



Australian Citizenship Act 2007

No. 20, 2007

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About this compilation

This compilation

This is a compilation of the *Australian Citizenship Act 2007* that shows the text of the law as amended and in force on 6 September 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to Australian citizenship

Preamble

The Parliament recognises that Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity.

The Parliament recognises that persons conferred Australian citizenship enjoy these rights and undertake to accept these obligations:

- (a) by pledging loyalty to Australia and its people; and
- (b) by sharing their democratic beliefs; and
- (c) by respecting their rights and liberties; and
- (d) by upholding and obeying the laws of Australia.

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Citizenship Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Part 1 Preliminary

Section 2A

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 March 2007
2. Sections 2A to 54	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2007 (see F2007L01653)
3. Schedule 1	At the same time as the provisions covered by table item 2.	1 July 2007

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

2A Simplified outline

The following is a simplified outline of this Act:

What this Act covers

This Act sets out how you become an Australian citizen, the circumstances in which you may cease to be a citizen and some other matters related to citizenship.

Becoming an Australian citizen

There are a range of ways you can become an Australian citizen.

Acquiring citizenship automatically

Generally, you become an Australian citizen automatically if you are born in Australia and one or both of your parents are Australian citizens or permanent residents when you are born.

There are some other, less common, ways of automatically becoming a citizen.

Division 1 of Part 2 has details about acquiring citizenship automatically.

Also, if you were a citizen under the old Act immediately before the day that this section commences, you will continue to be a citizen: see subsection 4(1).

Acquiring citizenship by application

The other way to become an Australian citizen is to apply to the Minister. This is covered by Division 2 of Part 2. There are 4 situations in which you can apply for citizenship.

The first is citizenship by descent. Generally, you would apply for this if you were born outside Australia and one or both of your parents were Australian citizens when you were born. Citizenship by descent is covered by Subdivision A.

The second is citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral arrangement: see Subdivision AA.

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The third is citizenship by conferral. Generally, you would need to be a permanent resident and willing to make a pledge of commitment to apply for citizenship by conferral. You may need to successfully complete a citizenship test. There are some less common circumstances in which you can apply for citizenship by conferral. Citizenship by conferral is covered by Subdivision B.

The fourth is resuming citizenship. In certain cases where you previously ceased to be an Australian citizen, you can apply for your citizenship to resume. Resuming citizenship is covered by Subdivision C.

The Minister must be satisfied of your identity for you to acquire citizenship by application. Rules about identification are in Division 5 of Part 2.

The Minister may be required to refuse your application on national security grounds.

Ceasing to be an Australian citizen

There are a number of ways that you can cease to be an Australian citizen.

You can renounce your citizenship.

If you did not automatically become an Australian citizen, the Minister can revoke your citizenship in certain circumstances.

There are some other, less common, ways of ceasing to be a citizen.

Division 3 of Part 2 has details about ceasing to be a citizen.

Evidence that a person is an Australian citizen

You can apply to the Minister for evidence of your Australian citizenship. This is covered by Division 4 of Part 2.

3 Definitions

In this Act:

adverse security assessment has the meaning given by section 35 of the *Australian Security Intelligence Organisation Act 1979*.

artificial conception procedure includes:

- (a) artificial insemination; and
- (b) the implantation of an embryo in the body of a woman.

Australia, when used in a geographical sense, includes the external Territories.

Australian citizen has the meaning given by section 4.

Australian law means a law of the Commonwealth, a State or a Territory.

bogus document has the same meaning as in subsection 5(1) of the *Migration Act 1958*.

child: without limiting who is a child of a person for the purposes of this Act, each of the following is the ***child*** of a person:

- (a) an adopted child, stepchild or exnuptial child of the person;
- (b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

commencement day means the day on which sections 2A to 54 (as originally enacted) commence.

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

disclose, in relation to identifying information that is a personal identifier provided under Division 5 of Part 2, includes provide unauthorised access to the personal identifier.

Note: Section 42 deals with authorised access to identifying information.

Section 3

entrusted person means:

- (a) the Secretary of the Department; or
- (b) an APS employee in the Department; or
- (c) a person engaged under section 74 of the *Public Service Act 1999* by the Secretary of the Department; or
- (d) a person engaged by the Commonwealth, the Minister, the Secretary of the Department, or by an APS employee in the Department, to do work for the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act.

foreign law means a law of a foreign country.

identifying information means the following:

- (a) any personal identifier provided under Division 5 of Part 2;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information derived from:
 - (i) any such personal identifier; or
 - (ii) any meaningful identifier derived from any such personal identifier; or
 - (iii) any record of a kind referred to in paragraph (c);that could be used to discover a particular person's identity or to get information about a particular person.

national security offence means:

- (b) an offence against Division 72 of the *Criminal Code*; or
- (c) an offence against Part 5.1 of the *Criminal Code* (treason and related offences) other than section 83.4 (interference with political rights and duties); or
- (ca) an offence against Division 91 of the *Criminal Code* (espionage); or

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- (cb) an offence against Part 5.3 (terrorism) of the *Criminal Code*; or
- (d) an offence against the *Australian Security Intelligence Organisation Act 1979*; or
- (e) an offence against the *Intelligence Services Act 2001*; or
- (f) an offence covered by a determination in force under section 6A.

New Guinea:

- (a) has the same meaning as ***the Territory of New Guinea*** had in the *Papua New Guinea Act 1949* immediately before 16 September 1975; and
- (b) in relation to any time before 4 June 1969—includes a reference to the Island of Nauru.

old Act means the *Australian Citizenship Act 1948* as in force at any time before the commencement day.

ordinarily resident: a person is taken to be ***ordinarily resident*** in a country if and only if:

- (a) he or she has his or her home in that country; or
- (b) that country is the country of his or her permanent abode even if he or she is temporarily absent from that country.

However, the person is taken not to be so resident if he or she resides in that country for a special or temporary purpose only.

Papua has the same meaning as ***the Territory of Papua*** had in the *Papua New Guinea Act 1949* immediately before 16 September 1975.

permanent resident has the meaning given by section 5.

permanent visa has the same meaning as in the *Migration Act 1958*.

personal identifier has the meaning given by section 10.

prison includes any custodial institution at which a person convicted of an offence may be required to serve the whole or a

Section 3

part of any sentence imposed upon the person because of that conviction.

psychiatric institution includes a psychiatric section of a hospital.

qualified security assessment has the meaning given by section 35 of the *Australian Security Intelligence Organisation Act 1979*.

responsible parent has the meaning given by section 6.

serious prison sentence means a sentence of imprisonment for a period of at least 12 months.

serious repeat offender: a person is a **serious repeat offender** in relation to a serious prison sentence if the sentence was imposed on the person for an offence committed by the person at a time after the person ceased to be confined in prison because of the imposition of another serious prison sentence.

special category visa has the same meaning as in the *Migration Act 1958*.

special purpose visa has the same meaning as in the *Migration Act 1958*.

Stateless Persons Convention means the Convention Relating to the Status of Stateless Persons, done at New York on 28 September 1954 [1974] ATS 20.

Note: The text of the Convention is set out in Australian Treaty Series 1974 No. 20. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

stepchild: without limiting who is a stepchild of a person for the purposes of this Act, someone is the **stepchild** of a person if he or she would be the person's stepchild except that the person is not legally married to the person's de facto partner.

unlawful non-citizen has the same meaning as in the *Migration Act 1958*.

visa has the same meaning as in the *Migration Act 1958*.

4 Australian citizen

- (1) For the purposes of this Act, **Australian citizen** means a person who:
- (a) is an Australian citizen under Division 1 or 2 of Part 2; or
 - (b) satisfies both of the following:
 - (i) the person was an Australian citizen under the *Australian Citizenship Act 1948* immediately before the commencement day;
 - (ii) the person has not ceased to be an Australian citizen under this Act.

Citizenship under the old Act

- (2) If, under this Act, it is necessary to work out if a person was an Australian citizen at a time before the commencement day, work that out under the *Australian Citizenship Act 1948* as in force at that time.

5 Permanent resident

- (1) For the purposes of this Act, a person is a **permanent resident** at a particular time if and only if:
- (a) the person is present in Australia at that time and holds a permanent visa at that time; or
 - (b) both:
 - (i) the person is not present in Australia at that time and holds a permanent visa at that time; and
 - (ii) the person has previously been present in Australia and held a permanent visa immediately before last leaving Australia; or
 - (c) the person is covered by a determination in force under subsection (2) at that time.

Section 6

- (2) The Minister may, by legislative instrument, determine that:
- (a) persons who hold a special category visa or a special purpose visa; or
 - (b) persons who have held a special category visa; or
 - (c) persons who are present in Norfolk Island or the Territory of Cocos (Keeling) Islands;
- and who satisfy specified requirements are, or are during a specified period, persons to whom this subsection applies.

Permanent resident under the old Act

- (3) If, under this Act, it is necessary to work out if a person was a permanent resident at a time before the commencement day, work that out under the *Australian Citizenship Act 1948* as in force at that time.

6 Responsible parent

- (1) For the purposes of this Act, a person is a **responsible parent** in relation to a child if and only if:
- (a) the person is a parent of the child except where, because of orders made under the *Family Law Act 1975*, the person no longer has any parental responsibility for the child; or
 - (b) under a parenting order the child is to live with the person (whether or not the person is a parent of the child); or
 - (c) under a parenting order the person has parental responsibility for the child's long-term or day-to-day care, welfare and development (whether or not the person is a parent of the child); or
 - (d) the person (whether or not a parent of the child) has guardianship or custody of the child, jointly or otherwise, under an Australian law or a foreign law, whether because of adoption, operation of law, an order of a court or otherwise.

- (1A) In paragraph (1)(a):

parental responsibility has the same meaning as in Part VII of the *Family Law Act 1975*.

- (2) Expressions used in paragraphs (1)(b) and (c) have the same meaning as in the *Family Law Act 1975*.

6A National security offences

- (1) The Minister may, by legislative instrument, determine that:
- (a) an offence against a specified provision of a specified Australian law or a specified foreign law; or
 - (b) an offence against an Australian law or a foreign law involving specified conduct;
- is a national security offence for the purposes of paragraph (f) of the definition of ***national security offence*** in section 3.
- (2) A determination under subsection (1) applies in relation to:
- (a) applications made under this Act after the determination takes effect; and
 - (b) applications made under this Act before the determination takes effect that have not been decided before the determination takes effect.

7 Children born on ships or aircraft or after death of parent

Persons born on ships or aircraft

- (1) For the purposes of this Act:
- (a) a person born on a ship or aircraft registered in Australia or a foreign country is taken to have been born at the place at which the ship or aircraft is registered; and
 - (b) a person born on a ship or aircraft not registered in Australia or a foreign country and belonging to the government of a country is taken to have been born in that country.

Persons born after death of parent

- (2) For the purposes of this Act, the status of a parent of a person at the time of the person's birth is, for a parent who died before the birth, taken to be the status of the parent when the parent died.

Section 8

8 Children born as a result of artificial conception procedures or surrogacy arrangements

- (1) This section applies if a child is:
 - (a) a child of a person under section 60H or 60HB of the *Family Law Act 1975*; and
 - (b) either:
 - (i) a child of the person's spouse or de facto partner under that section; or
 - (ii) a biological child of the person's spouse or de facto partner.
- (2) The child is taken for the purposes of this Act:
 - (a) to be the child of the person and the spouse or de facto partner; and
 - (b) not to be the child of anyone else.

9 Confinement in prison or psychiatric institution

Confinement in prison

- (1) For the purposes of this Act, the period during which a person is confined to a prison includes a period:
 - (a) during which the person is an escapee from the prison; or
 - (b) during which the person is undergoing a sentence of periodic detention in the prison.
- (2) For the purposes of this Act, the period during which a person is confined to a prison does not include a period during which the person has been so confined by reason only of the person serving a sentence relating to a conviction that is later quashed.

Confinement in psychiatric institution

- (3) For the purposes of this Act, the period during which a person is confined in a psychiatric institution by order of a court includes a period during which the person is an escapee from the institution.

