HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

ON APPEAL FROM
A SINGLE JUDGE OF THE HIGH COURT

BETWEEN: **FREDERICK CHETCUTI**
Appellant

and

COMMONWEALTH OF AUSTRALIA
Respondent

APPELLANT'S SUBMISSIONS

Part I: Internet certification

1. These submissions are in a form suitable for publication on the internet.

Part II: Issues arising in this appeal

2. Is it within the power of the Commonwealth Parliament, under s 51(xix) of the *Constitution*, to treat as an alien a natural-born subject of the Queen who arrived in Australia in 1948?

Part III: Section 78B of the Judiciary Act 1903

3. Notices have been issued under s 78B of the *Judiciary Act 1903* (Cth).

Part IV: Citations

4. This is an appeal from the whole of the judgment of Justice Nettle in *Chetcuti v Commonwealth of Australia* [2020] HCA 42 (26 November 2020) (***Chetcuti***).

Part V: Facts

5. The agreed facts are set out in the Special Case at Appeal Book (**AB**) 22-43. A brief recitation of them follows.

6. On 8 August 1945, the appellant was born in the Crown Colony of Malta. By reason of his birth within His Majesty's dominions and allegiance, the appellant was born a British subject.[1] That status was recognised by s 6(1)(a) of the *Nationality Act 1920* (Cth) (the **1920 Act**).

7. On 31 July 1948, the appellant arrived in Australia on a British passport and commenced living in Australia, where he has resided continuously save for a temporary absence between 22 November 1958 and 19 July 1959.[2]

8. On commencement of the *British Nationality Act 1948* (UK) (**1948 UK Act**) on 1 January 1949, the appellant became a citizen of the United Kingdom and Colonies (**CUKC**) with the status of a British subject.[3] On 26 January 1949, the *Nationality and Citizenship Act 1948* (Cth) (**1948 Act**) came into effect. By ss 7(1)-(2), a CUKC, such as the appellant, was a British subject.[4]

9. On 21 September 1964, upon the commencement of the *Malta Independence Act 1964* (UK), the appellant was bestowed Maltese citizenship by operation of s 23 of the Constitution of Malta, by his birth in Malta and his status as a CUKC on the day before the commencement of the Constitution of Malta.[5]

10. On 28 April 1993, the appellant was convicted in the Supreme Court of New South Wales of murder and, on 25 June 1993, sentenced to imprisonment for 24 years with a minimum term of 18 years.[6] On 6 April 2011, the appellant was convicted of assault occasioning actual bodily harm and sentenced to two years' imprisonment to be served concurrently with the 24 year sentence.[7]

11. On 1 September 1994, the appellant was deemed to be granted an Absorbed Person visa under s 34 of the *Migration Act 1958* (Cth) (**the Migration Act**).[8]

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1 *Chetcuti* [2020] HCA 42 at 2 [6].
2 *Chetcuti v Commonwealth of Australia* [2020] HCA 42 (***Chetcuti***) at 2 [7].
3 *Chetcuti* [2020] HCA 42 at 2 [6].
4 And, by s 5(1), an 'alien' was defined to mean a person who was not a British subject, an Irish citizen or a protected person.
5 *Chetcuti* [2020] HCA 42 at 2 [8].
6 *Chetcuti* [2020] HCA 42 at 2 [9].
7 *Chetcuti* [2020] HCA 42 at 2-3 [12].
8 Special Case at [95(p)] (AB 40).

12. The appellant's deemed Absorbed Person visa has been considered for cancellation under s 501 of the Migration Act on five occasions.[9] On the final occasion, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs cancelled the appellant's visa under s 501(3) of that Act. Since his release from prison on 27 April 2017, the appellant has been detained as an unlawful non-citizen under s 189 of the Migration Act.

Part VI: Argument

13. The appellant contends that he is not a person who required a visa to authorise his continued residence in Australia. As a result, s 189 of the Migration Act is incapable of authorising his ongoing detention. Both propositions flow from the circumstance that the appellant is not an 'alien'.

14. Below, Nettle J held that the appellant was not beyond the aliens power because he was a subject or a citizen of a foreign power: when he arrived in Australia in July 1948, the evolution resulting in the Crown in right of Australia having been completed prior to that time;[10] alternatively, upon the completion of that process subsequent to his arrival.[11]

15. The appellant contends, having arrived in Australia in 1948 as a subject of the Queen and prior to bifurcation of the Crown and the emergence of Australia's own unique statutory citizenship, he is beyond the reach of the aliens power in s 51(xix) of the *Constitution*. Upon his arrival in Australia as a natural-born subject of the Queen, the appellant held an allegiance to the same Crown as natural-born Australian subjects of the Queen. He took up permanent residence in Australia. Subsequently, Australia introduced its own unique form of citizenship and the Crown in right of Australia was established. Thereafter, the appellant was, like all Australian-born subjects of the Queen, a subject of the Queen of Australia. That he was also a CUKC and subsequently came to possess Maltese citizenship, did not affect his status as a subject of the Queen of Australia or align his allegiance to Malta. He was, by analogy, a 'dual' citizen. By reason of his being a subject of the Queen resident in Australia, he was and has at all relevant times been one of the people of the Commonwealth. He is an

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9 *Chetcuti* [2020] HCA 42 at 2-4 [11]-[19].
10 *Chetcuti* [2020] HCA 42 at 16-17 [52].
11 *Chetcuti* [2020] HCA 42 at 10 [36].

Australian constitutional citizen. At no time has the appellant done anything to alienate himself and no act of the Commonwealth Parliament was capable of or has, alienated him.

16. Alternatively, if Nettle J was correct to conclude that the Crown in right of Australia was established in 1942 or at any point prior to the appellant's arrival in Australia in 1948, then in the exercise of its power under s 51(xix), the Parliament by the 1920 Act and the 1948 Act, conferred full and formal membership of the Australian community upon him and he became one of 'the people of the Commonwealth'; that is, an 'Australian constitutional citizen'.

17. As a consequence, the appellant does not need any visa to remain in Australia and any purported exercise of the Minister's visa cancellation powers was ineffective and consequently, there is no power to detain the appellant under s 189 of the Migration Act.

