

Philippine Dual Citizenship & Absentee Voting Law 2003:

Implications and Opportunities
for Filipino-Australians



About Migrante Melbourne

MIGRANTE Melbourne is a proactive organisation working for the rights and welfare of migrants in Victoria Australia through various initiatives such as education, training, advocacy and affirmative action.

A comprehensive vision for a just society. Our vision is to support a society where justice, freedom and equality reigns so that Filipino migrants stands proud of their heritage and can exercise their rights and potentials to the fullest.

We aim to **unify the Filipino migrants in Melbourne**, support genuine trade union, migrant organization and other pro people organization and to generate assistance for the struggle of the Filipino people for a just and humane society.

Giving due recognition to Filipino talents. We are proud of our Filipino heritage and identity, seek to advance and recognize Filipino achievements.

Visit us on the web at www.migrante.org.au

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Introduction

This primer primarily aims to give the basic legal outline of the two newly passed laws in the Philippines, the **"Citizenship Retention and Re-Acquisition Act of 2003"** and the **"Overseas Absentee Voting Act of 2003"**. This primer also seeks to clarify the procedural issues and questions that may arise in reclaiming the citizenship and the registration for overseas voting.

The Filipino migrant sector consists of more than 10% of the total population of the Philippines and annually salvages an ailing national economy through dollar remittances. In 2001, Filipino migrants (totalled to 8.7 million) poured in a gross of US\$4.8.

Though Filipino migrants have different reasons for migrating, most of us Overseas Filipino Workers (OFWs) who were forced by the dire economic need to support one's self and its family and by the lack of opportunities at home to sustain a decent living condition. There are also students and professionals who see great opportunity for their careers to prosper overseas, or for political reasons.

The passage of these two laws has been the product of the migrant sector's clamor to recognize our voice in the political arena. With this two laws in place, a leap forward in advancing our sector's interest and rights, are reclaimed and reflected to our *voting rights as entitled to every global citizen*.

We hope that this primer can be used widely by our community and can serve as a guidance to all Filipinos in Australia, dual citizens or not in reaffirming our place towards a prosperous and just Philippine and Australian societies.

Migrante Melbourne
November 2003

THE CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003

1. What is the Citizenship Retention and Re-acquisition Act of 2003?

The **Citizenship Retention and Re-acquisition Act of 2003**, also known as the 'Dual Citizenship Law', enables natural born Filipinos, who have lost their Philippine citizenship by reason of their naturalisation as citizens of a foreign country, to reclaim their Philippine citizenship.

2. How may I re-acquire my Philippine citizenship?

You may re-acquire your Philippine citizenship upon taking an oath of allegiance to the Philippines, which reads as follows:

"I, _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognise and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion".

3. Who may be included in the re-acquiring of my Philippine citizenship?

Unmarried children and minors (below 18 years of age), whether illegitimate or adopted, are included in the re-acquiring of your Philippine citizenship and may also be deemed as Filipino citizens.

4. What are my rights and privileges for re-acquiring Philippine Citizenship?

A. Civil and Political

The Dual Citizenship Law empowers many Filipinos abroad to enjoy full civil and political rights and have their voices heard on Philippine issues that concern and affect them.

As a Filipino dual citizen, the law will empower you to:

- Exercise your right to vote (suffrage) under Article V of the Philippine Constitution and other existing laws that include the newly passed, Absentee Voting Law of 2003;

This new law thus creates an excellent opportunity to those Filipinos abroad seeking to retire and live in the Philippines for good.

B. Economic

One of the main goals of the Dual Citizenship Law is to drive economic growth. The new law encourages you to return to the Philippines and help contribute to the country's economic growth and development.

There are several economic advantages that you may gain:

- You can re-invest your money and even set-up your own local business that would generate income and job opportunities for local Filipinos.
- You may now lawfully own unlimited portions of lands, which the current Philippine law restricts foreign ownership of lands in the country.
- If you intend to practice your profession in the Philippines (eg lawyers, doctors, and accountants), you are able to apply for a licence or permit to engage in such practices.

