



HOUSE OF REPRESENTATIVES

House of Representatives

04 DEC 2017

Citizenship Register

To the Registrar of Members' Interests,

### Statement in relation to citizenship – 45th Parliament

I declare that at the time I nominated for election in this 45th Parliament I was an Australian citizen.

#### Section 1—Member's details

Surname	Other Names
KEAY	JUSTINE
Electorate	State
BRADDON	TASMANIA

#### Section 2—Member's birth and citizenship details

Place of birth	Citizenship held at birth
DEVONPORT, TASMANIA, AUSTRALIA	AUSTRALIAN
Date of birth	Date of Australian naturalisation <i>(if not an Australian citizen by birth)</i>
18 / 3 / 1975 Day Month Year	/ / Day Month Year

#### Notes

- (1) The information which you are required to provide is contained in a resolution agreed to by the House of Representatives on 4 December 2017.
- (2) If there is insufficient space on this form for the information you are required to provide, you may attach additional pages for that purpose. An electronic version of this form is available at <http://members.parl.net/citizenship> (internal link).
- (3) Forward the original, signed copy of all pages of this statement to the Registrar of Members' Interests, RG.39 Parliament House, Canberra ACT 2600.

**Section 3(a)—Member's parents' birth details**

	Mother	Father
Place of birth:	AUSTRALIA	UNITED KINGDOM
Date of birth:	12 / 4 / 1948 Day Month Year	27 / 1 / 1936 Day Month Year

**Section 3(b)—Member's grandparents' birth details**

	Maternal grandmother	Maternal grandfather
Place of birth:	AUSTRALIA	AUSTRALIA
Date of birth:	25 / 3 / 1925 Day Month Year	14 / 10 / 1917 Day Month Year

	Paternal grandmother	Paternal grandfather
Place of birth:	UNITED KINGDOM	UNITED KINGDOM
Date of birth:	17 / 6 / 1907 Day Month Year	? / 6 / 1908 Day Month Year

**Section 3(c)—Member's spouse details (if applicable)**

	Spouse
Place of birth:	N/A
Date of birth:	/ / Day Month Year

### Section 3(d)

Please list the steps you have taken to assure yourself you have not acquired citizenship of another country by descent, marriage or other means.

See 4(a).

**Section 4(a)—Foreign citizenship**

Have you ever been a citizen of any country other than Australia?

☐ **NO** — Proceed to Section 6☒ **YES** — List the countries that you have been a citizen of, and evidence of the date and manner in which your citizenship of any other country was renounced or otherwise came to an end in accordance with the laws of the relevant country.

Country	Manner of renunciation or other manner in which the foreign citizenship came to an end	Date	Evidence attached
UK	<p>I renounced British citizenship prior to nominating for election, by completing a <i>Form RN Declaration of Renunciation of British Citizenship</i> and dispatching it to the UK Home Office together with credit card details for payment of the processing fee.</p> <p>I completed the Declaration of Renunciation on 9 May 2016 and dispatched it to the UK Home Office on 13 May 2016 by International Registered Post.</p> <p>A copy of my Declaration of Renunciation is provided at <b>Attachment A</b>. A copy of the International Registered Post receipt is provided at <b>Attachment B</b>.</p> <p>Australia Post confirmed that my Declaration of Renunciation was delivered to the UK Home Office on 23 May 2016. A copy of the delivery confirmation is provided at <b>Attachment C</b>.</p> <p>A copy of the registered renunciation is provided at <b>Attachment D</b>.</p>	13 May 2016	Yes

**NB:** Evidence of the date and manner in which your citizenship was renounced or otherwise came to an end **should** be attached to this form. Please date and initial each page of any attachment.



**Section 4(b)—Foreign citizenship at time of nomination**

On the date you nominated for election in this 45th Parliament were you a citizen of any country other than Australia?

☐**NO**☒

**YES** — *Provide details and evidence of any steps you have taken to renounce the citizenship of the other country prior to the date of nomination.*

Country	Action	Date	Evidence attached
UK	See answer to 4(a)	13 May 2016	Yes
<b>NB:</b> Evidence of the steps taken to renounce the citizenship of the other country prior to the date of nomination <b>should</b> be attached to this form. Please date and initial each page of any attachment.			

**Section 4(c) —Foreign citizenship now**

Are you now a citizen of any country other than Australia?

☒**NO**☐

**YES** — *Provide details and evidence of any steps taken to renounce the citizenship of the other country.*

Country	Action	Date	Evidence attached
<b>NB:</b> Evidence of the steps taken to renounce the citizenship of the other country <b>should</b> be attached to this form. Please date and initial each page of any attachment.			

## Section 5—Member with foreign citizenship at nomination or now

Complete this section if you answered YES in section 4(b) or 4(c)

Basis on which you contend you are not disqualified under s 44(i) of the Constitution	Evidence attached
<p>I took all necessary steps to renounce British citizenship, in accordance with the requirements of British law, prior to nominating for election to the House of Representatives. I had therefore absolved myself of any impediment under section 44(i) of the Australian Constitution, in accordance with the "reasonable steps" test articulated by the High Court of Australia in the leading judgment of <u>Sykes v Cleary</u> and affirmed in the subsequent judgments of <u>Sue v Hill</u>, <u>Re Roberts</u> and <u>Re Canavan &amp; Ors</u>.</p> <p><b>Requirements for renunciation under British law</b></p> <p>On 9 May 2016 I completed a <i>Form RN Declaration of Renunciation of British Citizenship</i>. I dispatched it to the UK Home Office on 13 May 2016 by International Registered Post, together with credit card details for payment of the processing fee and relevant supporting documents.</p> <p>According to advice obtained from Mr Adrian Berry of the English Bar, upon dispatching the Form RN on 13 May 2016 I had taken all steps necessary to renounce British citizenship, according to the requirements of British law.</p> <p>Mr Adrian Berry is a leading expert on British Nationality Law. A copy of his professional profile is attached at <u>Attachment E</u>.</p> <p>A copy of Mr Berry's written advice of 1 December 2017 is provided at <u>Attachment F</u>. Mr Berry concludes:</p> <p>26. <i>In my opinion Justine had satisfied all the legal requirements for renouncing British citizenship when she despatched her completed Form RN Declaration of Renunciation of British citizenship on 13<sup>th</sup> May 2016, together with the documents accompanying that request. In completing the Form RN and sending it, together with the supporting documents, to the appropriate authority, she had complied with the prescribed requirements.</i></p> <p>27. <i>There were no further steps that she needed to take in order to provide the prescribed information sought under Section 12 of the British Nationality Act 1981 and Regulations 8 and 9 and Schedule 5 of the British Nationality (General) Regulations 2003.</i></p> <p><b>Reasonable steps test</b></p> <p>As I took all necessary steps to renounce British citizenship in accordance with the requirements of British law, prior to nomination, I had therefore absolved myself of any impediment under section 44(i) of the Australian Constitution.</p> <p>I enclose advice obtained from Ms Simona Gory and Mr Ray Finkelstein AO QC (<u>Attachment G</u>), who advise that (at paragraph 21 of their advice), as I had completed a Declaration of Renunciation and dispatched it to the Home Office together with credit card details for payment of the processing fee prior to nomination, I had:</p> <p><i>...taken all necessary steps to renounce her British citizenship. The only reason she remained a British citizen at the time of her nomination as a candidate and at the time she was elected as a member of the House was the time it took for the Home Office and Secretary of State to process her declaration.</i></p> <p>Accordingly, Ms Gory and Mr Finkelstein QC conclude that I was validly elected as the Member for Braddon and am qualified to sit as a Member of the House of Representatives.</p>	<p>Yes</p>

**NB:** Please date and initial each page of any attachment.

**Section 6—General declaration**

I declare that I have completed this statement to the best of my knowledge and have attached all evidence relevant to my declarations.

