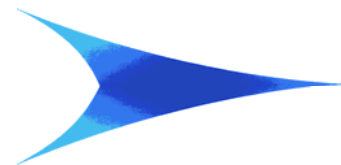


# The Southern Cross Group

*Promoting Mobility in the Global Community*



The Hon Kevin Andrews MP  
Minister for Immigration and Citizenship  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600  
AUSTRALIA

**Via fax: 0061 2 6273 4144 and 0061 3 9848 2741**

**By e-mail to *Kevin.Andrews.MP@aph.gov.au***

7 May 2007

## **Irish Post-Nuptial Citizenship – Whether Acquisition in 2002 Triggered Loss of Australian Citizenship under Section 17 of the *Australian Citizenship Act 1948***

Dear Minister

The Southern Cross Group (SCG) is an independent, international, non-profit, entirely volunteer-run advocacy and support organisation for the approximately one million Australians (and former Australians) who live outside Australia. The SCG was formed in Brussels in early 2000, and since that time has lobbied the Australian Federal Government to bring about various legislative and other reforms of benefit to the Australian diaspora. You may be aware that the various “expat fixes” in the *Australian Citizenship Act 2007* are in large part due to the lobbying work of the SCG over a number of years.

Every day the SCG receives a number of citizenship queries from individuals in Australia’s global diaspora. SCG volunteers answer these queries at no charge to the senders.

We recently received a query from a woman who has asked us whether she lost her Australian citizenship under the now repealed Section 17 of the *Australian Citizenship Act 1948*. After having looked at the case, we are of the view that a Section 17 loss did not occur. We seek your confirmation of that view.

By e-mail of 1 April 2007 we sent this same query to Nadine Clode, Director of the Citizenship Policy Section in your Department in Canberra. The e-mail was copied to Mary-Anne Ellis. Having had no response from the Department to date, we are now bringing this matter to your attention.

The circumstances of the woman’s case are as follows.

Mrs P was born in Australia in the 1960s. She was an Australian citizen by birth.

Her husband, Mr P, was also born in Australia, about 1960. He is an Australian citizen by birth under Australian law. He was also an Irish citizen (and therefore a dual citizen) from the time of his birth under Irish law because his father was born in Ireland.

At the beginning of 2002, Mr and Mrs P decided they would like to move to an EU country to live.

Mrs P was advised by the Irish consular authorities in Australia that she could obtain Irish citizenship by way of **Post Nuptial Citizenship**.

Under Irish law, between 1 July 1986 and 29 November 2005, the spouse of an Irish citizen (other than by naturalisation, honorary citizenship or a previous marriage) could obtain *Post Nuptial Citizenship* after 3 years of subsisting marriage, provided the Irish spouse had held that status for at least 3 years.

Consequently, Mrs P made a declaration to the Irish authorities in January 2002 that she wished to acquire Post Nuptial Citizenship.

In late February 2002 she received a letter from the Irish Embassy in Canberra acknowledging her declaration.

The letter stated:

*Thank you for your application for post nuptial citizenship which has now been lodged in Dublin. We have returned the originals of the documents submitted in support of your application. Copies have been retained on the Embassy files.*

In August 2002 the Irish Department of Foreign Affairs in Dublin wrote to the Irish Embassy in Canberra concerning Mrs P's application. This letter was then passed on to Mrs P. It stated:

*The Declaration has been checked and is in order. Form 3 and the Affidavit have been forwarded to the Immigration and Citizenship Division, Department of Justice, Equality and Law Reform to which the applicant should now send the fee.*

*The fee for EUR 126.97 in the form of a Bank Draft should be made payable to the Secretary General, Department of Justice, Equality and Law Reform and forwarded to Ms Brid McGovern/Mr Jim O'Brien. The address is 72-76 St Stephen Green, Dublin 2. The reference number should be quoted when the fee is being forwarded.*

*The Certificate of Declaration accepting Irish citizenship as post nuptial citizenship will then be issued by that Department.*

Mrs P then paid the prescribed fee. In October 2002 she received her Irish Certificate of Post Nuptial Citizenship. The Certificate states:

IRISH NATIONALITY AND CITIZENSHIP ACTS, 1956 and 1986

*Declaration accepting Irish citizenship as post-nuptial citizenship*

*In accordance with the terms of Section 8(1) of the Irish Nationality and Citizenship Act, 1956, as amended in 1986, the person detailed hereunder has made a declaration accepting Irish citizenship as post-nuptial citizenship and is an Irish citizen with effect from the date below (\*).*

*Name: A B P (nee Y)*

*Address: xxx*

*Date of birth: xxx*

*Place of birth: Australia*

*Date of lodgement of declaration:(\*) x January 2002*

*Signed: B McGovern, x October 2002*

It is our view that Mrs P acquired Irish citizenship in October 2002, and that therefore no Section 17 loss occurred, because Section 17 was repealed on 4 April 2002.

Our reasoning is that Mrs P was not entitled to any of the advantages or rights of Irish citizenship nor subject to perform any of the duties of Irish citizenship until she received the Certificate in October 2002, despite the fact that the Certificate on its face deems her to have accepted Irish citizenship from the date of her original January 2002 declaration. Until the certificate was issued, she could not apply for an Irish passport, and could not vote in Irish elections etc.

Indeed, if the declaration of January 2002 had been refused, she would never have become an Irish citizen. Similarly, if she had not paid the fee, she would also never have become an Irish citizen.

Additionally we note that the Australian Citizenship Instructions (ACIs) state (in para. 9.2.2.) that:

*A person who applied for the citizenship of another country prior to 4/4/02 but did not acquire that citizenship until on or after 4/4/02, will not lose their Australian citizenship.*

We would argue that the declaration made by Mrs P in January 2002 was merely an "application" and that she did not acquire her Irish citizenship until October 2002. Indeed, the February 2002 letter from the Irish Embassy in Canberra explicitly refers to Mrs P's "application for post nuptial citizenship" (emphasis added).

We would be glad of the your confirmation of our view. Were you not agree with our assessment, and if Mrs P were to have lost under Section 17, obviously she would be looking to apply for resumption of her Australian citizenship under Section 29(3)(a)(i) of the *Australian Citizenship Act 2007* as soon as it comes into force later this year.

We look forward to your response.

Kind regards,

Anne MacGregor  
Co-founder

Cc: Mr Tony Burke, MP  
Shadow Minister for Immigration, Integration and Citizenship

Ms Mary-Anne Ellis, DIAC (via e-mail only)  
Ms Nadine Clode, DIAC (via e-mail only)