HUMAN RIGHTS COMMISSION

THE AUSTRALIAN CITIZENSHIP ACT 1948

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Human Rights Commission
P.O. Box 629,
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25 August 1982

Senator the Hon. Peter Durack, Q.C.
Attorney-General
Parliament House
Canberra, A.C.T. 2600

Dear Attorney-General,

Pursuant to paragraph 9(1) (a) and sub-section 16(1) of the *Human Rights Commission Act* 1981 this report is presented to you following the Human Rights Commission's examination of the *Australian Citizenship Act* 1948.

Yours sincerely,

Chairman
for and on behalf of the
Human Rights Commission

Members of the Human Rights Commission

Chairman

The Hon. Dame Roma Mitchell, D.B.E.

Deputy Chairman

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Mrs E. Geia
Mr C. D. Gilbert
Ms E. Hastings

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THE FUNCTIONS OF THE COMMISSION

Section 9 of the *Human Rights Commission Act* 1981 reads:

9. (1) The functions of the Commission are-

(a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of any such examination;

(b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and-

(i) where the Commission considers it appropriate to do so—endeavour to effect a settlement of the matters that gave rise to the inquiry; and

(ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters __to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement;

(c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights;

(d) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;

(e) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;

(f) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories;

(g) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting human rights and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;

(h) to perform-

(i) any functions conferred on the Commission by any other enactment;

(ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and

(ii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and

(j) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commission shall not

(a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purpose of paragraph (1)(a) or (b) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or

(b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).

(3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organisations.

I. INTRODUCTION

1. The Commission has prepared this report on human rights aspects of the *Australian Citizenship Act* 1948 (the Act) because of the announced intention of the Government to propose amendments to the Parliament in the forthcoming Sittings.

2. The *Australian Citizenship Act* 1948 introduced Australian citizenship where before there had only been British subject status. It provided for citizenship by birth, by descent and by grant and set out a system to regulate the gaining of such citizenship.

3. Citizenship is one of the fundamental elements in the life of a nation and the Act has an important bearing on everyone's civil and political rights. A number of the complaints to the Commission have been from people concerned with aspects of citizenship, such as liability to deportation. While citizenship is regarded in international law as one area which falls completely within the discretion of a State, that very fact leads to the possibility of capricious action by the State toward those who are its citizens or who wish to have that status and emphasises the need for adequate protections in the law itself.

4. When conducting its review of the Act, the Commission bore in mind the proposed changes to the citizenship laws announced by the then Minister for Immigration and Ethnic Affairs in the House of Representatives on 6 May 1982. However, while taking them into account, it has not made them its primary focus as its charter is to examine proposed legislation only if the Bill is referred to it by the Attorney-General.

II. REVIEW OF CITIZENSHIP ACT

5. During the Commission's examination of the Act, it became apparent that there are five main areas of concern. These are:

(a) the definition and use of the term `alien';
(b) the requirements to be fulfilled by an applicant for citizenship;
(c) provisions relating to loss of citizenship;
(d) the words of renunciation in the oath or affirmation of allegiance; and
(e) discriminatory provisions which give preferential treatment on the basis of national origin, sex or marital status.

The text of all the provisions of the Act discussed in this Report is attached as Appendix 1.

(a) Aliens

6. In the course of providing the new status of Australian citizen, the Act in section 5 defines an 'alien' as a person who does *not* have the status of British subject, and is *not* an Irish citizen or protected person. The general scheme of the Act is that certain consequences flow in relation to an 'alien' that do not flow in relation to a 'non-alien'. The term 'alien' is used in Part IV of the Act the transitional provisions and also in sub-section 10(3).

7. The transitional provisions provide that British subjects born or resident in Australia prior to 26 January 1949 acquire, almost automatically, Australian citizenship. They also provide a status of British subject without citizenship. Sub-section 10(3) denies Australian citizenship by birth to a child born to an enemy alien father in any part of Australia then under enemy control, even if the mother is an Australian citizen.

8. The Commission recognises that the term 'British subject' is used in numerous Commonwealth and State statutes, e.g. the *Public Service Act* 1922. These pieces of legislation may need to be amended to remove the discrimination that results from the use of the term, but should not delay amendment of the Act. The Commission notes that the Minister's statement alludes to the need for changes to be made to a large number of Commonwealth and State statutes that rely on the Act definition.

9. The Commission considers that the concept and use of the term 'alien' has potential for giving rise to acts that are unlawful under section 9 of the *Racial Discrimination Act* 1975 and also for bringing section 10 of that Act into operation (the text of these sections of that Act is reproduced in Appendix 2).

10. It could be argued that the Racial Discrimination Act is not relevant because the present definition of 'alien' discriminates on the basis of nationality rather than national origin, a form of discrimination not prohibited by the Racial Discrimination Act. However, the concepts of nationality and national origin overlap. A similar point was made in *Ealing London Borough Council v. Race Relations Board* [1972] AC 342 when Viscount Dilhorne observed that:

> • . . discrimination against aliens is in the vast majority of cases discrimination consequent upon their national origins.