Signed	Date:
	<div data-bbox="963 472 1310 512">4 / 12 / 2017</div> <div data-bbox="932 528 1294 553">Day                      Month                      Year</div>

Applicant's Copy

3. I hold the following citizenship or nationality other than the citizenship or status I wish to renounce:

AUSTRALIAN

4. I am about to acquire the following citizenship or nationality after making this declaration:

N/A

5. I, (full name in BLOCK LETTERS) JUSTINE TERRI KEAY  
declare that to the best of my knowledge and belief the details given on this form are true.

Signature



Date

9/5/2016

Official confirmation of renunciation:

Signature



Home Office



Home Office

Form RN

June 2015

Official Copy

Declaration of Renunciation of British Citizenship, British Overseas  
Citizenship, British Overseas Territories Citizenship, British National  
(Overseas) or British Subject Status

IMPORTANT: Please read the guide RN before you fill this form in. Both parts of the form should be completed, signed and submitted. Please write in BLOCK LETTERS.

If your declaration of renunciation is registered the Applicant's Copy of this form will be signed, stamped and returned to you, and will be formal evidence of the renunciation.

Note: Some of the information you provide on this form will be stored on a computer which is registered under the Data Protection Act.

1. I (full name)

J U S T I N E   T E R R I   K E A H

of (full address)

[REDACTED ADDRESS]

Telephone number:

[REDACTED TELEPHONE NUMBER]

Email address:

[REDACTED EMAIL ADDRESS]

was born on (date of birth)

1 8   0 3   1 9 7 5

at (place and country of birth)

DEVONPORT, AUSTRALIA

2. I am a: (please tick)

☒ British citizen

☐ British overseas citizen

☐ British overseas territories citizen

☐ British national (overseas)

☐ British subject

I wish to renounce: (please tick)

☒ British citizenship

☐ British overseas citizenship

☐ British overseas territories citizen

☐ British national (overseas) status

☐ British subject status

See section 1 of the Guide and enclose evidence of your citizenship(s) or status – see section 3

You must complete either section 3 or section 4. If both apply, please complete both. You should send evidence of any other citizenship held or about to be acquired.

3. I hold the following citizenship or nationality other than the citizenship or status I wish to renounce:

AUSTRALIAN

4. I am about to acquire the following citizenship or nationality after making this declaration:

N/A

5. If you are under 18 please state your date of marriage or civil partnership:

--	--	--	--	--	--	--	--	--	--

6. Declaration

Warning: To give false information on this form knowingly or recklessly is a criminal offence punishable with up to 3 months' imprisonment or a fine not exceeding £5000 or both (Section 46(1) of the British Nationality Act 1981 as amended).

I, (full name in BLOCK LETTERS) JUSTINE TERRI KEAY  
declare that to the best of my knowledge and belief the details given on this form are true.

Signature



Date

9/5/2016



7. Declaration by countersignatory

Name:

[Redacted Name]

Address:

[Redacted Address]

Daytime telephone number:

[Redacted Telephone Number]

Either:

☒

I confirm that I am aged 18 or over, that I know the person who is making this declaration of renunciation, and that he/she is of full capacity. I am willing to give full details of my knowledge of this person. (See sections 1 and 3 in the guide.)

Or:

☐

I confirm that the person who is making this declaration is not of full capacity, but that renunciation would be in his or her best interests for the following reasons. I enclose documentation to show that he or she is in my care.

I understand that I may be liable for prosecution resulting in a penalty of up to 3 months imprisonment or a fine not exceeding £5,000 or both if I knowingly or recklessly make a false declaration.

Signature

[Redacted Signature]

Date

9 May 2016

A U S T R A L I A P O S T  
DEVONPORT - POST SHOP 7310 7310

PP Intl Std 500g Satchel \$ 28.32  
UNITED KINGDOM - Zone 6  
S S up to 500gm (Manual)  
Signature on Delivery 4.99  
Track Advice Email (Free)  
Article ID:  
CF100468330AU  
Notification: keayj@hotmail.com

Please retain as proof of lodgement.  
For track event information go to  
[www.auspost.com.au/track](http://www.auspost.com.au/track)

Extra Cover Not Purchased  
PADDED STCHL LNRSM x 1 1.10 \*  
TOTAL \$34.41  
Payment Tendered Details :  
EFTPOS 34.41  
\* POST supplied, price includes GST.  
GST on POST Taxable Supply : 0.10

ABN:28 864 970 579

TAX INVOICE

EFTPOS  
560254#####2040 (S) SAVINGS ACCOUNT  
EFTPOS Tender 34.41  
TOTAL EFTPOS 34.41  
APPROVED 00  
Proprietary Debit  
RRN 004243163601  
13/05/16 16:36:01 732578 01/004243 cr5

# Your item has been delivered

23 May 2016 at 6:35 pm

Found in Hotmail Inbox



Tracking update


Good news, your item  
has been delivered

Arrived at destination in **United Kingdom**

 **Delivered**

CF100468330AU

Sent with **International Post Standard**

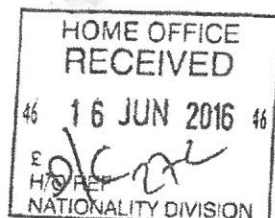
 **STARTRACK**

business of Australia Post





Home Office

 RENUNCIATION  
 REF NO: 3273441


Form RN

June 2015

Applicant's Copy

Declaration of Renunciation of British Citizenship, British Overseas  
 Citizenship, British Overseas Territories Citizenship, British National  
 (Overseas) or British Subject Status

This declaration, if signed and stamped below, is formal evidence of renunciation.

1. I (full name)

JUSTINE TERRI KEAY

of (full address)



was born on (date of birth)

18 03 1975

at (place and country of birth)

DEVONPORT AUSTRALIA

2. I am a: (please tick)



British citizen



British overseas citizen



British overseas territories citizen



British national (overseas)



British subject

I wish to renounce: (please tick)



British citizenship



British overseas citizenship



British overseas territories citizen



British national (overseas) status



British subject status



3. I hold the following citizenship or nationality other than the citizenship or status I wish to renounce:


AUSTRALIAN

4. I am about to acquire the following citizenship or nationality after making this declaration:

N/A

5. I, (full name in BLOCK LETTERS) JUSTINE TERRI KEAY  
declare that to the best of my knowledge and belief the details given on this form are true.

