



HOUSE OF REPRESENTATIVES

House of Representatives

05 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
Feeney	David Ian

Electorate	State
Batman	Victoria

Section 2—Member's birth and citizenship details

Place of birth	Citizenship held at birth
Adelaide, South Australia	Australian, British

Date of birth	Date of Australian naturalisation (if not an Australian citizen by birth)
05 / 03 / 1970 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:	Yorke town, Australia	Belfast, Northern Ireland (UK)
Date of birth:	03 / 03 / 1946 Day Month Year	18 / 05 / 1942 Day Month Year

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

	Maternal grandmother	Maternal grandfather
Place of birth:	Adelaide (Semaphore), South Australia	Adelaide (Semaphore), South Australia
Date of birth:	26 / 12 / 1920 Day Month Year	19 / 09 / 1921 Day Month Year

	Paternal grandmother	Paternal grandfather
Place of birth:	Belfast, Northern Ireland (UK)	Greenock, Scotland (UK)
Date of birth:	15 / 05 / 1914 Day Month Year	07 / 12 / 1912 Day Month Year

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

	Spouse
Place of birth:	Yarram, Victoria
Date of birth:	18 / 08 / 1973 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.

Prior to my nomination as a Senator as a candidate endorsed by the Australian Labor Party (ALP) in October 2007, I sought legal advice from the legal unit of the National Secretariat of the ALP as to whether I may have inherited British and Irish citizenships and the steps I needed to take to renounce those citizenships (if any).

Out of an abundance of caution, even though I was not a citizen of the Republic of Ireland by virtue of my father having been born in Northern Ireland and not having taken up his entitlement to Irish citizenship, on the basis of that advice in October 2007 I also sought to renounce any potential Irish citizenship. As my father never took any steps to enliven his entitlement to Irish citizenship and nor I have ever taken any steps to enliven any potential entitlement to Irish citizenship that I may have had, I am not, nor have I ever been, an Irish citizen.

I was advised by the ALP legal unit that I was likely to be a British citizen by reason of my father's birth in Northern Ireland.

At that time, in October 2007, I signed documents prepared for me in accordance with that advice as to the steps that I needed to take to renounce any inherited British and Irish citizenships.

As far as I am aware, those documents were sent to the relevant British and Irish authorities as required at the time.

In November 2017, I sought confirmation from the British Home Office about my 2007 renunciation. Further inquiries are being made of the British Home Office to confirm receipt of my renunciation.

In November 2017, I sought confirmation from the Irish Ambassador about my renunciation of any Irish citizenship I may have had in 2007. Further inquiries are being made of the Irish Embassy to confirm receipt of my renunciation of any entitlement to Irish citizenship.

I have sought advice from the ALP National Secretariat in respect of access to historical electronic documents from the time of my nomination as a Senator for Victoria in 2007. Those searches are ongoing.

In November 2017, I also sought independent Australian legal advice to confirm my status. Without waiving legal professional privilege in that advice, I am not an Irish citizen, nor have I ever been entitled to the rights or privileges of being an Irish citizen and I have taken reasonable steps to renounce any British citizenship.

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
United Kingdom	<p>In 2007, I renounced my British citizenship by completing a renunciation declaration in accordance with advice provided to me by the National Secretariat of the ALP as to UK requirements for renunciation which included:</p> <ul style="list-style-type: none"> • completion of a declaration of renunciation in accordance with form RN1; • provision of the completed form to the UK High Commission in Canberra or the UK Home Office. <p>In November 2017, I sought confirmation from the British Home Office about my 2007 renunciation. Preliminary advice is that I may not have been included on the register of persons who have renounced British citizenship. Further inquiries are being made of the British Home Office to confirm receipt of my renunciation.</p>	October 2007	ALP legal advice to David Feeney in October 2007.

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**** - To be confirmed. I am currently seeking confirmation of whether my renunciation in 2007 of my British citizenship is effective as a matter of UK law.

☐ **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

NB: Evidence of the steps taken to renounce the citizenship of the other country prior to the date of nomination **should** 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**** - To be confirmed. I am currently seeking confirmation of whether my renunciation in 2007 of my British citizenship is effective as a matter of UK law.

