BOOK REVIEWS

Australian Citizenship Law, by MICHAEL PRYLES, LL.B. (Melb.), LL.M., S.J.D. (S.M.U.), Barrister-at-law (Vic.), Senior Lecturer in Law, Monash University (Law Book Company, Sydney, 1981), pp.i-xxv, 1-271, with Table of Cases, Statutes and Regulations, and Index. Cloth recommended retail price $24.50. (ISBN : 6 455 20359 8).

This book is concerned primarily with Australian citizenship law and its historical development. The book also contains a chapter on the Australian law relating to passports. It has two useful appendices (Appendix B and Appendix C), which contain the principal Commonwealth Acts and Regulations concerned with matters of citizenship and passports, and which account for almost thirty per cent of the book.

Dr Pryles' description of his subject-matter is admirably clear, and meets the high standard of legal scholarship which we have come to expect of him. As to style, this reviewer's only criticism is that the text could in places be improved by the addition of hypothetical examples (such as the one on page 117) which would illustrate and 'bring to life' the highly complex, technical, and, some may say, 'dry' legislation with which the book is concerned. As to content, it is difficult to take issue with anything which Dr Pryles has written. It is enough to say that the book will, no doubt, become the definitive work on the subjects with which it deals.

However, this reviewer is disappointed that the book attempted no more than a technical exposition of the law. In view of the imminent enactment in the United Kingdom of radically new nationality legislation,[1] which will supersede the United Kingdom legislation[2] in conjunction with which the Australian legislation on citizenship[3] was itself drafted, it seems highly unlikely that the present Australian legislation can long survive the repeal of its British counterpart, and that a complete overhaul of the Australian legislation will be needed. The time is therefore ripe for an overall critical analysis and evaluation of the very foundations of the present citizenship law. Two types of criticism may be readily identifiable: first, those which derive from historical considerations; and, secondly, those suggested by an analysis of the contexts in which citizenship is a legally relevant criterion.

Viewed against its historical background, Australian citizenship law can now be seen as anachronistic and outmoded in many ways. Perhaps the most glaring example is the retention of the status of 'British Subject', which, since 1973,[4] has practically no meaning in Australian law, except that of exempting British Subjects from the disabilities affecting aliens. As Dr Pryles demonstrates (pages 62-66), these disabilities are not great, and, insofar as they exist, they are hardly an argument for the retention of 'British Subject' status. Rather, they suggest that the question should be whether there is any justification for their retention, and if so, whether

there is any need to discriminate between aliens and British Subjects. If it is thought desirable, for historical reasons, to retain some such status as 'British Subject', it should be replaced by the term 'Commonwealth Citizen', *and* the consequences of such classification should be carefully considered.[5] Meanwhile, Australia looks set to be the last country in the world to abolish the status of British Subject.[6] Of course, the status of British Subject *simpliciter* must be distinguished from that of 'British Subject without Citizenship' — another anachronism in our legislation.[7] This status, which is not without consequence, results from problems associated with the dissolution of the British Empire:[8] it is essentially a British problem,[9] and there is no apparent need for Australian legislation to make special provision for such Subjects, since their status could in any event be recognized in Australia by reference to United Kingdom law.[10]

More important conclusions about the sort of citizenship legislation which ought to be enacted in Australia could probably be drawn from an analysis of the contexts in which Australian citizenship is legally relevant, even if no detailed study of these contexts were undertaken. Citizenship is, of course, *traditionally* relevant in a number of contexts, *inter alia,* entitlement to a passport (ch. 4), immigration, legal restrictions upon aliens, and other diverse constitutional and statutory fields (see the list of Commonwealth Statutes on pages 170-171). Yet the importance of *Australian* citizenship in these areas should not be assumed. For example, if we take immigration, to which citizenship is no doubt popularly considered highly relevant, we may find that the immigration power[11] extends to Australian citizens,[12] or that, even if it does not so extend either as a matter of theory or, more likely, of practice (see page 42), citizenship is not an important practical consideration (*contra* page vii). This is simply because a person is either an Australian citizen or he is not, and a reading of Dr Pryles' book reveals that it is only in exceptional cases that the question, 'Is the *propositus* an Australian citizen?', will be a difficult one to answer. Once determined, no immigration problem is apparently presented, and it is unlikely that citizenship will ever be important in the area of immigration because Australia is simply not faced with a multitude of potential immigrants from all over the world who can make the cry, "civis australis sum"![13] Thus it is highly unlikely that Australia will ever have to place restrictions upon the entry into Australia of its own citizens,[14] or to pass restrictive citizenship legislation and tie the 'right of abode' in Australia to Australian citizens so defined.[15]

