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HOUSE OF REPRESENTATIVES

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CORRECTIONS

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Thursday, 28 February 2002

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

HR 40.1.7

PROOF

Bevis, A.R.	Brereton, L.J.
Burke, A.E.	Byrne, A.M.
Corcoran, A.K.	Cox, D.A.
Crosio, J.A.	Danby, M. *
Edwards, G.J.	Ellis, A.L.
Emerson, C.A.	Evans, M.J.
Ferguson, L.D.T.	Ferguson, M.J.
Fitzgibbon, J.A.	George, J.
Gibbons, S.W.	Gillard, J.E.
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McMullan, R.F.	Melham, D.
Mossfield, F.W.	Murphy, J. P.
O'Byrne, M.A.	O'Connor, G.M.
O'Connor, B.P.	Plibersek, T.
Price, L.R.S.	Quick, H.V. *
Ripoll, B.F.	Roxon, N.L.
Rudd, K.M.	Sawford, R.W.
Sciacca, C.A.	Sercombe, R.C.G.
Sidebottom, P.S.	Smith, S.F.
Snowdon, W.E.	Swan, W.M.
Tanner, L.	Thomson, K.J.
Vamvakinou, M.	Wilkie, K.
Zahra, C.J.	

* denotes teller

Question agreed to.

Third Reading

Mr ABBOTT (Warringah—Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service) (1.50 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT BILL 2002

Second Reading

Debate resumed from 13 February, on motion by **Mr Hardgrave**:

That this bill be now read a second time.

Mr LAURIE FERGUSON (Reid) (1.51 p.m.)—The Australian Citizenship Legislation Amendment Bill 2002 proposes a number of significant enhancements to the Australian citizenship system. The most crucial element of the bill is the repeal of section 17 of the Australian Citizenship Act. This means that, in future, adult Australian citizens will not lose their Australian citizenship if they take action to acquire the citizenship of another country. The bill also extends from 18 to 25 years the age limit for a person born overseas to an Australian citizen to register as an Australian citizen by descent. It provides for eligible children under 16 to be given a citizenship certificate in their own name, and strengthens the existing integrity provisions, allowing for the deferral, rejection or revocation of an application for Australian citizenship. As the shadow minister with responsibility for a citizenship matters, I indicate that the opposition will be supporting passage of the legislation without amendment.

The bill before the House is significant in several respects. Citizenship policy has important symbolic and practical consequences for Australia, and not just for those Australians who were born overseas. We have reason to be proud of the fact that we are a diverse, tolerant and multicultural society. The rights and obligations attached to citizenship are an important element of the common bond that unites all Australians, regardless of their place of birth, ethnic background, education, ancestry or life experience. Our citizenship system embraces the notion that all Australian citizens have full and equal membership of our society. That is in sharp contrast to many nations around the world.

It is not always understood that the legal basis of Australian citizenship has existed for only 53 years. It is in fact an enduring legacy of the postwar reconstruction agenda of the Chifley Labor government of 1945 to 1949 which also included the beginning of our postwar immigration program. Prior to Australia Day 1949, people born in Australia and naturalised migrants were, in fact, British subjects—they were not Australian citizens. The Nationality and Citizenship Act 1948—now known as the Australian Citizenship Act 1948—for the first time provided for eligible residents to become Australian citizens in three broad circumstances: by birth, by grant or by descent. The latest available data shows that some 3.75 million Australians who were born overseas have satisfied the basic two-year residential requirement for citizenship. Of those 3.75 million, some 2.8 million—or 75 per cent—have actually acquired Australian citizenship. Official data reveals considerable variation in the rate of citizenship for different birthplace groups. The highest rates of citizenship—greater than 95 per cent of those people eligible—occurs among people born in Laos, Lebanon, Greece, Hungary and Latvia. The lowest rates for taking up Australian citizenship are for those born in Japan, New Zealand, Malaysia and the United States of America.

The Australian Citizenship Council, chaired by Sir Ninian Stephen, exists to give advice to the government of the day regarding citizenship matters. This bill responds to a number of the 64 recommendations that the council made in its landmark December 1999 report *Australian citizenship for a new century*. As I said in my opening comments, the most significant aspect of the bill is undoubtedly the proposed repeal of section 17 of the Citizenship Act. That section states:

(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—

and that is important: it has to actually be a very deliberate act designed to do this—

(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) Subsection (1) does not apply in relation to an act of marriage.

In other words, if you acquire another citizenship through marriage, you do not lose your Australian citizenship automatically.

