act was amended in 1984 to make it easier for people to resume their Australian citizenship. This measure was designed in part to facilitate resumption for Australian citizenship by people who lost their Australian citizenship as a result of acquiring another citizenship unwittingly or by coercion. A further review of policy guidelines in 1995 gave more clarity and certainty for people wishing to resume Australian citizenship.

### **Circumstances Where Australian Citizens May Have More Than One Citizenship**

There are some circumstances which may result in Australian citizens having more than one citizenship and which are unaffected by the operation of section 17. Generally they tend to involve migrants from countries which allow them to retain their citizenship on acquisition of Australian citizenship, and Australian citizen children with a migrant background.

Currently an estimated 4.4 million Australians possess a citizenship additional to their Australian citizenship.

Circumstances which may produce this outcome include:

- When a migrant acquires Australian citizenship through the normal grant process and the laws of the migrant's previous country allow that person to retain their citizenship of that country. (Australian law does not require new citizens to divest themselves of other citizenships when acquiring Australian citizenship.)
- When a person is born in Australia to an Australian citizen parent who is, or in some cases was, also a citizen of another country. Thus the person acquires Australian citizenship by birth as well as the parent's other citizenship by descent.
- When a person is born overseas to an Australian citizen parent, thus being able to acquire Australian citizenship by descent as well as the citizenship of the country in which he/she was born.
- When an Australian citizen acquires the citizenship of another country automatically by legislation of that country, for example, by marriage.
- When an Australian citizen under 18 years of age acquires another citizenship. This is because children under 18 years of age who acquire another citizenship in their own right are not affected by section 17.
- When an Australian citizen acquires another citizenship, loses Australian citizenship as a consequence, and then resumes Australian citizenship.

## **What Other Countries Do**

The law and practice of many countries allow citizens of these countries to acquire another citizenship without losing their original citizenship.

The Canadian government has allowed Canadian citizens to hold more than one citizenship since 1977.

In the USA, it is possible to acquire another citizenship without loss of US citizenship, following a Supreme Court interpretation of relevant legislation to the effect that loss of US citizenship on acquisition of another citizenship is possible only where people show "affirmative intention" to transfer their allegiance when acquiring the other citizenship. Affirmative intention to transfer allegiance was interpreted as meaning something more than the simple acquisition of another citizenship.

There is a growing trend internationally for countries to allow their citizens to hold another citizenship without losing their original citizenship. New Zealand and the UK have allowed this for over 50 years; Ireland, for over 40 years; Canada and France, for over 20 years; and the USA and Italy, among others, have changed their practices within the last decade to allow this.

Most recently, Sweden has taken this step also. On 21 February 2001, the Swedish Parliament approved new citizenship legislation whose provisions include, inter alia, the

possibility of dual citizenship. The new legislation will come into effect on 1 July 2001. In making this decision, the Swedish Parliament expressed the view that the advantages of dual nationality outweigh the disadvantages.

Many Asian countries, on the other hand, have in place a policy of single citizenship.

As well as those mentioned earlier, some countries which allow acquisition of another citizenship without loss of the original include Switzerland, Hungary, Greece, Portugal, Israel, Brazil, Colombia, Egypt, Lebanon, Jordan, Mexico, Syria, Turkey, Western Samoa.

Countries which do not allow a person to keep their citizenship if they acquire another include Austria, Belgium, Denmark, Germany, Netherlands, Poland, Norway, Japan, China, India, Indonesia, Malaysia, PNG, Philippines, Singapore, Thailand, Vietnam.

An indicative listing of countries whose citizenship legislation or practice allow or do not allow dual citizenship is provided at Attachments A and B respectively.

## **Proposed Repeal of Section 17**

The Government is disposed to repeal section 17 of the *Australian Citizenship Act 1948*. This provision, as noted earlier, causes adult Australian citizens to lose their Australian citizenship when they acquire another citizenship. Repealing section 17 would allow adult Australian citizens to acquire another citizenship without losing their Australian citizenship.