Signature



Date

9/5/2016

Official confirmation of renunciation:

Signature



Home Office

HOME OFFICE

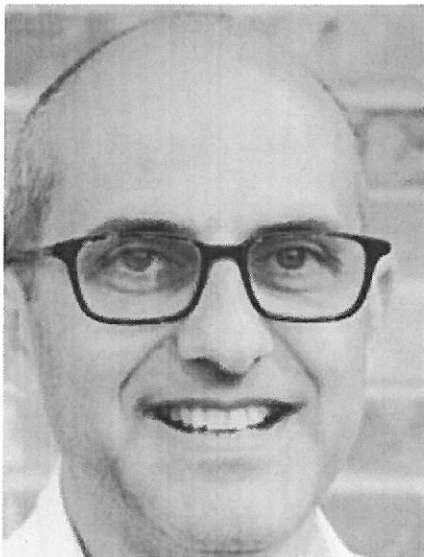
11 JUL 2016

REGISTERED



## ADRIAN BERRY

Call: 1998



***"One of the finest legal minds of our time."***

***"Analytical, and extremely clever at complex law; the best of any barrister at EU and nationality law."***

The Legal 500 and Chambers UK Bar Guide

## Practice

Adrian's core public law practice spans a range of inter-related areas concerning citizenship, migration, human rights, international protection, and social assistance:

1. British Nationality, Conflict of Nationality Laws, and Statelessness
2. Investor, Entrepreneur, High Value, and Economic Migration (inc Work Permits)
3. EU Citizenship and Free Movement of Persons
4. Human Rights and Family Reunion
5. International Protection, Refugee Law and Asylum, and Extradition
6. Settlement, Permanent Residence, and Citizenship, for High Value Migrants
7. Student Migration
8. General UK Immigration Law
9. Homelessness, Housing, and Migrant Welfare
10. Community Care and Welfare Benefits

He acts and advises across the field of public law. He provides advice and advocacy services. He accepts instructions via a solicitor or other licenced professional client. In addition, he is acts for clients directly under the Bar Public Access scheme.

Adrian acts for individuals, communities and, where appropriate, NGOs and international organisations. He accepts instructions to assist persons with applications, reviews and legal remedies in courts and tribunals. He

also acts as a consultant to NGOs and international organisations, to assist with strategic litigation, analyses and reports of immigration and nationality law and practice, and actions plans for reform.

Adrian practises in the Administrative Court, the Immigration Tribunals, the Administrative Appeals Chamber of the Upper Tribunal, Appeal Courts, County Courts, and the Special Immigration Appeals Commission (SIAC). He has acted in cases before the Court of Justice of the European Union (CJEU) and with petitions to the European Court of Human Rights. A list of some of his notable cases is set out below.

He writes a blog on migration, citizenship and free movement called Cosmopolis. He also has a website on Nationality and Citizenship law. As an immigration barrister he is well known, not just for his casework, but also for his policy work and contribution to debates on immigration and nationality law.

## What others say

Adrian is ranked in both legal directories for immigration. He is ranked in Tier 1 in the Legal 500 2016 and Band 1 in Chambers UK 2017.

In Chambers UK he has been described as having "real flair" and as being "excellent on EU points." In the Legal 500 he has been described as 'an "EU whiz-kid" who manages to "unscramble the EU and social security minefield with ease"', as having 'an extensive British nationality law practice', and as someone whose "commitment to ensuring that EU law can be used to benefit people who would otherwise be destitute is unwavering."

In **Chambers UK 2017**, Adrian is described as "An exceptionally skilled junior, whose practice is heavily focused on British nationality and EU free movement law. He routinely receives instructions from large-scale corporations in major commercial immigration matters." "An absolutely brilliant brain and a delightful personality – always a pleasure to work with." "One of the finest legal minds of our time."

In the **Legal 500 2016**, it is written that "His knowledge of the EU aspects of immigration law is unrivalled."

In **Chambers UK 2016**, it is written that "He remains one of the few true experts on nationality law." "He knows EEA law inside out. He is a seasoned High Court advocate and is so well connected in the world of immigration law, domestically and throughout Europe."

In **Legal 500 2015**, Adrian is described as "Analytical, and extremely clever at complex law; the best of any barrister at EU and nationality law." Regarding his social housing practice, "His depth of knowledge is excellent."

In **Chambers UK 2015**, it is written that Adrian "has an excellent reputation for his work on British nationality, international protection and asylum matters. He is often called upon to advise the UNHCR on statelessness, and he provides businesses, schools and individuals with information on Tier 1 and Tier 4 applications. He is described as "incredibly knowledgeable across all areas of UK immigration law and always willing to take the time to have something run by him." "Very impressive on nationality issues and statelessness, and a very good advocate and communicator."

In **Chambers UK 2014**, Adrian is described as a "guru on European immigration issues," and as "thorough and highly knowledgeable." "In EU law he really is the person." Regarding his practice in social housing, he is described as "bright and articulate," Adrian Berry has extensive knowledge of the eligibility of EU nationals to housing rights. "He's really stepped up as a leading junior on EU-related housing cases." "He's consistently turning out quality Court of Appeal and European work." Sources praise him for his ability to convey complex arguments in a concise, clear and persuasive manner."

In **Legal 500 2014**, Adrian is highlighted in Social Housing where it is said that "his knowledge of European Law is exceptional and his drafting is precise and clear." He is also highlighted in Immigration where it is noted that "Judges listen to him."

## British Nationality law, Nationality law codes, and Statelessness



Adrian has an extensive practice in British nationality law, both (1) in historic Commonwealth-based claims and (2) in contemporary issues concerning the automatic acquisition of citizenship, naturalisation and registration, as well as deprivation and loss of British nationality. He advises on claims to be a British citizen, British Overseas citizen (BOC), British overseas territories citizen (BOTC), British National (Overseas) (BN(O)), British protected person (BPP) or British subject.

He also regularly advises on the conflict of nationality laws for people with multiple nationalities, who hold or seek to hold both British nationality and other foreign nationalities, where the other countries are intolerant of multiple nationalities. In these cases he acts in partnership with foreign lawyers to resolve the conflict of laws between nationality law codes, as well as issues concerning domicile and tax. He also advises on the use of passports as markers of nationality.

As regards statelessness issues, he acts and advises in relation to statelessness cases, including in relation to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. He works on cases concerning stateless persons in detention, the regularization of stateless persons, and the welfare of stateless persons. He has worked with Asylum Aid and the Equal Rights Trust on statelessness issues and – as a member of the UNHCR London panel of counsel – he advises UNHCR on statelessness issues. He is a member of the Advisory Council of the European Network on Statelessness (ENS).

He has contributed to all chapters and parts of *Fransman's British Nationality Law* (3rd edition 2011), contributed the nationality law chapters to the *JCWI Handbook* 2006, contributed to *Jackson and Warr's Immigration Law and Practice* (2008) on the Right of Abode, contributed the nationality law chapters to the *Blackstone's Guide to the Borders, Citizenship and Immigration Act 2009* (OUP 2010), advised JCWI on government nationality proposals, and contributed to responses to government consultation papers and advised peers in the House of Lords for ILPA.

He has written on the relationship between British nationality and EU citizenship in *Deprivation of Nationality and Citizenship – The Role of EU Law* Journal of Immigration Asylum and Nationality Law Volume 28 Number 4 2015 pp. 355-366. In addition, he has provided advice in *Chagos Islanders v UK* (ECtHR) on the position of the Chagos Islanders in British nationality law.

He provides training on British nationality law and has taught nationality law as part of international public law to LLM students. He was a member of the group of nationality law experts reviewing the draft Protocol to the African Charter on Human and Peoples' Rights on the right to Nationality and the Prevention and Prohibition of Statelessness in Africa. He was a member of the Home Office Earned Citizenship Strategic Advisory Group.

