

File Note

Meeting at Department of Immigration and Multicultural Affairs (DIMA)

Canberra, Thursday 27 April 2006, 10 am

Present:

Mary-Anne Ellis, Assistant Secretary, Citizenship and Language Services Branch, DIMA

Nadine Clode, Acting Director, Citizenship Policy Section, DIMA

Anne MacGregor, Co-founder, Southern Cross Group

Apologies:

Peter Vardos, First Assistant Secretary, Citizenship and Multicultural Affairs, DIMA

1. Timing of the *Australian Citizenship Bill 2005*

MAE explained that following the tabling at the end of February 2006 of the Report by the Senate's Legal and Constitutional Affairs Committee at the conclusion of the recent Inquiry into the Citizenship Bill, the next step would be for the Government to respond.

DIMA's advice as to what the Government's response should contain was still under discussion within DIMA. A number of Government-sponsored amendments to the Bill could be expected, although MAE was not prepared to elaborate on the details of those amendments. MAE could not say when DIMA would finalise its advice to the Minister on the Government's response or when the Government's response might be tabled in Parliament.

Once the Government's response to the Inquiry findings were made public, the Bill could then be brought on for debate and vote in the House of Representatives, and following that, move to the Senate for consideration. MAE and NC could give no clear idea when the Bill might be definitively adopted by Parliament. NC indicated that it might be "in the Australian Spring".

MAE said that the Department had just been given approval to work towards a possible implementation date for the new legislation of Australia Day 2007 (i.e. 26 January 2007). However she stressed that whether the new legislation could ultimately be implemented for that date would depend on the priority the Government places on the Bill and how quickly it produces its response and devotes House and Senate time to it. The inference from MAE's comments in this respect was that the Citizenship Bill was very low down on the list of the Government's priorities.

AM pointed out that the *citizenship.gov.au* website was still indicating 1 July 2006 as a possible date for the coming into force of the new legislation. NC said that the website would be amended in due course.

AM also expressed disappointment that the timing on the new legislation had appeared to slip so dramatically. In particular she stressed that with every passing day, Australian war brides in the United States, many now in their eighties and nineties who had forfeited their citizenship under the old Section 17 in years past, were dying without being able to fulfil their strong wish to become Australian citizens again.

2. Preparation in Advance of Implementation by those wishing to make Resumption Applications

AM explained to MAE and NC that wherever possible, the SCG would be doing what it could to assist those who would have a new right to apply for Australian citizenship under the legislation to be able to make their applications without delay as soon as the new legislation was implemented. In particular, the SCG hopes to be able to run "clinics" or "seminars" in Malta for Australian-born Maltese to walk them through the preparation of their citizenship

resumption applications and guide them in obtaining the relevant supporting documentation to accompany those applications.

AM noted that presently, applications for the resumption of Australian citizenship using the current DIMA Form 132 require various documents to be submitted along with the completed Form 132, among them:

- Evidence of former possession of Australian citizenship, eg. full birth certificate if born in Australia, or certificate of Australian citizenship;
- Evidence of acquisition of foreign citizenship, for example, naturalisation certificate or a statement from the authorities of the other country stating how and when the person acquired the citizenship of that country;
- Evidence of name change(s) since Australian citizenship was acquired (if applicable), eg. marriage certificate, deed poll;
- Current Australian passport if held;
- Police certificate from all countries you have lived in for the past 10 years (except Australia).

AM asked whether the same or similar documentary requirements would exist under the new legislation for resumption applicants. NC indicated in general terms that she thought that would be the case.

AM noted that the legal criteria for the resumption of citizenship under the new legislation would be simplified, the primary criterion being that the person be of good character. She noted that there would be greater emphasis on good character in the new legislation.

AM asked whether people would still be required to provide police clearance certificates only for the last ten-year period, or whether this might be extended to cover a longer period. AM pointed out that many in the Australian diaspora might be classified as being "serial expats", having lived in a series of countries over a number of years, and that the police clearance certificate requirement could in some circumstances become quite burdensome when people had to contact authorities in countries where they have not lived for some time and do not speak the language.