Section 17 mainly impacts on Australians who go overseas for work or studies and find that they need to acquire citizenship of their new country of residence to secure appropriate employment or obtain other benefits. In this world the reality is that increasing numbers of Australians are overseas, employed by companies in other nations and subject to the laws of those countries. They find themselves discriminated against in some cases because they are not citizens of those countries and they find themselves discriminated in corporations they work for when they are not citizens of those countries that own the companies. Approximately 700 Australians a year lose their Australian citizenship because of this provision. I have to stress that there are probably many others who are unknown to Australian authorities who should, under the technical wording of this act, lose citizenship but they do not come to the attention of Australia. The only people who lose their citizenship are those the Australian authorities become aware of. Typical of the way the world is moving, we have agreements with 27 foreign countries that will report to each other when citizens of those countries take up the other citizenship. All of those, whilst legally on the books, are ignored, because that is typical of the way the world is going: dual citizenship is the reality internationally.

The need to repeal section 17 has been the subject of protracted debate over several decades. The Joint Parliamentary Committee on Foreign Affairs and Defence considered the matter in a major inquiry that reported in 1976. That inquiry recommended no change be made to the existing rules. Typical of the attitude at that time was the committee's conclusion that every person should have one nationality only. That was the view of the foreign affairs committee of this parliament in 1976. Essentially it said, 'You are an Australian—end of story; you take out only one citizenship.' The matter was next considered in the September 1994 report of the Joint Standing Committee on Migration, entitled *Australians all—enhancing Australian citizenship*. I served as a member of that committee, and I must confess that I was actually persuaded during the course of the inquiry. Coming from a position of initial opposition, I was persuaded by the mounting international trend towards dual citizenship and the reality that many Australians are adversely affected by the current law. That inquiry, convened by Senator Bolkus, included future and past immigration ministers Holding and Rudduck. Typical of the way the attitude had changed in Australia, on page 206 of that 1994 report, the committee's conclusion was:

Tolerance of diversity is a cornerstone of multicultural Australian society. The ultimate expression of such tolerance would be the recognition that while Australian citizens owe their primary allegiance to Australia, they can also show a commitment to their country of origin or the country of which they are resident.

So we see that, between 1976 and 1994, there was a fundamental rethinking. In 1976, 18 years earlier, the attitude was Australian citizenship—end of story; no other alternatives. By 1994, the parliamentary committee unanimously—all parties; all members—concluded that the law should be changed. Unfortunately, that recommendation could not be proceeded with in the pre-election environment that applied in 1995. The then Labor government decided to defer the matter of a proposed major review of the Citizenship Act.

The debate recommenced with the major 1999 report of the Australian Citizenship Council, which I referred to earlier. The Citizenship Council noted that nearly three-quarters of all the submissions that it received in that inquiry raised this very issue of section 17. These submissions included one from a Nobel prize winner and a former Australian of the Year living overseas. Many submissions covered the circumstances of Australians who were working overseas and whose prospects would have been severely prejudiced if they had not acquired citizenship of their country of residence. These people argued that their action in doing so had in no way diminished their commitment to Australia.

The SPEAKER—Order! It being 2 p.m., the debate is interrupted in accordance with standing order 101A. The debate may be resumed at a later hour and the honourable member for Reid will have leave to continue speaking when the debate is resumed.

QUESTIONS WITHOUT NOTICE

Immigration: 'Children Overboard' Affair

Mr CREAN (2.00 p.m.)—My question is directed to the Prime Minister. Has the Prime Minister seen the evidence of Air Marshal Houston, witnessed by Brigadier Bornholt, from Senate estimates last night, that he informed former Minister for Defence, Peter Reith, on 7 November 2001 that there were no women or children from the SIEV4 in the water on 7 October? Prime Minister, did you not ask Mr Reith on the night of 7 November whether he had any advice to contradict the veracity of the original claims? Are you, Prime Minister, alleging that Mr Reith told you he had not received any advice, orally or in writing, that in any way contradicted—I repeat, in any way contradicted—the original advice that children were thrown overboard from SIEV4 on 7 October?

Mr HOWARD—I confirm to the House what I have previously said about my discussions with Mr Reith. I specifically add that he did not convey to me in our discussion the discussion he had with Air Marshal Houston. But as the Leader of the Opposition has raised the evidence that was given before the Senate estimates last night, can I quote some other evidence. This comes from the senior military adviser to the government, the Chief of the Defence Force. This is what Admiral Barrie had to say. Bear in mind Admiral Barrie is the senior military adviser to the

Environment Protection Council Act 1994. (18 September 2001/19 September 2001)

Debate (on motion by **Mr Swan**) adjourned.

