



COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Votes and Proceedings

Hansard

TUESDAY, 28 NOVEMBER 2006

CORRECTIONS

This is a **PROOF ISSUE**. Suggested corrections for the Official Hansard and Bound Volumes should be lodged in writing with the Director, Chambers, Department of Parliamentary Services **as soon as possible but not later than:**

Tuesday, 5 December 2006

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	Main Committee	(02) 6277 8368

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

PROOF

Tuesday, 28 November 2006

The **SPEAKER (Hon. David Hawker)** took the chair at 12.30 pm and read prayers.

MAIN COMMITTEE

Mr BARTLETT (Macquarie) (12.31 pm)—by leave—I move:

That, unless otherwise ordered, for the Main Committee meeting today the first item of business shall be three-minute statements continuing for a period of 30 minutes, irrespective of suspensions for divisions in the House.

Question agreed to.

AUSTRALIAN CITIZENSHIP BILL 2005

Report from Main Committee

Consideration resumed from 2 November.

First unresolved question—

That the amendment moved by the honourable member for Watson be agreed to:

Clause 21, page 18 (line 2), after “17”, insert “or 18”.

Mr BURKE (Watson) (12.32 pm)—We have a very simple amendment before the chamber to fix a problem which has arisen for the Maltese community. The government has acknowledged that one section of the Maltese community who lost their Australian citizenship—they and their children—should be allowed to regain it. In a parallel situation, the government acknowledges that it is appropriate to let back in another section of the Maltese community who were forced to renounce Australian citizenship, but it does not want to do the same for their children. The government’s argument is that their children do not have a sufficient connection to Australia. Labor believes that the connection between children and their parents is as close as a connection can get.

This situation does not affect a lot of people, and it is something which the Maltese community has been crying out for for some time. It is something that should have attracted some bipartisanship in the parliament. The Labor Party offered that, if the government want to make this amendment theirs, we will grant leave for them to vary it in whatever way they want to. What we have here is simply sensible public policy. There appears to be no national security concern or anything like that; it simply appears to be a case where the government have drafted the legislation in this way and they are sticking to their guns no matter what the merits of the case.

In the Main Committee the member for Prospect and the member for Gorton made a compelling case as to why the cries of the Maltese community in Australia should be heard, as to why this is to the betterment of Australia and as to why it is really not too long a stretch: if you are looking at whether someone has a

significant connection to Australia, the connection between parents and their children is not a bad one to start with.

Question put:

That the amendment (**Mr Burke’s**) be agreed to.

The House divided. [12.38 pm]

(The Speaker—Hon. David Hawker)

Ayes.....	56
Noes.....	<u>79</u>
Majority.....	23

AYES

Adams, D.G.H.	Albanese, A.N.
Andren, P.J.	Beazley, K.C.
Bevis, A.R.	Bird, S.
Bowen, C.	Burke, A.E.
Burke, A.S.	Byrne, A.M.
Crean, S.F.	Danby, M. *
Edwards, G.J.	Elliot, J.
Ellis, A.L.	Emerson, C.A.
Ferguson, L.D.T.	Fitzgibbon, J.A.
Garrett, P.	Georganas, S.
George, J.	Gibbons, S.W.
Gillard, J.E.	Grierson, S.J.
Griffin, A.P.	Hall, J.G. *
Hatton, M.J.	Hayes, C.P.
Hoare, K.J.	Irwin, J.
Kerr, D.J.C.	King, C.F.
Lawrence, C.M.	Livermore, K.F.
Macklin, J.L.	McMullan, R.F.
Melham, D.	Murphy, J.P.
O’Connor, B.P.	O’Connor, G.M.
Owens, J.	Plibersek, T.
Price, L.R.S.	Quick, H.V.
Ripoll, B.F.	Roxon, N.L.
Rudd, K.M.	Sawford, R.W.
Sercombe, R.C.G.	Smith, S.F.
Swan, W.M.	Tanner, L.
Thomson, K.J.	Vamvakinou, M.
Wilkie, K.	Windsor, A.H.C.

NOES

Anderson, J.D.	Andrews, K.J.
Bailey, F.E.	Baird, B.G.
Baker, M.	Baldwin, R.C.
Barresi, P.A.	Bartlett, K.J.
Billson, B.F.	Bishop, B.K.
Bishop, J.I.	Broadbent, R.
Brough, M.T.	Cadman, A.G.
Causley, I.R.	Ciobo, S.M.
Cobb, J.K.	Costello, P.H.
Downer, A.J.G.	Dutton, P.C.
Elson, K.S.	Entsch, W.G.
Farmer, P.F.	Fawcett, D.
Ferguson, M.D.	Forrest, J.A.
Gambaro, T.	Gash, J.
Georgiou, P.	Haase, B.W.
Hardgrave, G.D.	Hartsuyker, L.
Henry, S.	Hockey, J.B.
Hull, K.E. *	Hunt, G.A.
Jensen, D.	Johnson, M.A.
Jull, D.F.	Katter, R.C.
Keenan, M.	Kelly, D.M.