MAE responded that AM's question went into a level of detail which the Department had not considered yet and would not consider for some time. NC pointed out that the Citizenship Section was very under-resourced and that the Section had a great deal of work ahead of it, what with drafting regulations to accompany the new Act, and overhauling the Australian Citizenship Instructions (ACIs).

AM pointed out that the Department had known for almost two years, i.e. since 7 July 2004 that the legislation would be changing, and that it was now almost seven months since the legislation had been tabled in Parliament. With the Government controlling both Houses, and the Bill enjoying bipartisan support, it was simply a matter of time before the legislation was enacted.

AM also inquired about birth certificates. Would they still be required with resumption applications? If people who intended to make resumption applications under the new legislation applied to the Births, Deaths and Marriage agencies of the Australian States and Territories now to procure their birth certificates, would these documents be out of date by the time resumption applications could be made?

Again, MAE responded that AM's question went into a level of detail which the Department had not considered yet and would not consider for some time. NC again made the point that the Department's resources were severely limited.

MAE said that in her view, resumption applicants are currently being asked to provide documentation to prove matters which the Department already knows about a person and that these documentary requirements were somewhat archaic. She said that the Department has complete records of individuals who have renounced their citizenship, and therefore, it

should not be necessary for people to prove to the Department that they had once been Australian citizens. She said that the documentary evidence requirements may in fact therefore be simplified or streamlined under the new legislation. This information appeared to be new to NC.

While MAE was not prepared to say definitively that birth certificates would not be required, she said that potential resumption applicants under the new legislation should not be obtaining birth certificates in anticipation of making their applications at this stage.

MAE said that some form of proof of identity would however of course be required, e.g. a current passport.

AM asked when exactly the Department expected to have the required application forms under the new legislation finalised, and asked whether once the supporting documentation requirements had been finalised, whether this information could be shared even before the date of implementation to allow potential applicants to get a head start in collecting such documentation in preparation.

MAE was hostile to the idea of sharing anything before the date of implementation. It was unclear whether this hostility was due to the fact that she did not think the Department would be ready in advance of the implementation date, or whether it was based on a simple reluctance to cooperate with the SCG in the way suggested.

MAE said that all citizenship application forms under the new legislation would be available on the *citizenship.gov.au* and *immi.gov.au* websites from the date of implementation. AM pointed out that all citizenship application forms are already presently online and that that would not be a new development. Indeed, AM commented that it would have been odd if that practice were to have been discontinued under the new legislation.

MAE again stressed that the aimed-for implementation date of 26 January 2007 might not be met, depending on how the legislation progressed through Parliament.

AM reminded MAE and NC that the Bill itself specifies that the latest date for implementation of the relevant sections of the legislation is six months from the date of assent by the Governor-General, so once the Bill is passed and assent has occurred, the Department would have no option but to be ready to implement the legislation from that drop-dead date.

AM also said that even in the absence of cooperation from the Department or clear information from it after the date of assent as to the intended date of implementation, the SCG would be able to advise its constituents that at the latest, applications would be able to be made six months from the date of assent.

3. Availability of the Australian Citizenship Instructions (ACIs)

AM stated that in the SCG's view, as indicated in a number of previous representations by the SCG to Government, the ACIs should be publicly available online. Many individuals with citizenship queries would be able to solve their own situations and would not have to seek professional citizenship advice if full access to the ACIs were given. AM said that the SCG questioned why the ACIs could not be made more fully accessible.

MAE said that the matter was "under review". She hoped that the review would be completed prior to the implementation of the new legislation. She pointed out that a great deal of work was needed to reshape the ACIs to accompany the new legislation.

In response to AM's query as to whether any drafting work on the new ACIs had already been started, MAE indicated that it had not and NC again said that limited internal resourcing had prevented work starting on the ACIs so far.

MAE said that she hoped that the *citizenship.gov.au* website would be able to be revamped so that on particular subjects/FAQs, there would be hyperlinks to the relevant sections of the

new Act, the new Regulations and the relevant paragraphs of the ACIs. AM welcomed that approach.