11. The Commission considers the term 'alien' as defined in the Act is inconsistent with the Racial Discrimination Act in that it discriminates in favour of persons of certain national origin, e.g. British and Irish nationals, in relation to the gaining of citizenship. Further, the provision appears to be inconsistent with Article 5(d)(iii) of the International Convention for the Elimination of All Forms of Racial Discrimination—which requires that nationality be given without discrimination and with the proviso in Article 1.3. Article 1.3, while allowing States to legislate with respect to nationality and citizenship, proscribes legislation which discriminates against any particular nationality. The text of the relevant provisions of the Convention is attached as Appendix 3.

12. The Commission considers, accordingly, that the present definition of alien should be repealed. If 'alien' is to be defined for the purposes of the Act there should be no distinction between non-citizens on grounds of national origin.

13. The Commission notes that the Government has announced its intention of removing the transitional provisions. To the extent that this will reduce the use of the term 'alien', the change is supported by the Commission on human rights grounds.

(b) Requirements for Citizenship

14. (i) *Mentally Retarded Persons.* Section 14 of the Act prescribes the requirements for grant of citizenship. Paragraphs 14(1)(b), (f) and (g), which require that the applicant for grant of citizenship:

(i) be capable of understanding the nature of the application (14(1)(b)),
(ii) have an adequate knowledge of the English language (14(1)(f)), and
(iii) have an adequate knowledge of the responsibilities and privileges of Australian citizenship (14(1)(g)),

could in some cases be inconsistent with paragraphs 1, 4 and 7 of the Declaration on the Rights of Mentally Retarded Persons and paragraphs 2, 4 and 9 of the Declaration on the Rights of Disabled Persons. In effect, these paragraphs guarantee to the mentally handicapped person to the maximum extent possible the enjoyment of rights available to other persons notwithstanding their disability. The text of the relevant paragraphs of the two Declarations is set out in Appendixes 4 and 5 respectively.

15. The Commission considers mentally handicapped persons who are members of a family seeking citizenship should to the extent necessary be exempted from the requirements of paragraphs 14(1)(b), (0 and (g). This country encourages the concept of family migration and reunion. It would accord with the paragraphs of the Declarations mentioned if the mentally handicapped member of a family migrating to this country were to be treated, within the guidelines laid down by the Department of Immigration and Ethnic Affairs for family reunion, in the same way as all other persons coming within his or her category, i.e. without any discrimination, and to take out Australian citizenship along with the other members of his/her family.

16. The Commission notes the Minister's statement that it is intended to amend subsection 14(2) to exempt from the operation of paragraphs 14(1)(b), (f) and (g) the mentally handicapped person who has an Australian parent. To the extent that this fulfils the requirements of the Declarations as indicated in the previous paragraph, the Commission supports the proposal.

17. (ii) *Confinement in Gaol.* A somewhat similar discrimination occurs in section 38. It provides that the period during which an applicant for citizenship who is 'confined in a gaol, reformatory, prison or hospital for the insane' is not to qualify as residence in an application for citizenship..

18. Under paragraph 4 of the Declaration on the Rights of Disabled Persons, persons with mental illnesses etc are to enjoy the same civil and political rights as other human beings. Disabled persons are defined as including persons with a deficiency, congenital or not in mental capabilities. Persons with mental illnesses should therefore be accorded the same rights as persons with other disabilities.

19. The Commission is of the view that those with mental illnesses or other disabilities should not by virtue of hospitalisation, have their period of qualification for citizenship suspended any more than should persons in other medical institutions. In relation to persons found not guilty on the grounds of insanity, the Commission notes that the primary reason for the qualifying period is to demonstrate a capacity for good citizenship. As this cannot be demonstrated by such persons while detained at the Governor-General's (or Governor's) pleasure, the suspension could continue to apply to them.

20. (iii) *Knowledge of English language.* As noted above, paragraph 14(1)(f) requires that an applicant for citizenship 'have an adequate knowledge of the English language'.

21. The Commission notes the objective of developing a multicultural society with its emphasis on providing conditions in which people can accept differences and appreciate a variety of life-styles rather than expect everyone to fit into a standardised pattern. This objective appears to the Commission to be fully within the spirit of Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which requires that persons belonging to ethnic, religious or linguistic minorities should not be denied the right to use their own language. Whilst the Commission recognises that some knowledge of the English language is desirable before a person should be granted citizenship, it notes that this could have the effect of discriminating against the person who chooses to use his own language for normal communication. The Commission welcomes the indication by the Minister that a minimum standard of proficiency in the English language is to be established. It considers the Minister should be authorised to grant exemption from the language requirement (in addition to the exemption available on grounds of age) where he is satisfied that the would-be citizen has a reasonable understanding, through the use of his or her own language, of Australia and its institutions despite the lack of the required level of English. An additional factor to be taken into account is Article 26 of the ICCPR, which prohibits discrimination in the administration of the law on grounds inter alia of language. Such a discrimination could, for example, occur if incidental deficiencies in the English expression of a person due to his or her previous language, rather than his or her basic understanding of Australia and its institutions, were to impede acquisition of citizenship. The text of the relevant provisions of the ICCPR is set out at Appendix 6.