10 Personal identifiers

- (1) For the purposes of this Act, a ***personal identifier*** is any of the following (including any of the following in digital form):
- (a) fingerprints or handprints of a person (including those taken using paper and ink or digital livescanning technologies);
 - (b) a measurement of a person's height and weight;
 - (c) a photograph or other image of a person's face and shoulders;
 - (d) an iris scan;
 - (e) a person's signature;
 - (f) any other identifier prescribed by the regulations (except an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*).
- (2) Before the Governor-General makes regulations for the purposes of paragraph (1)(f) prescribing an identifier, the Minister must be satisfied that:
- (a) obtaining the identifier would not involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*; and
 - (b) the identifier is an image of, or a measurement or recording of, an external part of the body; and
 - (c) obtaining the identifier is necessary for either or both of the following purposes:
 - (i) assisting in the identification of, and to authenticate the identity of, a person making an application under Part 2 or seeking to sit a test approved in a determination under section 23A;
 - (ii) combating document and identity fraud in citizenship matters;

11 Operation of Act*External Territories*

- (1) This Act extends to the external Territories.
-

Section 11

Application outside Australia

- (2) This Act extends unless the contrary intention appears:
- (a) to acts, omissions, matters and things outside Australia; and
 - (b) to all persons, irrespective of their nationality or citizenship.

State and Territory laws

- (3) It is the intention of the Parliament that this Act apply to the exclusion of any provisions of a law of a State or Territory that provide for Australian citizenship (whether the law was made before or after the commencement day).

Part 2—Australian citizenship

Division 1—Automatic acquisition of Australian citizenship

11A Simplified outline

The following is a simplified outline of this Division:

The most common way you become an Australian citizen under this Division is by being born in Australia and by having a parent who is an Australian citizen or a permanent resident at the time of your birth.

There are some other, less common, ways of becoming an Australian citizen under this Division. These cover:

- citizenship by being born in Australia and by being ordinarily resident in Australia for the next 10 years: see section 12; and
- citizenship by adoption: see section 13; and
- citizenship for abandoned children: see section 14; and
- citizenship by incorporation of territory: see section 15.

12 Citizenship by birth

- (1) A person born in Australia is an Australian citizen if and only if:
- (a) a parent of the person is an Australian citizen, or a permanent resident, at the time the person is born; or
 - (b) the person is ordinarily resident in Australia throughout the period of 10 years beginning on the day the person is born.

Section 13

Enemy occupation

- (2) However, a person is not an Australian citizen under this section if, at the time the person is born:
- (a) a parent of the person is an enemy alien; and
 - (b) the place of the birth is under occupation by the enemy;
- unless, at that time, the other parent of the person:
- (c) is an Australian citizen or a permanent resident; and
 - (d) is not an enemy alien.

13 Citizenship by adoption

A person is an Australian citizen if the person is:

- (a) adopted under a law in force in a State or Territory; and
- (b) adopted by a person who is an Australian citizen at the time of the adoption or by 2 persons jointly at least one of whom is an Australian citizen at that time; and
- (c) present in Australia as a permanent resident at that time.

14 Citizenship for abandoned children

A person is an Australian citizen if the person is found abandoned in Australia as a child, unless and until the contrary is proved.

15 Citizenship by incorporation of Territory

- (1) A person is an Australian citizen if:
- (a) any territory becomes a part of Australia; and
 - (b) the person is included in a class of persons specified in a determination under this section.

Determination

- (2) The Minister may, by legislative instrument, determine that specified classes of persons are Australian citizens from a specified day because of their connection with that territory.

Day citizenship begins

- (3) The person becomes an Australian citizen on that day.

Retrospective application of instruments

- (4) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the instrument.

Division 2—Acquisition of Australian citizenship by application

Subdivision A—Citizenship by descent

15A Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision in 2 situations:

- you were born outside Australia on or after 26 January 1949 and a parent of yours was an Australian citizen at the time of your birth: see subsection 16(2); or
- you were born outside Australia or New Guinea before 26 January 1949 and a parent of yours was an Australian citizen on 26 January 1949: see subsection 16(3).

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 17(3); or
- national security: see subsections 17(4) to (4B); or
- cessation of citizenship: see subsection 17(5).

You will be registered if the Minister approves you becoming an Australian citizen.

You do not become an Australian citizen, even if the Minister approves you becoming an Australian citizen, unless a parent of yours was an Australian citizen at a particular time: see section 19A.

16 Application and eligibility for citizenship

- (1) A person may make an application to the Minister to become an Australian citizen.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

Persons born outside Australia on or after 26 January 1949

- (2) A person born outside Australia on or after 26 January 1949 is eligible to become an Australian citizen if:
- (a) a parent of the person was an Australian citizen at the time of the birth; and
 - (b) if the parent was an Australian citizen under this Subdivision or Subdivision AA, or section 10B, 10C or 11 of the old Act (about citizenship by descent), at the time of the birth:
 - (i) the parent has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the person made the application; or
 - (ii) the person is not a national or a citizen of any country at the time the person made the application and the person has never been such a national or citizen; and
 - (c) if the person is or has ever been a national or a citizen of any country, or if article 1(2)(iii) of the Stateless Persons Convention applies to the person, and the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 17

Persons born outside Australia or New Guinea before 26 January 1949

- (3) A person born outside Australia or New Guinea before 26 January 1949 is eligible to become an Australian citizen if:
- (a) a parent of the person became an Australian citizen on 26 January 1949; and
 - (b) the parent was born in Australia or New Guinea or was naturalised in Australia before the person's birth; and
 - (c) if the person is or has ever been a national or a citizen of any country, or if article 1(2)(iii) of the Stateless Persons Convention applies to the person—the Minister is satisfied that the person is of good character at the time of the Minister's decision on the application.

17 Minister's decision

- (1) If a person makes an application under section 16, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.
- (1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 16(2) or (3).
- (2) Subject to this section, the Minister must approve the person becoming an Australian citizen if the person is eligible to become an Australian citizen under subsection 16(2) or (3).

Identity

- (3) The Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

National security

- (4) If the person is not covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen at a time

Section 18

when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).

- (4A) If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person has been convicted of a national security offence.
- (4B) A person is covered by this subsection if:
- (a) at the time the person made the application under section 16, the person:
 - (i) is not a national of any country; and
 - (ii) is not a citizen of any country; and
 - (b) at the time of the person's birth, the person had a parent who was an Australian citizen.

Cessation of citizenship

- (5) If the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

18 Registration

If the Minister approves the person becoming an Australian citizen, the Minister must register the person in the manner prescribed by the regulations.

19 Day citizenship begins

A person becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.

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19A When a person does not become a citizen despite the Minister's approval

Despite section 19, a person does not become an Australian citizen under this Subdivision, even if the Minister approves the person becoming an Australian citizen, unless:

- (a) if the person was born on or after 26 January 1949—a parent of the person was an Australian citizen at the time of the person's birth; or
- (b) if the person was born before 26 January 1949—a parent of the person became an Australian citizen on 26 January 1949.

Subdivision AA—Citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral arrangement

19B Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision if you are adopted outside Australia by at least one Australian citizen in accordance with:

- (a) the Hague Convention on Intercountry Adoption; or
- (b) a bilateral arrangement.

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved. You may be refused citizenship even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 19D(4); or

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- national security: see subsections 19D(5) to (7A); or
- cessation of citizenship: see subsection 19D(8).

You will be registered if the Minister approves you becoming an Australian citizen.

19C Application and eligibility for citizenship

- (1) A person may make an application to the Minister to become an Australian citizen.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

Eligibility

- (2) A person (the **applicant**) is eligible to become an Australian citizen if:
- (a) the applicant is adopted in a Convention country or a prescribed overseas jurisdiction by:
 - (i) a person (the **adopter**) who is an Australian citizen at time of the adoption; or
 - (ii) 2 persons jointly, only one of whom (the **adopter**) is an Australian citizen at the time of the adoption; or
 - (iii) 2 persons jointly, both of whom (the **adopters**) are Australian citizens at the time of the adoption; and
 - (b) an adoption compliance certificate issued in that country is in force for the adoption; and
 - (c) under the Intercountry Adoption regulations or the Bilateral Arrangements regulations, as applicable, the adoption is recognised and effective for the laws of the Commonwealth and each State and Territory; and
 - (d) the legal relationship between the applicant and the individuals who were, immediately before the adoption, the applicant's parents has been terminated; and

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- (e) if subparagraph (a)(i) or (ii) applies and the adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—the adopter satisfies subsection (3); and
 - (f) if subparagraph (a)(iii) applies and each adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—either or both of the adopters satisfy subsection (3); and
 - (g) if the applicant is aged 18 or over at the time the applicant made the application—the Minister is satisfied that the applicant is of good character at the time of the Minister’s decision on the application.
- (3) An adopter satisfies this subsection if the adopter has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the applicant made the application.

Definitions

- (4) In this section:

adoption compliance certificate:

- (a) for an adoption in accordance with the Hague Convention on Intercountry Adoption—has the same meaning as in the Intercountry Adoption regulations; and
- (b) for an adoption in accordance with a bilateral arrangement—has the same meaning as in the Bilateral Arrangements regulations.

Bilateral Arrangements regulations means prescribed regulations made under the *Family Law Act 1975*.

Convention country has the same meaning as in the Intercountry Adoption regulations.

Intercountry Adoption regulations means prescribed regulations made under the *Family Law Act 1975*.

prescribed overseas jurisdiction has the same meaning as in the
Bilateral Arrangements regulations.

19D Minister's decision

- (1) If a person makes an application under section 19C, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.
- (2) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 19C(2).
- (3) The Minister may refuse to approve the person becoming an Australian citizen despite the person being eligible to become an Australian citizen under subsection 19C(2).

Identity

- (4) The Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

National security

- (5) If the person is not covered by subsection (7), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (6) If the person is covered by subsection (7), the Minister must not approve the person becoming an Australian citizen if the person:
 - (a) if subparagraph (7)(b)(i) applies to the person:
 - (i) has been convicted of a national security offence; or
 - (ii) subject to subsection (7A), has been convicted of an offence against an Australian law or a foreign law, for

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which the person has been sentenced to a period of imprisonment of at least 5 years; or

- (b) if subparagraph (7)(b)(ii) applies to the person—has been convicted of a national security offence.

- (7) A person is covered by this subsection if:

- (a) at the time the person made the application under section 19C, the person:

- (i) is not a national of any country; and
(ii) is not a citizen of any country; and

- (b) either:

- (i) the person was born in Australia; or
(ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.

- (7A) The Minister may decide that subparagraph (6)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.

Cessation of citizenship

- (8) If the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

19E Registration

If the Minister approves the person becoming an Australian citizen, the Minister must register the person in the manner prescribed by the regulations.

19F Day citizenship begins

A person becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.

Subdivision B—Citizenship by conferral

19G Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision in 7 situations:

- you satisfy the general eligibility criteria and have successfully completed a citizenship test: see subsections 21(2) and (2A); or
- you have a permanent or enduring physical or mental incapacity: see subsection 21(3); or
- you are aged 60 or over or have a hearing, speech or sight impairment: see subsection 21(4); or
- you are aged under 18: see subsection 21(5); or
- you were born to a former Australian citizen: see subsection 21(6); or
- you were born in Papua: see subsection 21(7); or
- you are a stateless person: see subsection 21(8).

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

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You must be eligible to be an Australian citizen to be approved.
You may be refused citizenship even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 24(3); or
- national security: see subsections 24(4) to (4C); or
- non-presence in Australia: see subsection 24(5); or
- offences: see subsection 24(6); or
- cessation of citizenship: see subsection 24(7).

You may need to make a pledge of commitment to become an Australian citizen.

20 Requirements for becoming a citizen

A person becomes an Australian citizen under this Subdivision if:

- (a) the Minister decides under subsection 24(1) to approve the person becoming an Australian citizen; and
- (b) if the person is required to make a pledge of commitment to become an Australian citizen—the person makes that pledge.

Note: Sections 21 to 25 deal with the Minister approving the person becoming an Australian citizen. Sections 26 and 27 deal with the making of a pledge of commitment.

21 Application and eligibility for citizenship

- (1) A person may make an application to the Minister to become an Australian citizen.

Note 1: Subsections (2) to (8) deal with eligibility.

Note 2: Section 46 sets out application requirements (which may include the payment of a fee).

General eligibility

- (2) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
- (a) is aged 18 or over at the time the person made the application; and
 - (b) is a permanent resident:
 - (i) at the time the person made the application; and
 - (ii) at the time of the Minister's decision on the application; and
 - (c) satisfies the general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B), or satisfies the defence service requirement (see section 23), at the time the person made the application; and
 - (d) understands the nature of an application under subsection (1); and
 - (e) possesses a basic knowledge of the English language; and
 - (f) has an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship; and
 - (g) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
 - (h) is of good character at the time of the Minister's decision on the application.
- (2A) Paragraphs (2)(d), (e) and (f) are taken to be satisfied if and only if the Minister is satisfied that the following apply:
- (a) the person has sat a test approved in a determination under section 23A;
 - (b) the person was eligible to sit that test (worked out in accordance with that determination);
 - (c) the person started that test within the period worked out in accordance with that determination and completed that test within the period (the ***relevant test period***) worked out in accordance with that determination;

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- (d) the person successfully completed that test (worked out in accordance with that determination) within the relevant test period.