4. Working Holidaymakers Already in Australia Who Will Qualify for Citizenship by Descent

AM referred to the query sent by the SCG to the Department on 3 April 2006 concerning a young man of Canadian citizenship who had contacted the SCG, and was presently in Australia on a working holiday visa which would expire in August 2006. The individual concerned was born in Canada in 1977 to an Australian father, but was never registered as an Australian citizen by descent, and so would profit from clause 16 of the Bill, and would be able to apply for citizenship by descent once the new legislation was in force.

However, in view of the delays with the new legislation, the young man's working holiday visa would expire before he would be able to apply for Australian citizenship.

AM expressed the view that the reply received from NC on this matter dated 4 April 2006 had been unhelpful. NC had advised that the young man "should contact his nearest office of the Department to discuss his circumstances and his options for extending his stay in Australia (if indeed he wishes to remain in Australia)." NC had noted in her e-mail to the SCG that she was "not in a position to comment on any decisions made, or that may be made, under the Migration Act 1958".

AM said that although the SCG had only heard from one such individual to date, there would doubtless be others out there in the same circumstances. AM indicated that it might be useful for NC and MAE to talk to their colleagues in the relevant branch within their own Department in order to flag this special situation and if possible develop a policy which could apply uniformly and consistently to all such cases.

NC and MAE were wholly dismissive and said again that it was not their responsibility. They did not believe that there were many such cases, and such individuals should individually approach the Department in each case if indeed they existed. Some such individuals would perhaps find that they were best advised to go back to their present country of citizenship at the end of their working holiday visa and wait for the new legislation to come into force.

AM asked whether the Department could assure the SCG that if for example five individuals all in this situation each approached DIMA offices in different locations simultaneously around Australia, they would receive consistent advice. NC and MAE were unable to give that assurance.

5. Australian Citizenship for Individuals Aged 18 or Over Adopted Overseas

AM inquired as to whether any consideration was being given to the cases addressed in the SCG's supplementary submission dated 8 February 2006 made to the Senate Inquiry into the Citizenship Bill. This matter had not been addressed by the Senate Committee in its Report at the end of the Inquiry tabled at the end of February. Nevertheless, in the SCG's view, this was a significant deficit in the Bill. Although only three affected families had to date been identified by the SCG, this was probably indicative of a larger total number of such cases as yet lurking undiscovered internationally in the diaspora. More such cases would likely emerge once the new legislation was passed and as it received significant publicity, as such families looked to see whether the new legislation covered their situation and found that it did not.

MAE said that "adoption is being considered in the context of the House of Representatives Inquiry" and waved the Report from the House of Representatives Standing Committee on Family and Human Services Inquiry into the adoption of children from overseas tabled on 21 November 2005 in front of AM.

AM's recollection of the Adoption Inquiry Report was that the specific issue raised by the SCG in its 8 February 2006 submission to the Citizenship Inquiry had not been addressed, and that the discussion in the Adoption Inquiry Report on citizenship for those adopted by expatriate

Australians overseas related only to those adopted individuals who were still minors. AM queried whether the specific case of individuals now adults, who had for example been adopted overseas in the 1960s or the 1970s, was treated in that Report, and again asked whether that special group was nevertheless receiving consideration within the Department at the present time.

MAE declined to give a specific answer, stating only that “adoption matters were being considered in the context of the findings of the Adoption Inquiry”.

Children adopted privately overseas applying for grant of Australian citizenship under Section 13(9)(a) of the *Australian Citizenship Act 1948* have, since May 2005, been required to hold an adoption visas (class 102). AM asked whether the “date of first entry” condition on these visas had to be satisfied before citizenship applications could be made. This point had been raised in the SCG’s submission to the Citizenship Bill Inquiry dated 8 February 2006.

MAE said that “holding” the adoption visa was sufficient for an application for Australian citizenship to be made from offshore for these minor children so that travel to Australia by the parent and child was not necessary.