(c) Loss of Citizenship

22. Section 17 of the Act provides that a person is to lose Australian citizenship if he or she acquires, 'by some voluntary and formal' act, another nationality whilst *outside* Australia. If such other nationality is acquired whilst *inside* Australia, then the person acquires a second nationality. As it stands, therefore, section 17 recognises that in a

limited range of cases persons inside Australia may have more than one nationality and that the same may apply for persons outside Australia if they acquire the other citizenship by other than a 'voluntary or formal' act.

23. Much depends on the way in which the phrase 'voluntary and formal' is interpreted. Some countries automatically confer citizenship after a prescribed period of residence. In the view of the Commission, citizenship acquired in this way, or in similar ways, should not be regarded as 'voluntary and formal' for the purposes of section 17 unless accompanied by both an unequivocal and voluntary acquisition of another citizenship and a clear understanding that thereby Australian citizenship is lost. Otherwise section 17 could, by depriving someone of Australian citizenship whilst outside the country, have the potential to be inconsistent with Article 12.4 of the ICCPR, which provides that no one shall be arbitrarily deprived of the right to enter his own country. In the case of a child of such a person, it could also be inconsistent with Article 24(3) of the ICCPR (the child's right to a nationality), by removing the right the child might have had to Australian citizenship if by that act the child was rendered stateless. The Commission notes that paragraph 2 of Article 15 of the Universal Declaration of Human Rights provides that 'No one shall be arbitrarily deprived of his nationality'.

24. The Commission considers that as the application of the phrase 'voluntary and formal' in section 17 could in some circumstances result in an arbitrary loss of Australian citizenship, either some conditions should be defined for its interpretation or the Minister should be given a discretion which would allow retention of Australian citizenship where the loss was not by clear intention to renounce as indicated in paragraph 23.

25. The Commission notes that the Minister has indicated an intention to cause the 'voluntary and formal' criterion to apply to Australian citizens *within* Australia. It is our view that if this change is made, it should be subject to the protections proposed in paragraph 24. Adoption of the paragraph 24 proposal could make unnecessary the further changes outlined by the Minister which would allow for resumption of citizenship in certain circumstances.

26. The Commission notes further the existence of paragraph 14(8) (e) of the Act by which the Minister has discretion to grant citizenship to former Australian citizens notwithstanding their inability to fulfil all requirements for such a grant. The Commission considers it would be preferable to regard the person as retaining citizenship in cases where there has been no unequivocal and knowing loss of Australian citizenship, rather than requiring an application for a grant of citizenship.

(d) Oath of Allegiance

27. The Commission's attention has been drawn to the inclusion of the words 'renouncing all other allegiance' in the oath or affirmation of allegiance (the oath) which marks the date from which citizenship takes effect.

28. The words of renunciation are not required by section 15 of the Act, which refers only to *taking* the oath. In addition, the words of themselves have no legal effect. They are included in the oath as part of the individual's symbolic act of adopting Australian citizenship, but their inclusion is felt to be an impediment in the way of taking out Australian citizenship by substantial numbers of immigrants. These people do not wish to renounce *'all* other allegiance', although they wish to become loyal Australian citizens.

29. International human rights treaties stress the importance of nationality, and particularly the seriousness of depriving a person of nationality. For example, this point is expressly made in Article 15 of the Universal Declaration of Human Rights. Nationality is referred to in Article 24 of the ICCPR and is indirectly referred in Articles 12 and 25. It is also referred to in principle 3 of the Declaration of the Rights of the Child. In Article 5, paragraph (d) (iii) of the Racial Discrimination Convention it is provided that everyone is entitled to equality before the law, including having a right to nationality. The international trend has been to move away from allegiance dependant only on nationality. This stems from a growing awareness of the international community---evidenced by the human rights instruments which form the Commission's charter __ and from the increase in the number of persons moving from country to country for a variety of reasons, including employment and especially employment by multinational corporations.

30. Many countries from which Australia derives its immigrants allow their citizens to accept the citizenship of a second country without depriving them of the citizenship of the first country, e.g. British, Greek and Lebanese citizens do not lose that citizenship when taking out Australian citizenship. In those cases, the first citizenship would normally only be lost by a formal act of renunciation. Simply taking an oath which includes renunciation of former allegiance would not amount to such a formal act. Therefore, the renunciation clause itself has no legal effect in the first country.

31. The Commission considers the oath should be adequate as a mark of adoption of Australian citizenship, without the words of renunciation. The international human rights instruments contemplate that a person should at all times have a right to nationality. The Commission interprets this as allowing a person either to accept or renounce his nationality but not as compelling renunciation of one allegiance in the process of taking up citizenship in another country. Accordingly, the renunciation clause could with advantage be omitted from the oath.

32. The Commission notes the Minister's announcement that the wording of the oath will be changed to stress that persons are not renouncing all cultural ties with their former country. Depending on its precise formulation, this could substantially meet the points made by the Commission.