The appellant's status as a natural-born subject of the Queen

18. Upon the appellant's birth on 8 August 1945 'within His Majesty's dominions and allegiance', he was a natural-born subject of the Queen of the United Kingdom of Great Britain and Ireland. His birth in Malta created 'precisely the same tie of allegiance and confer[red] the same common law right of entry to all parts of the King's Dominions, no more and no less, as birth in any other part of the Empire'.[12]

19. 'British subjecthood' was seen until the latter half of the twentieth century, as being of great permissive benefit.[13] It was the tie that bound the dominions of the British Empire together; 'throughout the British Empire there is one King, one allegiance, one citizenship.'[14] The common law bestowed the rights and obligations of a subject of the Crown on anyone born within the sovereign's dominions. 'All of the King's subjects are members of one great society, bound by the one tie of allegiance to the one Sovereign, even as children hanging on to the ropes of a New Zealand swing. The top of the pole is the point of union: *Calvin's Case.*'[15]

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12 *Potter v Minahan* (1908) 7 CLR 277 at 308 (Isaacs J).
13 *Report on the Royal Commissioners of Inquiring into the Laws of Naturalisation and Alienage* (1869) (**Report on the Royal Commission**).
14 *Potter v Minahan* (1908) 7 CLR 277 at 321 (Higgins J).
15 *Potter v Minahan* (1908) 7 CLR 277 at 321 (Higgins J).

20. The common law rule that applied at the time of the commencement of the *Constitution* was that every person was either a British subject or an alien.[16] Quick and Garran, after explaining what was meant by the term 'naturalization', considered 'no question of naturalization arises in connection with the emigration of British subjects to British colonies';[17] every person born out of the British dominions was considered an alien and every person born in the British dominions was a British subject.[18] Blackstone formulated the common law rule as follows:

> Natural-born subjects are such as are born within the dominions of the crown of England; that is, within the lineance, or as it is generally called, the allegiance of the king; and aliens, such as are born out of it.[19]

21. In Australia, this common law understanding informed the meaning of the word 'alien' in s 51(xix) of the *Constitution* such that, at Federation, a subject of the Queen (at that time the indivisible Imperial Crown) was not an alien.[20] The text of the *Constitution* makes that plain. The preamble refers to 'one indissoluble Federal Commonwealth under the Crown of the United Kingdom' and, elsewhere, the people of the Commonwealth are identified by reference to their subjecthood.[21] Indeed, the *Constitution* recognises the distinction between natural-born and naturalized subjects of the Queen.[22] British subjecthood was the nationality status applicable in 1900[23] and, as was explained by Gummow, Hayne and Heydon JJ in *Singh v Commonwealth* (2004) 222 CLR 322 (***Singh***),[24] the common law position was that subjecthood and alienage were mutually exclusive alternatives. As McHugh J noted in the same case, '[i]n 1900, no-one in Australia who knew anything about the subject would think for a moment that a person, born in any part of the Crown's dominions, was an alien unless the child fell into one of the three categories' (which are of no relevance to this case).[25]

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16 *Re Ho* (1975) 5 ALR 304; 24 FLR 305 at 309.
17 Quick and Garran, Annotated Constitution of Australia at p 601.
18 Quick and Garran, Annotated Constitution of Australia at p 599.
19 *Blackstone's Commentaries,* 8th ed, vol 1, p 366. See also *Nolan v Minister for Immigration and Ethnic Affairs* (1988) 165 CLR 178 (***Nolan***) at 183-184 (Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ).
20 ***Nolan*** (1988) 165 CLR 178 at 183 (Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ); *Singh v Commonwealth* (2004) 222 CLR 322 (***Singh***) at 343 [37] (McHugh J); *Love v Commonwealth* (2020) 94 ALJR 198 (***Love***) at 241 [61] (Bell J), 231 [160] (Keane J).
21 See *Constitution* ss 34(ii) and 117.
22 See *Constitution* ss 34(ii).
23 *Koroitamama v The Commonwealth* (2006) 227 CLR 31 at 47 [54] (Kirby J).
24 ***Singh*** (2004) 222 CLR 322 at 388-389 [170]-[172] (Gummow, Hayne and Heydon JJ).
25 ***Singh*** (2004) 222 CLR 322 at 350 [56] (McHugh J); see also 366 [100], 376 [190]-[130] (McHugh J).

22. That remained the case well into the twentieth century. In 1936, Latham CJ held that '[t]here is not yet any established legal category of "Australian nationals"… The general rule as to nationality in Australia is the same as that in Great Britain. Any person who is a British subject in Great Britain would be regarded as a British subject in Australia. Within the class of British subjects recognized as such in Australia there are in Australia no distinctions. The Canadian-born British subject in Australia, so far as nationality is concerned, is upon precisely the same footing as the Australian-born or English-born British subject'.[26]

23. The appellant contends that in holding that the status of British subject was statute-based, as they did in ***Shaw***, Gleeson CJ, Gummow and Hayne JJ were wrong.[27] 'British subject' was both a common law status and a term employed in legislation to reflect the fact that the persons it described had a common allegiance to the undivided Imperial (British) Crown. For so long as that remained the case, British subjects were beyond the aliens power. The dichotomous approach of non-citizen/alien has not survived *Love v Commonwealth* (2020) 94 ALJR 198 (***Love***).[28]

The appellant was accepted as a member of 'the people' of the Commonwealth; that is, he became an 'Australian constitutional citizen'

24. The term 'citizenship', in a legal context, 'ordinarily defines the persons who are members of a particular community'.[29] In the context of the *Constitution*, 'the people of the Commonwealth' is a synonym for citizens of the Commonwealth.[30] The 'people of the Commonwealth' are those subjects of the Queen resident in Australia.[31] (**Australian constitutional citizenship**).

25. At Federation, at the time of the appellant's arrival in Australia and for decades following, British subjecthood was the fullest kind of formal community membership that a person residing in Australia could possess.[32]

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26 *R v Burgess, ex parte Henry* (1936) 55 CLR 608 at 647, 649-50. This is consistent with the way in which the census was taken in Australia until at least 1971: see paragraph 53 below.

27 ***Shaw*** (2003) 218 CLR 28 at 42 [28] (Gleeson CJ, Gummow and Hayne JJ).

28 ***Love*** (2020) 94 ALJR 198 at 215 [64] (Bell J), 247-8 [252] (Nettle J), 260 [308]-[309], 264 [333] (Gordon J), 285 [437] (Edelman J).