Permanent or enduring physical or mental incapacity

- (3) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
 - (a) is aged 18 or over at the time the person made the application; and
 - (b) is a permanent resident:
 - (i) at the time the person made the application; and
 - (ii) at the time of the Minister's decision on the application; and
 - (c) satisfies the general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B), or satisfies the defence service requirement (see section 23), at the time the person made the application; and
 - (d) has a permanent or enduring physical or mental incapacity, at the time the person made the application, that means the person:
 - (i) is not capable of understanding the nature of the application at that time; or
 - (ii) is not capable of demonstrating a basic knowledge of the English language at that time; or
 - (iii) is not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time; and
 - (e) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
 - (f) is of good character at the time of the Minister's decision on the application.

Person aged 60 or over or has hearing, speech or sight impairment

- (4) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
- (a) is:
 - (i) aged 60 or over at the time the person made the application; or
 - (ii) aged 18 or over at the time the person made the application and is suffering from a permanent loss or substantial impairment of hearing, speech or sight at that time; and
 - (b) is a permanent resident:
 - (i) at the time the person made the application; and
 - (ii) at the time of the Minister's decision on the application; and
 - (c) understands the nature of the application at the time the person made the application; and
 - (d) satisfies the general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B), or satisfies the defence service requirement (see section 23), at the time the person made the application; and
 - (e) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
 - (f) is of good character at the time of the Minister's decision on the application.

Person aged under 18

- (5) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
- (a) is aged under 18 at the time the person made the application; and
 - (b) is a permanent resident:
 - (i) at the time the person made the application; and
 - (ii) at the time of the Minister's decision on the application.

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Person born to former Australian citizen

- (6) A person is eligible to become an Australian citizen if the Minister is satisfied that:
- (a) the person was born outside Australia; and
 - (b) a parent of the person was not an Australian citizen at the time of the person's birth; and
 - (c) the parent had ceased to be an Australian citizen under section 17 of the old Act (about dual citizenship) before that time; and
 - (d) if the person is aged 18 or over at the time the person made the application—the person is of good character at the time of the Minister's decision on the application.

Person born in Papua

- (7) A person is eligible to become an Australian citizen if the Minister is satisfied that:
- (a) the person was born in Papua before 16 September 1975; and
 - (b) a parent of the person was born in Australia (within the meaning of this Act at the time the person made the application); and
 - (c) the parent was an Australian citizen at the time of the person's birth; and
 - (d) the person is of good character at the time of the Minister's decision on the application.

Statelessness

- (8) A person is eligible to become an Australian citizen if the Minister is satisfied that:
- (a) the person was born in Australia; and
 - (b) the person:
 - (i) is not a national of any country; and
 - (ii) is not a citizen of any country; and
 - (c) the person has:
 - (i) never been a national of any country; and

- (ii) never been a citizen of any country; and
- (d) the person:
 - (i) is not entitled to acquire the nationality of a foreign country; and
 - (ii) is not entitled to acquire the citizenship of a foreign country.

22 General residence requirement

- (1) Subject to this section, for the purposes of section 21 a person satisfies the ***general residence requirement*** if:
 - (a) the person was present in Australia for the period of 4 years immediately before the day the person made the application; and
 - (b) the person was not present in Australia as an unlawful non-citizen at any time during that 4 year period; and
 - (c) the person was present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.

Overseas absences

- (1A) If:
 - (a) the person was absent from Australia for a part of the period of 4 years immediately before the day the person made the application; and
 - (b) the total period of the absence or absences was not more than 12 months;then, for the purposes of paragraph (1)(a), the person is taken to have been present in Australia during each period of absence.
- (1B) If:
 - (a) the person was absent from Australia for a part of the period of 12 months immediately before the day the person made the application; and
 - (b) the total period of the absence or absences was not more than 90 days; and

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- (c) the person was a permanent resident during each period of absence;

then, for the purposes of paragraph (1)(c), the person is taken to have been present in Australia as a permanent resident during each period of absence.

Confinement in prison or psychiatric institution

- (1C) Subject to subsection (5A), the person is taken not to satisfy paragraph (1)(a) if, at any time during the 4 year period mentioned in that paragraph, the person was:

- (a) confined in a prison; or
- (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

Partial exemption—person born in Australia or former Australian citizen

- (2) Paragraphs (1)(a) and (b) do not apply if the person:
 - (a) was born in Australia; or
 - (b) was an Australian citizen at any time before the person made the application.

Ministerial discretion—administrative error

- (4A) For the purposes of paragraph (1)(b), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers the person was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.
- (5) For the purposes of paragraph (1)(c), the Minister may treat a period as one in which the person was present in Australia as a permanent resident if the Minister considers the person was present in Australia during that period but, because of an administrative error, was not a permanent resident during that period.

Ministerial discretion—confinement in prison or psychiatric institution

- (5A) The Minister may decide that subsection (1C) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

Ministerial discretion—person in Australia would suffer significant hardship or disadvantage

- (6) For the purposes of paragraph (1)(c), the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:
- (a) the person was present in Australia during that period (except as a permanent resident or an unlawful non-citizen); and
 - (b) the Minister is satisfied that the person will suffer significant hardship or disadvantage if that period were not treated as one during which the person was present in Australia as a permanent resident.

Ministerial discretion—spouse, de facto partner or surviving spouse or de facto partner of Australian citizen

- (9) If the person is the spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen at the time the person made the application, the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:
- (a) the person was a spouse or de facto partner of that Australian citizen during that period; and
 - (b) the person was not present in Australia during that period; and
 - (c) the person was a permanent resident during that period; and
 - (d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

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(10) In subsection (9):

surviving spouse or de facto partner of a person who has died means a person who was the person's spouse or de facto partner immediately before the person died and who has not later become the spouse or de facto partner of another person.

Ministerial discretion—person in an interdependent relationship

(11) If, at the time the person made the application, the person:

(a) holds a permanent visa granted to the person because the person was in an interdependent relationship with an Australian citizen; and

(b) is in that interdependent relationship;

then, for the purposes of paragraph (1)(c), the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

(c) the person held that visa during that period and the person was in that interdependent relationship during that period; and

(d) the person was not present in Australia during that period; and

(e) the person was a permanent resident during that period; and

(f) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

22A Special residence requirement—persons engaging in activities that are of benefit to Australia

(1) Subject to this section, for the purposes of section 21 a person (the *applicant*) satisfies the *special residence requirement* if:

(a) the following apply:

(i) the applicant is seeking to engage in an activity specified under subsection 22C(1);

(ii) the applicant's engagement in that activity would be of benefit to Australia;

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- (iii) the applicant needs to be an Australian citizen in order to engage in that activity;
- (iv) in order for the applicant to engage in that activity, there is insufficient time for the applicant to satisfy the general residence requirement (see section 22); and
- (b) the head of an organisation specified under subsection 22C(2), or a person whom the Minister is satisfied holds a senior position in that organisation, has given the Minister a notice in writing stating that the applicant has a reasonable prospect of being engaged in that activity; and
- (c) the applicant was present in Australia for a total of at least 180 days during the period of 2 years immediately before the day the applicant made the application; and
- (d) the applicant was present in Australia for a total of at least 90 days during the period of 12 months immediately before the day the applicant made the application; and
- (e) the applicant was ordinarily resident in Australia throughout the period of 2 years immediately before the day the applicant made the application; and
- (f) the applicant was a permanent resident for the period of 2 years immediately before the day the applicant made the application; and
- (g) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 2 years immediately before the day the applicant made the application.

Ministerial discretion—alternative residence requirements

- (1A) The Minister may, by writing, determine that paragraphs (1)(d) to (g) do not apply in relation to the applicant if:
 - (a) the Minister is satisfied that paragraphs (1)(a), (b) and (c) apply in relation to the applicant; and
 - (b) the Minister is satisfied that the applicant satisfies:
 - (i) paragraphs 21(2)(a), (b), (d), (e), (f), (g) and (h); or
 - (ii) paragraphs 21(3)(a), (b), (d), (e) and (f); or

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- (iii) paragraphs 21(4)(a), (b), (c), (e) and (f); and
- (c) the applicant was a permanent resident throughout the period of 90 days immediately before the day the applicant made the application; and
- (d) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 180 days immediately before the day the applicant made the application; and
- (e) the applicant has given the Minister an undertaking, in a form approved by the Minister under subsection (8), that, if the applicant becomes an Australian citizen in circumstances where the Minister exercises the power under this subsection:
 - (i) the applicant will be ordinarily resident in Australia throughout the period of 2 years beginning on the day the applicant becomes an Australian citizen; and
 - (ii) the applicant will be present in Australia for a total of at least 180 days during that 2-year period; and
- (f) the applicant has declared, in the undertaking, that the applicant understands the effect of section 34A.

Note: See also subsections (6) to (11).

- (1B) If the Minister exercises the power under subsection (1A) in relation to the applicant, then, for the purposes of section 21, the applicant is taken to satisfy the *special residence requirement*.

Confinement in prison or psychiatric institution

- (2) Subject to subsection (3), the applicant is taken not to satisfy paragraph (1)(c) if, at any time during the 2 year period mentioned in that paragraph, the applicant was:
 - (a) confined in a prison; or
 - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the applicant.
- (3) The Minister may decide that subsection (2) does not apply in relation to the applicant if, taking into account the circumstances

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that resulted in the applicant's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the applicant.

Ministerial discretion—administrative error

- (4) For the purposes of paragraph (1)(f) or (1A)(c), the Minister may treat a period as one in which the applicant was a permanent resident if the Minister considers that, because of an administrative error, the applicant was not a permanent resident during that period.
- (5) For the purposes of paragraph (1)(g) or (1A)(d), the Minister may treat a period as one in which the applicant was not present in Australia as an unlawful non-citizen if the Minister considers the applicant was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

Rules relating to power under subsection (1A)

- (6) The power under subsection (1A) may only be exercised by the Minister personally.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1A), whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.
- (8) The Minister may, by writing, approve a form for the purposes of paragraph (1A)(e).
- (9) If the applicant becomes an Australian citizen in circumstances where the Minister exercised the power under subsection (1A), the Minister must cause to be tabled in each House of the Parliament, within 15 sitting days of that House after the day the applicant becomes an Australian citizen, a statement that:
 - (a) states that the Minister has exercised the power under subsection (1A); and
 - (b) states the activity covered by paragraph (1)(a); and

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- (c) sets out the reasons for the Minister's exercise of that power, including why the Minister considers that engagement in that activity would be of benefit to Australia.
- (10) However, a statement under subsection (9) is not to include the name of the applicant.
- (11) A determination under subsection (1A) is not a legislative instrument.

22B Special residence requirement—persons engaged in particular kinds of work requiring regular travel outside Australia

- (1) Subject to this section, for the purposes of section 21 a person satisfies the *special residence requirement* if:
 - (a) at the time the person made the application, the person is engaged in work of a kind specified under subsection 22C(3) and the person is required to regularly travel outside Australia because of that work; and
 - (b) the following apply:
 - (i) the person was engaged in that kind of work for a total of at least 2 years during the period of 4 years immediately before the day the person made the application;
 - (ii) for the whole or part of that 4 year period when the person was engaged in that kind of work, the person regularly travelled outside Australia because of that work; and
 - (c) the person was present in Australia for a total of at least 480 days during the period of 4 years immediately before the day the person made the application; and
 - (d) the person was present in Australia for a total of at least 120 days during the period of 12 months immediately before the day the person made the application; and
 - (e) the person was ordinarily resident in Australia throughout the period of 4 years immediately before the day the person made the application; and

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- (f) the person was a permanent resident for the period of 12 months immediately before the day the person made the application; and
- (g) the person was not present in Australia as an unlawful non-citizen at any time during the period of 4 years immediately before the day the person made the application.

Ministerial discretion—alternative residence requirements

- (1A) The Minister may, by writing, determine that paragraphs (1)(c) to (g) do not apply in relation to the person if:
- (a) the Minister is satisfied that paragraphs (1)(a) and (b) apply in relation to the person; and
 - (b) the Minister is satisfied that the person's engagement in the kind of work concerned is of benefit to Australia; and
 - (c) the Minister is satisfied that the person satisfies:
 - (i) paragraphs 21(2)(a), (b), (d), (e), (f), (g) and (h); or
 - (ii) paragraphs 21(3)(a), (b), (d), (e) and (f); or
 - (iii) paragraphs 21(4)(a), (b), (c), (e) and (f); and
 - (d) the person was present in Australia for a total of at least 180 days during the period of 2 years immediately before the day the person made the application; and
 - (e) the person was a permanent resident throughout the period of 90 days immediately before the day the person made the application; and
 - (f) the person was not present in Australia as an unlawful non-citizen at any time during the period of 180 days immediately before the day the person made the application; and
 - (g) the person has given the Minister an undertaking, in a form approved by the Minister under subsection (8), that, if the person becomes an Australian citizen in circumstances where the Minister exercises the power under this subsection:
 - (i) the person will be ordinarily resident in Australia throughout the period of 2 years beginning on the day the person becomes an Australian citizen; and

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- (ii) the person will be present in Australia for a total of at least 180 days during that 2-year period; and
- (h) the person has declared, in the undertaking, that the person understands the effect of section 34A.