(e) Discrimination

33. The Commission draws attention to the fact that the following sections of the Act discriminate against persons on the basis of national origin, sex or marital status:

National origin
sub-section 5 (1) and sections 7, 8, 8A, 9, 11, 14, the sections of Part IV, and sections 34 and 51

Sex and marital status
sub-sections 5(1), 10(2) and (3), 11(1) and (3), 14(9), 18(2) and (3), 23(1) and (2), 23D(2), 25(3)(c), (4) and (5), 26(4), sections 26A and 27, sub-sections 28(2), 30(1), 34(2) and section 35

The text of these provisions is set out in Appendix 1.

34. The Commission is of the view that these provisions have the potential to infringe either sections 9 and 10 of the Racial Discrimination Act and Article 5(d)(iii) of the Racial Discrimination Convention or Articles 3, 23.4 and 26 of the ICCPR. Accordingly, it considers they should be amended to remove the discrimination, or be repealed.

35. The Commission notes that the first of the objectives mentioned by the Minister for Immigration and Ethnic Affairs when announcing in Parliament on 6 May 1982 proposals to amend the Act was to remove all discriminatory aspects which give preferential treatment on the basis of national origin, sex or marital status'. We endorse fully that objective and have identified above the provisions in the Act which in our view contain some form of discrimination. We will await with interest the detailed legislative expression in these provisions of the objectives of eliminating discrimination.

III. THE MIGRATION ACT

36. Some parts of the *Migration Act* 1958 will need consequential amendment as a result of the changes proposed to the Citizenship Act (the relevant sections are set out in Appendix 7).

37. It follows from paragraph 9 above that one area of concern to the Commission is the definition and use of the term 'alien'. This definition has important implications, particularly in relation to deportation (section 12). The Commission notes that related issues are currently before the High Court. When the High Court hands down its decision, the Commission will prepare a report on the relevant provisions of the Migration Act.

IV. RECOMMENDATIONS

38. Pursuant to sub-section 16(1) of the *Human Rights Commission Act* 1981, the Commission makes the following recommendations following its examination of the *Australian Citizenship Act* 1948 and related provisions of the *Migration Act* 1958:

Citizenship Act

(1) The definition of alien' in section 5 should be repealed or reworded to remove discrimination between non-citizens on grounds of national origin (paragragh 12).

(2) Mentally handicapped persons (section 14) should not be discriminated against in the grant of citizenship and should be able to acquire citizenship along with other members of their family (paragraph 15).

(3) Persons in mental hospitals (section 38) other than at the Governor-General's pleasure should not have their qualifying period for citizenship suspended (paragraph 19).

(4) The requirement of an adequate knowledge of the English language in paragraph 14(1)(f) should be consistent with Articles 26 and 27 of the ICCPR: if a suitable amendment could be devised to ensure this, that would be desirable (paragraph 21).

(5) Section 17 of the Act, which deprives persons of Australian citizenship in certain circumstances, should be modified to allow the Australian citizen to retain Australian citizenship when there has been no unequivocal and voluntary acquisition of another citizenship (paragraph 24)

(6) The oath or affirmation of allegiance provided for in section 15 should not include renunciation of all other allegiance (paragraph 31).

(8) The Commission considers the discriminatory aspects in the sections noted below should be removed by amendment or repeal:

(a) national origin—sections 5, 7, 8, 8A, 9, 11, 14, the sections in Part IV, and sections 34 and 51;

(b) sex or marital status__sub-sections 5(1), 10(2) and (3), 11(1) and (3), 14(9), 18(2) and (3), 23(1) and (2), 23D(2), 25(3)(c), (4) and (5), 26(4), sections 26A and 27, sub-sections 28(2), 30(1), 34(2) and section 35 (paragraph 34).

Migration Act

(9) In view of the impending decision of the High Court on related issues, the Commission will resume its consideration of the Migration Act when the decision is available, and particularly of the definition and use of the term alien' (paragraph 37).

APPENDIX 1

Australian Citizenship Act 1948

(Relevant Sections)

5. (1) In this Act, unless the contrary intention appears

'alien' means a person who does not have the status of a British subject and is not an Irish citizen or a protected person;

.....

'responsible parent', in relation to a child, means the father of that child, or, where the father is dead or the mother has been given the custody of the child by order of a court, or the child was born out of wedlock and resides with the mother, means the mother of that child;

7. (I) A person who, under this Act, is an Australian citizen or, by a law for the time being in force in a country to which this section applies, is a citizen of that country has, by virtue of his Australian citizenship or his citizenship of that country, as the case may be, the status of a British subject.