### **Investor, Entrepreneur, High Value and Economic Migration (inc Work Permits)**

Adrian acts for individuals, commercial undertakings, and institutions in relation to matters arising for economic migrants under the Points-Based System (Tiers 1, 2 and 5) and other routes. Among other things, he provides advice to individuals, sponsors, and banks and financial entities, in relation to the Tier 1 (Investor) route, the Tier 1 (Entrepreneur) route, Tier 2 work permits and Tier 2 Intra-Company Transfers (ICTs), and to individual and sponsors under other routes.

He regularly advises on the issues that arise for migrants and for employers in relation to unlawful employment and civil penalties (including county court appeals), including scenarios where the employer holds a sponsor licence. He also works with employment lawyers to advise on the cross-over between immigration sponsorship, breaches of immigration law, employment rights law, and dismissal law, in relation to migrants. He writes on economic migration issues. In addition, he provides strategic advice to professional associations, commercial entities and community interest groups on the use of the economic migration routes and the opportunities for lobbying the UK Home Office on areas of concern.

### **EU Citizenship and Free Movement**

Adrian has an extensive practice in relation to both EU citizenship and the free movement of persons under EU law. He has appeared in numerous cases before the Court of Justice of the European Union (CJEU) (including

*Chen, Teixeira* and *Dias*) and in numerous reported cases in domestic UK courts. He has a particular interest in EU law as it applies to EU citizens and third country nationals in immigration and social welfare cases.

As regards immigration law, he advises on free movement of persons under Directive 2004/38/EC, deportation, rights of residence derived from other EU law provisions, Posted Workers rights, and the use of the Charter of Fundamental Rights to protect family members of EU migrants.

As regards social welfare cases, he also advises on entitlement to social assistance under EU law, the co-ordination of social security (Regulation 883/2004), and the right to equal treatment in social policy and education matters.

As regards EU citizenship, he advises on rights derived from EU citizenship (*Zambrano* related rights) and associated social welfare rights, see for example his case of *Pryce v Southwark* in the Court of Appeal.

He has provided advice and assistance on EU law issues to the AIRE Centre, FEANTSA, and ILPA, among others. He has written extensively about the welfare of EU migrants, see *Macdonald's Immigration Law and Practice; Housing Law Handbook* (Law Society 2009); *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009); and *Social Rights under Directive 2004/38/EC* *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244.

## Human Rights and Family Reunion

Adrian advises and acts across the range of human rights issues that affect his clients, deploying human rights arising under the ECHR, the EU Charter of Fundamental Rights, the Common Law and other human rights catalogues, as appropriate. In immigration proceedings he acts for clients with family reunion issues and those who seek to rely on the European Convention on Human Rights. He has a particular interest in the intersection between immigration proceedings and family proceedings, and the procedural protection afforded by article 8 ECHR, see for example ***Mohan v Secretary of State*** [2012] EWCv Civ 1363, Court of Appeal. He advises on human rights and fundamental rights to European NGOs working variously on nationality, statelessness and homelessness issues.

## International Protection, Refugee Law and Asylum, Extradition

Adrian acts for a small number of clients with complex and sensitive asylum and international protection claims. Many of his clients have extensive political and economic interests in the country from which they have fled, have a high profile and are also liable to extradition. He works in partnership with extradition lawyers, immigration solicitors, country experts and commercial advisors to provide a comprehensive service. He provides advice and representation in matters arising under the 1951 Refugee Convention, the Refugee Qualification Directive (2004/83/EC) and the European Convention on Human Rights. He also acts in European Arrest Warrant (EAW) and Extradition cases and appeals. He also acts for a small number of clients with general asylum claims, including clients with multiple nationalities, statelessness issues, difficult issues in relation to a nexus to a Refugee Convention reason, and those subject to removal under the Dublin Regulation. He writes on Refugee law issues. He is a contributor to *Asylum Law and Practice* (Bloomsbury Professional, 2010).

## Settlement, Permanent Residence and Citizenship for High Value Migrants

Adrian provides strategic advice on settlement and citizenship options for persons looking to secure settlement, permanent residence and citizenship in the UK and elsewhere. He works in partnership with lawyers in other jurisdictions and with tax and financial advisors to ensure that clients are able to undertake the strategic planning necessary to optimise their position.

## Student Migration

As regards students and matters arising under Tier 4, Adrian advises and acts for individuals migrating to the UK. He also for schools, and colleges in relation to sponsor licences (issue, suspension and revocation

matters). In addition, he provides strategic advice to professional associations, commercial entities and community interest groups on the use of the student migration routes and the opportunities for lobbying the UK Home Office on areas of concern.

## General Immigration Law

Adrian acts and advises clients with issues arising under general immigration law. In addition to the work described above, he advises and acts for clients seeking to enter and remain in the UK under the Immigration Rules and on the options outside of the Immigration Rules. He also acts for clients who are unlawfully detained, those facing deportation as 'foreign criminals' or facing removal proceedings, and those whose cases require a detailed knowledge of the structure of immigration control under the Immigration Act 1971. He has also advised and represented OISC advisors in disciplinary matters before the First-tier Tribunal (Immigration Services). He is a contributor to *Macdonald's Immigration Law and Practice*.

He advises and acts for landlords subject to Home Office civil penalties under the 'right to rent' provisions of the 2014 Immigration Act.

## Homelessness, Housing and Migrant Welfare

Adrian regularly acts and advises in all areas of homelessness and allocations law concerning matters that are amenable to judicial review and in statutory homelessness appeals in the county court. In particular, he specialises in eligibility issues for migrants, appearing in numerous, reported cases. He has also provided HPLA with training and workshops on eligibility issues.

Adrian's expertise in social housing is in securing accommodation and housing for migrants. He provides a distinct service to solicitors with migrant clients based on being a one-stop shop on account of his fluency in housing, immigration, nationality, EU, ECHR and social security law. Where possible he solves problems in one of these areas by finding solutions in another.

In 2010 he was counsel in the first housing case (one of two linked cases) to reach the Court of Justice of the European Union from a British court, see **Teixeira v London Borough of Lambeth** [2010] EUECJ C-480/08. In addition he has a string of reported cases demonstrating his expertise in helping migrants secure: homelessness assistance, asylum support accommodation, accommodation for children leaving care, and housing benefit. He is responsible for many of the homelessness 'eligibility' cases decided in the Court of Appeal in recent years.

Adrian has developed a deep interest in migrant welfare, housing and support matters under different statutory regimes. His clients often have issues that touch on the Housing Act 1996, Community Care provisions, the Children Act 1989, and asylum support matters. He has particular expertise in asylum support, has a detailed knowledge of the asylum support system and has written extensively on support for asylum seekers.

He is widely published on social housing for migrants having contributed to the chapter in *Macdonald's Immigration Law and Practice* on 'Asylum Support, Housing and Community Care'; contributed the chapter in *Asylum Law and Practice* (Bloomsbury Professional, 2010), on the accommodation, housing and support of migrants 'Treatment of Asylum Seekers'; and contributed the chapter in the *Housing Law Handbook* (Law Society, 2009), on 'Housing outside the Parts 6 and 7 of the Housing Act 1996'. He also wrote the chapter in *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009) on benefits, including housing benefit.

