Contributors to this issue:
Katharine Betts, Nino Randazzo, Samantha Evans, Jill Curnow

THE NEW CITIZENSHIP REPORT

Katharine Betts

In November 1993 the Minister for Immigration and Ethnic Affairs, Senator Bolkus, asked the Joint Standing Committee on Migration to undertake an inquiry into aspects of Australian citizenship. Citizenship needed to be made more meaningful; the Citizenship Act of 1948 predated the concept of Australia as a multicultural society and might need revision and, in the context of 'increasing international mobility of Australians', the Act had also 'become too cumbersome and too restrictive in its application'.[1] The specific terms of reference for the inquiry covered a number of themes, but two predominate in the report, published in September this year.[2] How can we enhance the contemporary significance of Australian citizenship and what should we do about the question of dual citizenship?

On the first question the Committee makes a number of recommendations. There should be a vigorous campaign of public education, coordinated by the Office of Multicultural Affairs (OMA) and the Department of Immigration and Ethnic Affairs (DIEA). This should encourage eligible migrants to take out Australian citizenship, but it should also increase understanding of the rights and obligations of citizenship among all Australians. Citizenship should not be seen just as something that migrants get. All Australians should feel pride in 'Australian citizenship as a unifying symbol of a multicultural society'.[3] To advance these goals the principles set out in the National Agenda for a Multicultural Australia[4] should be inserted as a preamble to the Citizenship Act, DIEA should be renamed the Department of Citizenship, Immigration and Ethnic Affairs, and the Government should consider transferring responsibility for passports from the Department of Foreign Affairs and Trade to the renamed Immigration Department.[5]

Despite receiving a number of submissions on the topic, the Committee was not charged with making new recommendations on the criteria that migrants must fulfil in order to be eligible for citizenship.[6] Nevertheless, over the last twenty years these have changed. In 1973 the qualifying period of residence was reduced from five years to three[7] and, in 1984, it was reduced to two years. Also in 1984, the English language test was relaxed from an 'adequate' knowledge of English to a 'basic' knowledge.[8] And, in 1986, the wording of the pledge was changed so that applicants no longer had to renounce their former allegiances.[9]

Have these changes affected the propensity of eligible migrants to take out citizenship? The Committee presents findings from the 1988 FitzGerald Inquiry based on an analysis of the 1981 census. These showed that, in 1981, there were one million people resident in Australia who were eligible for citizenship and who had not taken it out. Ten

years later, the 1991 census showed 1,105,096 residentially-qualified non-citizens, an increase of 10 per cent.[10] Of course, large numbers of new potential candidates arrived during the 1980s, but these figures do not suggest that lowering the requirements in itself decreases the number of migrants not taking out citizenship.

Perhaps the education campaigns envisaged in the new report will reduce the backlog, but will they also increase the significance of citizenship for people who already have it? The authors of the report believe that campaigns sponsored by institutions concerned with immigration and migrant settlement (DIEA and OMA) will be able to convince the Australian-born majority that citizenship is not just something that migrants get.[11] The report also argues that if DIEA changes its name to Department of Citizenship, Immigration and Ethnic Affairs this 'will help all Australians to recognise that citizenship is a matter of significance to the Commonwealth,'[12] and that the transfer of passports to the renamed Department is desirable because 'all functions associated with citizenship ... [should] be controlled by one Commonwealth department.'[13]

This is not the first report to suggest a change of name for DIEA. In 1991 the Withers Report, *Population Issues and Australia's Future*, argued strongly that Australia should have an explicit population policy and that, to help implement this, DIEA (then the Department of Immigration, Local Government, and Ethnic Affairs) should be replaced by a Department of Population and Local Government.[14]

Bruer and Power refer to the Immigration Department as a 'distempered' bureaucracy,[15] distempered because it works in a highly charged political atmosphere and is subject to the claims of a number of competing lobbyists. Recent events have also shown it to be a Department afflicted by internal tensions.[16] It also implements an unpopular immigration program. Will arguing about its name, and giving it yet further tasks, help it to meet its primary responsibilities of managing the movement of people into Australia? And can such a troubled body provide a primary focus for the meaning of citizenship for all Australians?