### **Likely Effects of Change**

Repeal of section 17 would discontinue loss of Australian citizenship on acquisition of another citizenship for any Australian who acquires another citizenship from the date the legislation comes into effect.

It is not proposed that repeal of section 17 act retrospectively. The avenue of resumption of Australian citizenship would, of course, remain available to those who had lost their Australian citizenship through the operation of section 17 prior to the repeal.

There are currently an estimated 4.4 million Australians who also possess another citizenship. Repealing section 17 would be unlikely to increase significantly the number of Australian citizens who also possess another citizenship.

A consequential amendment would also be made to remove the reference to section 17 in section 23(1)(a) of the *Australian Citizenship Act 1948* which relates to the consequent loss of Australian citizenship for children, which occurs under the current law, but which would not occur if section 17 is repealed.

## Arguments for the Change

Some people in the community are of the view that current citizenship legislation is outmoded given the scale of movement of Australians overseas and the reality of global labour markets. The increasing internationalisation of commerce, it is argued, necessitates individuals working overseas holding another citizenship in order to make the most of opportunities available overseas in Australia's national interest. Australia's citizenship laws, it is said, fail to take account of this reality.

It is argued that current citizenship legislation works against the national interest by restricting the expansion of Australia's presence internationally in order to take advantage of business and personal opportunities in other countries. Many Australians who live abroad promote Australia overseas, creating linkages with, and business and employment opportunities in Australia and bringing back entrepreneurial, technical and other skills acquired overseas.

The ability to retain their Australian citizenship on acquisition of another citizenship would enable Australians resident overseas, many of whom have gained significant international expertise through working overseas, to return to Australia and bring that experience back to the workforce. If Australians working overseas lose their Australian citizenship, it is argued, they may never return to Australia and their knowledge and expertise may be lost to Australia.

The law and practice of many countries with which Australia is often in commercial competition, such as the UK, USA, New Zealand and Canada, allow their citizens to acquire another citizenship without losing their original citizenship.

It is often claimed that section 17 can be arbitrary or discriminatory in its practical application. In particular, the existing law impacts most heavily on, and appears less than equitable to, Australian-born adult Australian citizens. Australians who were born overseas frequently possess more than one citizenship while Australians born in Australia cannot. Australians abroad argue that they are forced to make an unenviable choice between taking out local citizenship to be effective and retaining their Australian identity and that of their children, which they regard as their birthright.

Many note that there is no evidence to suggest that the reality of the estimated 4.4 million Australians who possess more than one citizenship has presented any significant problems for the Australian community.

It is also argued association with a country need not be a singular concept. The apparently problem-free experience of countries which allow possession of more than one citizenship suggests that it is possible for individuals to have a close and continuing association with more than one country.

Still others are of the view that association with more than one country simply reflects the reality of a multicultural nation such as Australia, noting that there are productive and established members of the community whose identities require dual loyalties.

Another argument in favour of change recognises that current legislation does not allow Australian citizens who were former migrants to take advantage of recent changes in many countries to access the citizenship of their birth. Such opportunities exist, for example, following the collapse of the Soviet Bloc in Eastern Europe and due to

liberalisation in some Western countries, such as Italy. Many former migrants have a deep-felt longing to reacquire the citizenship of their birth, often for nostalgic reasons but also as a result of more practical considerations, including the existence of property rights.

### **The Australian Citizenship Council**

The Australian Citizenship Council specifically raised the issue of loss of Australian citizenship on acquisition of another citizenship, for comment in its Issues Paper (*Contemporary Australian Citizenship*, February 1999). Nearly three-quarters of submissions to the Council addressed this issue. Overwhelmingly, these submissions called for the repeal of section 17 (86 per cent of submissions raising issues of loss of Australian citizenship on acquisition of another citizenship).