Kelly, J.M.	Laming, A.
Ley, S.P.	Lindsay, P.J.
Lloyd, J.E.	Macfarlane, I.E.
Markus, L.	May, M.A.
McArthur, S. *	McGauran, P.J.
Mirabella, S.	Moylan, J.E.
Nairn, G.R.	Neville, P.C.
Prosser, G.D.	Pyne, C.
Randall, D.J.	Richardson, K.
Robb, A.	Ruddock, P.M.
Schultz, A.	Scott, B.C.
Secker, P.D.	Slipper, P.N.
Smith, A.D.H.	Somlyay, A.M.
Stone, S.N.	Thompson, C.P.
Tollner, D.W.	Truss, W.E.
Tuckey, C.W.	Vaile, M.A.J.
Vale, D.S.	Vasta, R.
Wakelin, B.H.	Washer, M.J.
Wood, J.	

* denotes teller

Question negatived.

The SPEAKER—The second unresolved question is that government amendments (1) to (76) be agreed to.

Second unresolved question—

That the amendments moved by the honourable member for Goldstein be agreed to.

- (1) Preamble, page 1 (line 4), before “formal”, insert “full and”.
- (2) Clause 2, page 2 (table item 2), omit “3”, substitute “2A”.
- (3) Page 3 (after line 3), after clause 2, insert:

2A Simplified outline

The following is a simplified outline of this Act:

What this Act covers

This Act sets out how you become an Australian citizen, the circumstances in which you may cease to be a citizen and some other matters related to citizenship.

Becoming an Australian citizen

There are a range of ways you can become an Australian citizen.

Acquiring citizenship automatically

Generally, you become an Australian citizen automatically if you are born in Australia and one or both of your parents are Australian citizens or permanent residents when you are born. There are some other, less common, ways of automatically becoming a citizen.

Division 1 of Part 2 has details about acquiring citizenship automatically.

Also, if you were a citizen under the old Act immediately before the day that this section commences, you will continue to be a citizen: see subsection 4(1).

Acquiring citizenship by application

The other way to become an Australian citizen is to apply to the Minister. This is covered by Division 2 of Part 2. There are 4 situations in which you can apply for citizenship.

The first is citizenship by descent. Generally, you would apply for this if you were born outside Australia and one or both of your parents were Australian citizens when you were born. Citizenship by descent is covered by Subdivision A.

The second is citizenship for persons adopted in accordance with the Hague Convention on Inter-country Adoption: see Subdivision AA.

The third is citizenship by conferral. Generally, you would need to be a permanent resident and willing to make a pledge of commitment to apply for citizenship by conferral. There are some less common circumstances in which you can apply for citizenship by conferral. Citizenship by conferral is covered by Subdivision B.

The fourth is resuming citizenship. In certain cases where you previously ceased to be an Australian citizen, you can apply for your citizenship to resume. Resuming citizenship is covered by Subdivision C.

The Minister must be satisfied of your identity for you to acquire citizenship by application.

Rules about identification are in Division 5 of Part 2.

The Minister may be required to refuse your application on national security grounds.

Ceasing to be an Australian citizen

There are a number of ways that you can cease to be an Australian citizen.

You can renounce your citizenship.

If you did not automatically become an Australian citizen, the Minister can revoke your citizenship in certain circumstances.

There are some other, less common, ways of ceasing to be a citizen.

Division 3 of Part 2 has details about ceasing to be a citizen.

Evidence that a person is an Australian citizen

You can apply to the Minister for evidence of your Australian citizenship. This is covered by Division 4 of Part 2.

- (4) Clause 3, page 3 (line 18), omit “3”, substitute “2A”.
- (5) Clause 3, page 3 (lines 20 and 21), after “is a personal identifier”, insert “provided under Division 5 of Part 2”.
- (6) Clause 3, page 3 (line 21), after “provide”, insert “unauthorised”.
- (7) Clause 3, page 3 (after line 21), at the end of the definition of *disclose*, add:

Note: Section 42 deals with authorised access to identifying information.
- (8) Clause 3, page 3 (before line 22), before the definition of *foreign law*, insert:

entrusted person means:

 - (a) the Secretary of the Department; or
 - (b) an APS employee in the Department; or
 - (c) a person engaged under section 74 of the *Public Service Act 1999* by the Secretary of the Department; or
 - (d) a person engaged by the Commonwealth, the Minister, the Secretary of the Department, or by

an APS employee in the Department, to do work for the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act.

- (9) Clause 3, page 3 (line 24), after “identifier”, insert “provided under Division 5 of Part 2”.
- (10) Clause 3, page 3 (line 25), after “from any”, insert “such”.
- (11) Clause 3, page 3 (line 27), after “analysing any”, insert “such”.
- (12) Clause 3, page 3 (line 28), after “from any”, insert “such”.
- (13) Clause 3, page 4 (line 1), after “any”, insert “such”.
- (14) Clause 3, page 4 (line 2), after “from any”, insert “such”.
- (15) Clause 3, page 4 (after line 6), after the definition of **identifying information**, insert:

national security offence means:

- (a) an offence against Part II or VII of the *Crimes Act 1914*; or
- (b) an offence against Division 72 of the *Criminal Code*; or
- (c) an offence against Part 5.1, 5.2 or 5.3 of the *Criminal Code*; or
- (d) an offence against the *Australian Security Intelligence Organisation Act 1979*; or
- (e) an offence against the *Intelligence Services Act 2001*; or
- (f) an offence covered by a determination in force under section 6A.

- (16) Clause 4, page 5 (lines 20 to 25), omit subclause (1), substitute:

- (1) For the purposes of this Act, **Australian citizen** means a person who:
 - (a) is an Australian citizen under Division 1 or 2 of Part 2; or
 - (b) satisfies both of the following:
 - (i) the person was an Australian citizen under the *Australian Citizenship Act 1948* immediately before the commencement day;
 - (ii) the person has not ceased to be an Australian citizen under this Act.

