

# PROOF HANSARD



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES

## SENATE

**THURSDAY, 14 MARCH 2002**

### **CORRECTIONS**

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**Thursday, 21 March 2002**

BY AUTHORITY OF THE SENATE

S.40.1.7

# PROOF HANSARD

search has found that non-smoking teenagers whose favourite film stars frequently smoke on screen are 16 times more likely to have positive attitudes towards smoking in the future. Even more importantly, 31 per cent of teenagers who saw more than 150 occurrences of smoking in movies—that is, in theatres, on video or television—had tried smoking, compared with only four per cent among teenagers who had seen fewer than 50 occurrences. Even after controlling for the effects of parents smoking and other factors, seeing a lot of smoking in the movies tripled the odds that a teenager would try smoking. Big tobacco marketing experts and independent researchers agree that moving stories with charismatic actors are a powerful way to attract new smokers and to keep the current smokers. That is of course why we ban television advertising of tobacco products in this country.

One option in stopping this insidious form of advertising by stealth would be to require film producers to make a disclaimer in their credits because, at the present time, the industry by and large claim that they do not take tobacco advertising. I think this is a good opportunity for us to ask them to make that a disclaimer and to put it into the film credits. It could be something to the effect that, 'The film has received no inducements from tobacco companies for product placement.' As I said, I do not propose to amend this legislation, but I would like to ask the government if they would consider exploring this issue. The Democrats are very keen to make some progress here. I wonder whether we could get an indication from the government that this might be a subject that we could have some discussions about with a view to using this legislation—this very worthwhile tax incentive for film-making investment—to bring about what I think is a very necessary change with regard to the way that tobacco smoking advertising by stealth is occurring in film-making.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (1.36 p.m.)—As I have indicated to Senator Allison privately, I am happy to reiterate that I understand the Treasurer is happy to have a look at that suggestion. I will ensure that he progresses it in the constructive way that he normally does. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

### Third Reading

Bill passed through its remaining stages without amendment or debate.

## AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT BILL 2002

### Second Reading

Debate resumed from 13 March, on motion by **Senator Ian Macdonald**:

That this bill be now read a second time.

**Senator BOLKUS** (South Australia) (1.37 p.m.)—In speaking to the **Australian Citizenship Legislation Amendment Bill 2002**, I indicate that I think the most pressing imperative for us today is to pass this legis-

lation by 2 o'clock. Accordingly, my remarks will not be as extensive as I would have liked.

This reform has been long awaited and will be welcomed by many. It is a belated reform—a reform which was necessary to our citizenship laws to bring them up to date, not just with the nature of the multicultural society that we claim to have in Australia, but with the rest of the world.

The major effect of the legislation that I will focus on is the repeal of section 17—the provision that denies dual citizenship to natural born Australians. We have a situation at the moment involving enormous discrimination. In 1995, as minister for immigration, I was advised that some five million Australians then had dual citizenship, but many Australians were not able to acquire it because of the effect of this provision in the legislation.

This matter has been on the agenda for eight years. In 1994, there was a recommendation by the Joint Standing Committee on Migration for Australia to embrace dual citizenship in an open and direct way. As I said, in 1995 five million Australians had dual citizenship. I would reckon that, given changes in international citizenship laws over the last seven years, a good half of Australia probably now has, or is entitled to, dual citizenship, and can obtain it legally under existing provisions, even before this legislation is passed. So 1994 was an important staging post on the road to this reform that we are debating today.

In 1995, as minister for immigration, with responsibility for citizenship, I was very keen to try to get this reform through. I was frustrated to a certain extent by the political climate at that time. There were reports that this legislation was on track. The opposition spokesperson at the time, Mr McGauran, tried to merge the issue of dual citizenship with that of the republican debate which was developing at the time. We felt at that time that the pre-election climate was such that the legislation could not be proceeded with.

As a consequence, I took executive action which was announced on 25 August 1995. By issuing guidelines for the resumption of citizenship, we were able to achieve substantially what this legislation achieves but in a two-step way. Australians, as a consequence of those guidelines interpreting the legislation, were able to acquire the citizenship of another country, lose Australian citizenship and then acquire it almost immediately upon proof of some inconvenience—lost economic opportunities or for social, cultural or procedural reasons. In essence, probably 95 per cent of those who have wanted to achieve citizenship over the last seven years would have been able to do so.

As I said, there was resistance from the then opposition, the present government. I am glad they have had a change of heart on this matter. It was imperative to make changes, given the pressing discrimination contained in existing legislation. I had also received advice from the late Ron Castan QC on the effects of section 17 which basically said to the government at the time that there was a fair chance that section 17 was unconstitutional. I would have liked to

have gone through this advice but with the leave of the Manager of Government Business in the Senate, Senator Ian Campbell, I seek leave to incorporate the document in *Hansard*.

Leave granted.

*The document read as follows—*

**RE: THE AUSTRALIAN CITIZENSHIP ACT 1948 – SECTION 17**

**MEMORANDUM OF ADVICE**

I have been asked to advise as the constitutional validity of Section 17 of the Australian Citizenship Act 1948.

That Section provides:

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

I am instructed that severe anomalies have arisen in the operation of this Section. It operates in a discriminatory way as between various classes of Australian citizens who, for various reasons, such as residence overseas, take steps to acquire dual citizenship, believing themselves able to retain their Australian citizenship. In particular it discriminates as between Australian citizens who are dual citizens by reason of having taken on Australian citizenship, while not losing their original citizenship under the law of some other country, and those Australian citizens who are not dual citizens, but for one reason or another seek to become so.

I have been much assisted by “Australians All – Enhancing Australian Citizenship”, the report of the Joint Standing Committee on Migration of September 1994, and by Memoranda concerning aspects of the administration of the provisions of Section 17, provided to me by my instructing solicitors, and officers of the Department of Immigration and Ethnic Affairs.

There is a peculiarity about Australian citizenship. It is not recognised in the Constitution, and there is no constitutional head of power which invests the Parliament of the Commonwealth with power to make laws with respect to citizenship. Section 51(xix) provides the Parliament with the power to make laws with respect to “naturalisation and aliens”. Section 51(xxvii) provides the Parliament with the power to make laws with respect to immigration and emigration. Neither of these powers is apt to deal with the question of citizenship generally. These powers necessarily omit the vast majority of Australian citizens, i.e. those who were born in Australia, and who are thus not in need of naturalisation, are not in any sense of the word “aliens”, and are not immigrants.