MATTERS OF PUBLIC IMPORTANCE

Howard Government: Standards of Honesty and Decency

The SPEAKER—I have received a letter from the honourable member for Lilley proposing that a definite matter of public importance be submitted to the House for discussion, namely:

The failure of the Howard Government to uphold basic standards of honesty and decency

I call upon those members who approve of the proposed discussion to rise in their places.

More than the number of members required by the standing orders having risen in their places—

Mr ABBOTT (Warringah—Leader of the House) (5.11 p.m.)—I move:

That the business of the day be called on.

Question agreed to.

MAIN COMMITTEE

The SPEAKER—I advise the House that the Deputy Speaker has fixed Monday, 11 March 2002 at 4 p.m. as the time for the next meeting of the Main Committee, unless an alternative day or hour is fixed. It is expected that the Main Committee will sit from 4 p.m. to 6.30 p.m. and from 8 p.m. to 9.30 p.m. on that day.

AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT BILL 2002

Debate resumed.

Mr LAURIE FERGUSON (Reid) (5.12 p.m.)—In referring to the many submissions received by the Citizenship Council, I particularly acknowledge the persistent efforts of the Southern Cross Group, which represents Australians living and working abroad and their families and which has played a key role in placing this matter on the agenda and keeping it there. In its report, the Citizenship Council strongly recommended the repeal of section 17. It argued:

... as we move into the twenty-first century, the prevalence of dual Citizenship internationally will rapidly increase. 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 ... These countries simply recognise that they have an internationally mobile population and that they can retain connection with this population even if another Citizenship is acquired ...

The Council also believes that to hold and enforce the threat of loss of Australian Citizenship over 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.

Internationally, the trend has been very much towards dual citizenship, essentially in Europe and North America—both Canada and the United States—countries with which we compare ourselves where dual citizenship has been allowed for many years.

In April 2000, following the Citizenship Council report, the opposition shadow ministry considered the matter and agreed that Labor would support the repeal of section 17. My colleague the member for Bowman, who was then the shadow minister for immigration, issued a media release to this effect. There is no doubt that this decision by the shadow ministry was a major breakthrough in the debate. Subsequently, in May 2001, the government announced that it proposed to introduce legislation. Legislation identical to the current bill was introduced by the government on 23 August 2001 but did not pass before parliament was dissolved in the election.

In indicating the opposition's support for the repeal of section 17, I wish to clarify three aspects. Firstly, I emphasise that the change does not involve the introduction for the first time of dual citizenship into the Australian system. Dual citizenship has long been a fact of life in Australia. Today, more than 4 million Australians are already dual citizens—even by 1986 there were over 3 million—largely because migrants are perfectly free, under Australian law, to retain the citizenship of the country of their origin. Their country of origin may, however, not allow them to hold dual citizenship. An instance is Turkey, which only in the early nineties reversed its previous position. Looking at citizenship take-up rates this country, the Turkish take-up rate was extremely low until Turkey abolished bans on dual citizenship. Before that time, Turks lost any property that they owned within Turkey if they took up dual citizenship. Once again, that is typical of the trend internationally. If you want to cite a country that is fairly nationalistic and patriotic, it would be Turkey. Even Turkey has moved in this direction before Australia. Section 17 has only prohibited dual citizenship if the person takes action to acquire another citizenship after they already possess Australian citizenship. Even then, it can still be possible in some circumstances to acquire the citizenship of another country without penalty—for example, by marriage or descent—if the person does not do any act or thing, the sole or dominant purpose of which is to acquire that citizenship.

Secondly, the bill in no way alters the position of members of parliament who face disqualification under section 44.(i.) of the Constitution if they hold dual citizenship. That provision has prompted a number of high profile High Court cases, the most recent being the 1999 judgment that Heather Hill was ineligible to be elected to the Senate representing Queensland at the time of the 1998 election.

Thirdly, I note that the bill provides that section 17 is repealed from the date the legislation receives royal assent. The change is thus purely prospective in nature and does not change the position of those who have already lost their Australian citizenship. In this regard, I would indicate the opposition's disappointment that the government is unwilling to revisit the current resumption arrangements as set out in section 23 of the act. By repealing section 27, we are signalling to the Australian parliament a bipartisan ap-

proach that we consider it inappropriate to penalise people simply because they acquire the citizenship of another country. You would think that it would be appropriate to simultaneously address the situation of those who have suffered from the application of section 17, particularly in recent times, and all the more so because as early as 1994, as indicated earlier, a joint committee of this parliament unanimously decided that we should move in this direction. Many people have lost citizenship in the interim.