- (17) Page 7 (after line 12), after clause 6, insert:

6A National security offences

- (1) The Attorney-General may, by legislative instrument, determine that:
 - (a) an offence against a specified provision of a specified Australian law or a specified foreign law; or
 - (b) an offence against an Australian law or a foreign law involving specified conduct;
 is a national security offence for the purposes of paragraph (f) of the definition of **national security offence** in section 3.
- (2) A determination under subsection (1) applies in relation to:

- (a) applications made under this Act after the determination takes effect; and
- (b) applications made under this Act before the determination takes effect that have not been decided before the determination takes effect.

- (18) Clause 10, page 9 (line 15), omit “will promote one or more”, substitute “is necessary for either or both”.

- (19) Clause 10, page 9 (line 21), omit subparagraph (2)(c)(iii).

- (20) Page 11 (before line 4), before clause 12, insert:

11A Simplified outline

The following is a simplified outline of this Division:

The most common way you become an Australian citizen under this Division is by being born in Australia and by having a parent who is an Australian citizen or a permanent resident at the time of your birth.

There are some other, less common, ways of becoming an Australian citizen under this Division. These cover:

- citizenship by being born in Australia and by being ordinarily resident in Australia for the next 10 years: see section 12; and
- citizenship by adoption: see section 13; and
- citizenship for abandoned children: see section 14; and
- citizenship by incorporation of territory: see section 15.

- (21) Clause 13, page 11 (line 20), omit “of”, substitute “in force in”.

- (22) Page 13 (before line 5), before clause 16, insert:

15A Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision in 2 situations:

- you were born outside Australia on or after 26 January 1949 and a parent of yours was an Australian citizen at the time of your birth: see subsection 16(2); or
- you were born outside Australia or New Guinea before 26 January 1949 and a parent of yours was an Australian citizen on 26 January 1949: see subsection 16(3).

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen. You must be eligible to be an Australian citizen to be approved.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 17(3); or
- national security: see subsections 17(4) to (4B); or
- cessation of citizenship: see subsection 17(5).

You will be registered if the Minister approves you becoming an Australian citizen.
You do not become an Australian citizen, even if the Minister approves you becoming an Australian citizen, unless a parent of yours was an Australian citizen at a particular time: see section 19A.

- (23) Clause 16, page 13 (line 15), after “Subdivision”, insert “or Subdivision AA”.
- (24) Clause 17, page 14 (after line 10), after subclause (1), insert:
- (1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 16(2) or (3).
- (25) Clause 17, page 14 (lines 12 and 13), omit “be so approved”, substitute “become an Australian citizen under subsection 16(2) or (3)”.
- (26) Clause 17, page 14 (lines 18 to 24), omit subclause (4), substitute:
- National security*
- (4) If the person is not covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (4A) If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person has been convicted of a national security offence.
- (4B) A person is covered by this subsection if:
- (a) at the time the person made the application under section 16, the person:
- (i) is not a national of any country; and
- (ii) is not a citizen of any country; and
- (b) at the time of the person’s birth, the person had a parent who was an Australian citizen.
- (27) Clause 19, page 15 (line 6), omit “(1)”.
- (28) Clause 19, page 15 (lines 9 to 15), omit subclause (2).
- (29) Page 15 (after line 15), after clause 19, insert:

19A When a person does not become a citizen despite the Minister’s approval

Despite section 19, a person does not become an Australian citizen under this Subdivision, even if the Minister approves the person becoming an Australian citizen, unless:

- (a) if the person was born on or after 26 January 1949—a parent of the person was an Australian citizen at the time of the person’s birth; or
- (b) if the person was born before 26 January 1949—a parent of the person became an Australian citizen on 26 January 1949.
- (30) Page 15 (before line 16), before Subdivision B, insert:

Subdivision AA—Citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption

19B Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision if you are adopted outside Australia in accordance with the Hague Convention on Intercountry Adoption by at least 1 Australian citizen.

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved. You may be refused citizenship even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 19D(4); or
- national security: see subsections 19D(5) to (7); or
- cessation of citizenship: see subsection 19D(8).

You will be registered if the Minister approves you becoming an Australian citizen.

19C Application and eligibility for citizenship

- (1) A person may make an application to the Minister to become an Australian citizen.
- Note: Section 46 sets out application requirements (which may include the payment of a fee).

Eligibility

- (2) A person (the **applicant**) is eligible to become an Australian citizen if:
- (a) the applicant is adopted in a Convention country by:
- (i) a person (the **adopter**) who is an Australian citizen at time of the adoption; or
- (ii) 2 persons jointly, only one of whom (the **adopter**) is an Australian citizen at the time of the adoption; or
- (iii) 2 persons jointly, both of whom (the **adopters**) are Australian citizens at the time of the adoption; and
- (b) an adoption compliance certificate issued in that country is in force for the adoption; and
- (c) under the Intercountry Adoption regulations, the adoption is recognised and effective for the laws of the Commonwealth and each State and Territory; and
- (d) the legal relationship between the applicant and the individuals who were, immediately before the adoption, the applicant’s parents has been terminated; and
- (e) if subparagraph (a)(i) or (ii) applies and the adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the

- adoption—the adopter satisfies subsection (3); and
- (f) if subparagraph (a)(iii) applies and each adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—either or both of the adopters satisfy subsection (3); and
- (g) if the applicant is aged 18 or over at the time the applicant made the application—the Minister is satisfied that the applicant is of good character at the time of the Minister’s decision on the application.
- (3) An adopter satisfies this subsection if the adopter has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the applicant made the application.