This is not to say that the Australian Citizenship Act 1948 is generally invalid insofar as it deals with citizenship as a whole.

The Australian Constitution proceeds upon the basis that there is a community of people which are described as “the people of the Commonwealth”. The preamble of the Constitution commences with the words:

“Whereas the people ... have agreed to unit in one indissoluble Federal Commonwealth”

Quick and Garran in their “Annotated Constitution of the Australian Commonwealth” published in 1901 pointed out, at p. 285:

“The opening words of the preamble proclaim that the Constitution of the Commonwealth of Australia is founded on the will of the people whom it is designed to unit and govern.”

In commenting on these words the authors specifically make reference to the American case of Dred Scott v. Sandford (19..) How.383 (referred to at p. 286 of Quick and Garran):

“The expressions ‘the people of the United States’ and ‘citizens’ are synonymous and mean the same thing. They both describe the political body which according to American institutions forms the sovereignty, holds the power and conducts the government through its representatives. The members of that body are called ‘sovereign people’ and every citizen is one of this people and a constituent member of the sovereignty “

Quick and Garran also make reference to the use of the words “have agreed” in the preamble. They say, at p. 290:

“These words make distinct and emphatic reference to the consensus of the people, arrived at through the procedure, in its various successive stages, prescribed by the substantially similar enabling Acts adopted by the legislatures of the concurring colonies. ... In all the colonies the Constitution was eventually referred to the people. ... In this manner there was ... in all the colonies a popular ratification of the Constitution, which is thus legally the work as it will be for all time the heritage, of the Australian people.”

At p. 314, Quick and Garran describe the Constitution as:

“... a general law or a collection of laws capable of effective enforcement and binding on every member of the community, including the members of the government in their private capacities.”

The next reference to this entity described in the Constitution as “the people” is to be found in covering clause 3 which uses the words:

“The people ... shall be united”.

Quick and Garran comment at p. 332:

“The formative words in this clause are more forcible, striking and significant than those of the corresponding parts of the constitutions of the United States and of Canada; they indicate the fundamental principle of the whole plan of government, which is neither a loose confederacy not a complete unification, but a union of the people considered as citizens of various communities whose individuality remains unimpaired, except to the extent to which they make transfers to the Commonwealth.

The union of the people of the colonies is doubly asserted and assured; first in the preamble, where it is recited that ‘the people have agreed to unite’ and secondly in this clause, which it is emphatically stated with mandatory force that on the day appointed they ‘shall be united’.”

The next reference to “the people” is to be found in covering clause 5 of the Constitution which provides that:

“This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges and people of every State and of every part of the Commonwealth ...”

Quick and Garran comment, at p. 353:

“The importance of these words, as indicating one of the fundamental principles of the Constitution, should

be specially noted. They make clause 5 of the Commonwealth Constitution Act substantially similar in scope and intention to article VI, Section 2 of the Constitution of the United States. Under this clause, the Act, the Constitution and laws of the Commonwealth made in pursuance of its powers will be the supreme law of the land, binding on the courts, judges and people of every State notwithstanding anything to the contrary in the laws of any State. ... The preeminent significance of this direct action of the federal laws on the courts, judges and people is that it forms the distinctly national feature of the Constitution and differentiates it from the weakness and imperfection of a confederate system of government.”

The importance of the concept of “the people of the Commonwealth” is emphasised by the operation of Section 24 of the Constitution which provides:

“24 The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the Senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner –

- (i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the Senators;
- (ii) the number of members to be chosen in each State shall be determined by dividing the number of the people of the States, as shown by the latest statistics of the Commonwealth, by the quota; ...”

The commentary in Quick and Garran at p 449 is in the following terms:

“Attention may be drawn to the above expression ‘the people of the Commonwealth’ for the purpose of contrasting of it with another, to be found in Section 7, ‘the people of the States’. A federation is, ... defined by some authorities as a State having a dual system of government ... hence, in a federation it is said there is a dual citizenship. It follows that each natural born or naturalised subject of the Queen permanently residing within the limits of the Commonwealth is entitled to be considered as a citizen of the State in which he resides. Every such person thus owes a double duty, and can claim a double right; a duty to the Commonwealth, as a great community embracing all the people, to yield obedience to its laws, to assist in its defence, and to take part in promoting its interests; a right to claim from the Commonwealth equal protection of its laws, and to share in the honour and advantage of its rule. Such a person also owes a duty to the particular State in which he resides, regarding that State as a part of the Commonwealth, guaranteed to possess and enjoy certain privileges and immunities; a duty to obey its laws, and at the same time to assist in defending the State domain against unconstitutional invasion; a right to demand from the State the equal protection of the laws of the State. In one capacity such a person is described by the Constitution as one of ‘the people of the Commonwealth’ and the other he is one of ‘the people of a State’. From this dual citizenship, and, in order to assist in its preservation, every person living under such a form of government has a duality of political rights and powers. He is entitled not only to assist in carrying on the government of

his State as a part of the Commonwealth, but to assist in the government of that wider organisation of the nation itself. In the latter work, taken and considered by itself, he has also a dual right and power; viz, to join in returning members to the House of Representatives in which centralising, consolidating, nationalising and progressive elements of the community are represented, and also to assist in returning members to the Senate, in which the moderating, restraining, conserving and provincial elements of the community are represented. The duty of a citizen having these dual functions, and of the Federal parliament to dually constituted, would be to reconcile and harmonise all these apparently conflicting yet necessary and inevitable forces.”

The importance of the concept of “the people” in a constitutional sense is further exemplified by the provisions of Sections 25 and 127 of the Constitution.

Section 25 provides:

“For the purposes of the last Section, if by the law of any State all persons of any race are disqualified from voting at elections for the numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.”

Section 127 provided, until its repeal in 1967, as follows:

“127 in reckoning the numbers of the people of the Commonwealth or of a State or other part of the Commonwealth. Aboriginal natives shall not be counted.”