He has a particular specialism in EU law as it applies to EU citizens and third country nationals in social housing, welfare and immigration cases, appearing in numerous reported cases. He is the author of 'Social Rights under Directive 2004/38/EC' *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244

## Community Care and Welfare Benefits

Adrian acts and advises clients in the First-tier and Upper Tribunal in social security and pensions cases, including but not limited to cases that touch on immigration issues, EU law issues, pensions and points of statutory construction. He has also acted in such cases, many reported, before the Administrative Court, the Court of Appeal and by way of reference before the European Court of Justice. He contributed the chapter on benefits to *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009). He has a particular expertise in the co-ordination of social security for migrants under EU Regulation 883/2004. In community care matters, he acts and advises clients, and migrants, in particular on access to social assistance and entitlement under EU law.

### Training and Teaching

Adrian provides training courses in British nationality law, EU law, immigration law, community care law, migrant welfare law, housing law, social security law and immigration law. He has provided accredited training for the Academy of European Law, Garden Court Chambers, ILPA, HLP, JCWI, Legal Action, law centres, and local authorities. Private training on tailored topics can be provided on request. He has taught International Migration Law to LLM students.

## Publications

### Books

- *Macdonald's Immigration Law and Practice* (2015) contributor
- *Fransman's British Nationality Law* (3rd edition, 2011) contributor to all chapters.
- *Asylum Law and Practice* (Bloomsbury Professional, 2010), contributed the chapter on 'Treatment of Asylum Seekers'
- *Blackstone's Guide to the Borders, Citizenship and Immigration Act 2009* (OUP, 2010) co-author (wrote the chapters on British nationality)
- *Housing Law Handbook* (Law Society, 2009), co-author, contributed the chapter on 'Housing outside the Parts 6 and 7 of the Housing Act 1996'
- *Support for Asylum Seekers and other Migrants* (Legal Action Group, 2009), contributed the chapter on benefits.
- *Blackstone's Guide to the Criminal Justice and Immigration Act 2008* (2009) (contributed the chapter on 'Foreign Criminals'/Special Immigration Status)
- *Jackson and Warr's Immigration Law and Practice* (4th Edition, 2008) (contributor, 'The right of abode'/British nationality)
- *JCWI Immigration, Nationality and Refugee Law Handbook 2006* (contributor, British nationality chapters)
- *Dealing with your Dismissal* (Hodder Headline 2000), author (concerning dismissal and redundancy law)

### Articles

- *Deprivation of Nationality and Citizenship – The Role of EU Law* *Journal of Immigration Asylum and Nationality Law* Volume 28 Number 4 2015 pp. 355-366
- *The Right to Marry and Immigration Control: The Compatibility of Home Office policy with Article 12 and Article 14 ECHR in Baiai* *Journal of Immigration Asylum and Nationality Law* Volume 23 Number 1 2009 pp. 41-50
- *Border Trouble: The UK Borders Act 2007* *New Law Journal* 158 NLJ 201 8 February 2008
- *Social Rights under Directive 2004/38/EC* *Journal of Immigration Asylum and Nationality Law* Volume 21 Number 3 2007 pp. 233-244

## Pro Bono and Community Work

- European Human Rights Advocacy Centre (EHAC)

## Notable Cases include:



**R(ML(Morocco) v Secretary of State for the Home Department [2016] EWHC 2177 (Admin), High Court.** A period of 10 months' detention under immigration powers while the Secretary of State tried to obtain an emergency travel document for a stateless individual was not unlawful. **Lopes v London Borough of Croydon [2016] EWCA Civ 465, Court of Appeal.** The court determined the correct destination for appeals where there had been an appeal to the county court which had made a determination as to costs and the parties wished to appeal the costs order. **London Borough of Croydon v Y [2016] EWCA Civ 398, Court of Appeal.** A judge should have granted a local authority's application to strike out or stay an asylum seeker's challenge to an age assessment unless he consented to further age assessments where such an order was reasonably necessary to enable the local authority to defend the challenge and the asylum seeker's refusal to give his consent was unreasonable. The principles from *Starr v National Coal Board* [1977] 1 W.L.R. 63 were not confined to private law litigation. **Secretary of State for Home Department v Ojo [2015] EWCA Civ 1301, Court of Appeal.** The acquisition of a permanent right of residence depended on continuous residence with a qualifying status. Residence and immigration status were not analogous and a period during which the requisite financial dependency had been broken could not be ignored. **R(Bondada) v Secretary of State for the Home Department [2015] EWHC 2661 (Admin), High Court.** An applicant who had been born in India to a father who had acquired British citizenship prior to her birth established her entitlement to British citizenship by descent, pursuant to the British Nationality Act 1981 s.11(1), where her mother's passport from 1978 provided clear evidence of her parentage and her parents' marriage. **Secretary of State for Work and Pensions v SF [2015] UKUT 502 (AAC), Upper Tribunal.** Pregnancy and childbirth were not of themselves enough to take a woman off the employment market and so outside the scope of TFEU art.45; a woman was protected by her worker status until such time, not exceeding the "reasonable period" contemplated by Saint Prix, as she showed an intention not to be part of the employment market. **B(Eritrea) v Secretary of State [2015] EWCA Civ 141, Court of Appeal.** A Refugee was lawfully entitled to benefits from the date his status was established. **R(Kondrak) v Secretary of State [2014] EWHC 639 (Admin), High Court.** The detention of a Polish national pending administrative removal was unlawful from the outset. **R(Foo Ann Ku) v Secretary of State [2013] EWHC 3881 (Admin), High Court.** At the date of removal of a British Overseas Citizen (BOC) the Secretary of State had reason to believe that the individual would be admitted to Malaysia. **Pryce v London Borough of Southwark, Secretary of State for the Home Department intervening [2012] EWCA Civ 1572 (7 November 2012) Court of Appeal.** Whether an unlawfully present parent of a British citizen/EU citizen child derived a right of residence from the need to enable the child to enjoy the genuine substance of his rights as an EU citizen in the country of his birth; whether EU citizenship after the case of *Zambrano* could confer a directly effective right of residence on that parent that rendered her eligible for homelessness assistance. **Mohan v Secretary of State for the Home Department [2012] EWCA Civ 1363 (23 October 2012) Court of Appeal.** The extent of the procedural protection afforded by article 8 ECHR, when immigration expulsion proceedings are afoot but family proceedings concerning contact with a child are not yet complete. **SL v Westminster City Council, Medical Foundation for the Care of Victims of Torture and MIND intervening [2011] EWCA Civ 954 (10 August 2011) Court of Appeal.** (acted for Medical Foundation by way of written submissions) The correct approach to the construction of s 21(1)(a) of the National Assistance Act 1948 as regards 'care and attention' and whether accommodation is 'otherwise available' when considering whether there is a duty to provide residential accommodation. **Secretary of State for Work and Pensions v Maria Dias [2011] EUECJ C-325/09 (21 July 2011) European Court of Justice.** Whether periods of residence completed prior to the transposition of Directive 2004/38/EC contribute to the acquisition of the right of permanent residence. Whether periods of residence completed in reliance on a Residence Permit contribute to the acquisition of a right of permanent residence. **PM (EEA – spouse – "residing with") Turkey [2011] UKUT 89 (IAC) (7 March 2011) Upper Tribunal.** Regulation 15(1)(b) of the Immigration (European Economic Area) Regulations 2006 applies to those who entered a genuine marriage where both parties have resided in the United Kingdom for five years since the marriage; the EEA national's spouse has resided as the family member of a qualified person or otherwise in accordance with the Regulations and the marriage has not been dissolved. The "residing with" requirement relates to presence in the UK; it does not require living in a common family home. **R(on the application of Birara) v Hounslow Borough Council [2010] EWHC 2113 (Admin) (16 July 2010) Administrative Court.** Accommodation for Children Leaving Care: Whether a local authority's decision to cease to provide a young person previously under its care with support and accommodation once she turned 21 could not stand where, in reaching that conclusion, it had failed to have regard to its own policy to continue to fund education past 21 in exceptional circumstances. **Teixeira (European citizenship) [2010] EUECJ C-480/08 Teixeira v London Borough of Lambeth and another C-**