(2) The countries to which this section applies are the following countries and any other country declared by the regulations to be a country to which this section applies:

Commonwealth of the Bahamas
People's Republic of Bangladesh
Barbados
Republic of Botswana
Canada
Republic of Cyprus
Fiji
The Gambia
Republic of Ghana
Guyana
Republic of India
Jamaica
Republic of Kenya
Kingdom of Lesotho
Republic of Malawi
Malaysia
Malta
Mauritius
Republic of Nauru
New Zealand
Federal Republic of Nigeria
Sierra Leone
Republic of Singapore
Republic of Sri Lanka
Kingdom of Swaziland
United Republic of Tanzania
Kingdom of Tonga

Trinidad and Tobago
Uganda
United Kingdom and Colonies
Independent State of Western Samoa
Republic of Zambia

8. (1) An Irish citizen who, immediately before 26th January, 1949, was also a British subject has the status of a British subject if

(a) he has, before the commencement of section 6 of the *Citizenship Act* 1969, given a notice in accordance with sub-section (1) of section 8 of the *Nationality and Citizenship Act* 1948 or of that Act as amended; or

(b)• he gives a notice, as prescribed, to an officer authorized by the Secretary to receive notices under this section claiming to be entitled to the status of a British subject on all or any of the following grounds:

(i) that he is or has been in service under an Australian Government;

(ii) that he is the holder of an Australian passport;

(iii) that he has associations by way of descent, residence or otherwise with Australia or New Guinea.

(2) Where, under the law for the time being in force in a country to which section 7 applies, provision corresponding to the foregoing provisions of this section is made for enabling Irish citizens to have the status of British subjects or of Commonwealth citizens, a person who, by virtue of that law, has that status also has the status of a British subject by virtue of this section.

8A. (1) Where

(a) a person is not an Australian citizen and, but for this sub-section, would not be a citizen of a country to which section 7 applies; and

(b) immediately before the date of commencement of this section-

(i) the person was a citizen of Pakistan or of the Republic of South Africa and was ordinarily resident in Australia; or

(ii) the person, being the child of a person referred to in sub-paragraph (i), was under the age of sixteen years,

this Act applies to and in relation to the person as if Pakistan and the Republic of South Africa were specified in sub-section (2) of section 7.

(2) This section shall cease to be in operation on the expiration of the period of two years commencing on the date of commencement of this section and shall thereupon be deemed to have been repealed by an Act other than this Act.

9. A law of the Commonwealth or of a Territory in force at 26th January, 1949, has effect, unless provision to the contrary has been or is made, in relation to Irish citizens who do not have the status of British subjects in like manner as it has effect in relation to persons who have that status.

10. (1) Subject to this section, a person born in Australia after the commencement of this Act shall be an Australian citizen by birth.

(2) A person shall not be an Australian citizen by virtue of this section if, at the time of his birth, his father

(a) was not an Australian citizen;

(b) was not ordinarily resident in Australia; and

(c) was

(i) a person who was entitled in Australia to any immunity from suit or other legal process by virtue of any law relating to diplomatic privileges and immunities (including any law relating to privileges and immunities attaching to persons connected with the Governments of other parts of the Queen's dominions or with international organisations); or

(ii) a consular officer of a foreign sovereign power.

(3) A person shall not be an Australian citizen by virtue of this section if, at the time of his birth, his father was an enemy alien and the birth occurred in a place then under occupation by the enemy.

11. (1) A person born outside Australia on or after 26th January, 1949, is an Australian citizen by descent if

(a) in the case of a person born in wedlock—at the time of the birth his father or mother was an Australian citizen; or

(b) in the case of a person born out of wedlock _____at the time of the birth his mother

(i) was an Australian citizen; or

(ii) was, or had the status of, a British subject and was ordinarily resident in Australia or New Guinea,

and, in either case, the birth was or is registered at an Australian consulate within five years after its occurrence or within such further period as the Minister allowed or allows.

(2) Where, at the time of the birth of a person (in this sub-section referred to as "the child") born in wedlock, one of the parents of the child was not an Australian citizen, the birth of the child shall not be registered at an Australian consulate unless the person applying to register the birth declares in writing to the person to whom the application is made, or otherwise satisfies that person, that

(a) there is not at the time of the application, a subsisting court order giving custody of the child exclusively to a person or persons other than the parent of the child who was an Australian citizen at the time of the birth; or

(b) the parents of the child are dead.

(3) The birth of a person (in this sub-section referred to as "the child") born out of wedlock shall not be registered at an Australian consulate unless the person applying to register the birth declares in writing to the person to whom the application is made, or otherwise satisfies that person, that—

(a) there is not at the time of the application, a subsisting court order giving custody of the child exclusively to a person or persons other than the mother of the child; or

(b) the mother of the child is dead.

(4) The validity of the registration at an Australian consulate of the birth of a person is not affected by a contravention of either of the last two preceding sub-sections in relation to that registration.

14. (1) The Minister may grant a certificate of Australian citizenship to a person who has made an application in accordance with section 13 and satisfies the Minister—

.....

(b) that he is capable of understanding the nature of the application;

.....

(0 that he has an adequate knowledge of the English language;

(g) that he has an adequate knowledge of the responsibilities and privileges of Australian citizenship;

.....