Note: See also subsections (6) to (11).

- (1B) If the Minister exercises the power under subsection (1A) in relation to the person, then, for the purposes of section 21, the person is taken to satisfy the *special residence requirement*.

Confinement in prison or psychiatric institution

- (2) Subject to subsection (3), the person is taken not to satisfy:
- (a) paragraph (1)(c) if, at any time during the 4-year period mentioned in that paragraph; or
 - (b) paragraph (1A)(d) if, at any time during the 2-year period mentioned in that paragraph;
- the person was:
- (c) confined in a prison; or
 - (d) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (3) The Minister may decide that subsection (2) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

Ministerial discretion—administrative error

- (4) For the purposes of paragraph (1)(f) or (1A)(e), the Minister may treat a period as one in which the person was a permanent resident if the Minister considers that, because of an administrative error, the person was not a permanent resident during that period.
- (5) For the purposes of paragraph (1)(g) or (1A)(f), the Minister may treat a period as one in which the person was not present in

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Australia as an unlawful non-citizen if the Minister considers the person was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

Rules relating to power under subsection (1A)

- (6) The power under subsection (1A) may only be exercised by the Minister personally.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1A), whether he or she is requested to do so by the person or by any other person, or in any other circumstances.
- (8) The Minister may, by writing, approve a form for the purposes of paragraph (1A)(g).
- (9) If the person becomes an Australian citizen in circumstances where the Minister exercised the power under subsection (1A), the Minister must cause to be tabled in each House of the Parliament, within 15 sitting days of that House after the day the person becomes an Australian citizen, a statement that:
 - (a) states that the Minister has exercised the power under subsection (1A); and
 - (b) states the kind of work covered by paragraph (1)(a); and
 - (c) sets out the reasons for the Minister's exercise of that power, including why the Minister considers that engagement in that kind of work is of benefit to Australia.
- (10) However, a statement under subsection (9) is not to include the name of the person.
- (11) A determination under subsection (1A) is not a legislative instrument.

Section 22C

22C Special residence requirement—legislative instruments

- (1) The Minister may, by legislative instrument, specify activities for the purposes of subparagraph 22A(1)(a)(i).
- (2) The Minister may, by legislative instrument, specify organisations for the purposes of paragraph 22A(1)(b).
- (3) The Minister may, by legislative instrument, specify kinds of work for the purposes of paragraph 22B(1)(a).

23 Defence service requirement

Person who has completed relevant defence service

- (1) For the purposes of section 21, a person satisfies the **defence service requirement** if the person has completed relevant defence service.

Member of family unit of person who has completed relevant defence service etc.

- (2) If:
 - (a) a person (the **defence person**) was granted, on or after 1 July 2007, a visa prescribed by the regulations; and
 - (b) the defence person has completed relevant defence service; and
 - (c) another person (the **relative**) was a member of the family unit of the defence person when the defence person was granted the visa; and
 - (d) the relative holds a visa of that kind because the relative is a member of the family unit of the defence person;the relative satisfies the **defence service requirement** for the purposes of section 21.
- (3) If:
 - (a) a person (the **defence person**) was granted, on or after 1 July 2007, a visa prescribed by the regulations; and

- (b) the defence person dies while undertaking service in the Permanent Forces or the Reserves; and
 - (c) another person (the **relative**) was a member of the family unit of the defence person when the defence person was granted the visa; and
 - (d) immediately before the death of the defence person, the relative held a visa of that kind because the relative was a member of the family unit of the defence person;
- the relative satisfies the **defence service requirement** for the purposes of section 21.

Definitions

- (4) In this section:

member of the family unit of a person has the same meaning as in the *Migration Act 1958*.

Permanent Forces means the Permanent Navy, the Regular Army or the Permanent Air Force.

relevant defence service: a person has completed **relevant defence service** if:

- (a) the person has undertaken a total of at least 90 days service in one or more of the Permanent Forces (whether or not that service was continuous); or
- (b) the person has undertaken a total of at least 90 days service on which he or she was required for, and attended and was entitled to be paid for, duty in one or more of the Reserves (whether or not that service was continuous); or
- (c) the person:
 - (i) was discharged from service undertaken in one of the Permanent Forces or the Reserves as medically unfit for that service; and
 - (ii) became so unfit because of service undertaken in any of the Permanent Forces or the Reserves.

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Reserves means the Naval Reserve, the Army Reserve or the Air Force Reserve.

service: a person undertakes ***service*** in the Permanent Forces or the Reserves only if the person is appointed, enlisted or transferred into any of the Permanent Forces or the Reserves.

Note: For appointment, enlistment or transfer into any of the Permanent Forces or the Reserves, see the *Defence Act 1903*.

23A Citizenship test

- (1) The Minister must, by written determination, approve a test for the purposes of subsection 21(2A) (about general eligibility for citizenship).

Note: The test must be related to the eligibility criteria referred to in paragraphs 21(2)(d), (e) and (f).

Successful completion of the test

- (2) A determination under subsection (1) must specify what amounts to successful completion of the test.

Eligibility criteria for sitting the test

- (3) A determination under subsection (1) may set out the eligibility criteria a person must satisfy to be able to sit the test.

Note: The eligibility criteria for sitting the test cannot be inconsistent with this Act and in particular subsection 21(2) (about the general eligibility criteria for becoming an Australian citizen).

- (4) For the purposes of subsection (3), the determination may provide that a person is not eligible to sit the test unless the person is a permanent resident and the Minister is satisfied of the identity of the person.

- (5) Subsection (4) does not limit subsection (3).

Period for sitting and completing the test

- (5A) A determination under subsection (1) may provide for the period within which a person must start the test and for the period within which a person must complete the test.

Other matters

- (6) A determination under subsection (1) may cover any other matter related to the test the Minister thinks appropriate.

Determination not a legislative instrument

- (7) A determination made under subsection (1) is not a legislative instrument.

24 Minister's decision

- (1) If a person makes an application under section 21, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.

Note: The Minister may cancel an approval: see section 25.

- (1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6), (7) or (8).

- (2) The Minister may refuse to approve the person becoming an Australian citizen despite the person being eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6) or (7).

- (2A) If the Minister exercised the power under subsection 22A(1A) or 22B(1A) in relation to the person, the decision under subsection (1) of this section must be made by the Minister personally.

Identity

- (3) The Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

Section 24

National security

- (4) If the person is not covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (4A) If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person:
- (a) if subparagraph (4B)(b)(i) applies to the person:
 - (i) has been convicted of a national security offence; or
 - (ii) subject to subsection (4C), has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
 - (b) if subparagraph (4B)(b)(ii) applies to the person—has been convicted of a national security offence.
- (4B) A person is covered by this subsection if:
- (a) at the time the person made the application under section 21, the person:
 - (i) is not a national of any country; and
 - (ii) is not a citizen of any country; and
 - (b) either:
 - (i) the person was born in Australia; or
 - (ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.
- (4C) The Minister may decide that subparagraph (4A)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.

- (4D) To avoid doubt, subsection (4A) applies to a person who is eligible to become an Australian citizen under subsection 21(8).

Person not present in Australia

- (5) If:
- (a) the person is covered by subsection 21(2), (3) or (4); and
 - (aa) the Minister is satisfied that the person did not satisfy the special residence requirement referred to in section 22A or 22B; and
 - (b) the Minister did not apply subsection 22(9) in relation to the person; and
 - (c) the Minister did not apply subsection 22(11) in relation to the person;
- the Minister must not approve the person becoming an Australian citizen at a time when the person is not present in Australia.

Offences

- (6) The Minister must not approve the person becoming an Australian citizen at a time:
- (a) when proceedings for an offence against an Australian law (including proceedings by way of appeal or review) are pending in relation to the person; or
 - (b) when the person is confined to a prison in Australia; or
 - (c) during the period of 2 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition on the person of a serious prison sentence; or
 - (d) if the person is a serious repeat offender in relation to a serious prison sentence—during the period of 10 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition of that sentence; or
 - (e) if the person has been released from serving the whole or a part of a sentence of imprisonment on parole or licence—during any period during which action can be taken under an

Section 24

Australian law to require the person to serve the whole or a part of that sentence; or

(f) if the person:

- (i) has been released by a court from serving the whole or a part of a sentence of imprisonment; and
- (ii) has been so released because the person gave a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour;

during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or

(g) if, in respect of proceedings for an offence against an Australian law in relation to the person:

- (i) a court does not impose a sentence of imprisonment on the person; and
- (ii) the court releases the person because the person gives a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour;

during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or

(h) during any period during which the person is confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

Cessation of citizenship

- (7) If the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

Statelessness

- (8) However, subsections (6) and (7) do not apply to a person covered by subsection 21(8) (about statelessness).

25 Minister may cancel approval

- (1) The Minister may, by writing, cancel an approval given to a person under section 24 if:
- (a) the person has not become an Australian citizen under section 28; and
 - (b) either of the following 2 situations apply.

Eligibility criteria not met

- (2) The first situation applies if:
- (a) the person is covered by subsection 21(2), (3) or (4); and
 - (b) the Minister is satisfied that, at the time the Minister proposes to cancel the approval, the person is:
 - (i) not a permanent resident; or
 - (ii) not likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia; or
 - (iii) not of good character.

Failure to make pledge of commitment

- (3) The second situation applies if:
- (a) the person has failed to make a pledge of commitment within 12 months after the day on which the person received notice of the approval; and
 - (b) the person's reason for the failure is not one that is prescribed by the regulations for the purposes of this subsection.

Cancellation of child's approval

- (4) If:

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Division 2 Acquisition of Australian citizenship by application

Section 26

- (a) a child aged under 16 makes an application under section 21 at a particular time; and
- (b) 1 or more responsible parents of the child make applications under section 21 at that time; and
- (c) the Minister decides under section 24 to approve the child and 1 or more of the responsible parents becoming Australian citizens; and
- (d) the Minister cancels the approval given to each responsible parent;

the Minister must, by writing, cancel the approval given to the child.

Effect of cancellation

- (5) If the Minister cancels an approval given to a person, the approval is taken never to have been given.

Note: A person cannot become an Australian citizen under this Subdivision unless the Minister approves the person becoming an Australian citizen. This subsection has the effect that the person will need to make another application if the person wants to become an Australian citizen.

26 Pledge of commitment must be made

- (1) A person must make a pledge of commitment to become an Australian citizen unless the person:
 - (a) is aged under 16 at the time the person made the application to become an Australian citizen; or
 - (b) has a permanent or enduring physical or mental incapacity, at the time the person made the application to become an Australian citizen, that means the person:
 - (i) is not capable of understanding the nature of the application at that time; or
 - (ii) is not capable of demonstrating a basic knowledge of the English language at that time; or

- (iii) is not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time; or
- (c) is covered by subsection 21(6), (7) or (8).

Note: See section 27 for how the pledge is to be made.

- (2) A person must not make a pledge of commitment before the Minister approves the person's application to become an Australian citizen. A pledge of commitment made by the person before that time is of no effect.

Delayed making of pledge

- (3) If the person is required to make a pledge of commitment and has not done so, the Minister may determine, in writing, that the person cannot make the pledge until the end of a specified period if the Minister is satisfied that:
 - (a) a visa held by the person may be cancelled under the *Migration Act 1958* (whether or not the person has been given any notice to that effect); or
 - (b) the person has been or may be charged with an offence under an Australian law.
- (4) The Minister must not specify a period that exceeds, or periods that in total exceed, 12 months.
- (5) The Minister may, by writing, revoke a determination.
- (6) If a determination is in force in relation to a person, the person must not make a pledge of commitment before the end of the period specified in the determination. A pledge of commitment made by the person before that time is of no effect.

27 How pledge of commitment is to be made

Form of pledge

- (1) A pledge of commitment must be made in accordance with either of the forms set out in Schedule 1.

Section 28

Prescribed arrangements

- (2) A pledge of commitment must be made in accordance with the arrangements prescribed by the regulations.

Note: The regulations may provide for a pledge of commitment to be made in public.