This new law thus creates an excellent opportunity to those Filipinos abroad seeking to retire and live in the Philippines for good.

C. Social and Cultural

One of the vital parts of this new law is the growth and advancement of social and cultural exchanges of both Australian and Filipino culture, tradition and learning.

The advantages in this area are very promising:

- You are permitted to travel anytime to and from the Philippines without securing a visa. Before, the *Balik Bayan* Program permits Filipino-Australians to stay in the Philippines for a maximum of 12 months without a visa. Now, you are able to stay in the Philippines for an unlimited duration of time and with no restrictions at all.

- The easiness of travelling will also encourage the flow of tourism, commerce and cultural (people to people) exchange between the Philippines and Australia.

5. Will I have to pay taxes should I re-acquire my Philippine citizenship?

Many potential dual citizens ask whether or not they will have to pay taxes, if they reclaim their Philippine citizenship. The simple answer to this questions is “no”. However, there are many exceptions to this due to the complexities of both the Australian and Philippine taxation laws.

Logically speaking, one has to pay a tax if the individual or the company clearly operates within the jurisdiction (scope) of a country’s regulation; in other words, you have to pay your tax to Australia if you are working in Australia or hold a business in Australia. The same logic also applies in the Philippine, if you intend to work or set up a business there. But being a dual citizen does not necessarily mean to say that you have to pay your tax in the Philippines.

6. Will I have to serve the military if I reacquire my Philippine citizenship?

Potential dual citizens express some concerns about serving in the Philippine military. But it is clear in the Dual Citizenship Law that it does not require dual citizens to serve in the military. Furthermore, the law does not expressly make dual citizens eligible for any future Philippine draft in the event of war or any conflict.

7. What is the procedure for applying?

Applicants in Australia should do the following:

- Personally appear before the Philippine Embassy in Canberra and inform the consul of your intention to re-acquire your Philippine citizenship;
- Present your expired Philippine passport, your Philippine birth certificate, your Australian citizenship certificate and/or Australian passport;
- Accomplished the prescribed application forms;
- Submit accomplished forms together with photocopies of the above-mentioned documents and a fee of A\$50.00;

- The oath of allegiance will be administered by the consul before the Philippine flag;
- Finally, the applicant will be given a notarised copy of his/her oath, thus, evidencing dual citizenship.

Please note that the Philippine Embassy and consulates around Australia should be able to provide you the full details.

THE OVERSEAS ABSENTEE VOTING ACT OF 2003

1. What is the Overseas Absentee Voting Act of 2003?

The Overseas Absentee Voting Act of 2003, also known as the ‘Absentee Voting Law’, is the law that ‘ensures equal opportunity to all qualified citizens of the Philippines abroad’ to exercise their right to vote (suffrage) in the election of President, Vice-President, Senators and Party-List Representatives.

2. Who are qualified to vote under the Absentee Voting Law?

All Filipino citizens abroad, not otherwise disqualified by law, at least 18 years of age on the day of the election, and who are registered overseas absentee voters with approved application to vote *in absentia*, may vote for the above mentioned-positions in the national election.

3. Who are disqualified from voting under the Absentee Voting Law?

The following are disqualified from registering as overseas absentee voters:

- Those who have lost their Philippine citizenship in accordance with Philippine laws;
- Those who have expressly renounced their Philippine citizenship and who have pledged allegiance to a foreign country;
- Those who have been convicted by a court or tribunal of an offence punishable by imprisonment of not less than 1 year as well as those who have been found guilty of Disloyalty under Article 137 of the Revised

Penal Code, unless such disability has been removed by plenary pardon or amnesty;

- An immigrant or a permanent resident who is recognised as such in the host country, *unless he/she executes, upon filing of an application for registration as absentee voter, an affidavit declaring that: (1) he/she shall resume actual physical permanent residence in the Philippines not later than 3 years from approval of his/her registration; and (2) he/she applied for citizenship in another country;*
- Any Filipino citizen abroad previously declared insane or incompetent by competent authority in the Philippines or abroad, unless that competent authority subsequently certifies that the person is no longer insane or incompetent.

