

**Southern Cross Group
Primary Submission to Citizenship Bill Inquiry
20 January 2006**

E-mail from DIMIA dated 11 January 2006

From: greg.macek@immi.gov.au
Sent: 11 January 2006 08:10
To: jajenkins@sprint.ca; MacGregor, Anne
Subject: Responses to questions on Australian Citizenship Bill 2005 [SEC=UNCLASSIFIED]

Dear Anne and Jeremy

Apologies for the delay in responding to your e-mails of November 2005. Please find below responses to the questions you have asked in your e-mails that the Department is in a position to respond to.

Kind Regards

Greg Macek
A/g Assistant Secretary
Citizenship and Language Services Branch
Citizenship, Settlement and Multicultural Affairs Branch

QUESTION THROUGH BERLIN EMBASSY of 4 JANUARY 2005

ANSWERS

About 250 Australians have renounced their Australian citizenship over the last three calendar years.
All applications for the renunciation of Australian citizenship, whether lodged onshore or offshore, are processed in Australia.

DIRECT E-MAIL of 25 NOVEMBER 2005

ANSWERS

CLAUSE(22)(7)

What activities will and (will not be) considered 'beneficial to Australia' are matters of policy. Matters of policy (including the appropriateness of the current policy) remain under consideration. However, we can advise that the intention is that this provision will not be restricted to certain visa subclasses.

Your comments on the apparent discrepancy between the Minister's second reading speech and clause 22(7) have been noted.

CLAUSE(22)(9)

What what will and (will not be) considered a 'close and continuing association with Australia' is a matter of policy. As outlined above matters of policy remain under consideration. However, as you would be aware the July 2004 announcements to the Act, included the discretion to waive part of the residence requirements for permanent resident spouses

residing with their Australian citizen spouse, on account of the work of their Australian citizen spouse, if they would have eligible for citizenship if they had been residing in Australia.

The inclusion of a definition of spouse to incorporate a de facto spouse as well as the legally married spouse of an Australian citizen will ensure that the Act is consistent with other Commonwealth legislation.

BURMA

To our knowledge, no records are held on declarations of retention lodged between 1950 and 1952 under the Nationality and Citizenship (Burmese) Act 1950.

DIRECT E-MAIL of 22 NOVEMBER 2005

ANSWERS - CHILDREN OF FORMER CITIZENS

If the matter of access to Australian citizenship for the children of former Australian citizens is raised during the Parliament's consideration of the Bill, the department will address it at point.

CLAUSE(36)

Clause 26 amends equivalent section 23 by introducing a discretion regarding the cessation of a child's citizenship where a responsible parent ceases to be an Australian citizen (by way of renunciation or service in a country at war with Australia). The removal of the operation of law provision will ensure that no child will arbitrarily cease to be an Australian citizen. The principle(s) underpinning Ministerial discretion (clause 36) is a matter of policy. As outlined above, matters of policy remain under consideration.

CLAUSE(33)(3)(b)

Clause 33(3)(b) of the Bill is consistent with section 18 of the existing Act, which included provision for those under 18 to renounce their Australian Citizenship. There are circumstances where children under 18 seek to renounce their Australian citizenship, for example, some countries require its citizens to renounce other citizenships in order to have access to certain benefits (i.e education) or rights (i.e. property). As you would be aware the Bill provides for persons of any age who have renounced their Australian citizenship, to resume (provided that they are of good character if they are 18 years or older).

DIRECT E-MAIL of 20 NOVEMBER 2005

ANSWERS - WOMEN AND BRITISH SUBJECT STATUS

This issue of woman who became a citizen of another country by reason of her marriage alone was governed by section 18 of the Nationality Act 1920, which was subject to significant amendments (in 1936 and 1946 which introduced sections 18A and 18B) until the Citizenship Act 1948 (the Act) repealed it. In 1949 when the Act commenced, transitional provisions restored citizenship to married woman in certain circumstances. A woman with British subject status who ceased to be a British subject by reason, relevantly, that on her marriage to an alien she acquired the nationality of her husband, she was deemed to be a

British subject immediately before the commencement of the Act.

A woman with British subject status married an alien and who did not acquire the citizenship of her husband by virtue of her marriage and prior to 26/01/49, and who did not acquire the citizenship of another country by a voluntary act and prior to 26/01/49, did not cease to be a British subject.

The position of a woman who did not acquire the citizenship of another country by virtue of her marriage to an alien was the same as that of men prior to the commencement of the Act. As such, women or men who acquired the citizenship of another country by a voluntary act prior to 26/01/49, ceased to be British subjects (section 21 of the Nationality Act 1920).

Section 22 of the Nationality Act 1920 provided that a person who was also a subject of another foreign state, and who was of full age (i.e 21) and not under disability (i.e woman) to make a declaration of alienage. On making the declaration the person ceased to be a British subject.

In 1949 when the Act commenced, the transitional provisions which provided for a person becoming an Australian Citizen were premised on the person being a British Subject.

DIRECT E-MAIL of 20 NOVEMBER 2005

ANSWERS - RESUMPTION UNDER SECTION 23AB

48 people who ceased to be citizens under Section 18 have resumed their Australian citizenship under Section 23AB since 1 July 2002. Of those 47 were from Malta. Processing time for resumption varies, however up to 90% of applications are processed within 60-90 days.

An assessment of 'close and continuing association with Australia' is determined by the Minister (or delegate) on a case by case basis, and is dependent on the applicant providing evidence as to how they have maintained such an association with Australia. For example, an applicant may present evidence that they have maintained such a relationship by having maintained contact with families and friends in Australia, or having had significant financial, economic and business interests in Australia, having visited Australia from time to time. It is at the Minister (or delegates) discretion as to whether, on balance, such evidence satisfies the legislative requirement.

Greg Macek

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