

Government urges the High Court to hear citizenship cases in mid-September

Written by Michelle Grattan, Professorial Fellow, University of Canberra



The government tells High Court it would be willing to pay costs of those before the court Mick Tsikas/AAP

The government has asked the High Court to hear the dual citizenship cases of several current and former MPs on September 13-14, saying there is a “compelling public interest” for the matters to be determined as quickly as possible.

In a submission to the court on behalf of Attorney-General George Brandis, Solicitor-General Stephen Donaghue also flags that Brandis would seek to appear in the case. In practice, the attorney-general would be represented by the solicitor-general.

The matters raise important issues about the proper construction of Section 44 (i) of the Constitution, and attorneys-general have appeared in relevant previous cases, the submission says.

The High Court has a directions hearing on Thursday. Brandis said at the weekend that while the government would ask the court to deal with the citizenship issue urgently, “I think realistically that may be in the first fortnight of October”.

So far, two Nationals, [Barnaby Joyce](#) and [Matt Canavan](#), two former Greens senators, [Scott Ludlam](#) and [Larissa Waters](#), and One Nation senator [Malcolm Roberts](#) have been referred to the court. When parliament resumes the Nationals’ [Fiona Nash](#) and crossbencher [Nick Xenophon](#) will also be referred.

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[The submission](#) says the Commonwealth has already obtained legal opinions from leading lawyers, in Italy on Canavan, and in New Zealand about Joyce.

“The experts conclude that, for the purposes of the domestic law of each country, senator Canavan and the Hon Barnaby Joyce MP are, or were, citizens of Italy and New Zealand respectively.

“The attorney-general understands that this conclusion will not be disputed in either reference.”

The government proposes also to seek opinions about the citizenship of the others referred to the court.

These would be sought from:

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Laurie Fransman of the UK bar. He has already given an opinion on Nash, whose father was a Scot, and “it is anticipated that he could provide a further opinion in relation to senator Roberts very quickly”. There is dispute about whether Roberts has renounced his UK citizenship.

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David Goddard of the New Zealand bar, in relation to Ludlam, who was born in New Zealand. Goddard provided the opinion on Joyce.

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A suitable expert in Canadian law who could advise on Waters, who was born in Canada.

The government says to help expedite the hearing, it would be willing to accept a court order to pay other parties’ costs.

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The government has said previously the individual MPs would be responsible for their own legal representation.

On the government's suggested timetable, the parties would provide detailed information about their circumstances by September 1.

This would include dates and places of birth of themselves, their parents, and – if relevant – their grandparents. Also, they should provide relevant immigration details for themselves and their family, and details of acquisition of Australian citizenship and renunciation of any foreign citizenship.

They should give the date and circumstances of their becoming aware they were or may be a citizen of another country.

And, if applicable, they should provide “details of any formal interactions with the relevant foreign power” such as for passport purposes, voting in elections, offers of or receipt of consular or similar assistance, or any military service requested or undertaken.

The government says that to the extent possible the cases should be heard together. “In the event that factual issues arise that prevent one or more of the references from being ready to be heard with the others, that circumstance should not delay the expedited resolution of the other references.”

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

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