4. How may a Filipino Citizen become a registered overseas absentee voter?

Filipino citizens abroad or Filipino citizens in the Philippines who will be abroad on the election day may become registered overseas absentee voters by filing an application for registration or certification as overseas absentee voters.

5. Is a registered overseas absentee voter automatically entitled to vote?

No. A registered overseas absentee voter must have an appropriate and approved application to vote in absentia to be entitled to vote for President, Vice-President, Senators and Party-List Representatives.

For those Filipinos who have not registered:

6. Is the registration for overseas absentee voter now closed?

For the purpose of 2004 Philippine election, the registration for an overseas absentee voter is now closed. The Absentee Voting Law stipulates that all applications for the May 2004 elections shall be filed with the Commission on Election (COMELEC) not later than 280 calendar days before the day of elections. COMELEC prescribed that the period within which all applications be filed was from 1 August 2003 to 30 September 2003.

Nevertheless, for succeeding elections, COMELEC will provide for the period within which applications to register must be filed.

For those Filipinos who have registered:

7. How will I know if my application has been approved or disapproved?

If your application has been approved:

- You or your authorised officer representative will receive a Certificate of Registration and your name shall be included in the City/Municipal/District registry of Absentee Voters and in the National Registry of Absentee Voters;
- Your name shall be posted on the day following the approval of your application in a conspicuous place in the premise of the city or municipal and *barangay* building of your residence as stated in your application form.

If your application has been disapproved:

- You or your authorised representative will receive a Notice of Disapproval stating the reason(s) for the disapproval; and
- Your name shall be posted on the day following the disapproval of your application in a conspicuous place in the premise of the city or municipal and *barangay* building of your residence as stated in your application form.

8. What steps may I take if my application for registration is disapproved?

You or your authorised representative may, within 5 days from receipt of the notice of disapproval, file a verified petition for inclusion of your name in the City/Municipal/District Registry of Absentee Voters with the proper Municipal or Metropolitan Trial Court.

9. How will I know if my application to vote *in absentia* has been approved or disapproved?

If your application to vote *in absentia* has been approved, you or your authorised representative shall receive a copy of your approved Voter Registration Record, which shall be in the form of an Overseas Absentee Voting Card.

If your application has been disapproved, you or your authorised representative will receive a Notice of Disapproval stating the reason(s) for the disapproval.

10. What steps may I take in case my application to vote in absentia is disapproved?

You may file a motion for reconsideration with the Committee on Absentee Voting at the Central Office of COMELEC, Intramuros, Manila, within 10 days from receipt of the notice of disapproval.

11. When is the period for casting of votes for overseas absentee voters?

Overseas absentee voters with approved application to vote *in absentia* shall cast their votes at anytime within 30 days before the day of the election, starting on 11 April 2004 (local time at the host country) up to 3:00 pm on 10 May 2004 (Philippine time).

12. How are votes cast?

Qualified overseas absentee voters shall cast their votes *personally* only at designated voting areas within the premises of the Philippine Embassy (Canberra), Consulate (Sydney), Honorary consulates (in other Australian capital cities) and other foreign service establishments that has jurisdiction over the country.

13. Can I vote by mail?

Votes may also be cast by mail in countries where COMELEC has authorised the casting of votes. At this stage, postal voting is only allowed in not more than 3 countries. In this case, initially identified are the following: Canada, UK and Japan.

Australia is not yet included where voting by mail is allowed. However, subject to review after May 2004 elections, postal voting may be expanded in Australia.

14. Will I be penalised if I breach my promise to return to the Philippines within 3 years from the approval of my registration?

