

Re Canavan – ‘The Citizenship 7’

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Eligibility/disqualification

Section 44(i)

Any person who:
is under any acknowledgment of
allegiance, obedience, or adherence
to a foreign power, or

is a subject or a citizen [of a foreign
power] 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.

Section 34 (and s 16)

Until the Parliament otherwise
provides

the qualifications of [members of the
Parliament] shall be as follows:

(i) he must be [at least 21] and
must be an elector ... or a person
qualified to become such elector, and
must have been [resident in the
Commonwealth for at least 3 years] at
the time when he is chosen;

(ii) he must be a subject of the Queen,
either natural-born or
for at least five years naturalized ...

Main principles

- 44(i) disqualifies persons who “have the status of subject or citizen of a foreign power”.
- Whether a person has such a status depends on foreign law.
- No mental element is required.

(see text, drafting history, policy, purpose)

Xenophon

- Substantive content to citizenship
 - Right of abode
 - Interaction between 2nd and 3rd parts of s 44(i)
- Allegiance
 - To whom?
 - Queen in right of UK?
 - Sovereign or state?
 - Requires positive act?

Canavan

- Problems with a lack of factual contradiction
- Challenges in translating foreign law

Where to from here?