29 *Hwang v Commonwealth* [2005] HCA 66; (2005) 222 ALR 83 (***Hwang***) at 5 [12].

30 ***Hwang*** (2005) 222 ALR 83 at 5 [14].

31 ***Constitution*** s 117.

32 Kim Rubenstein, ''From this time forward… I pledge my loyalty to Australia': loyalty, citizenship and constitutional law in Australia' in Victoria Mason (ed), *Loyalties* (API Network, Perth, 2007) 23-6;

26. This is reflected in the way, following his arrival in Australia, the Parliament expressly treated the appellant as an Australian constitutional citizen and admitted him to formal membership of the Australian community.

27. The 1920 Act[33] (which adapted and enacted in Australia the 1914 UK Act and was, like the 1914 UK Act, the legislative response to questions that had arisen with respect to dual or multiple nationality)[34] reflected the appellant's status as a British subject[35] by reason of his birth within His Majesty's dominions and allegiance. That statutory status of 'British subjecthood' could only be lost by the voluntary and formal act of a subject.[36]

28. The enactment of the 1948 Act continued to reflect that status.[37]

29. Although it was open to British subjects resident in Australia but born abroad to apply for citizenship, the provisions by which the statutory concept of citizenship were introduced did not affect the status of British subjects resident in Australia who did not take out statutory citizenship. [38]

30. Nor was it the intention of the Parliament that the status of British subjecthood should be usurped by the introduction of statutory citizenship. When the bill was read for a second time the Minister for Immigration, Arthur Calwell told Parliament:

> It should be clearly understood, and this is a point which I cannot too strongly emphasize, that creation of an Australian citizenship under this bill will in no way lessen the advantages and privileges which British subjects who may not be Australian citizens enjoy in Australia. British subjects, whether they are now in this country or enter it in future, will continue to be free from the disabilities and restrictions that apply to aliens. They will qualify for the franchise and have the right to become members of Parliament or to enter the public services. A British subject who is not Australian-born will be able to become an Australian citizen by a simple act of registration, but he will not suffer in any way whatever should he fail to do this.[39]

Sangeetha Pillai, 'Non-Immigrants, Non-Aliens and People of the Commonwealth: Australian Constitutional Citizenship Revisited' (2013) 39(2) *Monash University Law Review* 568; Kim Rubenstein, 'Australian Citizenship Law 2nd Edition' 2016, [1.40].

33 ***Re Patterson*** (2001) 207 CLR 391 at 440 [148] (Gummow and Hayne JJ).

34 ***Singh*** (2004) 222 CLR 322 at 393-394 [182]-[184] (Gummow, Hayne and Heydon JJ).

35 *Nationality Act 1920* (Cth) ss 5(2) (definition of 'alien'), 6(1)(a).

36 *Nationality Act 1920* (Cth) s 21.

37 *Nationality and Citizenship Act 1948* (Cth) ss 5 and 7.

38 Further, if such persons were within the aliens power, for the reasons developed below at paragraphs 71-73 it cannot be correct to say that the effect of those provisions was to render those persons a class of aliens with special advantages in Australian law, as was held by Gleeson CJ, Gummow and Hayne JJ in *Shaw v Minister for Immigration and Multicultural Affairs* (2003) 218 CLR 28 (***Shaw)*** at [22]**.** Rather, if such persons were within the aliens power, those provisions were an exercise of its power to determine legal status recognised by Gleeson CJ in *Re Minister for Immigration and Multicultural Affairs; Ex parte Te* (2002) 212 CLR 162 (***Te***) at 171 [24].

39 Australian House of Representatives, *Parliamentary Debates* (Hansard), 30 September 1948, p 1062.

31. The use of the term "British subject" to describe all those citizens of the United Kingdom and colonies and the dominions identified in s 7 of the 1948 Act, reflected the fact that those citizens were all subjects of the undivided Imperial (British) Crown. References to "British subject" were not deleted from the Act until 1987 and it was not until that time that Australian statutory citizenship became the sole statutory description of a member of the Australian nation.[40]

32. That the 1948 Act did not at any time provide for British subjects to undergo a process of 'naturalization'[41] reflects the fact that they were not aliens because they owed their allegiance to the Queen. The availability, until 1973, of Australian statutory citizenship to British subjects by simple registration – without needing to take an oath demonstrating that allegiance – further supports this contention.[42]

33. As addressed further in paragraphs 57 to 61 below, contrary to the conclusion reached by Nettle J at [37] of *Chetcuti*, the fact that the appellant has never formally become an Australian statutory 'citizen' is irrelevant to the question before the Court. Gaudron J did not accept in *Nolan v Minister for Immigration and Ethnic Affairs* (1988) 165 CLR 178 (***Nolan***) that 'mere inactivity in the face of legislative change' was capable of transforming a non-alien into an alien.[43] Her Honour confirmed in *Re Minister for Immigration and Multicultural Affairs; Ex parte Te* (2002) 212 CLR 162 (***Te***) that a lack of Australian citizenship is irrelevant if (s)he is not an alien.[44] The dichotomous approach of non-citizen/alien has not survived ***Love***.[45]

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40 ***Nolan*** (1988) 165 CLR 178 at 190 (Gaudron J).

41 ss 12-13 cf ss 14-16 of the 1948 Act.

42 The combined effect of ss 5(1), 7(1) and 7(4) of the 1920 Act – and of ss 3, 5 and 7 of its precursor, the *Naturalization Act 1903* (Cth) (**the 1903 Act**) – made an oath of allegiance a precondition of the grant of a certificate of naturalisation to a person who was not already a British subject. Self-evidently, "natural-born British subjects" were not required to obtain such a certificate. Section 7 of the 1903 Act was amended by the *Naturalisation Act 1917* to include the additional requirement of renunciation of the allegiance to the country of which the applicant for naturalisation was a subject at the time of making the application, but again this had no application to natural-born British subjects. Those arrangements were effectively preserved in the 1948 Act, as the combined effect of ss 5(1), 15 and 16(1) was that naturalised aliens became citizens after taking an oath of allegiance, whereas British subjects were not required to be naturalised or take an oath, and could become citizens by registration alone under the combined provisions of ss 7 and 12. None of the amendments to the 1948 Act prior to 1973 had the effect that a British subject would be required to take an oath of allegiance or renounce their "former allegiance" to the United Kingdom (or a colony or dominion). Sections 8 and 19 of the *Australian Citizenship Act 1973* (Cth) introduced amendments that, for the first time, required all people (including British subjects) who had obtained a grant of Australian citizenship to take an oath of allegiance to the Queen of Australia before citizenship took effect. See also ***Re Patterson*** (2001) 207 CLR 391 at 479 [265], 486 [283] (Kirby J).