Compared to a permanent visa, citizenship itself confers few material benefits. The report emphasises that many distinctions between citizens and non-citizens have already been removed from Commonwealth and State legislation. Indeed, the Attorney-General's Department advises that, in view of the fundamental human rights covered by international treaties Australia has signed, few distinctions are permissible.[17] Because the tangible benefits of citizenship are limited, the Attorney-General's Department advises that the concept's major importance lies not in the civil and economic advantages that it confers, but in the emotional ties it represents and the symbolic meaning that it conveys.[18]

Given this, the recommendations on dual citizenship are striking. The present situation is as follows. Some natualised immigrants have dual citizenship, not because the Australian Government favours this, but because their country of origin either refuses to relinquish them, or does not automatically debar them from its citizenship if they take out another. Australia does at present do this. If an Australian takes out foreign citizenship, section 17 of the Citizenship Act stipulates that he or she shall cease to be an Australian.[19]

Thus we have a situation where some Australians may have the advantage of

two passports but others, usually because they were born here, may not. This may put them at a disadvantage in business deals in a second country, a country which gives economic advantages to citizens that are denied to non-citizens. Faced with just such a situation, Mr Rupert Murdoch adopted United States citizenship and forfeited his Australian citizenship. But the report emphasises that it is not only business people who are inconvenienced by section 17. Any Australian married to a foreigner and living in his or her spouse's home country may experience considerable difficulties if they do not give up their Australian citizenship and take on the nationality of that country. The problems of both the international entrepreneur and the Australian marrying abroad have prompted this review of section 17.

A few submissions to the inquiry express worries that dual citizenship might nurture divided loyalties and that it might encourage foreigners to take out Australian nationality as a 'flag of convenience'.[20] But the Committee is unconvinced that the idea of dual citizenship embodies any threat of disloyalty or lack of commitment.[21] It also reports that the 'vast majority' of submissions favoured repeal of section 17.[22] (There were 139 submissions in all.) Consequently, the Committee recommends both that section 17 be repealed and that former Australian citizens who have lost their citizenship under this section have 'the unqualified right to apply for [its] resumption'. Should the Government adopt these recommendations, it is assured of bipartisan support.[23]

Most of the arguments in the submissions favouring these changes are instrumental; they point to the benefits for Australians if they are allowed to use other countries' nationalities as flags of convenience, without paying the price that Mr Murdoch paid. But the Committee presents the case for dual citizenship in strong moral terms. Repeal of section 17 is in keeping with our 'non-discriminatory and inclusive approach to citizenship' and it is 'only fair and equitable that the opportunity to acquire the citizenship of another country should be extended to Australian citizens at birth'. The authors reject the argument that people cannot owe allegiance or commitment to more than one country.

> Tolerance of diversity is a cornerstone of multicultural Australian society. The ultimate expression of such tolerance would be the recognition that while Australian citizens owe their primary allegiance to Australia, they also can show a commitment to their country of origin or the country in which they are resident.[25]

Dr Robin Fitzsimons told the Committee that 'The notion that you cannot have loyalties to two countries is as unfortunate as supposing that a child cannot be loyal to both his or her parents'.[26] But why should the newly liberated Australians stop at two? If the foreign countries that take their fancy are compliant (and the Report assures us that dual citizenship is the growing trend), why not multiple citizenships, membership rights in each country where business is to be done? The global citizen could then, in his or her own person, be legally a multinational.