Persons who may receive pledge

- (3) A pledge of commitment must be made before:
- (a) the Minister; or
 - (b) a person authorised under subsection (4); or
 - (c) a person who is included in a class of persons authorised under subsection (5).
- (4) The Minister may, by writing, authorise a person for the purposes of paragraph (3)(b).
- (5) The Minister may, by legislative instrument, authorise a class of persons for the purposes of paragraph (3)(c).

28 Day citizenship begins etc.

Persons required to make pledge of commitment

- (1) A person required to make a pledge of commitment becomes an Australian citizen under this Subdivision on the day on which the person makes the pledge.

Persons not required to make pledge of commitment

- (2) Subject to subsection (3), a person not required to make a pledge of commitment becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.

Section 28A

Applications made at the same time by child and responsible parents

- (3) Subsection (2) does not apply to a child aged under 16 at the time the child made the application to become an Australian citizen if:
- (a) 1 or more responsible parents of the child made applications under section 21 at that time; and
 - (b) the Minister decided under section 24 to approve the child and 1 or more of the responsible parents becoming Australian citizens.
- (4) If 1 or more of the responsible parents become Australian citizens under this section, the child becomes an Australian citizen on the first day on which a responsible parent becomes an Australian citizen.

Subdivision C—Resuming citizenship

28A Simplified outline

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision if you ceased to be an Australian citizen under this Act or the old Act.

You must make an application to become an Australian citizen again. The Minister must approve or refuse you becoming an Australian citizen again.

You must be eligible to be an Australian citizen again to be approved. You may be refused citizenship again even if you are eligible.

Section 29

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 30(3); or
- national security: see subsections 30(4) to (7).

You will be registered if the Minister approves you becoming an Australian citizen again.

29 Application and eligibility for resuming citizenship

- (1) A person may make an application to the Minister to become an Australian citizen again.

Note 1: Section 46 sets out application requirements (which may include the payment of a fee).

Note 2: The person may also apply to become an Australian citizen again under Subdivision A, AA or B.

Cessation under this Act

- (2) A person is eligible to become an Australian citizen again under this Subdivision if:
- (a) the person ceased to be an Australian citizen under:
 - (i) section 33 (about renunciation) in order to acquire or retain the nationality or citizenship of a foreign country or to avoid suffering significant hardship or detriment; or
 - (ii) section 36 (about children); and
 - (b) if the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

Note 1: See also section 32 (which is about persons resuming their former citizenship status).

Note 2: A person who ceases to be an Australian citizen under section 34, 34A or 35 may apply to become an Australian citizen again under Subdivision A, AA or B.

Cessation under old Act

- (3) A person is eligible to become an Australian citizen again under this Subdivision if:
- (a) the person ceased to be an Australian citizen under:
 - (i) section 17 (about dual citizenship) of the old Act; or
 - (ii) section 18 (about renunciation) of the old Act in order to acquire or retain the nationality or citizenship of a foreign country or to avoid suffering significant hardship or detriment; or
 - (iii) section 20 (about residence outside Australia) of the old Act; or
 - (iv) section 23 (about children) of the old Act; and
 - (b) if the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

30 Minister’s decision

- (1) If a person makes an application under section 29, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen again.
- (1A) The Minister must not approve the person becoming an Australian citizen again unless the person is eligible to become an Australian citizen again under subsection 29(2) or (3).
- (2) The Minister may refuse to approve the person becoming an Australian citizen again despite the person being eligible to become an Australian citizen again under subsection 29(2) or (3).

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Identity

- (3) The Minister must not approve the person becoming an Australian citizen again unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

National security

- (4) If the person is not covered by subsection (6), the Minister must not approve the person becoming an Australian citizen again at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (5) If the person is covered by subsection (6), the Minister must not approve the person becoming an Australian citizen again if the person:
- (a) if subparagraph (6)(b)(i) applies to the person:
 - (i) has been convicted of a national security offence; or
 - (ii) subject to subsection (7), has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
 - (b) if subparagraph (6)(b)(ii) applies to the person—has been convicted of a national security offence.
- (6) A person is covered by this subsection if:
- (a) at the time the person made the application under section 29, the person:
 - (i) is not a national of any country; and
 - (ii) is not a citizen of any country; and
 - (b) either:
 - (i) the person was born in Australia; or

- (ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.
- (7) The Minister may decide that subparagraph (5)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.

31 Registration

If the Minister approves the person becoming an Australian citizen again, the Minister must register the person in the manner prescribed by the regulations.

32 Day citizenship begins again etc.

- (1) A person becomes an Australian citizen again on the day on which the Minister approves the person becoming an Australian citizen again.

Same kind of citizenship—former citizen under this Act

- (2) If the person, before ceasing to be an Australian citizen, was an Australian citizen under Subdivision A, AA or B, the person becomes an Australian citizen again under that Subdivision.

Note: One of the effects of this subsection is that the Minister is able to revoke the person's citizenship: see section 34.

Same kind of citizenship—former citizen under old Act

- (3) If the person, before ceasing to be an Australian citizen, was an Australian citizen under the provision set out in column 2 of the following table, the person becomes an Australian citizen again under the provision set out in column 3 of the table.

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Section 32

Same kind of citizenship		
Column 1 Item	Column 2 Provision under which person was a citizen	Column 3 Provision under which person becomes a citizen again
1	Section 10B, 10C or 11 of the old Act	Subdivision A of this Division
2	Division 2 of Part III of the old Act	Subdivision B of this Division

Note: One of the effects of this subsection is that the Minister is able to revoke the person's citizenship: see section 34.

Division 3—Cessation of Australian citizenship

32A Simplified outline

The following is a simplified outline of this Division:

There are 5 ways in which you can cease to be an Australian citizen:

- you may renounce your Australian citizenship: see section 33; or
- if you did not automatically become an Australian citizen, the Minister can revoke your citizenship in circumstances involving offences or fraud: see section 34; or
- if you did not automatically become an Australian citizen and the Minister exercised the power under subsection 22A(1A) or 22B(1A), the Minister can revoke your citizenship in circumstances involving a failure to comply with special residence requirements: see section 34A; or
- you engage in various kinds of conduct inconsistent with allegiance to Australia: see sections 33AA, 35 and 35A; or
- if you are the child of a responsible parent who ceases to be an Australian citizen, the Minister can revoke your citizenship in some situations: see section 36.

33 Renunciation by application

- (1) A person may make an application to the Minister to renounce the person's Australian citizenship.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

Section 33

Minister's decision

- (2) The Minister must, by writing, approve or refuse to approve the person renouncing his or her Australian citizenship.
- (3) Subject to this section, the Minister must approve the person renouncing his or her Australian citizenship if the Minister is satisfied that:
 - (a) the person is aged 18 or over, and is a national or citizen of a foreign country, at the time the person made the application; or
 - (b) the person was born, or is ordinarily resident, in a foreign country and is not entitled, under the law of that country, to acquire the nationality or citizenship of that country because the person is an Australian citizen.
- (4) The Minister must not approve the person renouncing his or her Australian citizenship unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.
- (5) The Minister may refuse to approve the person renouncing his or her Australian citizenship if the person:
 - (a) is a national or citizen of a foreign country at the time the person made the application; and
 - (b) made the application during a war in which Australia is engaged.
- (6) The Minister must not approve the person renouncing his or her Australian citizenship if the Minister considers that it would not be in the interests of Australia to do so.
- (7) The Minister must not approve the person renouncing his or her Australian citizenship unless the Minister is satisfied that the person:
 - (a) is a national or citizen of a foreign country immediately before the Minister's decision on the application; or

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- (b) will, if the Minister approves the application, become a national or citizen of a foreign country immediately after the approval.

Time citizenship ceases

- (8) If the Minister approves a person renouncing his or her Australian citizenship, the person ceases to be an Australian citizen at the time of the approval.

Note: A child of the person may also cease to be an Australian citizen: see section 36.

33AA Renunciation by conduct

Renunciation and cessation of citizenship

- (1) Subject to this section, a person aged 14 or older who is a national or citizen of a country other than Australia renounces their Australian citizenship if the person acts inconsistently with their allegiance to Australia by engaging in conduct specified in subsection (2).

Note 1: The Minister may, in writing, exempt the person from the effect of this section in relation to certain matters: see subsection (14).

Note 2: This section does not apply to conduct of Australian law enforcement or intelligence bodies, or to conduct in the course of certain duties to the Commonwealth: see section 35AB.

- (2) Subject to subsections (3) to (5), subsection (1) applies to the following conduct:
 - (a) engaging in international terrorist activities using explosive or lethal devices;
 - (b) engaging in a terrorist act;
 - (c) providing or receiving training connected with preparation for, engagement in, or assistance in a terrorist act;
 - (d) directing the activities of a terrorist organisation;
 - (e) recruiting for a terrorist organisation;
 - (f) financing terrorism;
 - (g) financing a terrorist;

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- (h) engaging in foreign incursions and recruitment.
- (3) Subsection (1) applies to conduct specified in any of paragraphs (2)(a) to (h) only if the conduct is engaged in:
 - (a) with the intention of advancing a political, religious or ideological cause; and
 - (b) with the intention of:
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public or a section of the public.
- (4) A person is taken to have engaged in conduct with an intention referred to in subsection (3) if, when the person engaged in the conduct, the person was:
 - (a) a member of a declared terrorist organisation (see section 35AA); or
 - (b) acting on instruction of, or in cooperation with, a declared terrorist organisation.
- (5) To avoid doubt, subsection (4) does not prevent the proof or establishment, by other means, that a person engaged in conduct with an intention referred to in subsection (3).
- (6) Words and expressions used in paragraphs (2)(a) to (h) have the same meanings as in Subdivision A of Division 72, sections 101.1, 101.2, 102.2, 102.4, 103.1 and 103.2 and Division 119 of the *Criminal Code*, respectively. However (to avoid doubt) this does not include the fault elements that apply under the *Criminal Code* in relation to those provisions of the *Criminal Code*.
- (7) This section does not apply in relation to conduct by a person unless:
 - (a) the person was not in Australia when the person engaged in the conduct; or

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- (b) the person left Australia after engaging in the conduct and, at the time that the person left Australia, the person had not been tried for any offence related to the conduct.
- (8) Subsection (1) applies to a person who is an Australian citizen regardless of how the person became an Australian citizen (including a person who became an Australian citizen upon the person's birth).
- (9) Where a person renounces their Australian citizenship under this section, the renunciation takes effect, and the Australian citizenship of the person ceases, immediately upon the person engaging in the conduct referred to in subsection (2).

Minister to give notice

- (10) If the Minister becomes aware of conduct because of which a person has, under this section, ceased to be an Australian citizen, the Minister:
 - (a) must give, or make reasonable attempts to give, written notice to that effect to the person:
 - (i) as soon as practicable; or
 - (ii) if the Minister makes a determination under subsection (12)—as soon as practicable after the Minister revokes the determination (if the Minister does so); and
 - (b) may give notice to that effect to such other persons and at such time as the Minister considers appropriate.

Note: A person may seek review of the basis on which a notice under this subsection was given in the High Court of Australia under section 75 of the Constitution, or in the Federal Court of Australia under section 39B of the *Judiciary Act 1903*.

- (11) A notice under paragraph (10)(a) must set out:
 - (a) the matters required by section 35B; and
 - (b) the person's rights of review.
- (12) The Minister may determine in writing that a notice under paragraph (10)(a) should not be given to a person if the Minister is

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satisfied that giving the notice could prejudice the security, defence or international relations of Australia, or Australian law enforcement operations. The Minister must consider whether to revoke such a determination:

- (a) no later than 6 months after making it; and
- (b) at least every 6 months thereafter until 5 years have passed since the determination was made.