43 ***Nolan*** (1988) 165 CLR 178 at 193.

44 ***Te*** (2002) 212 CLR 162 at 179 [53] (Gaudron J).

45 ***Love*** (2020) 94 ALJR 198 at 215 [64] (Bell J), 247-8 [252] (Nettle J), 260 [308]-[309], 264 [333] (Gordon J), 285 [437] (Edelman J).

34. The only conclusion for this Court to draw is that, as a consequence of the appellant's British subjecthood, he was when he arrived in Australia beyond the aliens power so that when he took up permanent residence in Australia, he became one of the 'people of the Commonwealth'. The appellant's argument in this regard does not require the Court to depart from the ratio of existing relevant authority.

Patterson, Shaw* and *Nolan

35. This court has previously considered whether British subjects are 'aliens' on three occasions: in ***Nolan***,[46] *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391 (***Re Patterson***)[47] and *Shaw v Minister for Immigration and Multicultural Affairs* (2003) 218 CLR 28 (***Shaw***).[48]

Nolan

36. Mr Nolan was born in the United Kingdom in 1957 and arrived in Australia in 1967 as a British subject. He was not naturalised as an Australian citizen.

37. Both the majority, and Gaudron J in dissent, recognized that the introduction of statutory citizenship by the 1948 Act was a significant event in the historical timeline pertaining to the gradually declining recognition of the special status British subjects possessed in the Australian community. Gaudron J considered that the 'special position' of British subjects lasted until 1984[49] while the majority considered the 1948 Act and the *British Nationality Act 1948* (UK), 'reflected and formalized the diminished importance of the notion of 'British subject''.[50] The majority considered that it was, from that point on, that the status of 'a person who was born neither in Australia nor of Australian parents and who had not become a citizen of this country and was a British subject or a subject of the Queen by reason of his birth in another country could *no longer* be seen as having the effect, so far as this country is concerned, of precluding his classification as an 'alien'…'[51] Prior to the introduction of the 1948 Act, when it was not possible for a person to become an Australia statutory citizen, that was not the case.

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46 ***Nolan*** (1988) 165 CLR 178.
47 *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391 (***Re Patterson***).
48 *Shaw v Minister for Immigration and Multicultural Affairs* (2003) 218 CLR 28 (***Shaw***).
49 ***Nolan*** (1988) 165 CLR 178 at 191 (Gaudron J).
50 ***Nolan*** (1988) 165 CLR 178 at 184 (Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ).
51 ***Nolan*** (1988) 165 CLR 178 at 184 (Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ).

38. It follows from *Nolan* that a British subject who arrived in Australia prior to the introduction of the 1948 Act, as the appellant did, is beyond the aliens power in s 51(xix).

Re Patterson

39. Mr Taylor was born in the United Kingdom and arrived in Australia in 1966 at the age of six as a British subject. He was not naturalised as an Australian citizen.

40. Gaudron and Kirby JJ (Callinan J agreeing with Kirby J's reasoning) considered that Mr Taylor was not an alien for constitutional purposes at any time prior to 1987.[52] McHugh J (with whom Callinan J also agreed) considered that Mr Taylor was not an alien for constitutional purposes at any time prior to the passing of the *Royal Style and Titles Act 1973* (Cth) in 1973.[53] While lacking a clear *ratio decidendi*¸ ***Re Patterson*** is 'authority for the proposition that a British citizen is not an alien if that person arrived in Australia in or before 1966 and has lived here permanently since that time'.[54]

41. In concluding that s 51(xix) did reach the applicant, Gleeson CJ (in dissent) relied[55] on the majority's ratio in ***Nolan***[56] finding that, as Mr Taylor arrived in Australia after the commencement of the 1948 Act, he was an alien. Similarly, Gummow and Hayne JJ (also in dissent) considered that the commencement of the 1948 Act was determinative of alienage for British subjects born outside Australia.[57]

42. All of the judges in ***Re Patterson*** recognized (and those in dissent relied on) the 1948 Act being the first 'major step' towards persons who were born in the United Kingdom being classified as aliens.[58]

43. It follows from ***Re Patterson*** that a British subject who arrived in Australia prior to the introduction of the 1948 Act, as the appellant did, is beyond the aliens power in s 51(xix).

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52 On the basis that until 1987, s 5 of the *Australian Citizenship 1948* (Cth) defined 'alien' to mean 'a person who [was] not…a British subject…an Irish citizen or a protected person': ***Re Patterson*** (2001) 207 CLR 391 at 410 [44] (Gaudron J), at 495-496 [312]-[313] (Kirby J).

53 ***Re Patterson*** (2001) 207 CLR 391 at 431 [121] and [135] (McHugh J).

54 ***Shaw*** (2003) 218 CLR 8 at 48 [50] (McHugh J).

55 ***Re Patterson*** (2001) 207 CLR 391 at 399-400 [6] (Gleeson CJ).

56 ***Nolan*** (1988) 165 CLR 178 at 184 (Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ).

57 ***Re Patterson*** (2001) 207 CLR 391 at 470 [240] (Gummow and Hayne JJ).

58 ***Re Patterson*** (2001) 207 CLR 391 at 430 [118] (McHugh J).

Shaw

44. Mr Shaw was born in the United Kingdom in 1972 and arrived in Australia in 1974 as a British subject. He was not naturalised as an Australian citizen.

45. The majority (Gleeson CJ, Gummow and Hayne JJ with whom Heydon J agreed), consistent with their earlier reasoning in both ***Nolan*** and ***Re Patterson***, concluded that 'the aliens power has reached all those persons who entered this country after the commencement of the Citizenship Act on 26 January 1949'.[59] Those in dissent considered that Mr Shaw was not an alien because he arrived prior to March 1986.[60] As the appellant arrived before 26 January 1949, according to the ratio of ***Shaw***, he is not an alien.