In the “political community” which was constituted by the Constitution in 1901 the essentially democratic processes by which it was to function ensured appropriate representation according to population by gearing the numbers of members of the House of Representatives to the population of a given State and by ensuring that the number of Representatives would be twice the number of Senators. This political community was deliberately structured so as to ensure that specific groups were excluded, or were liable to be excluded from it. It was made manifestly clear that all those other than those so excluded formed part of the totality of the Australian community—they comprised “the Australian people”.

These last provisions were manifestly and deliberately racist. Their importance for present purposes however is the fact that they demonstrate that apart from the groups which were specifically excluded (or in the case of Section 25, were subject to potential exclusion) the concept of “the Australian people” was critical to the fundamental representative nature of Australia’s democratic institutions.

It is notable that Quick and Garran, in 1901, repeatedly used the concept of citizenship to reflect the prevailing view at that time of the notions conveyed by the concept of “the people” in the Constitution notwithstanding the absence of any reference to the concept of “citizenship” in the document itself.

The concept of “the people” was given consideration by the High Court in Attorney-General Commonwealth: Ex rel. McKinlay v. The Commonwealth (1975) 135 CLR 1.

Although that discussion took place in the context of a challenge to the relevant provisions dealing with apportionment and representation McTiernan and Jacobs JJ. At p.35 expressed the following view.

“The people is the body of subjects of the Crown inhabiting the Commonwealth regarded collectively as a unity or whole and the sum of those subjects regarded individually. To say that ‘people’ means ‘electors’ or

'enfranchised subjects' is erroneous because it takes account only of the enfranchised subjects regarded individually but no account of the body of subjects regarded collectively as a unity. It is an accurate description only so long as the franchise is wide enough to satisfy the description 'popular' but it would be nonsense to speak of a choice by a few who happen to be enfranchised (the foundation of an oligarch as a choice by the people (the foundation of a democracy) ...

Nevertheless, it is important to state that 'chosen by the people' does not mean chosen by all the persons individually who regarded collectively are the people. If it meant that perhaps a unanimous choice of all would be required and that cannot be correct: but without going that far it would mean that all subjects inhabiting the Commonwealth would need to participate in the choice of members and a choice by any number of persons less than a sum of the individuals would not be a choice by the people. That is not intended. Common sense tells us that babes and young children at least cannot participate in the choice and the Constitution ... envisages that all persons need not participate or be eligible to participate in the choosing. However, to argue from this that 'people' merely means 'electors' is to subtract an essential feature from the constitutional requirement if thereupon it is argued that Section 24 in its opening words says no more than the choosing of members shall be by direct vote of electors. The section says much more than this ...

At some point choice by electors could cease to be able to be described as a choice by the people of the Commonwealth. It is a question of degree. It cannot be determined in the abstract. It depends in part upon the common understanding at the time of those who must be eligible to vote before a member can be described as chosen by the people of the Commonwealth. For instance, the long established universal adult suffrage actually now be recognised as a fact and as a result it is doubtful whether ... anything less than this could now be described as a choice by the people.

Stephen J. p. 56 after referring to Section 24, dealing with the House of Representatives, and Section 7 dealing with Senators, went on:

"Both the similarities and the differences between these provisions are highly significant. Each calls for a system of representative democracy in the sense that the Houses of the Legislature are to be composed of members whom the people choose. In each the method of choice is required to be that of direct choice.

Three great principles, representative democracy (by which I mean that the legislators are chosen by the people), direct popular election, and the national character of the lower House, may each be discerned in the opening words of Section 24. Nothing however is said to the composition of electoral divisions. Only if some requirement as to their composition necessarily flows from one or other of these three principles can the plaintiffs submissions be made good; and it can surely only be from that first representative democracy in the sense in which I use that term, that some such requirement might be derived."

The High Court has also acknowledged the concept of "the community of the Australian people" in a number of decisions dealing with the proper meaning and interpretation of the power with respect to immigration and emigration. In a succession of cases originating in Ex parte Walsh and Johnston; in Re Yates (1925) 37 CLR 36 the court asserted that;

"... a person who has originally entered Australia as an immigrant may in the course of time and by force of circumstances, cease to be an immigrant and becomes a member of the Australian community ... and thus may be exempt from the operation of the immigration power."

In both Walsh and Johnston, and in O'Keefe v. Calwell (1947) 77 CLR 261 the court held that the power to provide for deportation (based on the immigration power) was exhausted when the person had become absorbed into the Australian community.

A relatively more modern view of this approach is reflected in the Queen v. Director General of Social Welfare (VIC); ex parte Henry (1975) 133 CLR 369.

In holding that a section of the Immigration (guardianship of Children) Act 1946 should be read down, in order to preserve its validity, Gibbs J. said:

"In my opinion section 6 on its proper construction does not extend to children who have become a part of the people of Australia, and so construed the section is valid. It is true that it may be difficult in an individual case to determine when the section ceases to apply .."

Gibbs J thus expressly adopted the concept of "a part of the people of Australia", and has found that the immigration power must be limited to deal with those who have not yet fallen into that category.

The naturalisation and aliens power goes much further than the immigration power. In Pochi v. McPhee (1982) 151 CLR 101, at 107-110. Gibbs C.J. outlined the history of the development of the statutory concept of "Australian citizenship" originating with the Nationality and Citizenship Act 1948, which took effect on 26 January 1949. It is clear from this case, and from Nolan's case (1988) 165 CLR 178 that the expression "subject of the Queen" which is to be found in Section 34(ii) of the Constitution and in Section 117, must now be taken to mean "subject of the Queen of Australia". "Subjects of the Queen" in right of the United Kingdom, Canada, or any other of the Queen's dominions are not included in those contemplated by the Constitution. On the contrary, it is clear from Nolan's case that a subject of the Queen in right of the United Kingdom is now capable of being an "alien" in terms of the Constitutional head of power in Section 51(ix) if such person has not otherwise been naturalised.

In Pochi's case, Gibbs C.J. acknowledged the difficulties inherent in the limitations provided by Section 51(xix), which confers power on the Parliament only to deal with "naturalisation and aliens". At page 109 he said:

"The meaning of 'aliens' in the Constitution cannot depend on the law of England. It must depend on the law of Australia. It is true that Section 51(xix) presents some difficulties. Clearly the parliament cannot, simply by giving its own definition of 'alien', expand the power under the section."