(5) Subject to sub-section (6), the Minister may, upon application made under sub-section (2) of section 13 within two years after the date of commencement of this section, grant a certificate of Australian citizenship to a person who—

(a) was, on the date of commencement of this section-

(i) a citizen'of a country to which section 7 applied on that date;

(ii) an Irish citizen; or

(iii) a person having the status of a British subject without citizenship; and

(b) would, but for paragraph (d) of sub-section (1) of this section, be eligible for the grant of the certificate under that sub-section.

15. (1) A person to whom a certificate of Australian citizenship has been granted under this Division shall be an Australian citizen—

(a) in the case of a person to whom paragraph (b) does not apply—as from the date upon which he takes an oath of allegiance or makes an affirmation of allegiance in the manner provided by this section and in accordance with the form contained in Schedule 2; or

(b) in the case of a person who has not attained the age of sixteen years or a person to whom sub-section (2) of section 14 applies—as from the date upon which the certificate is granted.

17. An Australian citizen of full age and of full capacity, who, whilst outside Australia and New Guinea, by some voluntary and formal act, other than marriage, acquires the nationality or citizenship of a country other than Australia, shall thereupon cease to be an Australian citizen.

18. (1) Where

(a) an Australian citizen is a national or citizen of a country other than Australia; and

(b) that person's nationality or citizenship of that other country was acquired (whether before, on or after 26th January, 1949) at birth, before he attained the relevant age for the purpose of this paragraph or by reason of marriage,

he may, at any time after attaining the age of eighteen years or after the marriage, make a declaration renouncing his Australian citizenship.

(1A) For the purpose of paragraph (b) of sub-section (1), the relevant age, in relation to a person, is

(a) if that person's nationality or citizenship of that other country was acquired before the commencement of this sub-section___ twenty-one years; or

(b) in any other case—eighteen years.

/ (2) A person who became an Australian citizen by reason of the inclusion of his name in a certificate of Australian citizenship granted to his responsible parent or his guardian may, at any time after attaining the age of twenty-one years, make a declaration renouncing his Australian citizenship.

(3) Where a person ceases to be an Australian citizen or is deprived of his Australian citizenship under the provisions of this Division and his wife acquires, under the law of some country other than Australia, the nationality or citizenship of her husband, she may, at any time after acquiring that nationality or citizenship, make a declaration renouncing her Australian citizenship.

24. In this Part, a reference to a British subject, in relation to a time before 26th January, 1949, shall be read as including a reference to a person who was, at that time, entitled in Australia or a Territory to all political and other rights, powers and privileges to which a natural-born British subject was then entitled.

25. (1) A person who was a British subject immediately prior to the date of commencement of this Act shall, on that date, become an Australian citizen if—

(a) he was born in Australia and would have been an Australian citizen if section 10 had been in force at the time of his birth;

(b) he was born in New Guinea;

(c) he was a person naturalised in Australia; or

(d) he had been, immediately prior to the date of commencement of this Act, ordinarily resident in Australia or New Guinea, or partly in Australia and partly in New Guinea, for a period of at least five years.

(2) A person shall not become an Australian citizen by virtue of the last preceding sub-section if, but for paragraph (d) of that sub-section, he would have ceased to be a British subject on the date of commencement of this Act.

(3) A person—

(a) who was born outside Australia and New Guinea before the commencement of the *Nationality and Citizenship Act* 1948;

(b) who was a British subject immediately before the commencement of that Act;

(c) whose father was a person to whom paragraph (a), (b) or (c) of sub-section (1) applied at the commencement of that Act; and

(d) who enters Australia and has the status of a British subject, but is not an Australian citizen, at the time of that entry,

shall, on the date of that entry, become an Australian citizen.

(4) A woman who

(a) was a British subject immediately prior to the date of commencement of this Act;

(b) had, prior to that date, been married to a person who becomes or, if he is dead, would, but for his death, have become an Australian citizen under this section; and

(c) entered Australia prior to that date,

shall on that date become an Australian citizen.

(4A) In determining, for the purposes of paragraph (c) of sub-section (8) of section 14 or paragraph (b) of sub section (4) of this section, whether a person would, but for his death, have become an Australian citizen under this section, it shall be , assumed that if he had lived he would have continued to be ordinarily resident in the place where he was ordinarily resident immediately before his death, but that nothing else which could have affected his eligibility for Australian citizenship would have Occurred between the date of his death and the date of commencement of this Act.

(5) A person who was born out of wedlock outside Australia, the countries to , which section 7 applies and Ireland and, prior to the date of commencement of this Act, entered Australia shall become an Australian citizen on that date if his mother was at the time of his birth a British subject ordinarily resident in Australia or New Guinea.

(6) A person who entered Australia prior to the date of commencement of this Act and who, at the time of his entry or subsequently. was---

(a) a prohibited immigrant within the meaning of the Immigration Act; or
(b) a person who had applied for, or was issued with, a certificate of exemption under section four of that Act,

shall not become an Australian citizen under this section unless, prior to that date, he had been granted permission by the Minister, or by an officer under that Act, to remain in Australia for permanent residence.