Application of *Re Patterson, Shaw* and *Nolan*

46. While this Court has not previously specifically determined, in the context of a British subject who arrived in Australia prior to the commencement of the 1948 Act, that such a person is not an alien, on every opportunity that the Court has considered whether a British subject is an alien, the commencement of the 1948 Act has been a significant determinative factor. Subject to the comments of the majority in *Shaw* at [22] and [27]-[28] addressed at paragraph 23 and footnote 38 herein, all of the majority and dissenting opinions in ***Re Patterson***, ***Shaw*** and ***Nolan*** support the proposition that British subjects who arrived prior to the commencement of the 1948 Act were not aliens for the purposes of s 51(xix) of the *Constitution.* The ratio in each case is aligned with the foundational judgment of Gibbs CJ in *Pochi v MacPhee and Another* (1982) 151 CLR 101 and his Honour's statement that, 'There are strong reasons why the acquisition by an alien of Australian citizenship should be marked by a formal act, and by an acknowledgment of allegiance to the sovereign of Australia. The [1948 Act] so validly provides'.[61] The Parliament continues to recogise the significance of the commencement of the 1948 Act as criteria for Australian statutory citizenship[62] and, in each of their judgments in ***Love***,

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59 ***Shaw*** (2003) 218 CLR 8 at 43 [32] (Gleeson CJ, Gummow and Hayne JJ).
60 ***Shaw*** (2003) 218 CLR 8 at 48 [51] (McHugh J), 72 [126] (Kirby J) and 84-85 [177] (Callinan J).
61 *Pochi v MacPhee and Another* (1982) 151 CLR 101 (***Pochi***) at 111 (Gibbs CJ).
62 See *Australian Citizenship Act 2007* (Cth) ss 16 and 19A.

Kiefel CJ,[63] Bell J,[64] Gageler J,[65] Keane J,[66] Nettle J[67] and Edelman J[68] recognized the importance (from different perspectives and for different reasons) of the 1948 Act.

The Crown did not divide at any time prior to the appellant's arrival in Australia

47. It is well settled that since Federation, the application of the constitutional term 'aliens' to British subjects has changed, reflecting Australia's emergence as an independent nation.[69] That is, the formerly undivided Imperial (British) Crown became the Crown in right of Australia.[70] Nettle J held that bifurcation of the Crown occurred prior to the appellant's arrival and, as a consequence, he arrived in Australia as an alien.[71] While the Commonwealth agrees that bifurcation occurred prior to the appellant's arrival, it disagrees with the date settled on by Nettle J.[72] His Honour's finding and the Commonwealth's approach are erroneous. A close analysis of the historical record leads to the inevitable conclusion that, had the appellant been born in Australia on the date of his birth, he would have been bestowed British subjecthood for the very same reason he was bestowed British subjecthood as a consequence of his birth in the Crown Colony of Malta and would have owed an allegiance to the same 'British' Crown.

48. The provisions of various Acts of the Commonwealth Parliament enacted between Federation and the last decade of the twentieth century – including on the important matters of defence, census-taking, the right to vote and eligibility for employment in the public service – demonstrate that, contrary to the conclusion reached by Nettle J,[73] the evolutionary process leading to bifurcation was incomplete until well after the introduction of the *Westminster Adoption Act 1942* (Cth). To the extent that it is

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63 ***Love*** (2020) 94 ALJR 198 at 4 [9].
64 ***Love*** (2020) 94 ALJR 198 at 16 [53].
65 ***Love*** (2020) 94 ALJR 198 at 34 [98].
66 ***Love*** (2020) 94 ALJR 198 at 53 [164].
67 ***Love*** (2020) 94 ALJR 198 at 84 [251].
68 ***Love*** (2020) 94 ALJR 198 at 154-157 [432]-[439].
69 ***Nolan*** (1988) 165 CLR 178 at 184 (Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ).
70 ***Pochi*** (1982) 151 CLR 101 at 109-111 per Gibbs CJ (Mason J and Wilson agreeing at 112, 116); ***Nolan*** (1988) 165 CLR 178 at 183-184 (Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ), 191 (Gaudron J); *Sue v Hill* (1999) 199 CLR 462 at 503 [96] (Gleeson CJ, Gummow and Hayne JJ); ***Shaw*** (2003) 218 CLR 28 at 39-42 [20]-[27] (Gleeson CJ, Gummow and Hayne JJ).
71 *Chetcuti* [2020] HCA 42 at [52].
72 Notice of contention filed by the respondent on 17 December 2020.
73 *Chetcuti* [2020] HCA 42 at [49].

necessary for the Court to decide the question, the finding in *Shaw* that the Crown had divided upon or before commencement of the 1948 Act is also erroneous.[74]

49. The decision of the several colonies to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland integrally bound Australia to that indivisible Crown.[75] The *Constitution* itself requires the Queen's involvement in Australia's legislative and executive affairs.[76] This Court has recently determined that the Crown was undivided for an unspecified period following Federation,[77] and, in contemporaneous decisions, that it was undivided in 1908,[78] 1920[79] and 1944.[80] Some four decades after Federation, Rich J considered in *Minister for Works for Western Australia v Gulson* (1944) 69 CLR 338 that '[i]t has been decided by the highest authority that, in constitutional theory, the Crown is one and indivisible', adding that 'it would be more strictly accurate to speak of the State of Western Australia in the right of the Crown than of the Crown in the right of the State of Western Australia … Thus, the prerogatives of the Crown are the prerogatives of a single, universal Crown, and endure for the benefit of each and every part of the Empire'.[81] The Queen was not referred to as the Queen of Australia[82] until 19 October 1973.[83] The 'prevailing doctrine of the unity of the Imperial Crown'[84] was implicit in the finding of Higgins J in *Re Yates; Ex parte Walsh* (1925) 37 CLR 36 that there

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74 *Shaw* (2003) 218 CLR 8 at 42 [28] and 43 [32] (Gleeson CJ, Gummow and Hayne JJ).

75 *R v Sharkey* (1949) 79 CLR 121 at 136.

76 As explained by the majority in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at 152-3 (Knox CJ, Isaacs, Rich and Stake JJ): 'The Act 63 & 64 Vict c 12, establishing the Federal Constitution of Australia passed by the Imperial Parliament for the express purpose of regulating the royal exercise of legislative, executive and judicial power throughout Australia, is by its own inherent force binding on the Crown to the extent of its operation.'

77 *Love* (2020) 94 ALJR 198 at 221 [96] (Gageler J); 247 [249] (Nettle J).