Given these developments, wherein lies the constitutional basis for the Australian Citizenship Act 1948, in its present form, and for the provisions of Section 17 in particular?

To the extent to which the Section deals with aspects of providing citizenship by naturalisation, it is clearly within the head of power conferred by Section 51(xix). To the extent to which it deals with aliens, it is also clearly within that head of power. However to the extent to which it deals with those persons who are already members of "the people of Australia" because they were born and grew up as part of that community, and have only ever been part of that community and of no other community, no express power under section 51 provides any assistance.

Nevertheless Parliament can validly make laws with respect to Australian citizenship, in relation to those who do not fall within the "naturalisation and aliens" category. It is inherent in the constitutional concept of "the people of the Commonwealth" that the Parliament can make laws which are reasonably and appropriately adapted to the purpose of determining who falls within and who falls beyond that category.

For this purpose it is necessary to take into account the implied power of "Australian nationhood". The nature of this power has been discussed in the High Court in considering the scope of the Executive Power of the Commonwealth. In *Davis v. The Commonwealth* (1988) 166 CLR 79, at 92, in the judgment of Mason C.J. Dean J. and Caudron J. their Honours discussed this concept in the following terms:

"The scope of the Executive Power of the Commonwealth has often been discussed but never defined. By section 61 of the Constitution it extends to the Execution and maintenance of the Constitution. As Mason J. observed in *Barton v The Commonwealth*, the power.

...extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. It enables the Crown to undertake all executive action which is appropriate to the position of the Commonwealth under the Constitution and to the spheres of responsibility vested in it by the Constitution.

These responsibilities derived from the distribution of legislative powers effected by the Constitution itself and from the character and status of a Commonwealth as a national polity. So it is that the legislative powers of the Commonwealth extend beyond the specific powers conferred upon the Parliament by the Constitution and include such powers as may be deduced from the establishment and nature of the Commonwealth as a polity: see the discussion by Dixon J. in the *Communist Party* case. Dixon J. expressed a like view of Parliament's power of appropriation when he said in the *Pharmaceutical Benefits* case:

"In deciding what appropriation laws may validly be enacted it will be necessary to remember what position a national government occupies and...to take no narrow view, but the basal consideration would be found in the distribution of powers and functions between the Commonwealth and the States...

If we ask the question whether the commemoration of the Bicentenary is a matter falling within the peculiar province of the Commonwealth in its capacity as a national and federal government, the answer must be in the affirmative. ...The commemoration of the Bicentenary is preeminently the business and the concern of the Commonwealth as the national government and as such falls fairly and squarely within the federal executive power. ...In the legislative sphere the nature and status of the Commonwealth as a polity has sustained legislation against subversive or seditious conduct: *Burns v. Ransley*, *R v. Sharkey*, see the *Communist Party* case."

It follows from the concept of 'the implied nationhood power' discussed in *Davis*, that there is a power in the Commonwealth Parliament appropriately to define those situations in which persons will be taken to form part of 'the people of the Commonwealth' and when they may not. This power, in my view, extends beyond the limits of the power conferred by Section 51(ixx) to deal with 'naturalisation and aliens.'

However, the fact that such a power exists does not mean that it is a power which is unlimited.

Whether it is dealing with persons who have become part of the 'the Australian people' by naturalisation, or with those who have always been and only ever been part of the Australian people by reason of their birth and residence in Australia, the parliament's capacity to pass laws depriving individuals of the privileges and benefits of being part of that 'people' has clear limits. To take a clear case there is no difficulty whatsoever with the provisions of Section 19 of the Australian Citizenship Act 1948. This section provides that an Australian citizen who is a national or citizen of another country under the law of that country and who serves in the armed forces of a country at war with Australia ceases to be an Australian citizen upon commencing so to serve. It is clear that Section 19 does no more than would be implied in any event, i.e. that a person who undertakes armed service against Australia has thereby expressed his intention to be separated from the Australian people, and is no longer to be regarded as one of them. In this sense, Section 19 is clearly 'reasonably and appropriately adapted to achieve the ends that lie within the limits of constitutional power' per Mason C>J>, Deane J. and Gaudron J. in *Davis v. The Commonwealth*, (holding that a law which limits the use of the expressions 'Melbourne, 1988, Sydney 1988' were beyond the power of the Commonwealth to decide how to celebrate the Bicentennial).

Section 18 of the Australian Citizenship Act, which deals with renunciation of citizenship, is of a similar nature to Section 19. It is virtually certain that the High Court would uphold a law which provides that persons who have expressly renounced their Australian citizenship (albeit that they have not gone to war against Australia) have ceased to become part of the Australian people. Such persons have by their conduct expressed their desire to do so by such renunciation.

It is easy to contemplate examples which clearly fall on the other side of the line, as compared to Sections 18 and 19. Let it be assumed that the Commonwealth were to amend the Australian Citizenship Act so as to provide that all Australian citizens who travel to a particular country shall lose their Australian citizenship, (assuming that Australia is not at war with that country). In the absence of extraordinary circumstances it would not be possible to say that such a law was 'reasonably and appropriately adapted to achieve the ends that lie within the limits of constitutional power'.

While conceding the capacity of the Parliament to define those circumstances in which a person clearly has ceased to be a member of 'the people of the Commonwealth' it is also possible to determine that certain provisions go beyond the capacity of the Parliament to exclude a person from the rights and privileges associated with that status.

In my view, these limitations apply whether or not a person is a naturalised citizen, or a citizen by birth. Once a person has been naturalised, he or she has been acknowledged as part of 'the Australian people'. It is only possible for the Parliament to deprive persons of the privileges which the Constitution bestows on those who form part of 'the people of the Commonwealth' by a law which is appropriately adapted to defining the limits of the group, subject to the constitutional concept itself.

Section 17 falls beyond the limit of constitutional power because it seeks to exclude from 'the people of the Commonwealth', in its Constitutional sense, persons who in truth have not ceased to be such people but who nevertheless wish to take on dual citizenship. In considering this question, I am influenced by the fact that the Constitution itself contemplates the concept of dual citizenship. Section 44 excludes from eligibility for election to the Senate or the House of Representatives, those persons who are:

“...under any acknowledgment of allegiance, obedience or adherence to a foreign power, or is a subject or a citizen or entitled to the rights of privileges of a subject or a citizen of a foreign power...”