**480/08 (23 February 2010) European Court of Justice** Whether an EEA national who is both a former worker and the primary carer of her children who are in education, is eligible for homelessness assistance by virtue of enjoying a right to reside pursuant to Article 12 of Regulation (EEC) 1612/68. **R (Ghai v Newcastle City Council and Others & Secretary of State for Justice (Interested Party) & (1) Ramgharia Gurdwara, Hitchin (2) Alice Barker Welfare & Wildlife Trust (3) Equality & Human Rights Commission (4) Hindu Merchants Association (interveners) [2010] EWCA Civ 59 (2010) 3 All ER 380, (2010) 7 EG 101 (CS), Times, February 18, 2010 (10 February 2010) Court of Appeal** Whether the wishes of an orthodox Hindu that his remains be cremated on a traditional fire could be accommodated under the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008, whether the kind of structure that he found acceptable for his cremation was a "building" within s of the 1902 Act. **Malekout v Secretary of State for Work & Pensions [2010] EWCA Civ 162 (02 February 2010) Court of Appeal** Whether for payments to be disregarded under the Income Support (General) Regulations 1987 Sch.9 para.15(5A)(e) for the purposes of assessing a claimant's entitlement to income support, the agreement giving rise to the payments, and not just the payments themselves, had to have been made in consequence of personal injury to the claimant. **HS v Secretary of State (29 January 2010) SC/69/2008 Special Immigration Appeals Commission** Whether the exclusion a foreign national resident in the UK was in the interests of national security and compatible with Article 8 ECHR. **Low & Ors, R (on the application of) v Secretary of State for the Home Department [2010] EWCA Civ 4 (14 January 2010) Court of Appeal** Whether the decision of the Secretary of State to refuse residence documents to third country nationals otherwise unlawfully present in the UK was contrary to the freedom to provide services under Article 49 of the EC Treaty when such nationals were temporarily employed by an Irish company with a contract to provide services in the UK. **Novitskaya v London Borough of Brent & Anor [2009] EWCA Civ 1260 (01 December 2009) Court of Appeal** Whether a claim for housing benefit can be made without using explicit words to indicate that a claim for housing benefit is being made. The judgment benefits vulnerable persons who make defective claims for housing benefit. **Secretary of State for Work and Pensions v Dias [2009] EWCA Civ 807 (31 July 2009) Court of Appeal** Whether a EU Residence Permit confers eligibility for income support on a single female head of household who left work to care for her child by virtue of Article 16 of Directive 2004/38/EC or Article 18 of the EC Treaty; referred to the European Court of Justice. **Yesiloz v London Borough of Camden & Anor [2009] EWCA Civ 415 (20 May 2009) Court of Appeal** Whether a Turkish asylum seeker on temporary admission and subject to immigration control, as a citizen of a state that had ratified ECSMA, and in respect of whom some provision had been made in social security legislation, ought to be considered as having a right to reside for housing benefit purposes. **Barry v London Borough of Southwark [2008] EWCA Civ 1440 (19 December 2008) Court of Appeal:** Whether an EEA national was eligible for homelessness assistance as a worker where he had worked for two weeks at a tennis championship and sought to retain worker status. **BY v Secretary of State for the Home Department [2008] UKSIAC 65/07 (07 November 2008) Special Immigration Appeal Commission** The application of EU law to an entry clearance application where national security forms the ground for exclusion. **Baiai & Ors, R (On The Application of) v Secretary of State For The Home Department [2008] UKHL 53 (30 July 2008) House of Lords** Whether the scheme introduced by the Secretary of State that limited the rights of those subject to immigration control to enter into a civil marriage infringed the European Convention on Human Rights 1950 Art.12 and was therefore unlawful. The objection inherent in the scheme applied just as much in the case of an illegal entrant as in the case of persons with very limited permission to remain. **Humphries & Ors v Secretary of State for Work and Pensions [2008] EWHC 1585 (Admin) (09 July 2008) Administrative Court** Child Support Agency (CSA) The application of the ex gratia compensation scheme and the use of administrative complaints procedures. **Ehiabor v Royal Borough of Kensington & Chelsea [2008] EWCA Civ 1074 (08 May 2008) Court of Appeal** Homelessness: whether a child born in the UK to a person subject to immigration control, who had never left the country, could be a 'person from abroad' for the purposes of homelessness legislation. **Secretary of State for Work and Pensions & Anor v Boyle & Anor [2008] EWCA Civ 210 (31 January 2008) Court of Appeal** Child Support Agency: The correct construction of secondary legislation where there is an interim maintenance assessment and information is provided to enable a full maintenance assessment to be made. **Christie v Department for Constitutional Affairs & Anor [2007] UKEAT 0140\_07\_2307 (23 July 2007) Employment Appeal Tribunal** Whether a part-time fee paid tribunal chairman was a 'worker' within the meaning of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Part Time Workers Framework Directive (97/81/EC). **FD (Algeria) v Secretary of State for the Home Department [2007] EWCA Civ 981 (25 September 2007) Court of Appeal** Whether the Secretary of State can rely on the unlawful presence of an unmarried partner of an EEA national to refuse a

residence card, notwithstanding that they are in a durable relationship and whether the Secretary of State can apply the domestic immigration rules to the application (case settled). **Rowley & Ors v Secretary of State for Department of Work and Pensions [2007] EWCA Civ 598 (19 June 2007) Court of Appeal** Whether the Secretary of State for Work and Pensions owed a common law duty of care in negligence to an applicant for child support under the Child Support Act 1991 as such a duty would be inconsistent with the statutory scheme. **Baiai & Ors, R (on the application of) v Secretary of State for the Home Department & Anor [2006] EWHC 1035 (Admin) (10 May 2006) Administrative Court** Whether human rights damages are available and should be awarded to a person where there is a breach of Article 12 and Article 14 ECHR. **Paul-Coker, R (on the application of) v London Borough of Southwark [2006] EWHC 497 (Admin) (03 March 2006) [2006] HLR 32 Administrative Court** Homelessness, interim accommodation pending Review, there was an unreasonable refusal letter failing to adequately apply the ex parte Mohammed test in context of an arguable habitual residence of Claimant. **YD (Turkey) v Secretary of State for Home Department [2006] EWCA Civ 52 (08 February 2006) Court of Appeal**: Inherent power of Court of Appeal to order stay on removal where an appeal from AIT lodged out of time. **Mohamed, R (on the application of) v London Borough of Harrow [2005] EWHC 3194 (Admin) (13 December 2005) [2006] HLR 18 Administrative Court** Homelessness, Interim accommodation pending Review, whether EC workers and EU citizens excluded from consideration. **R (Conde) v Secretary of State [2005] EWHC 62 (Admin) [2005] HLR 452 Administrative Court**: Availability of Children Act services to work seekers from EU Member States. **Burns, R (on the application of) v London Borough of Southwark [2004] EWHC 1901 (Admin) (19 July 2004) Administrative Court**: Whether local authority entitled to rely on Home Office view of immigration status or whether it is required to make its own enquiries. **Chen and Others (Free movement of persons) [2004] EUECJ C-200/02 (19 October 2004) [2005] QB 325, [2005] All ER (EC) 129 [2004] 3 CMLR 1060 European Court of Justice**: Right to reside in UK of primary carer of an EU/Irish citizen in context of right to reside under Article 18 of the EC Treaty. **Zardasht, R (on the application of) v Secretary of State for Home Department [2004] EWHC 91 (Admin) (23 January 2004) [2004] All ER (D) 196 (Jan) Administrative Court**: Destitution of asylum seekers, ambit of Article 3 ECHR. **A, X and Y, & Ors v Secretary of State for the Home Department [2002] EWCA Civ 1502 (25 October 2002) Court of Appeal**: Article 15 ECHR, Derogation, Detention, Discrimination, Article 14 ECHR, Terrorism, National Security. **Secretary of State For The Home Department v. Rehman [2001] UKHL 47 (11th October, 2001) [2003] 1 AC 153, [2002] 1 All ER 122 House of Lords**: Deportation and National Security.