78 *Potter v Minahan* (1908) 7 CLR 277 at 321 (Higgins J).

79 *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at 152 (Knox CJ, Isaacs, Rich and Stake JJ).

80 *Minister for Works for Western Australia v Gulson* (1944) 69 CLR 338 at 356 (Rich J),362 (McTiernan J), 366 (Williams J).

81 *Minister for Works for Western Australia v Gulson* (1944) 69 CLR 338 at 356 (Rich J), 366 (Williams J).

82 Full title: Elizabeth the Second by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

83 On 4 December 1947, the Royal Style and Title was amended to exclude the words "Indiae Imperator" and "Emperor of India", reflecting India's recent independence, but otherwise maintaining the formal indivisibility of the Crown: *Royal Style and Titles Act (Australia) 1947* (Cth), s 3. As of 7 May 1953, the Royal Style and Title was amended to "Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and her other Realms and Territories Queen, Head of the Commonwealth and Defender of the Faith": *Royal Style and Titles Act 1953* (Cth), s 4(1). Gaudron J stated in *Nolan* (1988) 165 CLR 178 at 192 that the criterion for admission to membership of the community constituting the body politic of Australia did not change to allegiance to the Crown in right of Australia prior to 1973.

84 *Love* (2020) 94 ALJR 198 at 221 [96] (Gageler J).

existed 'a strong presumption that Parliament was not intended to have power to deport British subjects, however drastically Parliament may interfere with their immigration'.[85]

50. In order to obtain statutory citizenship, naturalised aliens (but not those who were already British subjects) were required from 1949 to swear an oath of allegiance to 'His Majesty King George the Sixth, his heirs and successors according to law',[86] and from 1953 to 'Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law'.[87] From 1966, a naturalised alien was required to renounce all other allegiance before swearing the oath in relevantly identical terms[88] but, significantly, renunciation was not required of natural-born British subjects who wished to register as citizens.[89]

51. Section 7(1) of the *Passports Act 1938* (Cth) provided that 'any officer authorized in that behalf by the Minister may issue Australian passports to British subjects', a "British subject" was defined to include 'a person who in Australia or in any Territory of the Commonwealth is entitled to all political and other rights, powers and privileges to which a natural-born British subject is entitled'. That remained the case until s 2(b) of the *Passports Amendment Act 1984* (Cth) removed the definition of "British subject".

52. With respect to matters of Australia's national defence, as of 1 March 1904, s 59 of the *Defence Act 1903* (Cth) provided that all male inhabitants of Australia (except those who were exempt from service) who had resided therein for six months and were British subjects between the ages of eighteen and sixty years were, in war time, liable to serve in the Militia Forces, without distinction as to their birthplace within the British Empire.[90] Similarly, compulsory registration for military service introduced in 1951 made British subjecthood a qualification.[91] An obligation to serve when called upon in time of war continued to apply to British subjects under amendments made in 1965.[92] It was not until 1992 that British subjecthood ceased to be a qualification for

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85 *Re Yates; Ex parte Walsh* (1925) 37 CLR 36 at 117 (Higgins J).
86 *Nationality and Citizenship Act 1948* (Cth), s 16 and sch 2.
87 *Nationality and Citizenship Act 1953* (Cth), s 11.
88 *Nationality and Citizenship Act 1966* (Cth), s 11.
89 *Nationality and Citizenship Act 1948* (Cth), s 12.
90 Special Case [11] (AB 7).
91 *National Service Act 1951* (Cth), s 10(1)(a)(i).
92 *Defence Act 1965* (Cth), s 17.

military service.[93] The manner of Australia's entry into, and conduct during and after, the Second World War further supports the view that the Crown remained undivided at least to the end of the 1940s.[94]

53. With respect to the collection of statistical data relevant to matters of Australian public life, as of 8 December 1905, s 12(a) of the *Census and Statistics Act 1905* (Cth) required the 'Householder's Schedule' to include information about various matters, including 'nationality'. Censuses held in 1911, 1921, 1933, 1947, 1954, 1961, 1966 and 1971 recorded persons' nationality as either 'British' or 'foreign'.[95] That is, despite Australian citizenship being introduced in 1948, Australian citizenship was not considered to be a defining feature of 'nationality' for the purposes of the census until 1976.[96]

54. As to the eligibility to vote, as of 25 November 1918, 'natural-born or naturalized subjects of the King' were eligible to vote[97] and as of 22 April 1949, that right accrued to 'British subjects' rather than 'subjects of the King'.[98] It was not until 1 May 1987 that voting was restricted to Australian citizens and those British subjects whose names were on the electoral roll immediately before 26 January 1984.[99]

55. The ability to be employed in the Public Service was also confined to British subjects. As of 19 July 1923, no person could be admitted to the 'Commonwealth Service' unless they were a 'natural-born or naturalized British subject'.[100] It was not until 25 June 1984 that the qualification of 'British subject' was replaced by that of 'Australian citizen'.[101]

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93 *Defence Legislation Amendment Act 1992* (Cth), s 5.

94 On 3 September 1939, Prime Minister Menzies made the well-known statement that "Great Britain has declared war upon [Germany] and that, as a result, Australia is also at war", indicating complete unity of purpose and action between Australia and the "Motherland": Special Case[39] (AB 30). Notwithstanding the statement of Prime Minister John Curtin made on 27 December 1941 (Annexure SC-39, AB 335), that unity persisted, both formally and practically, in the manner in which declarations of war were made on Finland, Hungary, Rumania, and the Japanese Empire, in step with the United Kingdom and subject to explicit authorisation by "George VI, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India": Annexure SC-33 (AB 316). Following the war, Australia made a number of significant, unconditional monetary grants to the United Kingdom to assist with post-war recovery: *United Kingdom Grant Act 1947* (Cth); *United Kingdom Grant Act 1948* (Cth); *United Kingdom Grant Act 1949* (Cth).

95 Annexures SC-6-SC-14 (AB 112-181).

96 Annexure SC-15 (AB 182-189).

97 *Commonwealth Electoral Act 1918* (Cth), s 39(1)(b).

98 *Commonwealth Electoral Act 1949* (Cth), s 3.

99 *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985* (Cth), s 3 and sch 1.

100 *Commonwealth Public Service Act 1922* (Cth), s 33(1)(a).

101 *Public Service Reform Act 1984* (Cth), s 26(b).