Definitions

- (4) In this section:
- adoption compliance certificate** has the same meaning as in the Intercountry Adoption regulations.
- Convention country** has the same meaning as in the Intercountry Adoption regulations.
- Intercountry Adoption regulations** means the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

19D Minister’s decision

- (1) If a person makes an application under section 19C, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.
- (2) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 19C(2).
- (3) The Minister may refuse to approve the person becoming an Australian citizen despite the person being eligible to become an Australian citizen under subsection 19C(2).

Identity

- (4) The Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

National security

- (5) If the person is not covered by subsection (7), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (6) If the person is covered by subsection (7), the Minister must not approve the person becoming an Australian citizen if the person:

- (a) if subparagraph (7)(b)(i) applies to the person:
- (i) has been convicted of a national security offence; or
 - (ii) has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
- (b) if subparagraph (7)(b)(ii) applies to the person—has been convicted of a national security offence.

(7) A person is covered by this subsection if:

- (a) at the time the person made the application under section 19C, the person:
- (i) is not a national of any country; and
 - (ii) is not a citizen of any country; and
- (b) either:
- (i) the person was born in Australia; or
 - (ii) the person was born outside Australia and, at the time of the person’s birth, the person had a parent who was an Australian citizen.

Cessation of citizenship

- (8) If the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

19E Registration

If the Minister approves the person becoming an Australian citizen, the Minister must register the person in the manner prescribed by the regulations.

19F Day citizenship begins

A person becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.

- (31) Page 15 (before line 17), before clause 20, insert:

19G Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision in 7 situations:

- you satisfy the general eligibility criteria: see subsection 21(2); or
- you have a permanent physical or mental incapacity: see subsection 21(3); or
- you are aged 60 or over or have a hearing, speech or sight impairment: see subsection 21(4); or
- you are aged under 18: see subsection 21(5); or
- you were born to a former Australian citizen: see subsection 21(6); or
- you were born in Papua: see subsection 21(7); or
- you are a stateless person: see subsection 21(8).

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen. You must be eligible to be an Australian citizen to be approved. You may be refused citizenship even if you are eligible. The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 24(3); or
- national security: see subsections 24(4) to (4B); or
- non-presence in Australia: see subsection 24(5); or
- offences: see subsection 24(6); or
- cessation of citizenship: see subsection 24(7).

You may need to make a pledge of commitment to become an Australian citizen.

(32) Clause 20, page 15 (line 19), omit “approves”, substitute “decides under subsection 24(1) to approve”.

(33) Clause 21, page 18 (lines 17 to 27), omit subclause (8), substitute:

Statelessness

(8) A person is eligible to become an Australian citizen if the Minister is satisfied that:

- (a) the person was born in Australia; and
- (b) at the time the person made the application, the person:
 - (i) is not a national of any country; and
 - (ii) is not a citizen of any country; and
- (c) the person has:
 - (i) never been a national of any country; and
 - (ii) never been a citizen of any country; and
- (d) at the time the person made the application, the person:
 - (i) does not have reasonable prospects of acquiring the nationality of a foreign country; and
 - (ii) does not have reasonable prospects of acquiring the citizenship of a foreign country; and
- (e) the person has:
 - (i) never had reasonable prospects of acquiring the nationality of a foreign country; and
 - (ii) never had reasonable prospects of acquiring the citizenship of a foreign country.

(34) Clause 22, page 18 (line 29) to page 19 (line 2), omit subclause (1), substitute:

- (1) Subject to this section, for the purposes of section 21 a person satisfies the *residence requirement* if:
 - (a) the person was present in Australia for the period of 4 years immediately before the day the person made the application; and
 - (b) the person was not present in Australia as an unlawful non-citizen at any time during that 4 year period; and

- (c) the person was present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.

Overseas absences

(1A) If:

- (a) the person was absent from Australia for a part of the period of 4 years immediately before the day the person made the application; and
 - (b) the total period of the absence or absences was not more than 12 months;
- then, for the purposes of paragraph (1)(a), the person is taken to have been present in Australia during each period of absence.

(1B) If:

- (a) the person was absent from Australia for a part of the period of 12 months immediately before the day the person made the application; and
 - (b) the total period of the absence or absences was not more than 3 months; and
 - (c) the person was a permanent resident during each period of absence;
- then, for the purposes of paragraph (1)(c), the person is taken to have been present in Australia as a permanent resident during each period of absence.

Confinement in prison or psychiatric institution

(1C) Subject to subsection (5A), the person is taken not to satisfy paragraph (1)(a) if, at any time during the 4 year period mentioned in that paragraph, the person was:

- (a) confined in a prison; or
- (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

(35) Clause 22, page 19 (line 5), omit “Paragraph (1)(b) does”, substitute “Paragraphs (1)(a) and (b) do”.

(36) Clause 22, page 19 (lines 9 to 15), omit subclause (3).

(37) Clause 22, page 19 (lines 16 to 18), omit subclause (4).

(38) Clause 22, page 19 (before line 20), before subclause (5), insert:

- (4A) For the purposes of paragraph (1)(b), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers the person was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

(39) Clause 22, page 19 (line 20), omit “The”, substitute “For the purposes of paragraph (1)(c), the”.