6. Citizenship for Section 18 Offspring by Naturalisation

AM noted that following the Government’s decision to exclude Section 18 offspring from direct access to Australian citizenship under the new legislation, there would be families in the diaspora who would nevertheless still be seeking Australian citizenship for their overseas-born children once the Australian-born parent had resumed their renounced Australian citizenship. AM noted that dependent children in this situation could be sponsored for a permanent visa by their Australian-citizen parent. AM questioned whether “holding” the child visa would be sufficient in itself for an application to be made for Australian citizenship by grant, or whether for such child visas, the date of first entry requirement would have to first be fulfilled. When a child is under 16, no residence period currently applies as a prerequisite for the grant of Australian citizenship. Would such families have to “move” lock, stock and barrel to Australia, or would the Department allow such children with permanent visas to apply for citizenship from offshore, or alternatively, during a visit to Australia if the condition of first entry had to be fulfilled before application?

MAE and NC appeared not to have considered this issue previously. MAE indicated that one should not assume that the arrangements under adoption visas would also be applicable in such situations.

7. Section 23 Offspring

AM made reference to the SCG’s submission to the Citizenship Bill Inquiry on Section 23 Offspring dated 12 February 2006. This subject was not addressed in the Senate Committee’s report resulting from the Inquiry.

AM asked whether the matter was receiving attention by the Department. MAE said that she could not comment.

AM asked whether this issue had been considered at all while the Citizenship Bill was being drafted. Had the Department considered this group and decided as a matter of policy not to include them in the legislation after due reflection? Or had this group simply not been considered? MAE declined to comment.

NC appeared at first not to fully understand the technical way in which the legislation gave rise to the individuals under discussion. After brief clarifications by both AM and MAE however, NC said that she did not believe that there were many such individuals impacted. AM reminded MAE and NC that in the SCG’s estimation, in the order of 19,000 individuals around the world would fall into this category. NC said that the Department was not hearing from these people and that this group as a class did not appear to be interested in obtaining Australian citizenship.

AM said that it was only logical that such individuals, as the children of individuals who themselves had lost their citizenship as minors, would be living abroad today and would be one step further removed from Australia than their own parents, for example. They would not expect to have any rights to Australian citizenship in view of the state of the law for over 50 years, but it is to be expected that as news spreads of the new legislation, a number of cases will emerge. The SCG has heard of one or two cases so far. But the statistics indicated that there were in the order of 19,000. Further, the policy reasoning applied by the Government to justify its exclusion of Section 18 offspring from the Bill could not be used to justify the exclusion of Section 23 offspring.

8. Section 17 Cases in Malta: Improvement of the ACIs

AM noted that there were a handful of Section 17 loss cases in Malta, although the bulk of affected individuals in Malta were Section 18 cases of renunciation. AM noted that several quite complicated Section 17 cases in Malta had recently come to the attention of the SCG, and that it had been difficult to reach a final determination as to whether a Section 17 loss had actually occurred or not. This was because a Section 17 loss had only occurred on the "voluntary acquisition" of another citizenship. Maltese citizenship law underwent changes in both 1989 and 2000 and it was important to understand how Maltese law bestowed Maltese citizenship in certain cases where Maltese citizenship had been lost previously in order to understand whether that Maltese citizenship had in fact been "voluntarily" acquired. In some cases, Maltese citizenship law, from a certain date, simply deemed Maltese citizenship never to have been lost so that no application or registration had to be sought by the individual concerned to resume their Maltese citizenship.

AM suggested that it would be helpful to set out the relevant provisions in Maltese law in the paragraph dealing with Section 17 loss in the ACIs, to help DIMA officers to be able to unravel such cases and avoid confusion in any future cases in Malta which might emerge. AM noted that it was likely that due to the publicity surrounding the introduction of the new legislation, further Section 17 cases in Malta could be expected to come out of the woodwork in the next few years. AM recalled that one Section 17 case in Malta in 2004 had been poorly handled by the High Commission in Malta and that the staff concerned in Malta had been unable to grasp that the case was a Section 17 and not a Section 18 case.