On the one hand citizenship is to be made more comfortable for local multiculturalism, and on the other it must accommodate global capitalism. Students of postmodernism will savour this. But there is one small, peculiar, national anomaly. As the High Court case of *Sykes v Cleary* in 1992 reminded us, dual citizens may not hold seats in the

Senate or House of Representatives. Section 44 (i) of the Constitution disqualifies a candidate if he or she:

> Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power.[27]

In the wake of the judgment in *Sykes v Cleary*, parliamentary candidates were advised 'to take all reasonable steps under foreign law to renounce and divest themselves of foreign nationality and allegiance'.[28]

Some submissions to the committee suggested that this Constitutional disqualification should be changed, arguing that section 44 (i) was inconstant with the *Universal Declaration on Human Rights* which provides for a right to take part in government.[29] But the Committee was not convinced. It considered that there 'is merit in the argument canvassed by the framers of the Constitution and by the High Court ..., that Australia's elected representatives should owe undivided loyalty to Australia and have a disposition to maintain this requirement'.[30] Besides, unlike section 17 of the Citizenship Act, which can be repealed at the behest of the 'vast majority' of submissions and the will Parliament, section 44 (i) of the Constitution cannot be changed except by referendum. While Philip Ruddock is convinced that 'Australians generally will welcome' dual citizenship and the repeal of section 17 (and urges the Government to move quickly),[31] the real state of public opinion may be different. A referendum to repeal section 44 (i) could easily fail.

If section 17 of the Act is repealed and section 44 (i) of the Constitution is not, we will be faced with an interesting situation. While all Australians born in Australia will have the right to seek out other citizenships 'at birth' without forfeiting the one they began with, this right will not apply to Federal politicians. The class of people who do not seek political office may legally have divided loyalties, but they will be represented by a political class that may not.

References

1 Media Release, B42/93, 22 November 1993
2 Joint Standing Committee on Migration (JSCM), *Australians All: Enhancing Australian Citizenship*, Australian Government Publishing Service, Canberra, 1994
3 ibid., p. 65
4 Office of Multicultural Affairs, *National Agenda for a Multicultural Australia...Sharing Our Future*, Australian Government Publishing Service, Canberra, 1989
5 JSCM, op. cit., pp. xxiv, xl, xli
6 ibid., p. xxix
7 ibid., p. 20. It had effectively been only one year for British subjects. The 1973 changes removed any difference between British subjects and aliens in this matter.
8 ibid., p. 25
9 See K. Betts, 'The issues paper on citizenship', *People and Place*, vol. 2, no. 2, 1994, pp. 48-49.
10 See JSCM, op. cit. p. 30.
11 See DIEA in ibid., pp. xl, 49, 169.
12 ibid., p. 169
13 ibid., p. xli
14 *Population Issues and Australia's Future: Environment, Economy and Society (National Population Council, Population Issues Committee - Chair Glen Withers)*, Australian Government Publishing Service (AGPS), Canberra, 1991, pp. 109-110
15 J. Bruer and J. Power, 'The changing role of the Department of Immigration', in J. Jupp and M. Kabala (ed.), *The Politics of Australian Immigration*, AGPS, Canberra, 1993.
16 See R. Birrell, 'The politics of the refugee issue', *People and Place*, vol. 1, no. 4, 1993, especially pp. 14-17, and A. Wood, 'Gatekeepers of immigration policy lose the key', *The Australian*, 20 September 1994, p. 15.
17 See JSCM, op. cit., p. 22.
18 ibid., p.40
19 ibid., p. 190
20 ibid., pp. 197-198

[21] ibid., p. 206
[22] ibid., p. 198
[23] ibid., p. 207
[24] See Philip Ruddock, Current House Hansard proofs, 12 October 1994, p. 1828.
[25] JSCM, op. cit., p. 206
[26] See ibid., pp 198-199.
[27] The Consitution, Part IV, section 44 (i), quoted in ibid., p. 204
[28] See ibid., pp. 22,205-206.
[29] See ibid., p. 205.
[30] ibid., p. 207
[31] Ruddock, op.cit.