(40) Clause 22, page 19 (after line 24), after subclause (5), insert:

Ministerial discretion—confinement in prison or psychiatric institution

- (5A) The Minister may decide that subsection (1C) does not apply in relation to the person if, taking into

account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

(41) Clause 22, page 19 (line 27), omit "The", substitute "For the purposes of paragraph (1)(c), the".

(42) Clause 22, page 20 (lines 5 to 13), omit subclause (7).

(43) Clause 22, page 20 (lines 14 to 29), omit subclause (8).

(44) Clause 22, page 21 (lines 10 to 12), omit subclause (10), substitute:

(10) For the purposes of subsection (9), *spouse* includes de facto spouse.

Ministerial discretion—person in an interdependent relationship

(11) If, at the time the person made the application, the person:

(a) holds a permanent visa granted to the person because the person was in an interdependent relationship with an Australian citizen; and

(b) is in that interdependent relationship;

then, for the purposes of paragraph (1)(c), the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

(c) the person held that visa during that period and the person was in that interdependent relationship during that period; and

(d) the person was not present in Australia during that period; and

(e) the person was a permanent resident during that period; and

(f) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

(45) Clause 24, page 21 (after line 27), after subclause (1), insert:

(1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6), (7) or (8).

(46) Clause 24, page 21 (lines 29 and 30), omit "be so approved", substitute "become an Australian citizen under subsection 21(2), (3), (4), (5), (6), (7) or (8)".

(47) Clause 24, page 22 (lines 5 to 11), omit subclause (4), substitute:

National security

(4) If the person is not covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).

(4A) If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person:

(a) if subparagraph (4B)(b)(i) applies to the person:

(i) has been convicted of a national security offence; or

(ii) has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or

(b) if subparagraph (4B)(b)(ii) applies to the person—has been convicted of a national security offence.

(4B) A person is covered by this subsection if:

(a) at the time the person made the application under section 21, the person:

(i) is not a national of any country; and

(ii) is not a citizen of any country; and

(b) either:

(i) the person was born in Australia; or

(ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.

(48) Clause 24, page 22 (line 16), after paragraph (5)(b), insert:

and (c) the Minister did not apply subsection 22(11) in relation to the person;

(49) Clause 24, page 22 (lines 18 to 20), omit "unless the Minister considers the person is engaging in activities at that time that are beneficial to Australia".

(50) Page 28 (before line 2), before clause 29, insert:

28A Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision if you ceased to be an Australian citizen under this Act or the old Act.

You must make an application to become an Australian citizen again. The Minister must approve or refuse you becoming an Australian citizen again.

You must be eligible to be an Australian citizen again to be approved. You may be refused citizenship again even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 30(3); or
- national security: see subsections 30(4) to (6).

You will be registered if the Minister approves you becoming an Australian citizen again.

(51) Clause 29, page 28 (line 8), omit "Subdivision A or B", substitute "Subdivision A, AA or B".

(52) Clause 29, page 28 (lines 25 and 26), omit "Subdivision A or B", substitute "Subdivision A, AA or B".

(53) Clause 30, page 29 (after line 13), after subclause (1), insert:

(1A) The Minister must not approve the person becoming an Australian citizen again unless the person is

eligible to become an Australian citizen again under subsection 29(2) or (3).

(54) Clause 30, page 29 (lines 15 and 16), omit “be so approved”, substitute “become an Australian citizen again under subsection 29(2) or (3)”.

(55) Clause 30, page 29 (lines 22 to 28), omit subclause (4), substitute:

National security

(4) If the person is not covered by subsection (6), the Minister must not approve the person becoming an Australian citizen again at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).

(5) If the person is covered by subsection (6), the Minister must not approve the person becoming an Australian citizen again if the person:

- (a) if subparagraph (6)(b)(i) applies to the person:
- (i) has been convicted of a national security offence; or
 - (ii) has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
- (b) if subparagraph (6)(b)(ii) applies to the person—has been convicted of a national security offence.

(6) A person is covered by this subsection if:

- (a) at the time the person made the application under section 29, the person:
- (i) is not a national of any country; and
 - (ii) is not a citizen of any country; and
- (b) either:
- (i) the person was born in Australia; or
 - (ii) the person was born outside Australia and, at the time of the person’s birth, the person had a parent who was an Australian citizen.

(56) Clause 32, page 30 (line 11), omit “Subdivision A or B”, substitute “Subdivision A, AA or B”.

(57) Page 31 (before line 3), before clause 33, insert:

32A Simplified outline

The following is a simplified outline of this Division:

There are 4 ways in which you can cease to be an Australian citizen:

- you may renounce your Australian citizenship: see section 33; or
- if you did not automatically become an Australian citizen, the Minister can revoke your citizenship: see section 34; or
- you serve in the armed forces of a country at war with Australia: see section 35; or

- if you are the child of a responsible parent who ceases to be an Australian citizen, the Minister can revoke your citizenship in some situations: see section 36.

(58) Heading to subclause 34(1), page 32 (line 19), at the end of the heading, add “or for persons adopted in accordance with the *Hague Convention on Intercountry Adoption*”.

(59) Clause 34, page 32 (line 22), after “Subdivision A”, insert “or AA”.

(60) Clause 37, page 37 (line 9), omit “written”.