MAE dismissed this suggestion out of hand. She reiterated the terms of Section 17 and stressed that a voluntary act to acquire another citizenship had to have been done by an adult individual for citizenship to have been lost. AM assured MAE that AM fully understood the requirements for loss of citizenship under Section 17. MAE said that all the relevant DIMA officers dealing with such cases had a thorough understanding of how Section 17 had operated. MAE said that it would be completely inappropriate for the ACIs to include information on the citizenship laws of any other countries.

AM pointed out that the British citizenship instructions do contain information on the citizenship laws of other countries where that information is pertinent to making a decision as to whether someone has an entitlement to British citizenship. AM stressed that the suggestion was being made by the SCG in order to assist those DIMA officers faced with such cases in future to make the correct decision and to avoid disappointment and confusion for individuals who might otherwise received unclear or indeed incorrect advice from DIMA officers. MAE remained dismissive of the suggestion.

9. Resourcing: Processing of Applications for Citizenship under the New Legislation

AM questioned how the Department would ensure that the increased number of citizenship applications made from overseas would be handled expeditiously once the new legislation was in force. MAE said that most of the applications would simply be received by overseas missions, and would then be referred to Canberra for a decision. Details had not yet been defined.

AM noted that the SCG had particular concerns with regard to Malta where up to 2,000 individuals would qualify to apply for the resumption of Australian citizenship under the new legislation. AM recalled that the current Australian High Commissioner to Malta, HE Richard Palk, had already flagged with DIMA that an additional staff member would be required on the ground at the High Commission in Malta, and queried whether the Department had taken any decision as to how Malta would be resourced.

MAE said that the matter was under consideration.

10. Reception of Citizenship Applications at Overseas Missions – Privacy Concerns

AM noted that the submission of an application for citizenship at an Australian overseas mission involved the officer concerned talking through the application and the accompanying documentation with the applicant on the spot over the counter. AM recalled several cases in Malta reported to the SCG by the applicants in which the applicants had felt uncomfortable that the terms of this conversation, often involving a discussion of personal information, were fully audible to other individuals also present in a very small waiting room. AM noted that at least in Malta, a private booth already existed at one end of the reception counter which could easily be used when people went in to submit their citizenship applications. She suggested that this would be a more appropriate way to handle the reception of applications, especially going forward under the new legislation when one could expect the waiting room to be very crowded on occasions.

MAE was dismissive of this suggestion. She said that she saw no reason to change present practices, which were the same in all overseas missions. AM stressed that a private booth already existed at the High Commission in Malta. MAE then said that this was a “DFAT matter” and not a DIMA matter.

11. Citizenship Ceremonies Overseas

AM indicated concerns that in some circumstances, individuals overseas might be required to travel long distances to make the pledge of commitment, where such a pledge was a requirement for them obtaining citizenship. This would be especially the case, for example, if only certain Australian missions overseas, and not all, were to be able to conduct citizenship ceremonies. A person in Michigan, in the US, for example, might have to go to the Australian Embassy in Washington DC, when in fact it would be far more convenient to go to the Australian Consulate in Chicago. Such concerns would be exacerbated in parts of Africa, for example.

MAE indicated that she does not envisage any changes in principle under the new legislation compared to the current situation. In principle, any Australian mission overseas can hold a citizenship ceremony as long as an appropriate empowered person is present to receive the pledge of commitment. However, many Australian missions do not have such persons on their staff.

AM suggested that in the case of resumption of citizenship, no pledge was legally required, but that for many who would resume their citizenship under the new legislation, the act of becoming an Australian citizen again would be a moment of considerable personal significance, and that it might be appropriate to conduct citizenship ceremonies in major centres, such as London. MAE dismissed this out of hand saying that the Department had no resources for such exercises.

AM noted that citizenship affirmation ceremonies had been held in London and Ottawa in early 2003 on the occasion of the then Citizenship Minister’s overseas visits to those posts, and queried whether MAE ruled out that such occasions might again present themselves in the future. AM suggested that such ceremonies for resumption applicants might be held on an ad hoc basis in such circumstances, and that indeed the Minister or the Parliamentary Secretary to the Minister may find such an event a politically welcome addition to their itinerary.