---

## MY NEWS

### Garden Court secures number one spot in Legal 500 2017 for second year running

16 October 2017

### The Garden Court Chambers Housing Team respond to the consultation of Terms of Reference of the Grenfell Tower Inquiry

3 August 2017

### Garden Court barristers join #IBelong statelessness debate

2 November 2016

[More news](#)





**CONTACT THE CLERKS**

020 7993 7600

info@gclaw.co.uk

---

**CONTACT DETAILS**

020 7993 7706

adrianb@gclaw.co.uk

---

**PRACTICE AREAS**

- Administrative and Public Law
  - Employment law, discrimination and professional regulation
  - Garden Court International
  - Housing
  - Immigration: asylum and human rights
  - Immigration: business and private
  - Immigration: public access
  - Welfare benefits
- 

**EDUCATION**

- MA (1994)
  - M. Litt. (1996)
- 

**PROFESSIONAL MEMBERSHIPS**

- Administrative Law Bar Association (ALBA)
- Immigration Law Practitioners' Association (ILPA) (Chair)
- Social Security Law Practitioners' Association (SSLPA)
- Haldane Society

Printed from the Garden Court Chambers website. All rights reserved.

## IN THE MATTER OF JUSTINE KEAY

## IN THE MATTER OF THE BRITISH NATIONALITY ACTS

---

OPINION

---

1. I am asked to advise on the question of whether Justine Keay, a Labor MP in Australia, had satisfied all requirements for renouncing British citizenship under UK law, when she completed a Form RN Declaration of Renunciation of British citizenship on 9 May 2016 and dispatched it to the Home Office on 13 May 2016?
2. Justine Keay was born in Devonport, Tasmania, Australia on 18 March 1975.
3. On 9 July 2015 she completed a Candidate Eligibility Questionnaire after being pre-selected to stand as the Labor candidate for the seat of Braddon at the 2016 Federal Election. The questionnaire disclosed that her father and paternal grandparents were born in the United Kingdom and that she had previously obtained a British passport.
4. During her formal vetting by the Labor Party Justine stated that she remained a British citizen and held a valid UK passport.
5. On 1 February 2016 she was told that she would have to renounce her British citizenship prior to nomination.
6. On 9 May 2016 she executed and completed Form RN Declaration of Renunciation of British citizenship.
7. On 13 May 2016 Justine despatched the Declaration of Renunciation to the United Kingdom Home Office by International Express Post.

8. The Declaration of Renunciation was accompanied by her UK passport, a certified copy of the personal particulars page of her Australian passport, and credit card details for payment of the processing fee.
9. On 23 May 2016 Australia Post confirmed that the Declaration of Renunciation had been successfully delivered to the United Kingdom Home Office.
10. On 3 June 2016 the Australian Labor Party (Tasmanian Branch) nominated Justine to stand for election for Braddon in the House of Representatives at the 2016 Federal Election.
11. On 2 July 2016 was elected a Member for Braddon.
12. On 8 July 2016 the United Kingdom Home Office wrote to Justine to confirm that her British citizenship had been renounced. The applicant's copy of the declaration was enclosed with the correspondence. The applicant's copy was stamped "received 31<sup>st</sup> May 2016". It was also stamped "received 16<sup>th</sup> June 2016".
13. The Declaration of Renunciation was stamped as registered on 11 July 2016, being the date on which Justine formerly ceased to be a British citizen.
14. There is no correspondence between Justine and the United Kingdom Home Office between the date she submitted her Declaration of Renunciation and the date the United Kingdom Home Office wrote to her to confirm that her renunciation had been processed.
15. It will be immediately apparent that the Home Office letter of 8 July 2016 must have been sent to her after that date because it refers to a Declaration of Renunciation that is stamped as registered by the Home Office on 11 July 2016. However that does not disrupt my analysis.
16. The requirements for making a Declaration of Renunciation are as follows.
17. The primary legislative requirements for renunciation of British citizenship are found in section 12 of the British Nationality Act 1981, which provides:

## 12 Renunciation.

(1) If any British citizen of full age and capacity makes in the prescribed manner a declaration of renunciation of British citizenship, then, subject to subsections (3) and (4), the Secretary of State shall cause the declaration to be registered.

(2) On the registration of a declaration made in pursuance of this section the person who made it shall cease to be a British citizen.

...

18. Further detail is provided in the British Nationality (General) Regulations 2003.

Regulation 8 of those regulations provides that any declaration of renunciation of British citizenship shall be made to the appropriate authority specified in Regulation 9 and shall satisfy the requirements of Schedule 5.

19. By Regulation 9 (as amended), where a person is present in a Commonwealth country, the appropriate authority to which the application should be made is the Home Office in the United Kingdom.

20. Schedule 5 of the British Nationality (General) Regulations 2003 provides:

### **SCHEDULE 5 REQUIREMENTS AS RESPECTS DECLARATIONS OF RENUNCIATION**

1. A declaration shall be made in writing and shall state the name, address, date and place of birth of the declarant.

2. A declaration shall contain information showing that the declarant—

(a) is a British citizen, British Overseas citizen or British subject, as the case may be;

(b) is of full age or, if not, has been married;

(c) is of full capacity;

(d) will, after the registration of the declaration, have or acquire some citizenship or nationality other than British citizenship, British Overseas citizenship or British subject status, as the case may be.

3. A declaration shall contain a declaration that the particulars stated therein are true.
21. By Schedule 5 a declaration shall be made in writing and shall state the name, address, date, and place of birth of the declarant. The declaration must also contain information to show that the declarant is a British citizen, is of full age, is of full capacity, and that she will (after the registration of the declaration) have or acquire some other citizenship other than British citizenship. The declaration must also contain a declaration that the particulars stated therein are true.
22. I have considered the documents and instructions provided to me.
23. In my opinion Justine had satisfied all the legal requirements for renouncing British citizenship when she despatched her completed Form RN Declaration of Renunciation of British citizenship on 13<sup>th</sup> May 2016, together with the documents accompanying that request. In completing the Form RN and sending it, together with the supporting documents, to the appropriate authority, she had complied with the prescribed requirements.
24. There were no further steps that she needed to take in order to provide the prescribed information sought under Section 12 of the British Nationality Act 1981 and Regulations 8 and 9 and Schedule 5 of the British Nationality (General) Regulations 2003.
25. It is unsurprising that the Home Office did not seek any further information from Justine, as they had already issued her with the United Kingdom passport via the United Kingdom Passport Agency, and therefore would have held already information about the basis upon which she was a British citizen.
26. As at 13 May 2016 Justine had fulfilled the statutory requirements for renouncing her British citizenship. All that remained was for the request for renunciation to be registered, however that was a matter for the Secretary of State, not Justine.