This provision, discussed at length in *Sykes v. Cleary* (1992) 109 ALR 577, clearly distinguishes the question of eligibility for election to the Senate or the House of Representatives, from the question of eligibility to vote. Persons who have such an allegiance, or who are also a subject or a citizen of a foreign power, are not disqualified from voting. Dual citizenship is expressly contemplated by the Constitution by the mechanism of providing that dual citizens are not permitted to stand for the Federal Parliament. Nonetheless, such persons from part of ‘the people of the Commonwealth’. (I am instructed that there are up to 3 million Australians who hold dual citizenship). Thus the effect of Section 17 is to prohibit those who are not already dual citizens from attaining a status which is constitutionally permitted, and which millions of their fellow Australians already hold. In these circumstances, Section 17 takes as its criterion of operation a status held by persons who are members of what the Constitution describes as ‘the people of the Commonwealth’ and purports to remove that status from them. This removal occurs notwithstanding their own desire to maintain that status, or regardless of that desire, and notwithstanding that the status which they seek to obtain, on acquiring such second citizenship is a status which millions of their fellow Australians already hold, which is constitutionally permitted, and which is not inherently inconsistent with their membership of ‘the people of the Commonwealth’. In these circumstances, I do not consider that it is possible to say that the Section is reasonably and appropriately adapted to the purpose of the power of determining those who have ceased to be members of the Australian community or to be part of ‘the people of the Commonwealth’.

The discriminatory treatment as between Australians who are entitled to dual citizenship, and those who acquire dual citizenship, also manifests an inequality before the law founded on irrelevant considerations, and which itself runs counter to underlying constitutional principles. In *Queensland Electricity Commission v. The Commonwealth* (1985) 159 CLR 192, at 247 the court spoke of ‘equality of the people...under the law of the Constitution’. In *Davis v. The Commonwealth* (1988) 166 CLR 79 at 116 Brennan J. pointed out:

“It is of the essence of a free and mature nation that minorities are entitled to equality in the enjoyment of human rights. Minorities are thus entitled to freedom in the peaceful expression of dissident view...”

In *Health Department v. GWB and SMB* (1992) 175 CLR 218, 277, the court referred to ‘equality under the law’. In *Leeth v. The Commonwealth* (1992) 174 CLR 455 at 486-7, Deane and Toohey JJ said as follows:

“In conformity with its ordinary approach to fundamental principles, the Constitution does not spell out that general doctrine of legal equality in express words. The question arises whether it adopts it as a matter of necessary implication. In our view, several considerations combine to dictate an affirmative answer to that question.

For one thing, there is the conceptual basis of the Constitution. As the preamble in Section 3 of the Commonwealth of Australia Constitution Act 1900 make plain, that conceptual basis was the free agreement of ‘the people’ - all the people of the federating colonies - to unite in the Commonwealth under the Constitution. Implicit in that free agreement was the notion of the inherent equality of the people as the parties to the

contract. Indeed, covering Clause 5 expressly enacted the first aspect of the common law doctrine of legal equality namely that ‘this Act’ (which included the actual terms of the Constitution) and all laws made by the Parliament of the Commonwealth under the Constitution shall be binding on the courts, judges and people of every part of the Commonwealth.

For another thing, the doctrine of legal quality is, to a significant extent, implicit in the Constitution’s separation of judicial power from legislative and executive powers and the vesting of judicial power in designated ‘courts’...Those provisions not only identify the possible repositories of Commonwealth judicial power. They also dictate and control the manner of its exercise. They are not concerned with mere labels or superficialities. They are concerned with matters of substance...At the heart of that obligation (to act judicially) is the duty of a court to extend to the parties before it equal justice, that is to say, to treat them fairly and impartially as equals before the law and to refrain from discrimination on irrelevant or irrational grounds...The existence of a number of specific provisions which reflect the doctrine of legal equality serves to make manifest rather than undermine the status of that doctrine as an underlying provision of the principle of the Constitution as a whole.”

For the reasons expressed above, Section 17 of the Australian Citizenship Act, which is manifestly discriminatory as between those who happen to hold dual citizenship, as against those who seek to acquire it, embodies a form of inequality as between “the people of the Commonwealth” that in my view is constitutionally impermissible.

The real difficulty with the section in its present form is that it focuses on the purpose of the conduct of the Australian citizen in relation to acquisition of another nationality or citizenship rather than the purpose of the Australian citizen in relation to his or her continued Australian citizenship. If the section were drafted in a way which directed attention to steps taken by the Australian citizen with the purpose of ceasing to be an Australian citizen, it would be clearly valid. However in circumstances where it takes as its criterion of operation nothing other than the acquisition of the nationality or citizenship of a foreign country, it is discriminating against the citizen who has taken such a step as against those who hold citizenship of another country by virtue of other circumstances, and are not appropriately penalised in this way. It discriminates in this way for no constitutionally permitted or required reason that is apparent from the concept of “Australian peoplehood or nationhood”, that has been discussed above.

The view expressed above is supported by passages in the judgment of Gaudron J. (dissenting) in Nolan’s case (1988) 165 CLR 178, at 193:

“As the transformation from non-alien to alien requires some relevant change in the relationship between the individual and the community, it is not, in my view possible to effect that transformation by simply redefining the criterion for admission to membership of the community constituting the body politic of Australia. Nor, in my view, does a mere failure on the part of a non-alien to acquire citizenship involve any fundamental alteration of his or her relationship with that community. Of course, it might be otherwise if citizenship were offered and refused in circumstances such that refusal could properly be seen as a revival of an earlier allegiance to some other nation or as an abandonment of allegiance to Australia.”

Although dealing with a different issue, ie the failure of persons to take up citizenship when they were entitled to do so, these comments are apposite.

I note that the United States Supreme Court in *Vance v. Terrazas* (1984) 444 US 252 has held that Congress does not have any general power to take away an American citizen's citizenship without his "assent", which means an intent to relinquish citizenship, whether the intent is expressed in words or is found as a fair inference from his conduct. That case concerned a US citizen who obtained a certificate of Mexican nationality, and who was treated by the authorities as having lost US citizenship by reason of Section 349(a)(ii) of the Immigration and Nationality Act. That section provided that:

"A US citizen loses his nationality by taking an oath or making an affirmation or other formal declaration of allegiance to a foreign State..."

