

Greens resignations show a need to change dual citizenship requirements

Written by Lorraine Finlay, Lecturer in Law, Murdoch University



The Greens have lost their two co-deputy leaders, Scott Ludlam and Larissa Waters, in a matter of days. AAP/Mick Tsikas

On Tuesday, the Greens' [Larissa Waters](#) became the second senator in under a week to resign from parliament, after discovering she held dual citizenship and was therefore ineligible to hold her seat. Her Canadian citizenship revelation followed Greens co-deputy leader [Scott Ludlam's resignation](#), after he was found to hold New Zealand citizenship.

It is expected that the Senate will [refer both matters to the High Court](#), sitting in its capacity as the Court of Disputed Returns. The court will almost certainly find both senators ineligible based on their dual citizenship. It will declare the resulting vacancies should be filled by a recount of the ballot papers from the 2016 federal election.

What does the Constitution say?

[Section 44 of the Constitution](#) sets out several disqualifications that result in a person being:

... incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

One of those is Section 44(i). It [disqualifies any person](#) who:

... 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.

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Section 44(i) effectively means that dual citizens are not ordinarily eligible to be elected to parliament.

The High Court has previously held that becoming naturalised as an Australian citizen is not enough on its own to escape this disqualification. A person must also take ["all reasonable steps"](#) to renounce their foreign citizenship. Exactly what this requires will depend on the circumstances of each particular case and will, in particular, depend on the law of the relevant foreign country.

In the case of both [New Zealand](#) and [Canada](#) the process is straightforward. Specific government websites provide clear advice on how to apply to renounce your citizenship.

So, by failing to make a request for release from their foreign citizenship, neither Waters nor Ludlam took reasonable steps to satisfy the requirements of Section 44(i).

Not only does Section 44(i) mean the two Greens senators are unable to remain in the parliament, but they were never actually eligible to be elected in the first place.

Why are dual nationals ineligible?

Section 44(i) was originally designed to ensure MPs had a clear and undivided loyalty to Australia, and would not be subject to any improper influence from foreign governments.

This reflected [the position in the UK](#). Those born outside "the Realm" were disqualified from holding office in the Privy Council or parliament.

The history and context of this section is important. At the time of the first Australian parliament, nearly half of all members [had been born overseas](#) – and any person born in Australia was a British subject. The legal concept of Australian citizenship did not exist until 1949.

Before 2002, any Australian citizen who became a citizen of another country automatically lost their Australian citizenship. Much has changed since Section 44(i) was first drafted.

Should Section 44(i) be reformed?

Several expert bodies and parliamentary committees have considered Section 44(i) over the years and recommended reform. The section has been criticised on several grounds, including its archaic language, unclear scope, and the sheer number of Australian citizens who are potentially disqualified under its terms.

Of particular note, given the events of the past week, has been [the criticism](#) that many Australian citizens are likely to be unaware that they are actually dual citizens.

This is not simply an academic concern. Several potential MPs have been ruled ineligible in the past on the basis of holding dual citizenship, including the [two major party candidates](#) in the 1992 Wills by-election and a One Nation Senator elected for Queensland

[at the 1998 federal election](#)

. And earlier this year the Court of Disputed Returns

[rejected a challenge](#)

to the eligibility of independent senator Lucy Gichuhi that was based around her previous Kenyan citizenship.

Figures from the 2001 Census show approximately 3 million Australian citizens were [born overseas](#)

Among the 224 MPs who currently remain in parliament,

[23 were born overseas](#)

While not every Australian who is born overseas remains a dual citizen, these figures do highlight the significant number of people who are potentially impacted by Section 44(i).

But reform can only be achieved through a constitutional referendum, which is itself [a challenging exercise](#)

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There are arguments weighing against any change. The principles that underpin Section 44(i) are still of continued importance. There is no doubt that the integrity of parliament and the loyalty of MPs are vitally important. This issue has been highlighted only recently with claims about the [influence of foreign donations](#) in Australian politics.

When considering changes to Section 44(i), the key is to strike the right balance between maximising participation by Australian citizens while also safeguarding the national interest. Given the events of the past week, now is an opportune time to engage in that conversation.

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