The law says that a failure to return to the Philippines within the prescribed period of 3 years would result for the removal of your name from the National Registry of Absentee Voters and a permanent disqualification to vote *in absentia*.

In addition to this, if you do not return to the Philippines within the said period and *yet vote in the next elections*, you will be penalised by imprisonment of not less than 1 year. You will also be deemed disqualified and your passport will be stamped "not allowed to vote".

CURRENT ISSUES AND CONCERNS**■ On Dual Citizenship Under Australian Law****1. Will I lose my Australian citizenship if I re-acquire my Philippine citizenship?**

No. The Australian law now says that if you acquired another citizenship on or after 4 April 2002, you will not lose your Australian citizenship. The Australian Citizenship Act 1948 was amended, so that after 4 April 2002 Australian citizens can acquire the citizenship of another country without losing their Australian citizenship.

As the Australian law now recognises the acquisition of another citizenship (Philippine citizenship), Filipino-Australians may be able to enjoy and exercise all rights and privileges of both countries.

2. Can Australian citizens have dual citizenship?

Yes. The law states that Australian citizens (Filipino-Australians) may hold the citizenship of another country (dual citizenship) or more than two countries (plural citizenship).

This happens when:

- People born in Australia automatically acquired, through a parent, another citizenship by descent;
- People become Australian citizens and who are able, under the law of their country of origin, to keep their other citizenship;
- Australian citizens are born overseas to an Australian citizen parent and who by the law of that country acquire that citizenship at birth; and
- Australians acquire the citizenship of another country automatically by legislation of that country, for example, through marriage.

Thus, following recent amendments to the Australian Citizenship Law, Australian citizens (Filipino-Australians) can now acquire another citizenship (Philippine citizenship) from 4 April 2002 and at the same time retain their Australian citizenship.

Please note that further information on this matter can be found on the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) website at: www.immi.gov.au or www.citizenship.gov.au.

■ On Dual Citizens and Migrants' Right to Vote on 2004 Election

1. What are the issues?

For dual citizens:

The COMELEC was recently reported to have declared that dual citizens, who took pains and paid a lot of money to register as dual citizens and absentee voters, cannot vote in the 2004 elections for lack of residence.

Section 1, Article V of the 1987 Philippine Constitution specifically provides that suffrage (the right to vote) may be exercised by (1) all citizens of the Philippines (2) not otherwise disqualified by law (3) at least 18 years of age (4) who are *residents of the Philippines for at least one year and in the place where they propose to vote for at least six months immediately preceding the election.*

It is claimed that Filipino-Australians who became dual citizens on the day that they also registered as absentee voters could not possibly satisfy the 'one year-six months' residence requirements before the 2004 election, and at the time of their registration in September 2003, nearly 8 months away.

For migrants and permanent residents:

The 'residency' requirement is also an issue for them. Many had questioned the constitutionality (validity) of a provision in the Absentee Voting Law (Section 5(d)) allowing Filipinos abroad the right to register as absentee voters if they execute an affidavit promising they would return to the Philippines within 3 years after their registration.

It is mentioned earlier that the 'residency' requirement in the Constitution entails: (1) a voter must be *resident* of the Philippines for *at least one year* and; (2) that he/she should be in the place where he/she intends to vote for *at least six months* immediately preceding the election.

Therefore, it is argued that the Constitution does not allow 'provisional registration or a promise by a voter to perform a condition to be qualified to vote in a political exercise'.

2. Would allowing migrants and permanent residents' the right to vote violate the Constitution?

The Macalintal Case

Romulo Macalintal, a member of the Philippine Bar, filed a petition for prohibition before the Supreme Court, claiming that he has actual and material legal interest in the subject matter of the case. Macalintal sought a declaration that certain provisions of the Absentee Voting Law is flawed and suffers from constitutional infirmity.

But in its 45-page en banc decision, the Supreme Court said that the Constitution specifically mandates to create a law that enables 'qualified Filipinos abroad' to register and vote.