The case relied in part on the 14th Amendment which relevantly reads:

"All persons born or naturalised in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

It is noteworthy that this provision does not say anything about retention of that status, or the circumstances in which a person may be deprived of it. The majority judgment in the US Supreme Court specifically states:

"This court...rejected the idea that aside from the 14th amendment Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent", and referred to the court's opinion in *Afroyim v. Rusk*.

The court also stressed that:

"The trier of fact must in the end conclude that the citizen not only voluntarily committed the expatriating act prescribed in the Statute, but also intended to relinquish his citizenship."

In my view, the decision of *Vance v. Terrazas* is directly relevant to the present situation. The reasoning of the US Supreme Court in holding that citizenship is constitutionally protected, in the absence of express intent on the part of the US citizen to relinquish it, is directly applicable in Australia. Once it is acknowledged that there is a constitutional concept of "the people of the Commonwealth", then in my view those who form part of that body of people cannot be deprived of that status by the Parliament unless they intend to relinquish that citizenship, or have acted in ways which are inconsistent with their continued membership of that group of people.

I have also been asked to advise on aspects of the interpretation of Section 17, assuming its validity.

In particular, I have been asked whether the proper interpretation of Section 17, appropriately read down, is that it requires that the person concerned would not lose Australian citizenship unless they had the intention of relinquishing such citizenship.

I have also been asked whether "acquire" necessarily encompasses "reacquire" in the case of persons who acquire a nationality which they have previously held, but which has been relinquished or lost at an earlier stage and is then reacquired by acts which become the subject of consideration under Section 17.

In *Gugerli's* case (1992) 36 FCR 68 Davies J. found that Mrs Gugerli had applied for recognition for a preexisting Swiss citizenship and therefore had not sought to acquire Swiss citizenship, she believing she already held it. In these circumstances, Davies J. held that she had not lost

her Australian citizenship by reason of the operation of Section 17.

In my view, for the reasons expressed above, Section 17 is invalid, if read in a way which provides that a person loses Australian citizenship notwithstanding his or her desire to maintain it. The better view is that the Section should be read, pursuant to Section 15A of the Acts Interpretation Act, so as to be constitutionally valid. If so read, it is limited only to those cases in which a person seeks to acquire the nationality or citizenship of a foreign country with the intent of relinquishing Australian citizenship.

Given my above views, I have greater difficulty with the notion that the word "acquire" does not extend to "reacquire". I presume that it is not necessary to answer this question since the section does not have constitutional validity in the absence of an implication of appropriate intent.

My instructing solicitors have also asked whether it would be appropriate to treat the section as having become constitutionally invalid at the present time, so as not to cause the re-opening of the cases of those persons upon whom Section 17 has operated in the past. In my view this is not possible as a matter of law. If the section is invalid it has never had validity and there is nothing to stop persons who have "lost" their Australian citizenship from now seeking a Declaration from a court that the section did not affect their status, regardless of how they were dealt with by the Department. To quote Latham C.J. in *South Australia v. The Commonwealth* (1942) 65 CLR, at 408.

"Common expressions such as 'The Courts have declared a statute invalid' sometimes lead to misunderstanding. A pretended law made in excess of power is not and never has been a law at all. Anybody in the country is entitled to disregard it. Naturally he will feel safer if he has a decision of a court in this favour—but such a decision is not an element which produces invalidity in a law. The law is not valid until a court pronounces against it—and thereafter invalid. If it is beyond power it is invalid *ab initio*."

I would be happy to confer further to discuss any of the above matters if this is desired.

A.R. CASTAN Q.C.

Aickin Chambers

27 June 1995

**Senator BOLKUS**—The other point I would like to make is that there was an enormously strange environment in 1995 and it was not just because of the lead-up to an election. At that time, in the Prime Minister's department in particular, there were a number of senior bureaucrats who had their own political agenda and who I feel, to this day, overstepped the mark of propriety. Some of the claims that they were making were claims that were spurious at best, were baseless and were just designed to derail this particular process. Their behaviour was such that they became political players. For instance, PM&C claimed that Australia, by taking this measure, would be out of step with the rest of the world and out of step with the USA, when the facts showed full well, for instance, in the case of the USA, that it was a constitutional right of their citizens to maintain US citizenship in most circumstances where they acquired the citizenship of another country. But we were told that this would be contrary to the overriding and unifying commitment to Australia—rejecting, by way of that allegation, any adoption by them of the concept of multiculturalism, with a commit-

ment to Australia as the overriding and fundamental commitment of migrants who come here.

Their campaign was a political one and it was excessive. But I am pleased to see that they were not able to unwind the guidelines that were issued in 1995. I am pleased to see now that their influence is out of the system and we have reached the stage where this legislation is before us today. It is long awaited, belated legislation which does away with discrimination against Australian born citizens and which is necessary in the current multicultural environment in Australia, and it brings Australia very much in line with other countries. I think it responds very well to the imperatives of the global environment in which this country finds itself—a global environment which has more and more Australians working internationally and more and more people from overseas working in Australia. It is a global environment which means that, in a sense, we are in an era of rapid mobility where people and their assets travel the world for short periods but then come home and know where their home is. The citizenship legislation has not acknowledged that over recent years. I welcome this reform, having incorporated the late Mr Castan's advice in *Hansard*.

**Senator CROSSIN (Northern Territory)** (1.44 p.m.)—I seek leave to incorporate in *Hansard* a speech by Senator Ludwig on the [Australian Citizenship Legislation Amendment Bill 2002](#).

Leave granted.

*The speech read as follows—*

The main provision of this Bill centre on the repeal of section 17 of the Australian Citizenship Act 1948.

This section means that if an Australian citizen took out another citizenship then the effect of this would be to disqualify the person from holding Australian citizenship. Thus, Australian citizens are faced with a terrible choice - if they went abroad for either a short or long while, irrespective of the reasons, for example, work, marriage, touring and decided to take out citizenship in the resident country, they would automatically lose their Australian citizenship. Thus, on their return to Australia for a visit or perhaps to return for good they found themselves denied an Australian passport. A situation could arise where the person might find it difficult to return or at least spend some time worrying about their status.