27. In my opinion she had done all that she needed to do in order to renounce her British citizenship, and had taken all reasonable steps in order to do so. In the instant case there was nothing more she could have done.
28. It is plain that the Home Office had received her application by 31 May 2016, a date prior to 3 June 2016, when she was nominated to stand for election in the House of Representatives, and clearly therefore prior to 2 July 2016, when she was elected to the House of Representatives.
29. If I can be of any further assistance please do not hesitate to contact me.

Adrian Berry

Garden Court Chambers

1 December 2017

**In the matter of Ms Justine  
Keay and section 44 of the  
Constitution**

**Joint Advice**

**Introduction**

1. Ms Justine Keay was elected as the member for Braddon (Tasmania), in the House of Representatives at the Federal Election held on 2 July 2016. Both at the time that Ms Keay was nominated to be the endorsed ALP candidate and on the day of the election, Ms Keay was a British citizen. The question upon which we have been asked to advise is whether, because Ms Keay was a British citizen, she was ineligible of being chosen as a member of the House.
2. The question arises because s 44(i) of the Constitution relevantly provides that “a person who is a citizen of a foreign power”, which includes Britain, is incapable of being chosen as a member of the House.
3. In our view, for the reasons that follow, it is clear that Ms Keay was capable to stand as a candidate and be chosen to the House.

**The facts**

4. Ms Keay was born in Devonport, Australia on 18 March 1975. According to s 10(1) of the *Nationality and Citizenship Act 1948* (Cth), the legislation in force at the time, Ms Keay became an Australian citizen on her birth.



5. However, Ms Keay's father was born in England on 27 January 1936. This raises two questions, first, whether Ms Keay's father was a British citizen and, second, if he was whether Ms Keay also acquired British citizenship by descent.
6. The answer to each question depends upon the content of British law. In turn, only an expert in British law is able to provide those answers. Nonetheless, we think it is safe to proceed on our analysis of the position in England.
7. By the *British Nationality Act* 1948 (UK), s 12(1)(a) Ms Keay's father became a British citizen at least upon the commencement of that Act on 1 January 1949.<sup>1</sup> The British Nationality Act was in force at the time Ms Keay was born. By s 5(1) of that Act, Ms Keay became a British citizen by descent.
8. Ms Keay knew she was a British citizen and at some point acquired a British passport.
9. On 9 July 2015 Ms Keay completed the ALP Candidate Eligibility Questionnaire, which was part of the ALP's pre-election candidate vetting process. In that questionnaire she noted that her father was born in the United Kingdom.
10. On 1 February 2016 the ALP vetting team informed Ms Keay that it was necessary for her to renounce her British citizenship before she was nominated as a candidate for the election.
11. The manner in which a British citizen can renounce his or her citizenship is also governed by British law. In *Re Roberts* [2017] HCA 39, Keane J made findings of fact on this issue.

---

<sup>1</sup> At that time the principal form of British nationality was "citizen of the UK and colonies". By the enactment of the *British Nationality Act* 1981, "British citizen" became the primary form of British nationality: See *Re Roberts* [2017] HCA 39 at [73].

12. By s 12(1) of the *British Nationality Act 1981* a British citizen of full age and capacity may renounce his or her British citizenship provided it is done in the prescribed manner, which is by a declaration of renunciation of citizenship. If the declaration is made then the Secretary of State must cause the declaration to be registered at which point the person will cease to be a British citizen: s 12(2).
13. The British Nationality (General) Regulations 2003 prescribe the manner in which a declaration of renunciation must be made. By reg 8, the declaration of renunciation must be made to the appropriate authority specified in reg 9 (relevantly the Secretary of State at the Home Office) and must satisfy the requirements of sch 5 of the Regulations.
14. The requirements in sch 5 are that:
  1. A declaration shall be made in writing and shall state the name, address, date and place of birth of the declarant.
  2. A declaration shall contain information showing that the declarant –
    - (a) is a British citizen, British Overseas citizen or British subject, as the case may be;
    - (b) is of full age or, if not, has been married;
    - (c) is of full capacity;
    - (d) will, after the registration of the declaration, have or acquire some citizenship or nationality other than British citizenship, British Overseas citizenship or British subject status, as the case may be.
  3. A declaration shall contain a declaration that the particulars stated therein are true.
15. On 13 May 2016 Ms Keay sent her completed declaration of renunciation in the prescribed form to the Home Office by international registered post together with her British passport, a certified copy of personal particulars of her Australian passport, and credit card details to enable payment of the appropriate fee.

16. The records of Australia Post show that the documents were delivered to the Home Office on or before 23 May 2016.
17. On 3 June 2016 the ALP nominated Ms Keay to stand for election as the member of Braddon and she was duly elected on 2 July 2016.
18. Following the election, on 8 July 2016 the Home Office advised Ms Keay that her British citizenship had been renounced, with effect from 11 July 2016, the date of the registration of her declaration of renunciation.

#### **The law**

19. The incapacity created by s 44(i) of the Constitution is subject to a qualification. As the High Court explained in *Sykes v Cleary* (1982) 176 CLR 77, 107:

It would be wrong to interpret the Constitutional provision in such a way as to disbar an Australian citizen who has taken all reasonable steps to divest himself or herself of any conflicting allegiance.

20. This rule was confirmed by the High Court in *Re Canavan* [2017] HCA 45, a decision that was delivered on 27 October 2017. There the High Court confirmed that a candidate would not be incapable, by reason of s 44(i) of the Constitution, of being elected to either House of Parliament on the basis that he or she is a foreign citizen provided the candidate had taken reasonable steps to renounce that citizenship. In its joint judgment the Court said (at [45]):

Where it can be demonstrated that the person has taken all steps that are reasonably required by the foreign law to renounce his or her citizenship and within his or her power, the constitutional imperative [that an Australian citizen not be irremediably prevented by foreign law from participation in representative government] is engaged.

21. The facts we have outlined clearly establish that Ms Keay had taken all necessary steps to renounce her British citizenship. The only reason she remained a British citizen at the time of her nomination as a candidate and at the time she was elected as a member of the House was the time it took for the Home Office and Secretary of State to process her declaration.
22. We note that several constitutional law academics have been reported as expressing the view that it is uncertain whether taking all reasonable steps is sufficient to overcome the s 44(i) disqualification.<sup>2</sup> We do not agree.

### Conclusion

23. It is for these reasons that we are of the opinion that Ms Keay was not incapable of being chosen as a member of the House of Representatives.

Ray Finkelstein QC  
Castan Chambers

Simona Gory  
Chancery Chambers

8 November 2017

\* Liability is limited by a scheme approved under Professional Standards Legislation

---

<sup>2</sup> Paul Karp, “‘Reasonable steps’ to renounce foreign citizenship may not be enough”, *The Guardian*, 3 November 2017.