(7) A person who enters Australia after the commencement of Part II of the *Migration Act* 1958 and, at the time of his entry, is __

(a) a prohibited immigrant within the meaning of that Act; or
(b) the holder, within the meaning of that Act, of a temporary entry permit granted under that Act,

shall not become an Australian citizen under this section.

(8) In this section

the Immigration Act" means the *Immigration Restriction Act* 1901, and when considered in relation to any time, means that Act as amended as in force at that time;

person naturalised in Australia" means—

(a) a person to whom a certificate of naturalisation was granted in Australia or a Territory;
(b) a person who, by reason of the inclusion of his name in any such certificate, was deemed to be a person to whom a certificate of naturalisation was granted;
(c) a person who by virtue of any law in force in Australia or a Territory. was deemed to be a naturalised British subject by reason of his residence with his father or mother; or
(d) a married woman who by virtue of any such law, made a declaration that she desired to acquire British nationality.

26. (1) Subject to this section, a person who

(a) was a British subject immediately before 26th January, 1949; and
(b) was not at that date an Australian citizen of a country to which section 7 applies or an Irish citizen,

has the status of a British subject without citizenship.

(2) Subject to the next two succeeding sub-sections, the law in force in Australia, immediately before 26th January, 1949, in relation to British nationality continues to apply, as if this Act had not been passed, to a person who has the status of a British subject without citizenship while he has that status and continues so to apply as if he were a British subject.

(3) Where a person who has the status of a British subject without citizenship marries a woman who does not have the status of a British subject, she does not, by reason of the marriage, acquire the status of a British subject.

(4) Where a woman who has the status of a British subject without citizenship marries an alien or an Irish citizen, she does not, by reason of the marriage, cease to have that status.

(5) Subject to the next succeeding sub-section, where a person who, on or after 26th January, 1949; was or is born in a country outside Australia has acquired or acquires the status of a British subject by virtue of the law in force in a country to which section 7 applies but has not or does not, under this Act or the law in force in such a country, become an Australian citizen or a citizen of such a country, that person has the status of a British subject without citizenship.

(6) A person who, but for this sub-section, would, under this section, have the status of a British subject without citizenship does not have that status if he has become, or ceases to have that status if he becomes, an Australian citizen, a citizen of a country to which section 7 applies, as Irish citizen or an alien.

26A. (1) The Minister may direct that a woman who—

(a) applies, in accordance with a form approved by the Minister, for registration as a person having the status of a British subject; and

(b) satisfies the Minister that she is an alien and is the wife of a person having the status of a British subject without citizenship,

shall be registered as a person having the status of a British subject without citizenship, and, subject to the next succeeding sub-section, the Secretary shall cause her to be registered accordingly.

(2) A woman shall not be registered in accordance with a direction under sub-section (1) unless she takes an oath, or makes an affirmation, in accordance with the form in Schedule 3.

(3) Subject to sub-section (5), upon the registration of a woman under this section, she acquires the status of a British subject without citizenship.

(4) Subject to the next succeeding sub-section, a woman who—

(a) was the wife of a British subject without citizenship or is or was the wife of a person having the status of a British subject without citizenship; and

(b) has the status of a British subject by virtue of a law of a country to which section 7 applies but is not a citizen of that country,

has the status of a British subject without citizenship.

(5) A woman who, under this section, acquires or has the status of a British subject without citizenship ceases to have that status if she becomes an Australian citizen, a citizen of a country to which section 7 applies or an Irish citizen.

(6) Sub-sections (2) and (4) of section 26 apply to a woman who, under this section, acquires or has the status of a British subject without citizenship.

27. Where, at any time prior to the date of commencement of this Act, a woman ceased to be a British subject by reason that

(a) on her marriage to an alien she acquired the nationality of her husband; or

(b) during the continuance of the marriage, her husband, being a British subject, acquired a new nationality and, by reason of her husband acquiring the new nationality, she also acquired that nationality,

she shall be deemed, for the purposes of this Act, to have been a British subject immediately prior to that date.

28. (1) Where a person whose British nationality was conditional upon his complying with the second proviso to sub-section (1) of section 6 of the *Nationality Act* 1920, or of that Act as amended from time to time, failed to comply with that proviso, that person shall, if he would, but for that failure, have been a British subject immediately prior to the date of commencement of this Act, be deemed, for the purposes of this Act, then to have been a British subject.

(2) In determining whether, for the purposes of the last preceding sub-section, a woman who has married an alien would, but for her failure to comply with the proviso referred to in that sub-section, have been a British subject immediately prior to the date of the commencement of this Act, the marriage shall be disregarded.

29. A person whose father or mother was granted a certificate of naturalisation in Australia before 1st January, 1921, or who is or has been the wife of a person to whom such a certificate was granted, and who, by reason only that the certificate was not a certificate of naturalisation as defined in section 5 of the *Nationality Act* 1920, was not deemed to be a British subject, shall be deemed, for the purposes of this Act, to have been a British subject immediately prior to the date of commencement of this Act.