56. Section 1 of the *Australia Act 1986* (UK) provided that 'no Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory'. Whilst this was, like the *Statute of Westminster* before it, an expression of the Imperial Parliament and was capable of being repealed by it, the adoption of the same provision in s 1 of the *Australia Act 1986* (Cth) put the power to make laws for Australia permanently beyond its reach. It was only upon commencement of both Acts that Australia achieved independence in the sense that the Imperial Parliament could not, even if it wished to, have any involvement in Australian affairs.[102]

The appellant's acquisition of Maltese citizenship did not alienate him

57. As a consequence of Malta's independence in 1964, the appellant was automatically bestowed Maltese citizenship. However, nothing about this circumstance determines this case. The mere fact that the appellant was granted Maltese citizenship did not redirect his allegiance to Malta and did not impact his status as an Australian constitutional citizen. As observed by Gageler J in ***Love***,[103] employing foreign allegiance as indicia of alienage is problematic because it subjects the constitutional concept of alienage to the whims of foreign law. Nettle J recognised in ***Love*** that the common law 'long tolerated subjects owing allegiance to foreign sovereigns' provided that allegiance to the King of England was paramount.[104]

58. In his dissenting opinion in ***Singh***, McHugh J reasoned[105] that it is irrelevant in determining the meaning of the constitutional term 'aliens' that, under the law of another country, a member of the Australian polity may be a citizen of, and owe obligations of allegiance to the sovereign of, the foreign country. Rather, central to the meaning of the constitutional term 'alien' is the existence of an obligation of permanent allegiance to our sovereign.

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102 This view is supported by the comments of McHugh J in *McGinty v Western Australia* (1996) 186 CLR140,[102] Mason CJ in *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106,[102] and the plurality in *Sue v Hill.*[102] Were the contrary view correct, in the words of Callinan J in ***Shaw*** (2003) 218 CLR 28 at 83 [171], 'there would have been no need for the elaborate mechanism of the Australia Acts'.

103 ***Love*** (2020) 94 ALJR 198 at 220 [89].

104 ***Love*** (2020) 94 ALJR 198 at 80-81 [247] (Nettle J).

105 ***Singh*** (2004) 222 CLR 322 at 344 [39], 351 [58] (McHugh J).

59. This proposition finds further support in s 44(i) of the *Constitution*, which acknowledges that persons may be Australian nationals and yet be subjects or citizens of a foreign power. This extends even to natural-born Australians.[106]

60. The phrase 'is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power' in s 44 of the *Constitution* is not a synonym for 'alien'.[107] A person who has been naturalised as an Australian may be a member of the Australian community by virtue of his or her Australian citizenship and, at the same time, a citizen or subject of a foreign country.[108] As, Gaudron J correctly observed in ***Nolan*** at 189:

> … an alien is "a person who is not a member of the community which constitutes the body politic of the nation state from whose perspective the question of alien status is to be determined". That is not the same as asking whether the person 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", that being the question posed by s 44(i) of the Constitution with respect to the qualification necessary to be a member of the Commonwealth Parliament.

61. That the possession of foreign citizenship does not bring a person within the scope of the aliens power was resolved in ***Love.***[109]

The appellant is a subject of the Queen of Australia

62. As McHugh J and Callinan J explained in ***Re Patterson***[110], with the bifurcation, the appellant became, like all other Australian-born British subjects then resident in Australia, a subject of the Queen of Australia, albeit one who was also a subject of the Queen of the United Kingdom.

63. Nettle J seemingly accepted that conclusion,[111] but thereafter found the appellant's British subjecthood to be determinative of the issue, without considering the significance of his dual allegiance. In summarising the relevant characteristics attached to the appellant, Nettle J omitted to identify him as a subject of both the

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106 *Re Canavan* (2017) 91 ALJR 1209 at 1214 [15] and 1217 [34] (per Curiam).
107 ***Singh*** (2004) 222 CLR 322 (Gummow, Hayne and Heydon JJ) at 382 [149].
108 ***Re Patterson*** (2001) 207 CLR 391 at 407 [34] (Gaudron J).
109 ***Love*** (2020) 94 ALJR 198 at 215 [66] (Bell J), 220 [89] (Gageler J), 111-113 [316]-[322] (Gordon J), 153 [430] (Edelman J).
110 ***Re Patterson*** (2001) 207 CLR 391 at 435 [131]-[135] (McHugh J), 517, [373] (Callinan J). See also ***Te*** (2002) 212 CLR 162 at 188 [90] (McHugh J).
111 ***Chetcuti*** [2020] HCA 42 at 8 [32].

Queen of Australia and the Queen of the United Kingdom, as if these two statuses could not coexist.[112] In so doing, his Honour fell into error.

64. It is his status as a subject of the Queen resident in Australia that, without more, places the appellant beyond the aliens power.[113]

The appellant cannot be stripped of his Australian constitutional citizenship in the absence of some positive legislative enactment or other alienating action

65. In the period between the appellant's arrival in Australia and the cancellation of his Absorbed Person visa in 2017, the appellant did not act in a way that could be considered inconsistent with his permanent allegiance to the 'British' Crown and subsequently the Crown in right of Australia.

66. Indeed, his actions were at all times consistent with his permanent allegiance to the Crown – he resided in Australia, voted in Australian elections, worked for the public service, was placed in the Vietnam conscription ballot and did not take any steps to take up the Maltese citizenship which was automatically bestowed to him by dint of a foreign law of a country he has never been to.[114]

67. *Calvin's Case*[115] held, inter alia, that at common law the allegiance of a natural-born British subject was regarded as permanent or 'indelible' as allegiance to the sovereign is due by the law of nature and cannot be altered.[116] While exceptions to this common law principle arose, none of them apply to the appellant.[117] For the purposes of this case it follows that the appellant's allegiance to the Crown did not change.

68. On the case stated, the appellant has done nothing to alienate himself. He was a British subject by reason of his own birth and descent and became a subject of the Queen of Australia by the process described above. His status is therefore indelible only to

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112 ***Chetcuti*** [2020] HCA 42 at 12 [42].

113 ***Re Patterson*** (2001) 207 CLR 391 at 435 [132] (McHugh J), 493-4 [307]-[308] (Kirby J), 517-8 [373]-[378] (Callinan J).

114 Whilst the appellant was born in the Crown Colony of Malta and returned there for a short time in 1958 he has not visited since it became an independent country.