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

Country	Action	Date	Evidence attached

Country	Action	Date	Evidence attached
NB: Evidence of the steps taken to renounce the citizenship of the other country should 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>If it is the case (which is not yet confirmed) that my renunciation in 2007 of my British citizenship is not effective as a matter of UK law, I contend that I have taken reasonable steps to renounce that citizenship as required under the Constitution so as not to be disqualified under section 44(i) by:</p> <ul style="list-style-type: none"> the steps I believe that I took in 2007, which included completing the required declaration of renunciation under British law; and sending the completed renunciation form to the UK High Commission in Canberra or the Home Office; making inquiries of the Home Office as to the status of my renunciation (which inquiries are ongoing); and seeking Australian legal advice to confirm my citizenship status and the reasonableness of the steps that I have taken to renounce my British citizenship. 	
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 style="text-align: center;"> 05 / 12 / 2017 Day Month Year </div>

Subject:

Attachments:

CA Feeney (Senate).doc

----- Forwarded Message -----

Subject: Final S44 Candidate Advice - Feeney (VIC Senate) - UK citizenship issue - Eire citizenship issue

Date: Sun, 14 Oct 2007 20:14:19 +1000

From: Every, Simon (Sen J. Ludwig) <Simon.Every@aph.gov.au>

To: David Feeney <David.Feeney@cbr.alp.org.au>

CC: monique.we@cbr.alp.org.au, Tony Lang <Tony@Lang.net>

<<CA Feeney (Senate).doc>>

Hi David

As discussed, please find attached final advice concerning your eligibility to a) nominate as a candidate for; and b) sit as member of; the Senate. This advice has been cleared. Should you have any queries concerning this advice please contact me on 02 9384 2222 or 0417 955 182.

Kind Regards

Simon Every
Legal Unit
ALP Campaign 07

David Feeney – Victoria (Senate) –UK Citizenship – Irish Citizenship

Short Advice: David is probably unqualified to sit in Parliament as a result of an automatic entitlement to UK citizenship. In addition, David may be disqualified by an entitlement to Irish citizenship.

In order to ensure his eligibility to nominate for election and sit in Federal parliament, David should take reasonable measures to divest himself of these foreign entitlements. Reasonable measures includes an attempt at renouncing the foreign citizenships.

NB this advice is prepared for the benefit of the ALP, not the candidate. Candidates considering acting on this advice should seek further information from a legal professional.

Citizenship Issue:

Is David a UK citizen?

David was born in Australia to a father born in Northern Ireland. David's father was a UK citizen, and David is therefore technically a UK citizen as of right as at 31 December 1982.¹

When the UK citizenship law changed on 1 January 1983, David will have acquired one of the three forms of British citizenship coming into effect on that date.² In order for these rights to be exercised, David is entitled to register as a British citizen.³

Unless David has in fact renounced his UK citizenship, a plain reading of s44(i) indicates that David is not qualified to sit in Parliament until he takes reasonable measures to relinquish, discharge or be released from a foreign allegiance.

Is David qualified under s44(i) of the Constitution?

In *Sykes v Cleary*, the High Court determined 6:1 (in dicta) that dual nationals who omit to take reasonable steps to relinquish, discharge or be released from a foreign allegiance will be disqualified.

What can David do to renounce UK Citizenship?

¹ See UK Citizenship flow chart C:

<http://www.ind.homeoffice.gov.uk/documents/nichapter2/annexc?view=Binary>

² See UK Citizenship flow chart E:

<http://www.ind.homeoffice.gov.uk/documents/nichapter2/annexe?view=Binary>

³ <http://www.ind.homeoffice.gov.uk/applying/nationality/advice/> .

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Reasonable measures includes (as the High Court held 5:1 in *Sykes v Cleary*) positive measures in contacting the foreign power to divest oneself of the citizenship or allegiance

In *Sue v Hill* the High Court determined 4:0 that the UK was a foreign power, thus within the ambit of s44 of the Constitution despite the enacting words.

Under UK law, these measures include completing the application for renunciation, submitting it to the UK High Commission and paying the appropriate fee before nominating.

The forms and UK guide for renunciation are available here:

<http://www.ind.homeoffice.gov.uk/applying/nationality/formsandguidance/guidern>
1

Can UK citizenship be re-applied for in future?

UK law does provide in limited circumstances for people who have renounced UK citizenship to regain British Overseas Territories Citizenship (thus if David's circumstances apply, he may be able to regain limited UK citizenship if he fails to be elected) see below:

<http://www.ind.homeoffice.gov.uk/applying/nationality/formsandguidance/guiders>
2

When should David's UK Citizenship be renounced?

If David needs to renounce his UK citizenship he should do so at the earliest opportunity.

This is because the key to timing is that the 'reasonable action' (in this case submission of an application for renunciation) must be performed before he nominates.

What will happen if David fails to renounce his citizenship and is elected?

The usual effect of a Senate election where the candidate is disqualified is to conduct a count back (*Sue v Hill*). In the recent instance of this occurring, the disqualified candidate (Heather Hill) was replaced by a candidate of the same party next down on the ticket (Len Harris).