30. (1) This section shall apply, to any person who

(a) under the provisions of sub-section (1) of section 20 of the *Nationality Act* 1920, or of that Act as amended from time to time, ceased to be a British subject by reason that he was a minor child of a person ceasing to be a British subject; and

(b) on the date of commencement of this Act, would, but for the provisions of that sub-section, have been either an Australian citizen, or a British subject without citizenship by virtue of section 26 of this Act,

and, in determining whether, for the purposes of this section, a woman who had married an alien would, but for those provisions, have been an Australian citizen or such a subject, the marriage shall be disregarded.

(2) If a person to whom this section applies makes and furnishes to the Secretary a declaration in accordance with the prescribed form, within one year after the date of the commencement of this Act or the date upon which he attains the age of eighteen years, whichever is the later, or within such further period as the Minister allows, that he wishes to resume British nationality, the Secretary shall cause the declaration to be registered.

(3) Upon the registration of the declaration, the person who made the declaration becomes an Australian citizen or acquires the status of a British subject without citizenship, as the case may be.

(4) The provisions of section 26 of this Act apply to a person who, under this section, acquires the status of a British subject without citizenship.

34. (1) A person born out of wedlock and legitimated by the subsequent marriage of his parents shall, as from the date of the marriage or of the commencement of this Act, whichever is the later, be treated, for the purpose of determining whether he is an Australian citizen, or was a British subject immediately prior to the date of the commencement of this Act, as if he had been born in wedlock.

(2) A person shall not, for the purposes of this section, be deemed to have been legitimated by the subsequent marriage of his parents unless, by the law of the place in which his father was domiciled at the time of the marriage, the marriage operated immediately or subsequently to legitimate him.

(3) Nothing in this section excludes or limits the effect that, by virtue of Part VI of the *Marriage Act* 1961, a legitimation referred to in that Part has for the purposes of this Act.

35. (1) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death.

(2) Where the death occurred prior to, and the birth occurred after, the date of commencement of this Act, the status or description which would have been applicable to the father if he had died after that date shall be deemed to be the status or description applicable to him at the time of his death.

38. Any period during which an applicant for a certificate of Australian citizenship is confined in a gaol, reformatory, prison or hospital for the insane in Australia or New Guinea shall be disregarded in determining the period of residence for the purpose of the grant of such a certificate.

51. (1) A reference in any other law of the Commonwealth to a British subject shall be read as including a reference to an Australian citizen and to any other person who, under this Act, has the status of a British subject or has the status of a British subject without citizenship.

(2) In this section, law of the Commonwealth' means—

(a) an Act;

(b) an instrument (including regulations or rules) having effect by virtue of an Act;

(c) an Ordinance of a Territory and any other law in force in a Territory;

(d) an instrument (including regulations or rules) having effect by virtue of such an Ordinance or law; and

(e) an instrument having effect by virtue of any regulations or rules as are mentioned in paragraph (b) or paragraph (d).

52. The provisions of this Act shall apply to the exclusion of any provisions, providing for British nationality or Australian citizenship, of any law of a State, whether the law was passed or made before or after the commencement of this section.

APPENDIX 2

Racial Discrimination Act 1975

(Relevant Sections)

9. (1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

(2) The reference in sub-section (1) to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes a reference to any right of a kind referred to in Article 5 of the Convention.

(3) Sub-section (1) does not apply in respect of the employment, or an application for the employment, of a person on a ship or aircraft (not being an Australian ship or aircraft) if that person was engaged, or applied, for that employment outside Australia.

(4) The succeeding provisions of this Part do not limit the generality of sub-section (1).

10. (1) If, by reason of, or of a provision of, a law of Australia or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.

(2) A reference in sub-section (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention.

(3) Where a law contains a provision that

(a) authorises property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or

(b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander,

not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which sub-section (1) applies and a reference in that sub-section to a right includes a reference to a right of a person to manage property owned by him.

APPENDIX 3

International Convention on the Elimination of All Forms of Racial Discrimination

(Relevant Articles)

Article 1

1. In this Convention, the term ˜racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalisation, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the rights to participate in elections__ to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

APPENDIX 4

Declaration on the Rights of Mentally Retarded Persons

(Relevant Paragraphs)

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

APPENDIX 5

Declaration on the Rights of Disabled Persons

(Relevant Paragraphs)

2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

4. Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.

9. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialised establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

APPENDIX 6

International Covenant on Civil and Political Rights

(Relevant Articles)

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order *(ordre public),* public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognised.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

APPENDIX 7

Migration Act 1958

(Relevant Sections)

5. (1) In this Act, unless the contrary intention appears—

"alien" means a person who is not—

(a) a British subject;

(b) an Irish citizen; or

(c) a protected person;

.....

12. Where (whether before or after the commencement of this Part) an alien has been convicted in Australia of a crime of violence against the person or of extorting any money or thing by force or threat, or of an attempt to commit such a crime, or has been convicted in Australia of any other offence for which he has been sentenced to imprisonment for one year or longer, the Minister may, upon the expiration of, or during, any term of imprisonment served or being served by that alien in respect of the crime, order the deportation of that alien.