Indeed, if a contextual study of citizenship in Australia were to reveal that a primary objective of nationality legislation in this country ought to be to assist in the absorption into the Australian community of those migrants who so desired it, then the conditions under which Australian citizenship is granted may well require scrutiny. In particular, the present model of favouring administrative discretion (pages 92-111)[16] over legally enforceable rights, requires examination. In this regard the 1976 Canadian Citizenship Act[17] may well provide a useful model.

All this is not, of course, a criticism of Dr Pryles' book, since the considerations averted to above were manifestly beyond Dr Pryles' brief. However, it is suggested that the aims of the second edition of the book should be widened to include the sorts of issues mentioned above so as to make the book more useful and help to answer the question which initially came to this reviewer's mind, and which remained unanswered because of the limited objectives of the book: that question was, and is, 'Why a book on Australian Citizenship Law?'

It remains to add that the book has been well printed and bound. Only three small

printing errors have been detected: 'statuts' for 'status' on page 53; 'absence' for 'absences' on page 86, line 17; and, the omission of the definite article before 'Commonwealth' where it last appears on page 140.

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FOOTNOTES

1. Outlined in the White Paper 'British Nationality Law' Cmnd. 7987 (1980), summarised by Dr Pryles on pp. ix-x.
2. Principally the British Nationality Act, 1948 (U.K.).
3. Principally the Australian Citizenship Act, 1948 (Cth).
4. When the favourable terms on which British subjects could obtain Australian citizenship by registration or notification were repealed: see Pryles pp. 74-76.
5. Consider the Canadian Citizenship Act, S.C. 1976, c.108, Part VIII (ss.31-34).
6. See the White Paper, note 1 *supra* at para. 106.
7. Australian Citizenship Act, 1948 (Cth), ss.26-30.
8. See the Green Paper 'British Nationality Law', Cmnd. 6795 (1977), para. 7.
9. The retention of this status is envisaged in the White Paper, note 1 *supra* at para. 107.
10. Dicey and Morris, *The Conflict of Laws* (10th ed., London, Stevens, 1980), Vol. 1, p. 28.
11. Commonwealth Constitution, s.51 (xxvii).
12. See P. H. Lane *The Australian Federal System* (2nd ed., Sydney, Law Book Co. Ltd., 1979), pp 223, "perhaps".
13. The U.K. situation is different *inter alia* because Citizenship of the U.K. and Colonies was granted to certain groups of people as part of the decolonization process. *Cf.* the provisions relating to Australian citizenship upon the attainment of independence by Papua New Guinea: Pryles pp. 218-221.
14. See Immigration Act 1971 (U.K.), s.2.
15. As envisaged in the U.K. White Paper, note 1 *supra* paras. 14 & 22, by the creation of the status of 'British citizen'.
16. Note that the Bland Committee proposed the introduction of a review process for certain sections of both the Citizenship Act and the Passports Act : *Final Report of the Committee on Administrative Discretions* (A.G.P.S., Canberra, 1973), App. H. pp. 112, 119.
17. Note 5 *supra,* s.5, and Pt. V.

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The High Court and the Constitution, by LESLIE ZINES, Robert Garran Professor of Law Australian National University (Butterworths, Sydney, 1981) ppi-xvii, 1-358, with Table of Cases, Constitution and Index. Cloth recommended retail price $35.00. Paperback recommended retail price $27.50 (ISBN 0 409 300195, 0 409 30019 5).

Professor Zines' book "The High Court and the Constitution" evidently results from a long period of co-ordination, analysis and evaluation of the decisions of the High Court and of the reasons given by participating Justices in relation to the interpretation and application of a number of the provisions of the Constitution of the Commonwealth of Australia. It provides in these aggregations and analyses a useful overview of the decisions of the Court and, to some extent, of the expressed tendencies in opinion of some of the individual Justices in relation to some of those provisions. It is not really a book to be read continuously as a whole (though for the purpose of this review I have done so), unless as an element in historical research,