Submissions in favour of repeal generally argued that seeking the citizenship of another country does not diminish one's commitment to Australia, and indeed facilitates transfer of international skills and expertise to Australia. Many also pointed to the significant disadvantages experienced by those living in a country without benefit of the citizenship of that country. Some extracts of submissions made to the Council are as follows.

*"An increasing number of us function, by necessity, as world citizens. This does not reduce our loyalty or affection for our countries of origin, but it can create some very real personal difficulties. ... It makes no sense to have barriers, whether psychological or financial, that make it less likely that Australia will gain from the contributions and resources of people who have extensive international experience."*

*"Under US law, as a non-citizen, I would lose a substantial amount of my husband's hard-earned estate to estate tax should he die... I have a young child to raise and a husband with cancer..."*

*"Australians living overseas ... promote Australia... create opportunities at home and abroad."*

*"Denying Australian-born citizens access to dual citizenship is inconsistent with the notion of a fair go... It is ironic that a country so proud of its commitment to equal opportunity discriminates on such a fundamental issue against its own citizens."*

In its report, *Australian Citizenship for a New Century* (February 2000), the Australian Citizenship Council concluded that section 17 is outdated in an increasingly global world. The Council found that this provision works against the national interest by restricting the expansion of Australian presence in other societies. It also works quite unevenly as most of the people who are likely to suffer loss of their Australian citizenship are the Australian-born.

The Council strongly recommended that section 17 be repealed so that Australian citizens over the age of 18 do not lose their Australian citizenship when they acquire another citizenship.

## Impacts on expatriate Australians

One group which is particularly vocal in its support of repeal of section 17 is expatriate Australians. In part this is because Australian citizens living overseas without benefit of the citizenship of their country of residence face a number of personal difficulties, including the following.

- Many feel forced, unfairly in their view, to choose between their country of birth and the country where they need to live and work.
- They generally cannot vote in their country of residence, despite paying taxes in that country. They are therefore unable to participate fully, in the civic sense, in their country of residence.
- They generally cannot be appointed to government or quasi-government positions. In many cases, this curtails employment and professional opportunities, imposing an unnecessary cost penalty on them as well as on Australia's international potential.
- In some countries, for example Canada, certain grants, awards and positions are only open to people who hold the local citizenship. Australian citizens are therefore excluded from applying for these.
- In some cases there may be overseas travel restrictions as well as implications for the residency status in the country of residence. An Australian citizen living in Canada, for example, risks losing their 'landed immigrant' status if they remain outside Canada for longer than six months without prior permission.
- In some countries, surviving non-citizen heirs can be faced with significant inheritance taxes. The USA, for example, imposes sizeable inheritance taxes. A surviving spouse is exempt, but only if he/she is a US citizen.
- In some countries, property rights can be attached to local citizenship.
- Access to a European Union member state passport would facilitate international travel for both business and private purposes for many Australians who travel frequently, particularly within the European Union.

## **Arguments Against the Change**

Some people in the community believe that a legislative change to enable retention of Australian citizenship on acquisition of another citizenship would add to what they perceive as erosion of social values and political and legal structures.

People who support this point of view often note that communities which work effectively have boundaries. Their members feel a commitment to each other and to their shared community. Blurred membership, it is argued, leads to blurred loyalty. The same is true of nation states.

An important consideration, some argue, is whether nations and their members have interests which may be compromised by conflicting allegiances. The possibility of conflict between nations is not simply a question to be raised in time of war, it is said. Nations frequently have competing economic, cultural and political interests.

Another key argument sometimes raised against the change is based on the symbolic value of Australian citizenship. Australian citizenship is perceived as a core issue of national identity, national security and social cohesion. As such, it is argued that Australian citizenship should not be depreciated by being treated as a commodity to be sought for economic reasons or convenience of travel arrangements, employment opportunities or tax advantages.