The Bill also contains a new provision to allow a person who is born overseas to be allowed to be registered up to their 25th birthday. The caveat is that the person be of good character. Occasionally, overseas Australians do not register their child or children and thus fail to get Australian citizenship notwithstanding the parents of the child or children by being Australian citizens.

The provision 10B(1A) will overcome this inconvenience in part by allowing the upper age to be moved from 18 to 25.

Section 13(1) of the Australian Citizenship Act 1948 extends the scope of service with the Australian Reserve Forces to a more contemporary basis. It allows 6 months equivalent service to allow a residency requirement of 1 out of 2 or 2 out of 5 years to be waived. However, the usefulness of this provision remains to be seen.

The amending Bill also contains provisions for the Prohibitions on Grant of Citizenship and provisions where citizenship can be deprived of gaining citizenship.

Section 23AA touches on the cases where citizenship can be resumed in various circumstances. The situations where this can be activated is only where the person did not know that the act through which they lost their citizenship would have that outcome or acted under duress. Thus, if the person took the action voluntarily and with knowledge of its consequences than it would not be permissible under this provisions. The Minister must approve it though.

So, in short, the Bill takes away the provision which means that Australian citizenship is lost on the gaining of another. It extends the age at which young people can gain citizenship. It also inserts a specific reference to people smuggling offences in the existing provision in the Act.

The central provision of the Bill deals with the concept of dual citizenship. A dual citizen is a person who has a citizenship certificate from two countries. Many, many Australian's currently hold dual citizenship.

It is interesting to note that under present legislation, two classes become apparent. Australians who already hold another citizenship because of a number of circumstances such as through marriage a person becomes a citizen of another country or because of descent. On the other hand a person who acquires citizenship of another country loses their Australian citizenship. Thus, it appears that the present legislation militates against Australians who are citizens by birth.

The benefits of the new Bill seem to more broadly fit in with a modern world. Dual citizenship is in part recognition of our multiculturalism. And, clearly that the world is a smaller place. More people are travelling, working and living for periods in other countries without necessarily feeling that they have to make a choice between Australia and the new country. It would appear anecdotally that many Australians living overseas don't easily give up there citizenship.

No doubt, many countries show a close tie with Australia and its people. Clearly countries like U.S., U.K., N.Z., Canada and France have recognised this and I'm sure Australians feel the same. Of course, this should not cheapen the value of citizenship.

I am comforted in my view, that it is a valuable contribution to our citizenship regime because in February 2000 the Australian Citizenship Council's report 'Australian Citizenship for a New Century' strongly recommended the repeal of section 17. The Government responded to the Report positively. Labor has similarly supported the repeal of section 17.

Laurie Ferguson, the Shadow Spokesperson informed the House that the Joint Standing Committee on Migration entitled 'Australians All-Enhancing Australian Citizenship' was persuaded by those deliberations in 1994 to accede to the Concept of Dual Citizenship.

"Many Australians are adversely effected by the current law when overseas."

It was unable to be proceeded with at that time but was revised in 1999 by the Australian Citizenship Council. Labor is pleased to support the Bill. Although it would be better to allow better resumption arrangements.

The Bill is prospective and thus Australian citizens who have lost their citizenship cannot easily recover it under these provisions. Further work is needed on this issue. Consideration should be given to looking at this matter again.

The Act as I have said, provides that a person born overseas to Australian parents can get Australian citizenship by descent if their parents registered their birth before their 18th birthday. About 8-9 thousand children are registered. This is now extended to 25 years.

The Australian Labor Party has a proud record of multiculturalism and involvement in citizenship matter and I am pleased to be able to support such an initiative.

**Senator BARTLETT (Queensland)** (1.44 p.m.)—I recognise the importance of trying to get the *Australian Citizenship Legislation Amendment Bill 2002* finalised by 2 o'clock, so I will be brief, which is rather unfortunate because it is an important piece of legislation. The brevity of my remarks should in no way be taken as a lack of recognition of its importance.

I will put a few points on the record. The Democrats are happy to support this bill and are happy to facilitate its quick passage. It was introduced in the last parliament but was not able to be debated. The issue itself has been bubbling along for quite some time, certainly in relation to the repeal of section 17 of the Citizenship Act. It is worth noting that the whole notion of citizenship is one that is evolving. As senators would know, citizenship itself only became a legal reality a little over 50 years ago and, for the first half of our life as a federated nation, we did not have such a thing as an Australian citizen, despite being an Australian nation. It is a concept that will continue to evolve, and it will be interesting to see what the notion of citizenship is in 50 years time. I think it will be very different again.

This bill is at least bringing things more up to date. It removes discrimination against a significant proportion of Australians, and will assist in the better integration of Australia with the global community. It does, however, raise one other issue which makes it all the more urgent that it be addressed. I urge the government to act in the life of this parliament to address this issue, because the longer we leave it, particularly having passed this bill, the worse it is going to get. I refer to the provision in the Constitution that prohibits dual citizens from standing for parliament. The Democrats have indicated a number of times our support for removing that provision or modifying it significantly, although it has to be done by referendum. We would urge the government to hold a referendum on that, if not before the next election then at least at the next election. This already affects a large number of people. I do not know how many but Senator Bolkus indicated it was a very large proportion. He said it affected half of Australia; I think at least one-quarter of Australians are dual citizens already. This will open up the ability for many more to become dual citizens and, effectively, at the same time, disenfranchise themselves from running for the federal parliament.

It is becoming more and more of a problem, certainly from my experience as a campaign director for the Democrats through many elections. It is a regular problem for people who are wishing to run for parliament—often, unfortunately for the Democrats, for House of Representatives seats where they are not likely to win. They still want to participate in the electoral process but are not able to do so because of the Constitution and the way it has been interpreted by the High Court. I think it is an unfortunate interpretation but I should not reflect on a decision of the High Court. Certainly, the interpretation has been

made regardless. The Democrats urge the government, and urge the opposition to lend their cooperation, to attempt to change that part of the Constitution by putting up a referendum to change it as quickly as possible. As I say, the passage of this bill, whilst it is one that we support very strongly, actually makes that need for action all the more urgent.

