

ECCV Position Paper on Dual Citizenship and Constitutional Legislation restricting political participation

November 2017

1. The Ethnic Communities' Council of Victoria (ECCV) is aware that under Section 44 of the Australian Constitution, being a citizen of any other country makes an Australian incapable of running for or sitting in Federal Parliament as a senator or a member of the House of Representatives.
2. ECCV points out that many Australians hold dual citizenship as Australia has become an increasingly multicultural nation; therefore a rigid constitution around renouncing dual citizenship significantly limits our society's civic participation.
3. ECCV is aware of considerable media publicity around several political cases put forward for consideration by the High Court of Australia regarding Section 44 of the Constitution that lists the grounds for disqualification on who may become a candidate for election to Parliament.
4. ECCV acknowledges that, over a number of years, almost every part of Section 44 in the Constitution has proved difficult to interpret and apply.
5. ECCV believes that the strict requirements of Section 44(i) in the Constitution do not reflect the population diversity of a multicultural Australia with nearly 50 per cent of the Australian population born overseas or having a parent born overseas.
6. ECCV highlights that Australian citizenship is considered as a privilege and a celebration by many of the successive waves of migrants that have brought new skills, economic benefits, and a range of other positives contributing to the success of multiculturalism.
7. ECCV believes celebrating inclusiveness should go hand-in-hand with celebrating citizenship.
8. ECCV points out that many proud Australian citizens hold dual nationality as they have strong family and community ties to their countries of origin.
9. ECCV believes that dual citizenship should be seen as a positive complementary sense of identity, belonging and contribution to Australia rather than as a deficit at a time when people are more mobile and mixed than ever before and transnational living is becoming the norm.
10. ECCV believes there is a trend of growing numbers of Australians living and working in other countries possibly boosting multiple passport holding.

11. ECCV is aware that some Australians from culturally diverse backgrounds, who are from multi-generational and multi-ethnic descent, would like to fully participate in Australian politics as part of their civic duties, but find it difficult or impossible to renounce their citizenship rights.
12. ECCV recognises that citizenship status carries with it both rights and duties.
13. ECCV is aware of the tensions and uncertainty about what citizenship is supposed to mean, especially when citizenship poses different conditions for immigrants, for example in 2015 new laws were introduced to strip citizenship from dual-citizen Australians who fight in conflicts overseas.
14. ECCV calls for a respectful debate about dual citizenship and to what extent Australia and its parliament could benefit from constitutional reform.
15. More specifically ECCV notes inconsistencies in the punitive nature of offences relating to Section 44 for example misleading information by parliamentarians about their dual citizenship shows up in Section 44(i) as a criminal offence that could lead to 12 months imprisonment but it does not clearly spell out the disqualification of office.
16. ECCV acknowledges that Section 44(i) has been criticised on several grounds, including its archaic language, unclear scope, and the sheer number of Australian citizens who are potentially disqualified from the Australian Parliament under its terms.
17. Please refer to the details in the appendix 1, 2 and 3 below for the exact wording in Section 44 and other details
18. ECCV believes that citizenship reform should reflect multicultural society that is Australia.

Appendices:

Appendix 1

Section 44 of the Australian Constitution states:

44. Any person who -

- (i.) Is under any acknowledgement 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 citizen of a foreign power: or
- (ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or
- (iii.) Is an undischarged bankrupt or insolvent: or
- (iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or
- (v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons: shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

Appendix 2

The Australian Electoral Commission reproduces the section in its Candidates Handbook, where it draws particular attention to Section 44(i) and (iv). As to the nomination form, it advises that to give "false or misleading information", or to "omit any information if omitting that information would be misleading", is a criminal offence and that the "maximum penalty for this offence is imprisonment for 12 months". It does not however clearly spell out that such a conviction could result in disqualification under Section 44(ii).

Source: Wikipedia accessed 29.9.17

Appendix 3

The following is an extract of an article in MCCV (Maltese Communities Council of Victoria) News

Dual Citizenship obstacle for Federal MPs

In a surprising development, seven sitting members from both Houses of the Australian Parliament were challenged as to their eligibility to maintain their seats having regards to alleged breaches of Section 44 of the Australian Constitution. It was alleged that at the time of their nominations they held dual citizenship which is prohibited by Section 44.

Two of the seven MPs have resigned and the Attorney General referred the remaining five cases to the High Court for its determination and hearings are still proceeding for this purpose. What is most surprising is that even the major political parties had overlooked the requirements of this constitutional provision, when screening individuals to represent them in the various Federal Electorates.

...It is interesting that, in contrast to the Australian situation, the Constitution of Malta apparently allows persons with dual citizenship (Maltese and that of another country), to be elected to Parliament, provided that they have not become a citizen of the other country voluntarily and are not under a declaration of allegiance to such a country.

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