

David Barrow

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SUMMARY

- Candidate for Nomination in all five 28 July 2018 Australian federal byelections
- Must renounce my British citizenship to be eligible Candidate to Nominate in one (only)
- My prospects of being elected are somewhere between nil and very negligible
- I understand it is totally a matter of discretion for Home Department as to whether my British renunciation processing will await further information

Department 1

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UNITED KINGDOM

Special Circumstances – Renunciation British Citizenship

29 June 2018

Dear Home Secretary,

I am a Candidate for Nomination in all five Australian federal byelections (simultaneously): Longman QLD, Mayo SA, Braddon TAS, Fremantle WA and Perth WA to be contested on 28 July 2018.

I am applying to renounce my British Citizenship solely so as not to be incapable of Nominating as a Candidate for election in one (only) of the byelections.

Section 44 of the Constitution of Australia provides:

"Any person who:

- (i) is under any acknowledgment 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 a citizen of a foreign power;

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

In [Re Gallagher](#) [2018] HCA 17, delivered in the High Court of Australia on 9 May 2018, Ms Katy Gallagher was found not to have been eligible to be elected as a Senator to the Australian Federal Parliament on 2 August 2016 because at the time candidate nominations closed on 9 June 2016 she still held British-Australian dual citizenship, notwithstanding she had submitted a declaration of renunciation of her British citizenship to the Home Office by 20 April 2016 – albeit that the registration did not take effect until 16 August 2016.

Re Gallagher was a unanimous decision of all seven Justices of the High Court of Australia. However, as the Australian apex court it is not bound to follow its own decisions. Things can change.

In the event that I either:

1. do not lodge a candidate nomination for one (only) of the 28 July 2018 byelections; or
2. am not elected to the Federal Parliament;

I will notify the Home Department to immediately, if possible, withdraw my application to renounce my British Citizenship.

I note from the Guide RN for Declaration of Renunciation that if the declaration is registered in the expectation of acquiring another citizenship (which is not my circumstances), the applicant has some 6 months to provide further information concerning this.

I will provide further information on the outcome of any byelection that I contest when this becomes known. I expect that this will be at the end of July 2018.

I understand that it is totally a matter of discretion for the Home Department as to whether final processing of my application to renounce my British Citizenship will await this further information.

I note that the *British Nationality Act 1981* at section 12 “Renunciation” provides:

- "(3) A declaration made by a person in pursuance of this section shall not be registered unless the Secretary of State is satisfied that the person who made it will after the registration have or acquire some citizenship or nationality other than British citizenship; and if that person does not have any such citizenship or nationality on the date of registration and does not acquire some such citizenship or nationality within six months from that date, he **shall be, and be deemed to have remained, a British citizen notwithstanding the registration.**" [emphasis added]

It would be helpful if the UK Parliament could squeeze in a new section **12(3A)** to also give the Home Secretary powers to deem a person who renounced British citizenship for the sole purpose of contesting a Commonwealth of Australia federal election to be deemed to have remained a British citizen notwithstanding a renunciation registration.

In argument at the 14 March 2018 High Court hearing of *Re Gallagher* [2018] [HCATrans 85](#), I note that on one reading I was characterised as “**gaming**” the Australian Constitution:

MR DONAGHUE:

...The next difficulty is that – and we have already touched on this – the possibility that if one focuses just on the taking of the steps then a person can a day or even only an hour before nomination start the process of renouncing, knowing that it obviously will not be complete and perhaps preserving to themselves the capacity to withdraw the renunciation if they are not successfully elected.

That possibility is not in any way fanciful and it was, indeed, the very scenario that your Honour Justice Edelman had before you in **Barrow’s Case** which we have included in the book and I might just touch on briefly to illustrate the point. It is in the joint book of authorities at tab 9, (2017) 91 ALJR 1240.

It is a case where both – and your Honours see this at paragraphs [4] and [5] – at the 2010 election and at the 2016 election Mr Barrow sought to nominate – he made an application to renounce British citizenship just shortly before nominating and then having failed to secure election he abandoned his renunciation applications before they had been processed, so enabling him to nominate without actually losing his citizenship.

In the case of the 2016 election, he did that one day prior to the 2016 election and so it demonstrates that it is no way fanciful to say that if one, instead of requiring the process to be complete under foreign law before a person is eligible to run, that this argument that the senator is advancing creates the potential for the system to be **gamed** in that way.

...

GAGELER J: So you admit of what was put against you, the possibility of **gaming** the system?

MR GLEESON: We do not admit **gaming**. What we accept is that in the extreme examples, such as Mr Barrow, if a person is able to withdraw lawfully, which is not clear, from the moment you withdraw you cease to have the benefit of the constitutional imperative because you are no longer in the condition of a person who has taken all steps required by the foreign law and within your power; you are in the reverse situation.

A person like Mr Barrow is in the same position. Again they are extreme examples. Someone who is a sole Australian citizen and nominates and after they fail to get elected – I am sorry, who nominates and while the election is still alive for them chooses to take up a British citizenship by taking that Act up, will be disqualified on that day. So, if a person is able to effectively withdraw during the election period, the result will be they will be disqualified from that point and either section 44 or section 45 will descend upon them.

Now, they are extreme examples of people who behave that way. If they do behave that way, the Constitution provides a very clear answer – you are then disqualified. No different, as I say, to if you choose to take up a citizenship at any time during the election period.

Yours sincerely,



David C. Barrow

Enclosed: RN application to renounce British Citizenship together with payment slip, British Passport and Australian Passport