Minister's power to rescind notice and exempt person

- (13) Subsections (14) to (19) apply only if a person has renounced his or her citizenship under this section.
- (14) At any time after a person has renounced his or her citizenship under this section, the Minister may make a determination to:
 - (a) rescind any notice given under subsection (10) in respect of the person; and
 - (b) exempt the person from the effect of this section in relation to the matters that were the basis for the notice, or in relation to matters that would have been the basis for giving a notice in respect of the person under paragraph (10)(a), but for the operation of subsection (12).
- (15) The Minister does not have a duty to consider whether to exercise the power under subsection (14) in respect of any person, whether the Minister is requested to do so by the person who has renounced his or her citizenship under this section, or by any other person, or in any other circumstances.
- (16) To avoid doubt, in deciding whether to consider exercising the power in subsection (14), the Minister is not required to have regard to any of the matters referred to in subsection (17).
- (17) If the Minister decides to consider whether to exercise the power in subsection (14), then, in that consideration, the Minister must have regard to the following:
 - (a) the severity of the matters that were the basis for any notice given in respect of the person under subsection (10), or of matters that would have been the basis for giving a notice in

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- respect of the person under paragraph (10)(a), but for the operation of subsection (12);
- (b) the degree of threat posed by the person to the Australian community;
 - (c) the age of the person;
 - (d) if the person is aged under 18—the best interests of the child as a primary consideration;
 - (e) whether the person is being or is likely to be prosecuted in relation to matters referred to in paragraph (a);
 - (f) the person's connection to the other country of which the person is a national or citizen and the availability of the rights of citizenship of that country to the person;
 - (g) Australia's international relations;
 - (h) any other matters of public interest.
- (18) If the Minister makes a determination under subsection (14), the Minister must cause to be laid before each House of the Parliament, within 15 sitting days of that House after the Minister makes the determination, a statement that:
- (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons in relation to the matters set out in subsection (17).
- (19) If the Minister thinks that it would not be in the public interest to publish the name of the person or of any other person connected in any way with the matter concerned, the statement under subsection (18) must not include those names or any information that may identify those persons.

General provisions relating to Minister's powers

- (20) The powers of the Minister under this section may only be exercised by the Minister personally.
- (21) Section 47 applies to a decision by the Minister to make, or not make, a determination under subsection (14), but does not apply to any other decision of the Minister under this section (including any

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decision whether to consider exercising the power in subsection (14) to make a determination).

- (22) The rules of natural justice apply to a decision by the Minister to make, or not make, a determination under subsection (14), but do not apply to any other decision, or the exercise of any other power, by the Minister under this section (including any decision whether to consider exercising the power in subsection (14) to make a determination).
- (23) An instrument exercising any of the Minister's powers under this section is not a legislative instrument.
- (24) To avoid doubt, a person's citizenship is taken never to have ceased under this section because of particular conduct if:
 - (a) in proceedings under section 75 of the Constitution, or under this Act or another Commonwealth Act, a court finds that the person did not engage in the conduct or have the requisite intention under subsection (3) of this section; or
 - (b) in proceedings under section 75 of the Constitution, or under this Act or another Commonwealth Act, a court finds that the person was not a national or citizen of a country other than Australia at the time of the conduct; or
 - (c) the Minister makes a determination under subsection (14) in relation to the conduct to exempt the person from the effect of this section; or
 - (d) a declaration under section 35AA is disallowed by either House of the Parliament, and the person's citizenship would not have ceased under this section if that declaration had not been made.

34 Revocation by Minister—offences or fraud

Citizenship by descent or for persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral arrangement

- (1) The Minister may, by writing, revoke a person's Australian citizenship if:
 - (a) the person is an Australian citizen under Subdivision A or AA of Division 2 (including because of the operation of section 32); and
 - (b) either of the following apply:
 - (i) the person has been convicted of an offence against section 50 of this Act, or section 137.1 or 137.2 of the *Criminal Code*, in relation to the person's application to become an Australian citizen;
 - (ii) the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and
 - (c) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.

Citizenship by conferral

- (2) The Minister may, by writing, revoke a person's Australian citizenship if:
 - (a) the person is an Australian citizen under Subdivision B of Division 2 (including because of the operation of section 32); and
 - (b) any of the following apply:
 - (i) the person has been convicted of an offence against section 50 of this Act, or section 137.1 or 137.2 of the *Criminal Code*, in relation to the person's application to become an Australian citizen;
 - (ii) the person has, at any time after making the application to become an Australian citizen, been convicted of a serious offence within the meaning of subsection (5);

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- (iii) the person obtained the Minister's approval to become an Australian citizen as a result of migration-related fraud within the meaning of subsection (6);
 - (iv) the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and
 - (c) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.
- (3) However, the Minister must not decide under subsection (2) to revoke a person's Australian citizenship if:
- (a) the Minister may revoke the person's Australian citizenship under that subsection only because of the application of subparagraph (2)(b)(ii); and
 - (b) the Minister is satisfied that the person would, if the Minister were to revoke the person's Australian citizenship, become a person who is not a national or citizen of any country.

Time citizenship ceases

- (4) If the Minister revokes a person's Australian citizenship, the person ceases to be an Australian citizen at the time of the revocation.

Note: A child of the person may also cease to be an Australian citizen: see section 36.

Serious offence

- (5) For the purposes of this section, a person has been ***convicted of a serious offence*** if:
- (a) the person has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to death or to a serious prison sentence; and
 - (b) the person committed the offence at any time before the person became an Australian citizen.

Migration-related fraud

- (6) For the purposes of this section, a person obtained the Minister's approval to become an Australian citizen as a result of ***migration-related fraud*** if and only if:
- (a) at any time, the person was convicted of an offence against:
 - (i) section 234, 236 or 243, or former section 244 (as in force before its repeal by the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008*), of the *Migration Act 1958*; or
 - (ii) section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*;that the person committed at any time before the Minister gave the approval; and
 - (b) the act or omission that constituted the offence was connected with the person's entry into Australia or the grant to the person of a visa or of a permission to enter and remain in Australia.
- (7) Subsection (6) does not apply to a person in respect of an offence if the Minister is satisfied that the act or omission that constituted that offence was not in any way (whether directly or indirectly) material to the person becoming a permanent resident.

Third-party fraud

- (8) For the purposes of this section, a person (the ***applicant***) obtained the Minister's approval to become an Australian citizen as a result of ***third-party fraud*** if and only if:
- (a) at any time, another person was convicted of an offence against section 50 of this Act, or section 134.1, 135.2, 135.4, 136.1, 137.1, 137.2, 139.1, 141.1, 142.1, 142.2, 144.1, 145.1, 145.2, 145.4, 145.5 or 149.1 of the *Criminal Code*, that the other person committed at any time before the Minister gave the approval; and
 - (b) the act or omission that constituted the offence was connected with the Minister approving the applicant becoming an Australian citizen.

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Charge proved but no conviction

- (9) A reference in this section to a conviction of an offence:
- (a) in relation to a law of the Commonwealth—includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence; and
 - (b) in relation to a law of a State or Territory or a foreign country—includes a reference to the making of an order under the corresponding provision of a law of the State or Territory or foreign country in relation to the offence.

34A Revocation by Minister—special residence requirements

- (1) The Minister may, by writing, revoke a person's Australian citizenship if:
- (a) the person is an Australian citizen under Subdivision B of Division 2; and
 - (b) the person became an Australian citizen in circumstances where the Minister exercised the power under subsection 22A(1A) or 22B(1A); and
 - (c) the Minister is satisfied that:
 - (i) the person will not be, or was not, ordinarily resident in Australia throughout the period of 2 years beginning on the day the person became an Australian citizen; or
 - (ii) the person will not be, or was not, present in Australia for a total of at least 180 days during that 2-year period.
- (2) However, the Minister must not decide under subsection (1) to revoke a person's Australian citizenship if the Minister is satisfied that the person would, if the Minister were to revoke the person's Australian citizenship, become a person who is not a national or citizen of any country.
- (3) The power under subsection (1) may only be exercised by the Minister personally.

Time citizenship ceases

- (4) If the Minister revokes a person's Australian citizenship, the person ceases to be an Australian citizen at the time of the revocation.

Note: A child of the person may also cease to be an Australian citizen: see section 36.

35 Service outside Australia in armed forces of an enemy country or a declared terrorist organisation

Cessation of citizenship

- (1) A person aged 14 or older ceases to be an Australian citizen if:
- (a) the person is a national or citizen of a country other than Australia; and
 - (b) the person:
 - (i) serves in the armed forces of a country at war with Australia; or
 - (ii) fights for, or is in the service of, a declared terrorist organisation (see section 35AA); and
 - (c) the person's service or fighting occurs outside Australia.

Note 1: The Minister may, in writing, exempt the person from the effect of this section in relation to certain matters: see subsection (9).

Note 2: This section does not apply to conduct of Australian law enforcement or intelligence bodies, or to conduct in the course of certain duties to the Commonwealth: see section 35AB.

- (2) The person ceases to be an Australian citizen at the time the person commences to so serve or fight.
- (3) Subsection (1) applies to a person who is an Australian citizen regardless of how the person became an Australian citizen (including a person who became an Australian citizen upon the person's birth).

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- (4) For the purposes of subparagraph (1)(b)(ii) and without limitation, a person is not in the service of a declared terrorist organisation to the extent that:
- (a) the person's actions are unintentional; or
 - (b) the person is acting under duress or force; or
 - (c) the person is providing neutral and independent humanitarian assistance.

Minister to give notice

- (5) If the Minister becomes aware of conduct because of which a person has, under this section, ceased to be an Australian citizen, the Minister:
- (a) must give, or make reasonable attempts to give, written notice to that effect to the person:
 - (i) as soon as practicable; or
 - (ii) if the Minister makes a determination under subsection (7)—as soon as practicable after the Minister revokes the determination (if the Minister does so); and
 - (b) may give notice to that effect to such other persons and at such time as the Minister considers appropriate.

Note: A person may seek review of the basis on which a notice under this subsection was given in the High Court of Australia under section 75 of the Constitution, or in the Federal Court of Australia under section 39B of the *Judiciary Act 1903*.

- (6) A notice under paragraph (5)(a) must set out:
- (a) the matters required by section 35B; and
 - (b) the person's rights of review.
- (7) The Minister may determine in writing that a notice under paragraph (5)(a) should not be given to a person if the Minister is satisfied that giving the notice could prejudice the security, defence or international relations of Australia, or Australian law enforcement operations. The Minister must consider whether to revoke such a determination:
- (a) no later than 6 months after making it; and

- (b) at least every 6 months thereafter until 5 years have passed since the determination was made.

Minister's power to rescind notice and exempt person

- (8) Subsections (9) to (14) apply only if a person has ceased to be a citizen under this section.
- (9) At any time after a person has ceased to be a citizen under this section, the Minister may make a determination to:
 - (a) rescind any notice given under subsection (5) in respect of the person; and
 - (b) exempt the person from the effect of this section in relation to the matters that were the basis for the notice, or in relation to matters that would have been the basis for giving a notice in respect of the person under paragraph (5)(a), but for the operation of subsection (7).
- (10) The Minister does not have a duty to consider whether to exercise the power under subsection (9) in respect of any person, whether the Minister is requested to do so by the person who has ceased to be a citizen under this section, or by any other person, or in any other circumstances.
- (11) To avoid doubt, in deciding whether to consider exercising the power in subsection (9), the Minister is not required to have regard to any of the matters referred to in subsection (12).
- (12) If the Minister decides to consider whether to exercise the power in subsection (9), then, in that consideration, the Minister must have regard to the following:
 - (a) the severity of the matters that were the basis for any notice given in respect of the person under subsection (5), or of matters that would have been the basis for giving a notice in respect of the person under paragraph (5)(a), but for the operation of subsection (7);
 - (b) the degree of threat posed by the person to the Australian community;
 - (c) the age of the person;

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- (d) if the person is aged under 18—the best interests of the child as a primary consideration;
 - (e) whether the person is being or is likely to be prosecuted in relation to matters referred to in paragraph (a);
 - (f) the person's connection to the other country of which the person is a national or citizen and the availability of the rights of citizenship of that country to the person;
 - (g) Australia's international relations;
 - (h) any other matters of public interest.
- (13) If the Minister makes a determination under subsection (9), the Minister must cause to be laid before each House of the Parliament, within 15 sitting days of that House after the Minister makes the determination, a statement that:
- (a) sets out the determination; and
 - (b) sets out the reasons for the determination, referring in particular to the Minister's reasons in relation to the matters set out in subsection (12).
- (14) If the Minister thinks that it would not be in the public interest to publish the name of the person or of any other person connected in any way with the matter concerned, the statement under subsection (13) must not include those names or any information that may identify those persons.

General provisions relating to Minister's powers

- (15) The powers of the Minister under this section may only be exercised by the Minister personally.
- (16) Section 47 applies to a decision by the Minister to make, or not make, a determination under subsection (9), but does not apply to any other decision of the Minister under this section (including any decision whether to consider exercising the power in subsection (9) to make a determination).
- (17) The rules of natural justice apply to a decision by the Minister to make, or not make, a determination under subsection (9), but do not apply to any other decision, or the exercise of any other power,

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by the Minister under this section (including any decision whether to consider exercising the power in subsection (9) to make a determination).