115 (1609) 7 Co Rep 1a [77 ER 377].

116 (1609) 7 Co Rep 1a, 25a [77 ER 377, 407] cited in ***Singh*** (2004) 222 CLR 322, 389 [170] (Gummow, Hayne and Heydon JJ).

117 For example, *Doe d Thomas v Acklam* (1824) 2 B & C 779 [107 ER 572] does not apply to the appellant because after Malta's seceded, he and his family chose to remain in Australia and thus maintained their allegiance to the Crown; the appellant, like Mr Auchmuty (*Doe d Auchmuty v Mulcaster* (11826) 5 B & C 771 at 775 [108 ER 287 at 289]) acted in a manner that preserved his allegiance to the Crown.

renunciation.[118] He arrived as someone with permanent allegiance to the Crown and has remained so allegiant. It follows that he is beyond the aliens power.

69. Argument in ***Singh*** proceeded on the footing that the aliens power also extends to making a law identifying the circumstances in which, and the procedures by which, a person who is not an alien may sever the ties of allegiance to Australia.[119] Be that as it may, the appellant has not been treated as a non-alien who has severed his ties of allegiance to Australia: firstly because he has not done anything to sever his ties of allegiance, and secondly because the respondent's position is that he has always been an alien.

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Conclusion on primary case

70. Whether the appellant is an alien is 'fundamentally a question of otherness'[120]; is he a 'belonger'[121] or is he not? As a natural born subject of the Queen who, upon the emergence of the Queen in right of Australia became her subject by reason of his permanent residence in Australia, he is a 'belonger'. As such, he is beyond the aliens power.

The appellant's alternative case if the Court finds the Crown divided before the appellant's arrival in Australia

20 The appellant was formally admitted as one of 'the people' of the Commonwealth; that is, he became an 'Australian constitutional citizen'

71. As Gleeson CJ explained in ***Te***,[122] 'From the beginning, the power to make laws with respect to aliens has been understood as a wide power, equipping Parliament with the capacity to decide, on behalf of the Australian community, who will be admitted to formal membership of that community. Alienage is a legal status. Naturalisation is the act in the law by which a person who was formerly an alien ceases to be one. The power conferred by s 51(xix) includes a power to determine legal status'.[123]

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118 ***Love*** (2020) 94 ALJR 198 at 160 [445] (Edelman J).
119 ***Singh*** (2004) 222 CLR 322 at 397-398 [197]-[198] (Gummow, Hayne and Heydon JJ).
120 ***Love*** (2020) 94 ALJR 198 at 116 [333] (Gordon J).
121 ***Love*** (2020) 94 ALJR 198 at 134 [394] (Edelman J).
122 ***Te*** (2002) 212 CLR 162 at 171 [24]; see also 179-180 [56]-[57] (Gaudron J), 192 [109], 194 [116] (Gummow J).
123 And see ***Love*** (2020) 94 ALJR 198 at 205 [5] (Kiefel CJ), 212 [53] (Bell J), 218 [84], 219 [88] (Gageler J), 232 [166] (Keane J), 262 [325] (Gordon J), 285 [439] (Edelman J).

72. Nettle J's decision was premised on the assumption that the only way to alter non-alien status is to take up Australian citizenship.[124] That may be the case today. However, the 1920 and 1948 Acts, in conferring non-alien status on 'British subjects' were an exercise of the Parliament's power to determine legal status. By declaring British subjects to be non-aliens and by conferring upon them the rights and privileges discussed above, Parliament exercised its power under s 51(xix) to formally admit British subjects to the body politic.

73. The appellant's case can be distinguished from that of the applicant in ***Te*** and of all other persons who have entered Australia on visas granted under the Migration Act. Their entry was conditional. As a 'British subject' the appellant's entry into Australia in 1948 was unconditional. Upon taking up permanent residence here, by reason of those Acts, he became one of the people of the Commonwealth.

Part VII: Orders sought

74. The appellant seeks the following orders:

    a. The appeal be allowed and the orders of Nettle J in *Chetcuti* be set aside;

    b. A declaration that the appellant is not an alien for the purposes of section 51(xix) of the *Constitution*; and

    c. Costs of the proceeding.

Part VIII: Time for oral argument

75. The appellant estimates he will require 2 hours for oral argument.

Dated: 5 March 2021

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[124] ***Chetcuti*** [2020] HCA 42 at 12 [42].

IN THE HIGH COURT OF AUSTRALIA

MELBOURNE REGISTRY

ON APPEAL FROM
A SINGLE JUDGE OF THE HIGH COURT

BETWEEN: **FREDERICK CHETCUTI**
Appellant

and

COMMONWEALTH OF AUSTRALIA
Respondent

ANNEXURE
LIST OF STATUTES AND STATUTORY INSTRUMENTS

1. *Australia Act 1986* (Cth)
2. *Australia Act 1986* (UK)
3. *Australian Citizenship Act 1973* (Cth), ss 8, 19
4. *British Nationality Act 1730* (UK)
5. *British Nationality Act 1948* (UK), s 1(1)
6. *Commonwealth Electoral Act 1918* (Cth), s 39(1)(b)
7. *Commonwealth Electoral Act 1949* (Cth), s 3
8. *Commonwealth Public Service Act 1922* (Cth), s 33(1)(a)
9. *Constitution of Malta*, s 23(1)
10. *Defence Act 1909* (Cth), ss 10, 17
11. *Defence Legislation Amendment Act 1992* (Cth), s 5
12. *Judiciary Act 1903* (Cth), s 78B
13. *Malta Independence Act 1964* (UK), s 2
14. *Maltese Citizenship Act 1964* (Malta), s 3
15. *Migration Act 1958* (Cth), ss 34, 189, 501(2)-(3)
16. *Nationality Act 1920* (Cth), ss 5(1), 6(1)(a), 7(1), 7(4)

17. *Nationality and Citizenship Act 1948* (Cth), ss 5, 7, 11, 2, 15, 16, sch 2
18. *National Service Act 1951* (Cth), s 10(1)(a)(i)
19. *Naturalization Act 1870* (UK)
20. *Naturalization Act 1903* (Cth), s 3, 5, 7
21. *Public Service Reform Act 1984* (Cth), s 26(b)
22. *Royal Style and Titles Act 1973* (Cth)
23. *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985* (Cth), s 3, sch 1