(61) Clause 42, page 40 (after line 5), after subclause (1), insert:

(1A) This section does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(62) Clause 42, page 40 (lines 6 to 9), omit subclause (2), substitute:

(2) This section does not apply if the access is through:

- (a) a disclosure that is a permitted disclosure within the meaning of section 43; or
- (b) a disclosure to which section 43 does not apply because of the operation of subsection 43(1A).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(63) Clause 42, page 40 (line 17), omit “one or more”, substitute “either or both”.

(64) Clause 42, page 40 (lines 28 to 30), omit paragraph (4)(g), substitute:

- (g) the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act;

(65) Clause 42, page 40 (line 32) to page 41 (line 5), omit subclause (5).

(66) Clause 43, page 41 (after line 11), after subclause (1), insert:

(1A) If:

- (a) a disclosure of identifying information is made to a person who is not an entrusted person; and
 - (b) the disclosure is a permitted disclosure;
- this section does not apply in relation to any further disclosure of that identifying information by a person who is not an entrusted person.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Paragraph 3 of Information Privacy Principle 11 in section 14 of the *Privacy Act*

1988 may apply to further disclosures of that identifying information by a person who is not an entrusted person.

- (1B) This section does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

- (67) Clause 43, page 41 (lines 13 to 15), omit paragraph (2)(a).
- (68) Clause 43, page 41 (line 16), omit paragraph (2)(b), substitute:
- (b) is for the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act; or
- (69) Clause 43, page 41 (after line 20), after paragraph (2)(d), insert:
- (da) is to an agency of the Commonwealth, a State or a Territory in order to verify that a person is an Australian citizen; or
- (70) Clause 43, page 41 (after line 24), after paragraph (2)(e), insert:
- (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth, a State or a Territory; or
- (eb) is required by an Australian law; or
- (71) Clause 43, page 41 (lines 29 and 30), omit “a request for the provision of a personal identifier”, substitute “action taken by the Department”.
- (72) Clause 43, page 41 (line 33) to page 42 (line 6), omit subclause (3).
- (73) Clause 44, page 42 (after line 25), after subclause (2), insert:

Exception

- (2A) If:
- (a) a disclosure of identifying information is made to a person who is not an entrusted person; and
- (b) the disclosure is a permitted disclosure within the meaning of section 43;
- this section does not apply in relation to any modification or impairment of that identifying information by a person who is not an entrusted person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

- (74) Clause 46, page 45 (after line 19), after subclause (2), insert:

Children aged under 16

- (2A) An application under a provision of this Act by a child aged under 16 must be set out:
- (a) on a form that contains no other application; or

- (b) on a form that also contains an application by 1 responsible parent of the child.

- (75) Clause 52, page 49 (after line 9), after paragraph (1)(a), insert:

- (aa) a decision under section 19D to refuse to approve a person becoming an Australian citizen;

- (76) Clause 52, page 49 (lines 21 to 27), omit subclauses (2) and (3), substitute:

Citizenship by conferral decision

- (2) However, if:

- (a) the Minister makes a decision under section 24 to refuse to approve a person becoming an Australian citizen; and
- (b) the Minister’s reasons for the decision did not refer to the eligibility ground in subsection 21(8) (about statelessness); and
- (c) the person was aged 18 or over at the time the person made the application to become an Australian citizen;

a person (the *applicant*) cannot apply for review of that decision unless the applicant is a permanent resident.

Mr BURKE (Watson) (12.46 pm)—There are two deeply offensive parts to the amendments that this House is dealing with. After the London bombings we had the government putting around the press gallery—and it was published everywhere—that there was a 10-point antiterrorism plan. One of those issues was that citizenship should move from two years to three years. That information went out to the gallery, to the nation and to the world after all the leaders of the governments in Australia had been given the best security information that was available and the best security briefings by ASIO. They decided that the balance should be struck at three years.

But then briefings were given by someone else—we can only assume that it was Mark Textor. Briefings were given by someone else who had nothing to do with national security. They said, ‘Labor’s agreed to three years for Australian citizenship so we’d better go one step further to try to make sure Labor disagrees.’ They went one step further: they went to four years. Make no mistake, our reason for refusing to go to four years is that we will not go against what was unanimously agreed in the counter-terrorism plan. It might be good enough for this government to say that all the leaders of all the governments in Australia can agree on something but if a pollster says the parliamentary secretary ought to do something different then it will be switched. That might be good enough for them, but we will not support an extension to four years for the waiting time for Australian citizenship. It is a careful balance. You have to get that balance right and you should base that on the security information, not on the polling information.

Something else came out in the course of debate. When this debate was adjourned to the Main Committee, I offered on the floor of the House that, if the government wanted to adjust this amendment, we would grant leave to adjust it. The government decided not to bother doing that. We have an amendment before us now which says that a limited group of people who are classified under this amendment as stateless persons will be prohibited from getting Australian citizenship if they have been convicted—this is under amendment (47)—of an offence under Australian law, or a foreign law, for which the person has been sentenced to a period of imprisonment of at least five years. I have no problem, if someone is being jailed overseas, for that to ring alarm bells and send an alert to the minister. I do not mind it being deferred to ministerial discretion. But I am disgusted that Australian citizenship, of all things, will be deferred to a foreign power—that if a foreign power has decided to imprison someone for five years then the Australian government loses control of Australian citizenship. It is for a limited class of people.

This government has outsourced many things in its time, but I never thought we would outsource Australian citizenship. If we were going to outsource it, I never thought we would pick the worst regimes in the world. Someone who fits the classification for a stateless person under this amendment could have been imprisoned in the cell next-door to Nelson Mandela for being an anti-apartheid activist. This legislation says that that person is prohibited—there is no discretion at all—from gaining Australian citizenship. Someone could have been imprisoned by Saddam Hussein, and the Australian minister will not be able to make them an Australian citizen, because we have deferred that power to the authority of a tyrant. Yesterday we got a report about giving him money; today we get legislation to give him control of citizenship.