Does entitlement to Irish citizenship have any effect?

Prior to recent changes, all persons born on the island of Ireland were entitled to Irish citizenship.

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David appears to be also entitled to Irish Citizenship.

The following table drawn from the Irish Citizens Information Board is useful in explaining the situation for Irish citizens:⁴

If you are:	Then you are:
Born in the island of A Ireland on or before 31 December 2004	Entitled to Irish citizenship or you are an Irish citizen
Born on the island of B Ireland on or after 1 January 2005	Entitled to Irish citizenship if your parents are Irish. Entitled to Irish citizenship, if your parents are foreign nationals legally resident in Ireland for three out of four years immediately prior to your birth
C Child of A, born outside the island of Ireland	An Irish citizen
D Child of C and a grandchild of A, born outside the island of Ireland	Entitled to Irish citizenship, but you must first register in the Foreign Births Register
E a child of D and a great- grandchild of A, born outside the island of Ireland	Entitled to Irish citizenship, by having your birth registered in the Foreign Births Register, but only if your parent D had registered by the time of your birth.

David's father falls into Category A, but was not born within the Republic.

Section 6 (1-2) of the *Irish Nationality and Citizenship Act 1956* (Ire)⁵ relevantly provides:

6.—(1) ¹⁶ Subject to section 6A (inserted by section 4 of the Irish Nationality and Citizenship Act 2004), every person born in the island of Ireland is entitled to be an Irish citizen.

(2) ¹⁷ (a) Subject to subsection (5), a person who is entitled under subsection (1) to be an Irish citizen shall be an Irish citizen from the date of his or her birth if—

(i) he or she does any act that only an Irish citizen is entitled to do, or

(ii) in the case of a person who is not of full age or who is suffering from a mental incapacity, any act is done on his or her behalf that only an Irish citizen is entitled to do.

⁴ <http://www.citizensinformation.ie/categories/moving-country/irish-citizenship/irish-citizenship-through-birth-or-descent>

⁵ Unofficial Consolidated version -

<http://www.inis.gov.ie/en/INIS/ConsolidationINCA.pdf/Files/ConsolidationINCA.pdf> .

- (b) The fact that a person so born has not done, or has not had done on his or her behalf, such an act shall not of itself give rise to a presumption that the person is not an Irish citizen or is a citizen of another country.

Sub-section (5) then provides:

- (5) A person born in the island of Ireland who has made a declaration of alienage under section 21 shall remain entitled to be an Irish citizen, but shall not be an Irish citizen unless, in the prescribed manner, that person declares that he or she is an Irish citizen; and such person shall be an Irish citizen from the date of the declaration.

It is not known whether David's father declared Irish citizenship at any stage.

It is unclear to what extent the Irish statute conferring citizenship (on even those who don't want it) in another country's territory (i.e. Northern Ireland) is valid. In *Sykes v Cleary* the High Court delivers a lengthy discussion on the practice of conferring citizenship extra-territorially and the application of international law, before returning the general view that it is the law of the conferring country that must be considered.

However, in this case, the UK Government has itself recognised the Republic's conferral of such citizenship by an international instrument – the "Good Friday Agreement".⁶ Thus it seems that the conferral is at least valid according to the UK and Eire.

In any case according to the table above, David is himself an Irish citizen or eligible for Irish citizenship.

Therefore, in order to free himself from any encumbrance of Irish citizenship, David should seek to make a "declaration of alienage" under s 21:

Renunciation of citizenship.

21.—(1)⁴² If an Irish citizen of full age is or is about to become a citizen of another country and for that reason desires to renounce citizenship, he or she may do so, if ordinarily resident outside the State, by lodging with the Minister a declaration of alienage in the prescribed manner, and, upon lodgment of the declaration or, if not then a citizen of that country, upon becoming such, shall cease to be an Irish citizen.

(2) An Irish citizen may not, except with the consent of the Minister, renounce Irish citizenship under this section during a time of war as defined in Article 28.3.3^o of the Constitution.

Even if the Irish government has no record of him being a citizen, what is important is that David takes the reasonable steps of seeking to renounce prior to nominating.

An application form is available from the Embassy of Ireland at the address below:

⁶ See Article 1 and Annexe 2: <http://www.taoiseach.gov.ie/index.asp?docID=219>

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Address:
Embassy of Ireland
20 Arkana Street
Yarralumla
A.C.T. 2600
Canberra
Telephone:
+612 6273 3022, +612 6273 3201
Fax:
+612 6273 3741
Email:
irishemb@cyberone.com.au
Ambassador
His Excellency Máirtín O'Fáinín
First Secretary
Aidan Cronin