

"Immigration and Citizenship"

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For the past fifty years, thinking about Australian citizenship, and changes to both citizenship law and administrative practices, have been profoundly influenced by the government's decision to allocate responsibility for citizenship to the same Commonwealth department responsible for immigration. As a result, citizenship has been thought about largely as a legal status bestowed on aliens, not in terms of its significance for all Australians.

This paper examines how Australian citizenship law, and the way it has been administered over the past fifty years, has changed in respect to migrants. It focuses on three areas of change - the concept of national identity reflected in citizenship legislation, the consequent discrimination on the grounds of race and ethnicity in administrative arrangements regulating access to and retention of the formal status of citizenship by permanent residents in Australia, and the legal consequences of citizenship for migrants granted it. It argues that legislative and administrative discrimination based on the notion of national identity officially promoted until the 1970s, had little effect on the ability of most immigrants to rebuild their lives in Australian communities. More important by far were the conditions favourable to the participation of migrants in the host community created by bi-partisan acceptance of the economic importance of immigrants to Australia, and the commitment of successive governments to achieving their social and economic integration.

National identity and citizenship

Concepts of national identity are revealed most clearly in a country's citizenship legislation because it defines who belongs to and who is excluded from the nation. The creation of a separate Australian citizenship by the Nationality and Citizenship Act 1948 did not change the prevailing concept of the 'imagined community' of Australians, which was still seen as essentially British in culture and ethnicity, male and white. On the contrary, this normative conception of the Australian citizen was reflected and reinforced by the Act which, until 1987, defined an 'alien' as 'a person who does not have the status of British subject and is not an Irish citizen or a protected person'. The image of an Australian enshrined in the Act, therefore, was that of an Anglo-Celt. It also affirmed the inferior legal status of women in the family. Until 1969, children of married women could only attain their citizenship status through their fathers, and the definition of 'responsible parent' was amended only in 1984 to give equal rights to both parents. Before then, a father could take his child out of Australia without its mother's permission.

Unequal access to citizenship

Until 1958, the government excluded from Australia those it regarded as undesirable (most commonly on racial grounds) by requiring them to pass a dictation test

in a European language chosen to ensure that the applicant would fail. After 1958, the task of excluding non-Europeans fell to officers of the Department of Immigration responsible for selecting migrants overseas. Despite these exclusionary policies and practices, non-Europeans (usually those with desirable qualifications) were admitted at the Minister's discretion. In 1966, immigration policy was changed to facilitate the entry for permanent residence of skilled non-Europeans although, as the Secretary of the Department of Immigration explained to the Governor-General:

There is no wish to create in Australia the problems of a multi-racial or plural society, which are a feature of some other countries. The objective is to maintain broadly the present homogeneity of the Australian population.

Australia has never desired to attract 'guest workers'. All granted permanent residence in Australia were regarded as proto-citizens. In the past, considerable effort and funding was devoted to assisting newcomers to become part of the national community - to assimilate, integrate or settle, as the process was variously conceived - and to become citizens as quickly as possible. Until 1973, however, the rules governing access to citizenship, and its legal consequences, varied according to the race and ethnic origin of the migrant.

While all British subjects in Australia on 26 January 1944 automatically became Australian citizens in 1949, those who arrived subsequently did not automatically become Australian citizens without formally applying for it. It was, however, made much easier for them to acquire it than for aliens. Until 1973, British migrants were eligible to apply for citizenship after only one year's residence in Australia, were not required to attend citizenship ceremonies and did not have to take the oath of allegiance to the Queen. From 1969, British migrants who had lived in Australia for five years without committing a crime for which they could be deported, could acquire Australian citizenship by merely notifying the Department of Immigration that they wished to become citizens. Because of prevailing conceptions of national identity, however, they were not targeted by any of the Department of Immigration's various citizenship campaigns, and remained the category of migrant least likely to apply for citizenship. This was not surprising, as citizenship added few rights they did not already enjoy. Until 1973 they could enter Australia without a visa, were eligible for public housing and the same social welfare benefits as citizens, and British non-citizens who were on the electoral roll before January 1984 could, and still can, vote in Australian elections and serve on juries.

Access to citizenship by aliens also depended on their race. Until 1956, non-European aliens were ineligible to apply for Australian citizenship and had to have lived in Australia for fifteen years before they could be joined by their families. They had the status of temporary residents although many had lived in Australia since before Federation. Their Australian-born children, however, acquired Australian citizenship automatically. Following a Cabinet decision taken in July 1956, non-Europeans living in Australia for fifteen years could apply for citizenship. Until the Racial Discrimination Act 1975, however, there was no legislative protection for non-Europeans to ensure that the legal

consequences of citizenship were the same for them as for European citizens. The Defence Act 1903 for example, forbade the employment of aliens and those not of 'substantially European descent' in the Navy and the Airforce.