It is disgraceful for us to be in this situation, where it has been pointed out to the government and they could not be bothered making the amendment. They could not be bothered saying that Australian citizenship ought to be one of the things that should be in the control of Australia. As I said, I have no problems at all saying that this should ring an alarm bell, that this should give an alert, but the final decision should lie with the Australian minister. There will be many times when I do not like the way the government exercise their discretion. But if it is a choice between whether the discretion goes to an Australian minister or to the people who locked up Aung San Suu Kyi, I will pick the Australian minister. It should give rise to a discretion, but it is unforgivable for this government—for the first time in our history—to be saying that a foreign power gets control of anyone's Australian citizenship.

Question put:

That government amendments Nos 1 to 76 be agreed to.

The House divided. [12.55 pm]

(The Speaker—Hon. David Hawker)

Ayes.....	79
Noes.....	<u>57</u>
Majority.....	22

AYES

Anderson, J.D.	Andrews, K.J.
Bailey, F.E.	Baird, B.G.
Baker, M.	Baldwin, R.C.
Barresi, P.A.	Bartlett, K.J.
Billson, B.F.	Bishop, B.K.
Bishop, J.I.	Broadbent, R.
Brough, M.T.	Cadman, A.G.
Causley, I.R.	Ciobo, S.M.
Cobb, J.K.	Costello, P.H.
Dutton, P.C.	Elson, K.S.
Entsch, W.G.	Farmer, P.F.
Fawcett, D.	Ferguson, M.D.
Forrest, J.A.	Gambaro, T.
Gash, J.	Georgiou, P.
Haase, B.W.	Hardgrave, G.D.
Hartsuyker, L.	Henry, S.
Hockey, J.B.	Hull, K.E. *
Hunt, G.A.	Jensen, D.
Johnson, M.A.	Jull, D.F.
Katter, R.C.	Keenan, M.
Kelly, D.M.	Kelly, J.M.
Laming, A.	Ley, S.P.
Lindsay, P.J.	Lloyd, J.E.
Macfarlane, I.E.	Markus, L.
May, M.A.	McArthur, S. *
McGauran, P.J.	Mirabella, S.
Moylan, J.E.	Nairn, G.R.
Neville, P.C.	Prosser, G.D.
Pyne, C.	Randall, D.J.
Richardson, K.	Robb, A.
Ruddock, P.M.	Schultz, A.
Scott, B.C.	Secker, P.D.
Slipper, P.N.	Smith, A.D.H.
Somlyay, A.M.	Stone, S.N.
Thompson, C.P.	Tollner, D.W.
Truss, W.E.	Tuckey, C.W.
Turnbull, M.	Vaile, M.A.J.
Vale, D.S.	Vasta, R.
Wakelin, B.H.	Washer, M.J.
Wood, J.	

NOES

Adams, D.G.H.	Albanese, A.N.
Andren, P.J.	Beazley, K.C.
Bevis, A.R.	Bird, S.
Bowen, C.	Burke, A.E.
Burke, A.S.	Byrne, A.M.
Crean, S.F.	Danby, M. *
Edwards, G.J.	Elliot, J.
Ellis, A.L.	Ellis, K.
Emerson, C.A.	Ferguson, L.D.T.
Fitzgibbon, J.A.	Garrett, P.
Georganas, S.	George, J.
Gibbons, S.W.	Gillard, J.E.
Grierson, S.J.	Griffin, A.P.
Hall, J.G. *	Hatton, M.J.
Hayes, C.P.	Hoare, K.J.

Irwin, J. Kerr, D.J.C.
 King, C.F. Lawrence, C.M.
 Livermore, K.F. Macklin, J.L.
 McMullan, R.F. Melham, D.
 Murphy, J.P. O'Connor, B.P.
 O'Connor, G.M. Owens, J.
 Plibersek, T. Price, L.R.S.
 Quick, H.V. Ripoll, B.F.
 Roxon, N.L. Rudd, K.M.
 Sawford, R.W. Sercombe, R.C.G.
 Smith, S.F. Swan, W.M.
 Tanner, L. Thomson, K.J.
 Vamvakinou, M. Wilkie, K.
 Windsor, A.H.C.

* denotes teller

Question agreed to.

Bill, as amended, agreed to.

Third Reading

Mr ROBB (Goldstein—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.02 pm)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

AUSTRALIAN CITIZENSHIP (TRANSITIONALS AND CONSEQUENTIALS) BILL 2005

Second Reading

Debate resumed from 9 November 2005 on motion by **Mr McGauran**:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Consideration in Detail

Bill—by leave—taken as a whole.

Mr ROBB (Goldstein—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.03 pm)—by leave—I present a supplementary explanatory memorandum to the bill. I move government amendments (1) to (8):

- (1) Clause 2, page 2 (table item 2), omit “sections 3”, substitute “sections 2A”.
- (2) Schedule 3, item 1, page 12 (line 8), omit “3”, substitute “2A”.
- (3) Schedule 3, item 2, page 12 (line 13) to page 13 (line 10), omit the item, substitute:

2 Rules applicable to Australian citizens under the old Act

- (1) This item applies to a person who was an Australian citizen under the *Australian Citizenship Act 1948* immediately before the commencement day.