Many see Australian citizenship as fundamental to national unity and social cohesion. They argue that facilitating the acquisition of another citizenship would erode this unifying power of Australian citizenship.

Others perceive acquisition of another citizenship as an act of disloyalty to Australia and a deliberate choice to place allegiance to another country at least on an equal footing, if not above, commitment to Australia. They believe that it is impossible and/or unreasonable for people to owe allegiance to more than one country.

Others note that at the symbolic level, retention of Australian citizenship on acquisition of another citizenship could legitimise the activity of special interest groups, including strident ethnic or nationalistic interests.

In general, those opposing change to the existing citizenship law believe that Government should not sponsor such change as it could be seen as 'sending the wrong message' to the community.

### **Consultation by the Australian Citizenship Council**

Around 14 per cent of submissions to the Australian Citizenship Council raising issues of loss of Australian citizenship on acquisition of another citizenship, expressed opposition to repeal of section 17. These submissions generally argued that acquisition of another citizenship represents disloyalty to Australia and that Australian citizenship should represent more than an object of convenience.

Some extracts of submissions made to the Council are as follows.

*"Dual nationality... One wonders what will be the fate of people possessing dual citizenship similar to our Italian, German and Japanese settlers of the two World Wars..."*

*"Australian citizenship is further devalued when the Act permits dual citizenship."*

*"The matter of loyalty will always be a contentious point; a person cannot be loyal to two different countries. Old allies can be tomorrow's enemies. Japan and Italy were our allies during World War I... those countries were our enemies in World War II."*

*"Australia should not offer its citizenship for economic reasons."*

## **Providing Your Views and Comments to the Government**

The Government is keen to obtain your views and comments on issues related to the proposed repeal of section 17 of the *Australian Citizenship Act 1948*. The Government particularly welcomes your views on whether section 17 should be repealed or otherwise.

Written submissions should be forwarded by Friday 6 July 2001 to:

The Director  
Citizenship Policy Section  
Department of Immigration and Multicultural Affairs  
PO Box 25  
BELCONNEN ACT 2616

Submissions may also be e-mailed to [Citizenship@immi.gov.au](mailto:Citizenship@immi.gov.au). To facilitate processing, please title e-mails "Views on s17".

Please include your name, name of your organisation (if appropriate), postal address and daytime telephone number if practical. (This will allow us to contact you should we need to clarify any aspect of your submission.)

Limited additional copies of this Discussion Paper are available by telephoning (02) 6264 1320 (answering machine).

## Attachment A

### Some countries whose legislation allows acquisition of another citizenship

Bangladesh	Italy	South Africa*
Brazil	Jordan	Spain (only in certain cases)
Canada	Latvia	Sri Lanka
Colombia	Lebanon	Sweden
Cyprus	Lithuania	Switzerland
Egypt	Macedonia	Syria
El Salvador	Malta	Tonga (only in certain cases)
France	Mexico	Turkey
Greece	New Zealand	United Kingdom
Hungary	Pakistan*	United States of America
Ireland	Portugal	Western Samoa
Israel	Serbia and Montenegro	

- Persons retain their former citizenship if they apply to retain their existing citizenship prior to taking out Australian citizenship.
- **NOTE:** This information is based on DIMA's interpretation of citizenship legislation in the relevant countries.

## Attachment B

### Some countries whose legislation does not allow acquisition of another citizenship

Austria	India	Papua New Guinea
Belgium	Indonesia	Peru
Brunei	Iran*	Philippines
Chile	Japan	Poland
China	Kenya	Romania
Denmark	Kiribati	Singapore
Ecuador	Malaysia	Solomon Islands
Fiji	Mauritius	Thailand
Finland	Myanmar	Vietnam
Germany	Nepal	Venezuela
Iceland	Norway	Zimbabwe

\* Does not recognise dual citizenship but continues to recognise its citizens as Iranian

**NOTE:** This information is based on DIMA's interpretation of citizenship legislation in the relevant countries.

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