12. Certificates on Resumption of Citizenship

At present those who resume Australian citizenship simply receive a letter from the Department stating that they are Australian citizens again from a certain date. No certificate or document of a ceremonial nature is provided to them. AM suggested that it would be an appropriate gesture to provide successful resumption applicants with some sort of certificate or other document which could be framed.

MAE was unreceptive to this idea. She said that the Department had to be very cautious as to the sort of documents it issued concerning citizenship, because such documents would be used later on as evidence of Australian citizenship in other contexts. Those who resumed citizenship were free to apply separately for a certificate evidencing their Australian citizenship, for a fee.

13. Fees for Citizenship Applications

AM inquired as to whether there were any plans to increase the fees for the various types of citizenship applications beyond their present levels on the implementation of the new legislation. MAE indicated that there were no such plans, and that any such considerations would have happened in the context of budget discussions but had not.

14. Section 17 Victims Still Holding and Using Current Australian Passports

AM said that the SCG had been contacted by a number of individuals who had in fact lost their Australian citizenship under Section 17 prior to 4 April 2002, but who were still in possession of current Australian passports and who were using those passports. These people in most cases had not realised until they contacted the SCG that they had lost their Australian citizenship under Section 17. Some were still in possession of passports valid for 10 years that had been issued to them before the date of their acquisition of the other citizenship. Others had had those passports issued to them after their date of loss under Section 17. Some had applied for those passports overseas, and others had applied for those passports in Australia. AM noted that the application form for passports used in missions overseas had note on the bottom of it asking the applicant whether they had acquired another citizenship prior to 4 April 2002, whereas the application form for passports used in Australia had not.

AM questioned the best approach for such individuals in light of the new legislation. Individuals who lost their citizenship under Section 17 would soon be able to apply for "simplified resumption", without having to declare an intention to return to Australia within three years. On the other hand, the emphasis in the new legislation would be on good character. AM expressed a concern that a person who now came forward and admitted to having a passport that they were not entitled to have could be deemed to have committed fraud under either the *Passports Act* or under the *Citizenship Act*, or could be considered to be generally untruthful, and that this in turn could be held against them as an indication of bad character and therefore prevent them from resuming their lost Australian citizenship. Such fears, whether well-founded or not, could act as a disincentive to a person regularising their citizenship/passport situation. AM asked whether the Department would be likely to consider that such a person was of bad character and thereby reject a resumption application.

MAE said initially in response to this question that if a person had no other criminal record the Department would be unlikely to deny a citizenship resumption application in such circumstances on the grounds of bad character. However, she then qualified her answer and said that each case would have to be considered on an individual basis.

AM said that the SCG's advice to such individuals was invariably to encourage them to stop using their Australian passport, and to apply for the resumption of Australian citizenship and then a new passport following the resumption of citizenship. Such cases also often had implications for the citizenship status of the overseas-born children and even grandchildren of affected individuals. MAE made the point at length that an Australian passport is not

evidence of Australian citizenship. AM assured MAE that this point was well understood by the SCG, and that it often explained this to those in the diaspora.

NC made the point that continuing to use an Australian passport when one was not in fact an Australian citizen presented an ongoing risk. If the person's lack of Australian citizenship were discovered at a point when the person was abroad, the withdrawal of their Australian passport could place them in a difficult situation from a consular perspective.

AM suggested that the fact that such cases existed should be indicated on the *citizenship.gov.au* website with the general advice to regularise their situations, so that those in the situation concerned could understand that their cases were not unique and find some guidance. AM suggested that the bad character/resumption point might also be addressed in general terms. More cases were likely to emerge as a result of the publicity surrounding the forthcoming changes.

MAE said that the Department was not prepared to address this matter on the *citizenship.gov.au* website or provide guidance as to when a person's past behaviour in this respect might or might not prevent them from resuming citizenship on character grounds.