- (18) An instrument exercising any of the Minister's powers under this section is not a legislative instrument.
- (19) To avoid doubt, a person's citizenship is taken never to have ceased under this section because of the person serving or fighting as set out in subsection (1) if:
 - (a) in proceedings under section 75 of the Constitution, or under this Act or another Commonwealth Act, a court finds that the person did not so serve or fight (whether because of subsection (4) of this section or for any other reason); or
 - (b) in proceedings under section 75 of the Constitution, or under this Act or another Commonwealth Act, a court finds that the person was not a national or citizen of a country other than Australia at the time the person served or fought; or
 - (c) the Minister makes a determination under subsection (9) in relation to the conduct to exempt the person from the effect of this section; or
 - (d) a declaration under section 35AA is disallowed by either House of the Parliament, and the person's citizenship would not have ceased under this section if that declaration had not been made.

35AA Declared terrorist organisation

Declaration of declared terrorist organisation

- (1) A **declared terrorist organisation** is any terrorist organisation, within the meaning of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, that the Minister, by legislative instrument, declares is a declared terrorist organisation for the purposes of this section.

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- (2) Before declaring that an organisation is a declared terrorist organisation, the Minister must be satisfied on reasonable grounds that the organisation:
- (a) either:
 - (i) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
 - (ii) advocates the doing of a terrorist act; and
 - (b) is opposed to Australia, or to Australia's interests, values, democratic beliefs, rights or liberties, so that if a person were to fight for or be in the service of such an organisation the person would be acting inconsistently with their allegiance to Australia.
- (3) The making of a declaration under subsection (1) is taken not to be prescribed administrative action for the purposes of Part IV of the *Australian Security Intelligence Organisation Act 1979*.

Review of declaration by Parliamentary Joint Committee on Intelligence and Security

- (4) The Parliamentary Joint Committee on Intelligence and Security may:
- (a) review a declaration made under subsection (1) as soon as possible after the declaration is made; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the period during which the House may disallow the declaration.

35AB Sections 33AA and 35 do not apply to conduct of Australian law enforcement or intelligence bodies or in course of certain duties to the Commonwealth

- (1) Sections 33AA and 35 do not apply to conduct engaged in by:
- (a) a person in the proper performance of a function of an Australian law enforcement or intelligence body; or

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- (b) a person acting in the course of the person's duty to the Commonwealth in relation to the defence, security or international relations of Australia.

- (2) In this section:

Australian law enforcement or intelligence body means a body, agency or organisation of the Commonwealth, or of a State or Territory, that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud, security intelligence, foreign intelligence or financial intelligence.

35A Conviction for terrorism offences and certain other offences

Cessation of citizenship on determination by Minister

- (1) The Minister may determine in writing that a person ceases to be an Australian citizen if:
 - (a) the person has been convicted of an offence against, or offences against, one or more of the following:
 - (i) a provision of Subdivision A of Division 72 of the *Criminal Code*;
 - (ii) a provision of Subdivision B of Division 80 of the *Criminal Code* (treason);
 - (iia) a provision of Division 82 of the *Criminal Code* (sabotage) other than section 82.9 (preparing for or planning sabotage offence);
 - (iib) a provision of Division 91 of the *Criminal Code* (espionage);
 - (iic) a provision of Division 92 of the *Criminal Code* (foreign interference);
 - (iii) a provision of Part 5.3 of the *Criminal Code* (except section 102.8 or Division 104 or 105);
 - (iv) a provision of Part 5.5 of the *Criminal Code*;
 - (vi) section 6 or 7 of the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978*; and

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- (b) the person has, in respect of the conviction or convictions, been sentenced to a period of imprisonment of at least 6 years, or to periods of imprisonment that total at least 6 years; and
- (c) the person is a national or citizen of a country other than Australia at the time when the Minister makes the determination; and
- (d) the Minister is satisfied that the conduct of the person to which the conviction or convictions relate demonstrates that the person has repudiated their allegiance to Australia; and
- (e) having regard to the following factors, the Minister is satisfied that it is not in the public interest for the person to remain an Australian citizen:
 - (i) the severity of the conduct that was the basis of the conviction or convictions and the sentence or sentences;
 - (ii) the degree of threat posed by the person to the Australian community;
 - (iii) the age of the person;
 - (iv) if the person is aged under 18—the best interests of the child as a primary consideration;
 - (v) the person’s connection to the other country of which the person is a national or citizen and the availability of the rights of citizenship of that country to the person;
 - (vi) Australia’s international relations; and
 - (vii) any other matters of public interest.

Note: A person may seek review of a determination made under this subsection in the High Court of Australia under section 75 of the Constitution, or in the Federal Court of Australia under section 39B of the *Judiciary Act 1903*.

- (2) The person ceases to be an Australian citizen at the time when the determination is made.
- (3) Subsection (1) applies to a person who is an Australian citizen regardless of how the person became an Australian citizen (including a person who became an Australian citizen upon the person’s birth).

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- (4) For the purpose of paragraph (1)(b):
- (a) the reference to being sentenced to a period of imprisonment does not include a suspended sentence; and
 - (b) if a single sentence of imprisonment is imposed in respect of both an offence against a provision mentioned in paragraph (1)(a) and in respect of one or more other offences, then:
 - (i) if it is clear that only a particular part of the total period of imprisonment relates to the offence against the provision mentioned in paragraph (1)(a)—the person is taken to have been sentenced to imprisonment in respect of that offence for that part of the total period of imprisonment; and
 - (ii) if subparagraph (i) does not apply—the person is taken to have been sentenced to imprisonment in respect of the offence against the provision mentioned in paragraph (1)(a) for the whole of the total period of imprisonment.

Minister to give notice

- (5) If the Minister makes a determination under subsection (1) because of which a person ceases to be an Australian citizen, the Minister:
- (a) must give, or make reasonable attempts to give, written notice to that effect to the person:
 - (i) as soon as practicable; or
 - (ii) if the Minister makes a determination under subsection (7)—as soon as practicable after the Minister revokes the subsection (7) determination (if the Minister does so); and
 - (b) may give notice to that effect to such other persons and at such time as the Minister considers appropriate.
- (6) A notice under paragraph (5)(a) must set out:
- (a) the matters required by section 35B; and
 - (b) the person's rights of review.

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- (7) The Minister may determine in writing that a notice under paragraph (5)(a) should not be given to a person if the Minister is satisfied that giving the notice could prejudice the security, defence or international relations of Australia, or Australian law enforcement operations. The Minister must consider whether to revoke the determination:
- (a) no later than 6 months after making it; and
 - (b) at least every 6 months thereafter until 5 years have passed since the determination was made.

Minister must revoke determination if conviction overturned

- (8) The Minister must, in writing, revoke a determination made under subsection (1) in relation to a person if:
- (a) a conviction because of which the determination was made is later overturned on appeal, or quashed, by a court; and
 - (b) that decision of that court has not been overturned on appeal; and
 - (c) no appeal, or further appeal, can be made to a court in relation to that decision.
- (9) If the Minister revokes the determination, the person's citizenship is taken never to have ceased under this section because of that determination.

General provisions relating to Minister's powers

- (10) The powers of the Minister under this section may only be exercised by the Minister personally.
- (11) Except for the powers of the Minister under subsection (1), the rules of natural justice do not apply in relation to the powers of the Minister under this section.
- (12) Section 47 does not apply in relation to the exercise of the powers of the Minister under this section.
- (13) An instrument exercising any of the Minister's powers under this section is not a legislative instrument.

35B Matters to be set out in notices to persons who have ceased to be Australian citizens

- (1) A notice that is given to a person under paragraph 33AA(10)(a) or 35(5)(a) must:
 - (a) state that the Minister has become aware of conduct because of which the person has, under section 33AA or 35, ceased to be an Australian citizen; and
 - (b) contain a basic description of that conduct.
- (2) A notice that is given to a person under paragraph 35A(5)(a) must:
 - (a) state that the Minister has determined under section 35A that the person has ceased to be an Australian citizen; and
 - (b) include the reasons for the decision to make the determination.
- (3) However, a notice given to a person under paragraph 33AA(10)(a), 35(5)(a) or 35A(5)(a) must not contain information, or content of a document, if:
 - (a) the information or content includes any operationally sensitive information (within the meaning of the *Independent National Security Legislation Monitor Act 2010*); or
 - (b) the disclosure of the information or content would or might prejudice:
 - (i) the security, defence or international relations of Australia; or
 - (ii) the performance by a law enforcement or security agency (within the meaning of the *Independent National Security Legislation Monitor Act 2010*) of its functions; or
 - (c) the disclosure of the information or content would or might endanger a person's safety; or
 - (d) the disclosure of the information or content would be likely to be contrary to the public interest for any other reason.

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36 Children of responsible parents who cease to be citizens

- (1) If:
- (a) a person ceases to be an Australian citizen at a particular time (the *cessation time*) under section 33, 34 or 34A; and
 - (b) at the cessation time, the person is a responsible parent of a child aged under 18;
- then:
- (c) the Minister may, by writing, revoke the child's Australian citizenship; and
 - (d) if the Minister does so—the child ceases to be an Australian citizen at the time of the revocation.

Exception—another responsible parent

- (2) If, at the cessation time, another responsible parent of the child is an Australian citizen, subsection (1) does not apply to the child:
- (a) while there is a responsible parent who is an Australian citizen; and
 - (b) if there ceases to be such a responsible parent because of the death of a responsible parent—at any time after that death.

Exception—statelessness

- (3) The Minister must not revoke a child's Australian citizenship under subsection (1) if the Minister is satisfied that the child would then become a person who is not a national or citizen of any country.

36A No resumption of citizenship if citizenship ceases under section 33AA, 35 or 35A

If under section 33AA, 35 or 35A a person ceases to be an Australian citizen, then Divisions 1 and 2 of this Part do not apply in relation to the person on and after the time of that cessation.

Note: The effect of this section is that (subject to subsections 33AA(14) and (24), 35(9) and (19) and 35A(8) and (9)) the person can never become an Australian citizen again.

Division 4—Evidence of Australian citizenship

37 Evidence of Australian citizenship

- (1) A person may make an application to the Minister for evidence of the person's Australian citizenship.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

Notice

- (2) The Minister may give the person a notice stating that the person is an Australian citizen at a particular time.
- (3) The notice must:
- (a) be in a form prescribed by the regulations; and
 - (b) contain any other matter prescribed by the regulations.

Identity

- (4) The Minister must not give the person such a notice unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

Evidentiary status

- (5) A notice is prima facie evidence of the matters in the notice.

Cancellation

- (6) The Minister may, by writing, cancel a notice given to a person under this section.

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38 Surrender of evidentiary notice

Request for surrender

- (1) If:
- (a) the Minister makes a decision under section 34 or 34A to revoke a person's Australian citizenship; and
 - (b) at the time of the revocation, there is in force a notice under section 37 in relation to the person;
- the Minister may request the person to surrender the notice to the Minister.
- (2) If the Minister makes a decision under subsection 37(6) to cancel a notice given to a person under section 37, the Minister may request the person to surrender the notice to the Minister.

Form of request

- (3) A request given to a person under subsection (1) or (2) must:
- (a) be made in writing; and
 - (b) specify the day on or before which the person must surrender the notice (which must be a day at least 28 days after the day on which the Minister makes the request); and
 - (c) specify how the person is to surrender the notice to the Minister; and
 - (d) contain a statement to the effect that a failure to comply with the request is an offence.

Offence

- (4) A person commits an offence if:
- (a) the person is given a request that is in accordance with this section; and
 - (b) the person fails to comply with the request.

Penalty for contravention of this subsection: 10 penalty units.

39 Altering evidentiary notice

A person commits an offence if:

- (a) the person alters, or causes or permits to be altered, a notice;
and
- (b) the notice was given to a person under section 37.

Penalty: Imprisonment for 12 months.

Division 5—Personal identifiers

Subdivision A—Obtaining personal identifiers

40 Request for personal identifiers

- (1) For the purposes of the Minister being satisfied of the identity of:
- (a) a person in relation to an application under this Part; or
 - (b) a person who has sought to sit a test approved in a determination under section 23A;
- the following persons may request the person, in writing, to provide one or more specified personal identifiers:
- (c) the Minister;
 - (d) a person authorised under subsection (3);
 - (e) a person who is included in a class of persons authorised under subsection (4).

Form of request

- (2) A request must inform the person of the matters prescribed by the regulations.

Authorisations

- (3) The Minister may, by writing, authorise a person for the purposes of paragraph (1)(d).
- (4) The Minister may, by legislative instrument, authorise a class of persons for the purposes of paragraph (1)(e).

41 Provision of personal identifiers

The regulations may prescribe the procedures and requirements that apply to the provision of a personal identifier by a person under this Division.