In contrast to non-Europeans, European aliens were encouraged to become citizens, although until 1973 they had to live in Australia for five years before they became eligible to apply. Their acceptance of Australian citizenship was seen as an indicator of their successful assimilation - of their social, political and cultural absorption into the mainstream community. In order to encourage this process the government gradually eased the requirements demanded of aliens seeking citizenship. In 1954 and 1962 it removed most of the obstacles caused by the complexities and insensitivities of the application procedures, although the requirement to renounce all former allegiances, which many found distressing and repugnant, remained until 1986. They were targeted by Department of Immigration citizenship information pamphlets, personal letters of invitation, and general citizenship promotion campaigns including, from 1966, citizenship caravans which travelled around regional areas and shopping centres. The government, however, was concerned that migrants apply for citizenship because they wanted to become fully participating members of the community, not to gain some financial or other benefit available only to citizens. In 1966 one of the major financial incentives to become a citizen was removed when permanent residents became eligible for age, invalid and widows' pensions.

Refusal of citizenship

Not all applications for citizenship were accepted. From 1957, and throughout the 1960s and 1970s the Labor Party regularly attacked the government for allegedly refusing applications for citizenship from migrants on political grounds. Departmental statistics, however, show that the overwhelming majority of applications rejected or deferred were on the grounds of inadequate English or failure to demonstrate an understanding of the 'responsibilities and privileges of citizenship'. They indicate that for some migrants, poor education was a far greater barrier to acquiring citizenship than political discrimination.

Deportation of citizens

Three Acts limited citizenship by grant, making it a less secure form of citizenship than citizenship by birth. The deportation provisions introduced into the Crimes Act by the Bruce-Page government in 1926 empowered the Attorney-General to deport naturalised Australian citizens who advocated or incited the overthrow of governments, who participated in or encouraged others to take part in industrial disturbances, lockouts or strikes, or who joined an organisation declared by the High Court or the Supreme Court of a State to be an 'unlawful association'. Although it was doubtful whether any citizen had been deported under these provisions, they were removed in 1973 on the grounds that they created the impression that citizenship by grant was inferior to that of birth.

Sections 20 to 22 of the Nationality and Citizenship Act 1948 provided that a naturalised Australian who had lived outside Australia for seven years, and did not notify

an Australian consulate annually of his or her desire to retain their Australian citizenship, would lose it. They also granted the Minister for Immigration power to strip naturalised Australians of their citizenship on a wide variety of character grounds, including disloyalty towards the Sovereign. In 1958 the Act was amended leaving only gaining citizenship through fraud as grounds for the deprivation of citizenship.

The right of naturalised migrants to stay in Australia was also limited by the deportation provisions of the Migration Act 1958 . Until this Act was reformed in 1973, British subjects could be deported for offences carrying certain penalties committed within five years of entry. Aliens, however, could be deported for almost any reason after any period in Australia, even after becoming citizens.

The legal consequences of citizenship

This legislative and administrative discrimination in acquiring or retaining citizenship had little effect on the economic or social integration of most immigrants who either chose to become Australian citizens or to remain permanent residents. It is, however, of historical significance because it clearly documents the way national identity changed in Australia between 1945 and 1975.

While assimilation policies were applied in the post-war period to both Aboriginal citizens and alien immigrants, they were not as malevolent in their effects on migrants as they were on Indigenous Australians. They were also relatively short-lived. The term 'assimilation' was officially abandoned by the Department of Immigration in 1964 and replaced by 'integration'. While the cultural difference of Indigenous Australians was simultaneously ignored and undermined, bureaucrats had to confront and adjust to that of non-British migrants because the successful settlement of aliens was widely perceived to be essential both for the preservation of social harmony and for Australia's future economic development. Thus, assimilation policies had a relatively benign impact on non-British migrants. From 1950 they took the form of encouraging community involvement by mainstream organisations, such as the Returned Services League, the churches and the Country Women's Association, in the social integration of migrants into regional communities through the government-funded Good Neighbour Movement, and by providing a conduit of advice from such organisations to the government on the problems encountered by communities through annual Citizenship Conventions. Because of a long-standing belief that migrants took jobs and undermined workers' conditions, the government stressed that migrants would enjoy the same wages and conditions as other Australian workers, and vigorously opposed attempts to provide them with less. The Department of Immigration constructed bridges to the community in the form of English language, interpreting and translating services, and negotiated with trade unions and professional organisations in an attempt to have migrants' trade and professional qualifications recognised. By 1966 it had successfully persuaded the Department of Social Services to cease discriminating on the grounds of nationality when assessing applications for social welfare benefits. I have discussed the strengths and weaknesses of these, and

other government programs designed to facilitate the social absorption of migrants, in my books *Redefining Australians* and *Alien to Citizen*. The Department of Immigration long regarded its citizenship statistics as indicators of the success of its assimilation or (as later defined) its integration and settlement policies. However by the 1970s, both the government and the Department of Immigration grew increasingly conscious of the considerable practical and administrative obstacles still confronting new citizens wishing to access their rights and to fulfil their obligations.