**Senator COONEY (Victoria)** (1.48 p.m.)—The *Australian Citizenship Legislation Amendment Bill 2002* is non-controversial but I would have hoped that a deal of time was put aside for its debate. It is about the underpinning of Australian nationality, and that is a matter which we as a parliament ought to talk about at length. There is an interesting concept that you must be an Australian citizen to be in the Australian military forces or to be in the reserves. That indicates that there is importance attached to the concept of Australian nationality. But with the passing of this legislation—and it has been discussed, as Senator Bolkus has said, for years now—the fact is that you will be able to hold any number of citizenships of any number of countries and, at the same time, be Australian.

I am really talking nostalgically. I do not think nostalgia is all that bad at times. I became an Australian citizen in 1948, when the act was originally passed. I was born in Tasmania; my father—who had the same name as me, Barney Cooney—was born there in July 1894. In spite of the fact that my mother, Corrie Curtain, was also born in Tasmania on 26 February 1899, and three of my grandparents were born there, the fourth one was a foreigner from Ballarat—in those days, Ballarat was in a foreign country, and I was born British.

Great contributions were made to Australia in the 19<sup>th</sup> century. This legislation is in keeping with where Australia has developed to. I like to think that, although Australia is developing in a great way and we have a great multicultural society, those who came in the 19<sup>th</sup> century and before did make a great contribution. The indigenous people were, of course, the first people here.

I am always very pleased in light of some of my ancestry, that 26 January is Australia Day. That is the day that the convicts founded Australia. That was the day that they got here, and they were the first to till the soil in this land. They were followed by the graziers, squatters, the selectors that we used to learn about in school, and the miners. And we developed to the stage we have reached now. I think it is good to contemplate the contribution that the earlier settlers made to Australia. We learnt about those sorts of things at school. Mr Acting Deputy President, you will remember the great poem by Dorothea Mackellar, which is the one that often comes to mind: *My Country*, which contains the lines 'I love a sunburnt country'—

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—A land of sweeping plains.

**Senator COONEY**—'A land of sweeping plains,' and so on. You would know, Mr Acting Deputy President, about the magnificent country that we belong to and the great contribution that our forebears

made to it. This is an occasion when we ought to be talking about it. It is a time to remember how over 60,000 Australians were killed in the First World War. This would be a different country had they survived. I am not saying that the present country is not a magnificent country; I am just saying it is a different country. I want to bring to the fore at a time when we say, 'Righto, you can be an Australian citizen; you can be a citizen of any other country who cares to take you at the same time', that the contribution of the past is not forgotten and that those over 60,000 men that were killed on the battlefields are remembered. I think there were about 200 Navy people killed as well. Even the contribution Australia made in the Boer War, not a war that I necessarily agreed with—

**Senator McGauran**—Breaker Morant!

**Senator COONEY**—I heard you the other night, Senator McGauran. It is the anniversary of the execution of Breaker Morant and Hancock who was executed with him. There are other historic figures, for example great painters. I was thinking of Mount Duneed, where Sir Arthur Stretton was born—as Senator McGauran would know—and the magnificent art he painted. All I am saying is that the Australia of Lawson, the Australia of Steele Rudd—Arthur Hoey Davis was known as Steele Rudd—C. J. Dennis and all those stories that we used to read, such as *Blinky Bill*, are clothed with nostalgia but, I think, very important nostalgia. In the context of our debate about Australian nationality, that ought to be remembered.

**Senator Crossin**—Talk about Vegemite and Aeroplane jelly!

**Senator COONEY**—Senator Crossin talks about Vegemite and Aeroplane jelly. I understand what she means, but that can be belittling of a contribution made by a lot of people prior to and since 1900. I want to have that on the record as we go into the future. We have the possibility of dual citizenship. None of my children, unless they go overseas and acquire it over there—I am not sure that they would want to—could get it. Nevertheless, as we go forward let us remember what is the best of the past. We must remember that we have a very proud history to date. All I want to do is to have that acknowledged.

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer)** (1.55 p.m.)—I endorse the words of Senator Cooney and thank all honourable senators for their contributions. I would have loved to have had a much longer debate on this sort of bill. It falls into the category of the sort of bill we could debate for longer if we managed our time better and set our priorities better. That is a debate I will continue for a long time, I suspect.

After all the convicts, the pastoralists, the graziers and everyone else, finally came the merchant bankers. One Australian whom we are looking forward to returning to our shores very soon is an investment banker by the name of Simon Withers. I am sure he will applaud the passing of this legislation. We all look forward to welcoming home the son of former Senator Reg Withers very soon.

Question agreed to.

Bill read a second time.

### Third Reading

Bill passed through its remaining stages without amendment or debate.

## ~~RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX) AMENDMENT BILL 2002~~

### Second Reading

Debate resumed from 11 March, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

### Third Reading

Bill passed through its remaining stages without amendment or debate.

## QUESTIONS WITHOUT NOTICE

### Defence: Intelligence

**Senator FAULKNER** (2.00 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Minister, what steps have you taken, or what steps do you propose to take, to investigate the apparent breach of security in today's publication of sensitive intelligence material, including transcripts, intercepted by DSD?

**Senator HILL**—I have checked to ensure that the matters have been referred to the Australian Federal Police, and have been told that that has occurred.

**Senator FAULKNER**—Madam Deputy President, I ask a supplementary question. I thank the minister for his response. Minister, in this circumstance isn't it correct that a disclosure of intercepted material is by definition a security breach and would contravene laws enacted by the parliament? In this situation would the minister agree to a proposal to allow DSD to brief the Joint Intelligence Committee of the parliament on how that organisation protects its source material and what steps it takes to investigate unauthorised disclosures?

**Senator HILL**—I think that that would be okay. I would like to check with DSD. It seems to me that the purpose of the act is for parliamentary supervision of the administrative structures. Effective administration includes effective security. I cannot see any reason why the new committee should not be briefed to the extent that they can be satisfied that important intelligence is being properly secured. In saying that, please do not misinterpret me to be conceding that any protected material has in fact been leaked. I would not wish to be interpreted in that way.

### Employment: Workplace Reform

**Senator TIERNEY** (2.02 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister inform the Senate of the government's intended workplace reform policies, which are further proof of the Howard government's commitment to providing job growth and increased business confidence, to the benefit of all Australians? Is the minis-