In discussions with the minister, he has indicated that people who have already lost their Australian citizenship will need to make application to have their citizenship restored in accordance with the current resumption requirements. Currently, the first requirement in applying to resume Australian citizenship is that the person must indicate that they did not know that they would lose Australian citizenship as a result of their actions, or that they would have suffered significant hardship or detriment had they not acquired the other citizenship and, if the hardship or the detriment was of an economic nature, the circumstances that caused them to take out foreign citizenship must have been compelling. The other requirements are that the person has been lawfully resident in Australia for at least two years at some time, and undertakes to continue to reside in Australia, if they are in Australia, or that they intend to resume living in Australia within three years of the restoration of their citizenship if they are overseas and, finally, has maintained a close and continuing association with Australia.

Sensible lobby groups like the Southern Cross Group are disappointed that the coalition will not agree to free up the current resumption requirements. These requirements appear to presume that Australian citizenship should only be restored in exceptional circumstances. They require applicants to establish that there were compelling reasons for their action, and that they would have suffered significant hardship or detriment had they not acquired the other citizenship.

The resumption provisions also require an overseas applicant to undertake a return to Australia in three years. These requirements in toto place applicants in an invidious position because if they tell the literal truth their application may be rejected. We are aware of overseas posts, Australian embassies and high commissions telling Australians to lie about these requirements. That is a highly unsatisfactory situation. Essentially people go along there, and they are honest with the post and the immigration authorities, and they explain their problem. The representatives of this country abroad know that it is a rather silly situation so they say. ‘Look, just sign it; say you’re going to go back in three years. That’s the best thing to do.’ We feel that is very unsatisfactory, and that the government should tackle this matter at this stage.

I urge the minister to give further consideration to this matter. He seems relaxed about the fact that people continue to be deprived of their Australian citizenship, even after both the government and opposition have indicated their support for the repeal of section 17. He appears to accept that some people will have to fudge their answers in order to have their Australian citizenship restored. I stress that just because the opposition does not wish to hold up this bill which, as we know, has had a fairly long process, he should not assume that dissatisfaction with the resumption arrangements will simply fade away. We act on the basis of lobbying by groups which want this matter finalised. They do not want to see the legislation held up by amendments; they do not want to see debate and argument about this matter, but they do say to the government that the resumption situation should be revisited. I have heard from the minister the example that some people might—if we were to make mandatory decisions to basically give everyone back citizenship—suffer overseas. An instance was given of American taxation laws. A person might be hit with taxes if we summarily gave them back citizenship. However, there is a lot of area between that and other alternatives, and the government should look at this situation.

Resumption arrangements were last eased in August 1995 when Senator Bolkus was the minister. He approved a broader range of circumstances that would be accepted as evidence of ‘significant hardship and detriment.’ These changes were made in the context of section 17 remaining the law. Now that section 17 is to be repealed, it would seem appropriate, once again, to review the resumption arrangements. Whilst noting government indications that some individuals overseas might be disadvantaged if their Australian citizenship is automatically restored to them, I frankly cannot understand the government’s refusal to liberalise the citizenship resumption provisions for this group of people.

Currently, the act provides that a person born overseas to Australian parents can obtain Australian citizenship by dissent if their parents registered their birth before their 18th birthday. Each year, some 8,000 to 9,000 children are registered in this way throughout the world. Section 10(c) of the act allows people who were born before 15 January 1974 to register after age 18 if they have an acceptable reason for not having registered earlier. There is no such discretion for people born after 15 January 1974. As a result, some young people have missed out on the opportunity to obtain Australian citizenship because they were unaware of the registration requirements or because they failed to register in time. To overcome this problem the bill extends the registration deadline to the person’s 25th birthday. This is in line with recommendation 26 of the Citizenship Council report. I note that the government has imposed an additional requirement that adult applicants seen to have obtained citizenship by dissent will, unlike those aged under 18 years, be required to satisfy the minister that they are of good character.

Under current provisions only adult migrants are issued with citizenship certificates. The names of children under 16 are recorded on a parental certificate. I think many members would be aware, from their experiences in their electorate offices, that this can create problems when the child later has to pro-

vide evidence of their Australian citizenship and can no longer easily access the parental certificate for a variety of reasons. To overcome this problem, the government proposes that eligible children under 16 years will in future be issued with a certificate in their own name. This provision will also be available to those who wish to obtain evidence of an earlier grant of citizenship to them.