Multiculturalism and citizenship

Following its election in December 1972, the Labor government set about dismantling what remained of the network of legislative and administrative discrimination on the grounds of ethnicity and race, that had sustained the image of Australia as a nation of essentially British culture and ethnicity. It also set new benchmarks for the rights of citizens, deciding in 1973 to ratify the United Nations Covenant on Civil and Political rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Political Rights of Women and the Convention adopted by the International Labour Conference in 1958 abolishing discrimination in employment.

It abandoned its predecessor's conception of Australia as a 'homogeneous' society, substituting the adjective 'multicultural' to describe the identity of a society transformed by thirty years of European migration. It redefined Australia as 'a society in which equal opportunity is accompanied by cultural diversity in an atmosphere of acceptance and tolerance', and planned to devolve responsibility for the social integration of migrants from the Department of Immigration to other government departments. Building on the program of Grants-in-Aid initiated in 1968, it planned to redirect the provision of welfare services to migrants from mainstream welfare bodies to ethnic organisations supported by Commonwealth funding. However, despite the government's efforts many migrants experienced difficulties accessing the services they needed. Reports published in 1975 by the Australian Government Commission of Inquiry into Poverty, chaired by Professor Ronald Henderson and Professor R. Sackville, documented the economic, social and legal inequalities of migrants at that time.

While none of the aims outlined by Grassby had been implemented by November 1975 when the Labor Government was removed from office, multiculturalism began to acquire a distinctively Australian incarnation as subsequent governments developed multicultural policies from 1976. From 1985 Access and Equity policies helped migrants, as well as other Australians, access services they were entitled to either as permanent residents or as citizens.

In 1989 the National Agenda for a Multicultural Australia provided the first authoritative statement of the rights and responsibilities of Australians in a multicultural society. The Australian Nationality and Citizenship Act 1948 still provides little more than a bare definition of citizenship, and tells us nothing about its legal consequences. Although its preamble refers to the rights, obligations and liberties of Australia and its people, it

nowhere explains what these are. The founding document of Australian nationhood, the Constitution, does not include the concept of citizenship. In its May 1999 report the National Multicultural Advisory Council stressed the close relationship between citizenship and multiculturalism. While it expressed the belief that 'some formal description' of the fundamental rights and obligations and the core values of citizenship is required, it acknowledged that consideration of the form such a statement should take is more properly written into the charter of the Australian Citizenship Council.

As the history of Indigenous Australians clearly demonstrates, the formal status of citizenship is meaningless unless it is given substance by legislation and administrative procedures. Although in the past both legislative and administrative change has tended to narrow the gap between the rights of permanent residents and citizens of Australia, in recent years this trend has been reversed. Some important social rights of permanent residents have been eroded, and Commonwealth-funded settlement services are now restricted largely to humanitarian entrants. Other categories of migrants are ineligible to apply for social welfare benefits in the first two years following their arrival, and many previously free and unrestricted government-provided services, such as those relating to language or employment, have been outsourced to private agencies or require fees. New instrumental incentives to become a citizen have been introduced - certain educational benefits are now only available to citizens, and citizens are given priority in sponsoring the migration of relatives.

Any future attempt to define the rights of Australian citizens should be undertaken within a conceptual framework which regards immigrants granted permanent residence as proto-citizens. Care should be taken to protect their existing rights from policies and practices resulting from shifts in popular constructions of national identity, or from changed views on the economic value of immigration. Failure to do so would place at risk the social harmony which has characterised Australia's migration program since 1947.

The term 'imagined community' is derived from Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of nationalism*, Verso, London 1983, (reprint 1991). For more detail on the Nationality and Citizenship Act 1948 see Ann-Mari Jordens, *Redefining Australians. Immigration, Citizenship and National Identity*, Hale and Iremonger, Sydney, 1995, pp 1-24.

Ann-Mari Jordens, *Alien to Citizen. Settling Migrants in Australia 1945-75*, Allen and Unwin with Australian Archives, Sydney, 1997, p 218.

For more detail on migrants in the defence forces see Jordens (1995) pp 137-151.

For changes in citizenship legislation in relation to aliens see Jordens (1997), pp 171-88.

A. J. Grassby, 'Objectives - citizenship and settlement policy', statement tabled in the House of Representatives 6.12.1973. Jordens (1997) pp 230-31.

Australian multiculturalism for a new century: Towards inclusiveness, Commonwealth of Australia, 1999, p. 42.