Note: The person becomes an Australian citizen under the new Act: see subsection 4(1) of the new Act.

Same kind of citizenship

- (2) If the person, immediately before the commencement day, was an Australian citizen under the provision set out in column 2 of the following table, the person is taken, on and from that day, to be an Australian citizen under the provision set out in column 3 of the table:

Same kind of citizenship		
Column 1 Item	Column 2 Provision under which person was a citizen	Column 3 Provision under which person is taken to be a citizen
1	Section 10B, 10C or 11 of the old Act	Subdivision A of Division 2 of Part 2 of the new Act
2	Division 2 of Part III of the old Act	Subdivision B of Division 2 of Part 2 of the new Act

Person may cease to be a citizen under new Act

- (3) This item does not prevent the person from ceasing to be an Australian citizen under the new Act.

Note: For example, section 34 of the new Act allows the Minister to revoke a person’s citizenship.

- (4) Schedule 3, item 3, page 13 (lines 13 and 14), omit “and paragraphs 22(6)(a) and (7)(b)”, substitute “, subsection 19C(3) and paragraphs 22(1)(b) and (6)(a)”.
- (5) Schedule 3, page 15 (after line 3), after item 5, insert:

5A Citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption

- (1) Section 19C of the new Act applies in relation to adoptions that occur before, on or after the commencement day.
- (2) Paragraphs 19C(2)(e) and (f) of the new Act apply as if a reference to Subdivision A included a reference to section 10B, 10C or 11 of the old Act (about citizenship by descent).

- (6) Schedule 3, page 15, after proposed item 5A, insert:

5B Citizenship by conferral—persons who are permanent residents at commencement

If:

- (a) a person is a permanent resident (worked out under the old Act) immediately before the commencement day; and
- (b) the person makes an application under subsection 21(1) of the new Act within the period of 3 years beginning on the commencement day;

then, for the purposes of that application, subsections 22(1) to (2), (4A) and (5A) of the new Act do not apply and the following subsections of section 22 of the new Act apply instead:

- (1) For the purposes of section 21, a person satisfies the *residence requirement* if the person has been present in Australia as a permanent resident for:
 - (a) a total period of at least 1 year in the period of 2 years before the day the person made the application; and

- (b) a total period of at least 2 years in the period of 5 years before that day.
- (2) Paragraph (1)(b) does not apply if the person:
- was born in Australia; or
 - was an Australian citizen at any time before the person made the application.
- (3) For the purposes of subsection (1), the Minister must not take into account any period during which the person has been:
- confined in a prison; or
 - confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (7) Schedule 3, item 7, page 17 (lines 30 to 32), omit subitem (8), substitute:
- (8) In applying section 22 of the new Act to a new application covered by subitem (2), subsections 22(1) to (2), (4A) and (5A) of the new Act do not apply and the following subsections of section 22 of the new Act apply instead:
- (1) For the purposes of section 21, a person satisfies the *residence requirement* if the person has been present in Australia as a permanent resident for:
- a total period of at least 1 year in the period of 2 years before the day the person made the application; and
 - a total period of at least 2 years in the period of 5 years before that day.
- (2) Paragraph (1)(b) does not apply if the person:
- was born in Australia; or
 - was an Australian citizen at any time before the person made the application.
- (3) For the purposes of subsection (1), the Minister must not take into account any period during which the person has been:
- confined in a prison; or
 - confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (4) The Minister may treat a period as one in which the person was present in Australia as a permanent resident if:
- the person was engaged in activities during that period that the Minister considers to be beneficial to Australia; and
 - the person was not present in Australia during that period but was a permanent resident during that period.
- (8) Schedule 3, item 14, page 20 (line 6), omit “3”, substitute “2A”.
- Question agreed to.
- Bill, as amended, agreed to.

Third Reading

Mr ROBB (Goldstein—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.04 pm)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

CRIMES AMENDMENT (BAIL AND SENTENCING) BILL 2006

First Reading

Bill received from the Senate, and read a first time.

Second Reading

Mr RUDDOCK (Berowra—Attorney-General) (1.05 pm)—I present the explanatory memorandum to this bill. I move:

That this bill be now read a second time.

The Crimes Amendment (Bail and Sentencing) Bill 2006 ensures that all Australians are treated equally under the law and that criminal behaviour cannot be excused or justified by customary practice or cultural law.

At the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities, held here in Canberra last June, the Australian government expressed serious concern about the high level of violence and abuse in Indigenous communities.

Following the summit, we called on all state and territory Labor governments to work with us to ensure that all Australians are equally subject to the law and that all Australians can expect the same protection under the law.

This issue was also tackled by the Prime Minister and state and territory Labor leaders at the July Council of Australian Governments meeting, who agreed that the law's response to family and community violence and sexual abuse must reflect the seriousness of such crimes.

Criminal behaviour can never, in any form, be excused, justified, authorised, required or rendered less serious because of customary law or cultural practice. Nor has it ever been intended that customary law or cultural practice should be used to aggravate the seriousness of criminal behaviour.

The Australian government firmly rejects the idea that an offender's cultural background should automatically be considered, when a court is sentencing an offender, so as to mitigate the sentence imposed.

Likewise, in the process of granting bail to an alleged offender, this bill will ensure customary law or cultural practice cannot be used as an excuse that the criminal behaviour concerned is somehow less culpable. All Australians, regardless of their background, will thus be equal before the law.