The bill makes a number of changes to the integrity provisions of the Citizenship Act. These generally relate to the requirement that an applicant be of good character. Currently an applicant cannot be granted Australian citizenship if they are awaiting trial for a criminal offence or have been sentenced to imprisonment for a term of 12 months or more. People so sentenced cannot be granted citizenship for two years after their release from prison or while they are serving a period of parole. No additional penalty exists for those who are imprisoned on more than one occasion before the grant of citizenship. To address this situation, the bill provides that a 'serious repeat offender' who serves more than one such period of imprisonment cannot be granted citizenship for 10 years after that has elapsed.

The bill also provides for the revocation of a grant of citizenship where, before the citizenship certificate has actually been conferred, additional information becomes available to DIMIA that is sufficiently adverse to the applicant that they would not admit the original application requirements. Where the person is charged with a criminal offence in Australia before citizenship has been conferred, the minister may also defer the conferral pending the outcome of the trial. Henceforth, a grant of citizenship can be revoked if an applicant fails without acceptable reason to make a pledge of commitment within 12 months of being notified that their citizenship application has been successful. The grounds the minister may consider acceptable for any such delay will be defined by regulation after passage of the bill. I would hope that these are framed in a sensible way and address situations where a person is unavoidably required to remain overseas. As we know, that is a continuing reality and the number of people affected is growing every day.

Finally, the bill clarifies an existing provision whereby an overseas born person can be deprived of Australian citizenship. The act already provides that a person can be deprived of citizenship where they are convicted of citizenship or immigration related fraud or where they are convicted of an offence that was committed before the citizenship application. This bill includes a preparatory provision to the effect that being sentenced to imprisonment for 12 months or more for a people-smuggling offence that was committed before the grant of citizenship shall constitute grounds for revocation of citizenship.

In conclusion, I again indicate that the opposition is happy to cooperate in seeing this legislation passed without unnecessary delay. We do so because we particularly understand the situation of those who will benefit from repeal of section 17. We believe that measure is a sensible and overdue development. We do not oppose the other changes in the bill. I would emphasise that Labor has a long and proud record on citizenship issues. We take seriously the range of other proposals that the Citizenship Council recommended but which are not included in this bill. As we review our policies, we are committed to maintaining a dialogue with interested organisations on the issues of citizenship and multicultural affairs. We recognise the efforts of the Southern Cross group on the matter. We urge the minister to abandon his timidity and show a willingness to have another look at the current resumption arrangements, which are in need of review.

Debate (on motion by **Mr Cadman**) adjourned.

ADJOURNMENT

Mr BROUGH (Longman—Minister for Employment Services) (5.27 p.m.)—I move:

That the House do now adjourn.

Antarctica: Services

Shipping: Foreign Vessels

Mr SIDEBOTTOM (Braddon) (5.27 p.m.)—There was good news today with the announcement by the Parliamentary Secretary to the Minister for the Environment and Heritage, Dr Stone, that Sydney based company Skytraders has been selected as the preferred supplier of a Falcon intercontinental jet to fly nonstop between Hobart and Casey and Casey and Hobart to provide passenger services and other supply services for the Australian Antarctic Territory and its research program. We congratulate all those that have been involved in that selection, and we wish the service well. We are very pleased to note that it is one more link in the chain for Hobart in particular and Tasmania in general in being selected for the provision of those services to the Antarctic. As I said, we wish that service well.

Today the government was censured for its disgraceful performance in relation to the asylum seekers and the dishonesty that was perpetrated in relation to that. But this government deserves to be censured for another issue related to border protection, and that is its terrible performance on shipping. I believe that its efforts in this area are directly disproportionate to its efforts to demonise asylum seekers.

Today, the Industrial Relations Commission has a case before it whereby unions are currently in dispute with the owners of the Australian flagged and crewed CSL *Yarra*. They are taking a case to the commission to ensure that foreign shipowners working Australian routes observe proper minimum working conditions. It is expected that the federal government will oppose this application and I am urging the federal government to change its attitude to the demise of shipping in this country and to support this industry, which is so important to us.

In fact, instead of developing a shipping industry, what we are getting is the export of jobs from Australia. Australia is almost totally dependent upon sea transport for the carriage of its imports and exports. In terms of tonnes-kilometres, Australia has the fifth largest maritime transport task in the world. However, less than one per cent of this trade generated by