The answer to the above question is 'no'. It is clear in *Macalintal (2003)* that the Court upheld the right of 'qualified Filipinos abroad' to vote under the Absentee Voting Law if they promise to come back to the Philippines.

A. 'Exception' to the 'one year-six month' residency requirement

The Court said this was an 'exception' to the 'one year-six month' residency requirement in the Constitution. It noted that the Constitution's framers intended to enfranchise as much as possible all 'qualified Filipinos abroad' who are not physically present in the country and had not abandoned their domicile of origin.

As Justice Ma. Alicia Austria-Martinez said:

"The qualified Filipino abroad who executed the affidavit *is deemed to have retained his domicile* in the Philippines. He *is presumed not to have lost his domicile by his physical absence* from this country. His having become an immigrant or permanent resident of his host country *does not necessarily imply an abandonment of his intention to return to his domicile of origin*, the Philippines. Therefore, under the law, he must be given the opportunity to express that he has not actually abandoned his domicile in the Philippines by executing the affidavit required by Sections 5(d) and 8(c) of the law." (emphasis added).

The fact that a 'qualified Filipino abroad' may have been physically absent from the Philippines and is physically a resident in Australia, for instance, but has a clear intention to return to the Philippines, will therefore make him or her 'qualified' as a resident of the Philippines under the Absentee Voting Law.

B. Affidavit: an explicit expression

The Court also said that the execution of affidavit is very crucial as it is the 'explicit expression' that Filipinos abroad had not in fact abandoned his or her domicile of origin.

As Justice Austria-Martinez added:

"The affidavit is not only proof of the intention of the immigrant or permanent resident to go back and resume residency in the Philippines, but more significantly, it serves as an *explicit expression that he had not in fact abandoned his domicile of origin.*" (emphasis added).

It then follows that the affidavit is required by migrants and permanent residents abroad because of their status in their host country, which also presupposes that they will not be physically present in the Philippines. Therefore, without the affidavit, the presumption of abandonment of his or her domicile of origin still remains.

3. So, Filipino migrants and permanent residents in Australia are now entitled to vote?

Yes. Because of the Court's decision in *Macalintal (2003)* to uphold migrants and permanent residents' right to vote under the Absentee Voting Law, they are now entitled to vote in the forthcoming 2004 Philippine election.

4. What about dual citizens? Are they also allowed to vote in the 2004 Philippine election?

It appears that the Court in *Macalintal (2003)* may have included dual citizens to have the right to vote in the upcoming 2004 Philippine election.

The key to the Court's decision in *Macalintal (2003)* is the phrase 'qualified Filipinos abroad'. One must read carefully the words of Section 2, Article V of the Constitution:

The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as *a system for absentee voting by qualified Filipinos abroad* (emphasis added).

Contrary to the claim that dual citizens cannot vote because they did not satisfy the 'one year-six months' residency requirement, it is legally and practically impossible to enfranchise 'qualified Filipinos abroad', who do not physically live in the Philippines. That is the reason why Section 2 of Article V was placed immediately after the 'one year-six month' residency requirement in Section 1 of Article V – to demonstrate clearly that Section 2 is an 'exception' to the residency requirement.

To empower and to enfranchise all 'qualified Filipinos abroad', including dual citizens, is precisely the underlying principle behind the Absentee Voting Law, which was upheld by the Court in *Macalintal (2003)*. The rationale for this is that the Congress wants the law to be expansive and all-inclusive as much as possible. The law must operate with equality among all 'qualified Filipinos abroad' to which it is granted.

Therefore, as long as you are 'qualified citizens of the Philippines abroad' (Sections 2, 3 and 4 of the Absentee Voting Law), whether you are a Filipino migrant, a Filipino permanent resident or a Filipino dual citizen in Australia, you are entitled to vote. ■

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Our Vision

“ A society where justice, freedom and equality reigns so that Filipino Migrants stands proud of their heritage and can exercise their rights and potentials to the fullest... ”

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