Subdivision B—Obligations relating to identifying information

42 Accessing identifying information

- (1) A person commits an offence if:
- (a) the person accesses identifying information; and
 - (b) the person is not authorised under this section to access the identifying information for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

- (1A) This section does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) This section does not apply if the access is through:
- (a) a disclosure that is a permitted disclosure within the meaning of section 43; or
 - (b) a disclosure to which section 43 does not apply because of the operation of subsection 43(1A).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Authorisation

- (3) The Minister may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.
- (4) The Minister must specify in an authorisation under subsection (3), as the purpose or purposes for which access is authorised, one or more of the following purposes:
- (a) either or both of the purposes set out in paragraph 10(2)(c);

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- (b) disclosing identifying information in accordance with this Division;
- (c) administering or managing the storage of identifying information;
- (d) making identifying information available to the person to whom it relates;
- (e) modifying identifying information to enable it to be matched with other identifying information;
- (f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
- (g) the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act;
- (h) complying with Australian laws.

43 Disclosing identifying information

- (1) A person commits an offence if:
 - (a) the person's conduct causes disclosure of identifying information; and
 - (b) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(1A) If:

- (a) a disclosure of identifying information is made to a person who is not an entrusted person; and
- (b) the disclosure is a permitted disclosure;

this section does not apply in relation to any further disclosure of that identifying information by a person who is not an entrusted person.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Australian Privacy Principle 6 may apply to further disclosures of that identifying information by a person who is not an entrusted person.

- (1B) This section does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A **permitted disclosure** is a disclosure that:
- (b) is for the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act; or
 - (c) is for the purpose of administering or managing the storage of identifying information; or
 - (d) is for the purpose of making the identifying information in question available to the person to whom it relates; or
 - (da) is to an agency of the Commonwealth, a State or a Territory in order to verify that a person is an Australian citizen; or
 - (e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or
 - (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth, a State or a Territory; or
 - (eb) is required by an Australian law; or
 - (f) is for the purpose of a proceeding, before a court or tribunal, relating to the person to whom the identifying information in question relates; or
 - (g) is for the purpose of an investigation by the Information Commissioner or the Ombudsman relating to action taken by the Department; or
 - (h) takes place with the written consent of the person to whom the identifying information in question relates.

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44 Unauthorised modification or impairment of identifying information

Unauthorised modification

- (1) A person commits an offence if:
- (a) the person causes any unauthorised modification of identifying information; and
 - (b) the person intends to cause the modification; and
 - (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

Unauthorised impairment

- (2) A person commits an offence if:
- (a) the person causes any unauthorised impairment of:
 - (i) the reliability of identifying information; or
 - (ii) the security of the storage of identifying information; or
 - (iii) the operation of a system by which identifying information is stored; and
 - (b) the person intends to cause the impairment; and
 - (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

Exception

- (2A) If:
- (a) a disclosure of identifying information is made to a person who is not an entrusted person; and
 - (b) the disclosure is a permitted disclosure within the meaning of section 43;
- this section does not apply in relation to any modification or impairment of that identifying information by a person who is not an entrusted person.

Section 45

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

Interpretation

- (3) In this section:
- (a) modification of identifying information; or
 - (b) impairment of the reliability of identifying information; or
 - (c) impairment of the security of the storage of identifying information; or
 - (d) impairment of the operation of a system by which identifying information is stored;
- by a person is **unauthorised** if the person is not entitled to cause that modification or impairment.
- (4) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (5) For the purposes of this section, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (6) For the purposes of subsection (3), if:
- (a) a person causes any modification or impairment of a kind mentioned in that subsection; and
 - (b) the person does so under a warrant issued under an Australian law;
- the person is entitled to cause that modification or impairment.

45 Destroying identifying information

- (1) A person commits an offence if:
- (a) the person is the responsible person for identifying information; and
 - (b) the person fails to destroy the identifying information as soon as practicable after the person is no longer required under the *Archives Act 1983* to keep the identifying information.

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Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

Note: See section 24 of the *Archives Act 1983* on the obligation to keep the identifying information.

- (2) This section does not apply if the identifying information is:
- (a) a personal identifier that is any of the following:
 - (i) a measurement of a person's height and weight;
 - (ii) a photograph or other image of a person's face and shoulders;
 - (iii) a person's signature; or
 - (b) identifying information derived from or relating to such a personal identifier.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Definitions

- (3) For the purposes of this section, the **responsible person** for identifying information is:
- (a) if the identifying information is stored on a database—the person who has day-to-day control of the database; or
 - (b) otherwise—the person who has day-to-day responsibility for the system under which the identifying information is stored.
- (4) For the purposes of this section, identifying information is **destroyed** if:
- (a) in the case of identifying information that is a personal identifier—it is physically destroyed; and
 - (b) in any other case—any means of identifying it with the person to whom it relates is destroyed.
- (5) For the purposes of this section, a **database** is a discrete body of information stored by electronic means, containing:
- (a) indexes of persons who have provided personal identifiers in accordance with a request under this Division; and
 - (b) their identifying information.

Part 3—Other matters

Division 1—Bogus documents

45A Prohibition on, and forfeiture of, bogus documents

- (1) A person (whether a citizen or non-citizen) must not give a bogus document to the Minister, a person acting under a delegation or authorisation of the Minister, a tribunal or any other person or body performing a function or purpose under, or in relation to, this Act (the *official*), or cause such a document to be so given.
- (2) A bogus document given in contravention of subsection (1) is forfeited to the Commonwealth.

45B Seizure of bogus documents

- (1) If the Minister reasonably suspects that a document is forfeited under subsection 45A(2), then the Minister may seize the document.
- (2) As soon as practicable after seizing the document, the Minister must give written notice of the seizure to the person who gave the document to the official under subsection 45A(1).
- (3) The notice must:
 - (a) identify the document; and
 - (b) state that the document has been seized; and
 - (c) specify the reason for the seizure; and
 - (d) state that the document will be condemned as forfeited unless the person institutes proceedings against the Commonwealth before the end of the period specified in the notice:
 - (i) to recover the document; or
 - (ii) for a declaration that the document is not forfeited.
- (4) For the purposes of paragraph (3)(d), the period must:

Section 45C

- (a) start on the date of the notice; and
- (b) end 90 days after that date.

45C Document condemned as forfeited

- (1) If a document is seized under subsection 45B(1), then:
 - (a) the person who gave the document to the official under subsection 45A(1); and
 - (b) if that person is not the owner of the document—the owner; may, subject to paragraph (2)(b), institute proceedings in a court of competent jurisdiction:
 - (c) to recover the document; or
 - (d) for a declaration that the document is not forfeited.
- (2) The proceedings:
 - (a) may be instituted even if the seizure notice required to be given under subsection 45B(2) in relation to the document has not yet been given; and
 - (b) may only be instituted before the end of the period specified in the seizure notice.
- (3) If, before the end of the period specified in the seizure notice, the person or owner does not institute the proceedings, the document is condemned as forfeited to the Commonwealth immediately after the end of that period.
- (4) If, before the end of the period specified in the seizure notice, the person or owner does institute the proceedings, the document is condemned as forfeited to the Commonwealth at the end of the proceedings unless there is:
 - (a) an order for the person or owner to recover the document; or
 - (b) a declaration that the document is not forfeited.
- (5) For the purposes of subsection (4), if the proceedings go to judgment, they end:
 - (a) if no appeal against the judgment is lodged within the period for lodging such an appeal—at the end of that period; or

- (b) if an appeal against the judgment is lodged within that period—when the appeal lapses or is finally determined.

45D Dealing with a document after it is condemned as forfeited

- (1) If, under section 45C, a document is condemned as forfeited to the Commonwealth, it must be dealt with or disposed of (including by being given to another person) in accordance with any direction given by the Minister.
- (2) If the Minister considers that the document may be relevant to proceedings in a court or tribunal, then the Minister:
 - (a) must give a direction for the safe keeping of the document; and
 - (b) must authorise access to the document for the purposes of those proceedings.
- (3) A direction given under this section is not a legislative instrument.

Division 2—Other

46 Application requirements

- (1) An application under a provision of this Act must:
- (a) be on the relevant form approved by the Minister for the purposes of that provision; and
 - (b) contain the information required by the form; and
 - (c) be accompanied by any other information or documents prescribed by the regulations; and
 - (d) be accompanied by the fee (if any) prescribed by the regulations.
- (1A) For applications made under section 21 by persons who, in order to be eligible to become an Australian citizen under subsection 21(2), must have sat a test approved in a determination under section 23A, the fee prescribed by the regulations may include a component that relates to the sitting of that test.

Approval of forms

- (2) The Minister may, by writing, approve one or more forms for the purposes of a provision of this Act under which an application may be made.

Note: For example, there are 2 ways to become an Australian citizen by descent under section 16. The Minister may approve 1 form for the purposes of that section or may approve 2 different forms.

Children aged under 16

- (2A) An application under a provision of this Act by a child aged under 16 must be set out:
- (a) on a form that contains no other application; or
 - (b) on a form that also contains an application by 1 responsible parent of the child.

Remission, refund or waiver of fees

- (3) The regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph (1)(d).

47 Notification of decisions

- (1) If the Minister makes a decision under this Act in relation to a person, the Minister must give the person notice of the decision.

Child

- (2) If the person is a child, the Minister satisfies the requirement in subsection (1) if the Minister gives a parent of the child notice of the decision.

Reasons for adverse decision

- (3) If the decision is an adverse decision, the notice must include the reasons for the decision.

Form of notice

- (4) The Minister must give the notice in the manner prescribed by the regulations (which includes electronic form).

Procedural defect does not affect validity of decision

- (5) A failure to comply with subsection (3) or (4) does not affect the validity of the decision.

48 Computerised decision-making*Computer-based decisions*

- (1) The Minister may, by writing, arrange for the use, under the Minister's control, of computer programs for any purposes for which the Minister may, or must, under this Act or the regulations:
- (a) make a decision; or

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- (b) exercise any power or comply with any obligation; or
 - (c) do anything else related to making a decision or exercising a power or complying with an obligation.
- (2) The Minister is taken to have:
 - (a) made a decision; or
 - (b) exercised a power or complied with an obligation; or
 - (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under such an arrangement.

Minister may substitute his or her own decision

- (3) The Minister may substitute a decision (the ***substituted decision***) for a decision (the ***initial decision***) made by the operation of a computer program under such an arrangement if:
 - (a) a notice under section 49 relates to the computer program and to the initial decision; and
 - (b) the notice states that the computer program was not functioning correctly; and
 - (c) the substituted decision could have been made under the same provision of this Act or the regulations as the initial decision; and
 - (d) the substituted decision is more favourable to the applicant.
- (4) The Minister does not have a duty to consider whether to exercise the power under subsection (3) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

- (5) Subsection (3) has effect despite any law of the Commonwealth, or any rule of common law, to the contrary effect.

Arrangement not a legislative instrument

- (6) An arrangement under subsection (1) is not a legislative instrument.

49 Evidence of whether computer program is functioning correctly*Issue of notices*

- (1) In citizenship proceedings, a notice signed by an authorised person stating whether or not a specified computer program was functioning correctly:
- (a) at a specified time or during a specified period; and
 - (b) in relation to specified outcomes from the operation of that program under an arrangement made under subsection 48(1);
- is prima facie evidence of the matters stated in the notice.

Ministerial authorisations

- (2) The Minister may, by writing, authorise a person to issue notices under this section.
- (3) The Minister may, by legislative instrument, authorise a class of persons to issue notices under this section.

Definitions

- (4) In this section:

authorised person means:

- (a) an APS employee in the Department; or
- (b) a person authorised under subsection (2) to issue notices under this section; or
- (c) any person who is included in a class of persons authorised under subsection (3) to issue notices under this section.

citizenship proceedings means:

- (a) proceedings in a court (including criminal proceedings) that relate to this Act (including an offence against this Act); or
- (b) proceedings that relate to an application for review under section 52.

functioning correctly: a computer program is ***functioning correctly*** if:

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- (a) outcomes from its operation comply with this Act and the regulations; and
- (b) those outcomes would be valid if they were made by the Minister otherwise than by the operation of the computer program.

50 False statements or representations

- (1) A person commits an offence if:
 - (a) the person makes, or causes or permits to be made, a representation or statement; and
 - (b) the person does so knowing that the representation or statement is false or misleading in a material particular; and
 - (c) the person does so for a purpose of or in relation to this Act.

Penalty: Imprisonment for 12 months.

- (2) A person commits an offence if:
 - (a) the person conceals, or causes or permits to be concealed, a material circumstance; and
 - (b) the person does so for a purpose of or in relation to this Act.

Penalty: Imprisonment for 12 months.

51 Geographical jurisdiction for offences

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Act.

51A Things seized under Crimes Act search warrant and information about such things

- (1) This section applies to the following:
 - (a) a thing seized (**warrant material**) under a search warrant issued under Division 2 of Part 1AA of the *Crimes Act 1914*;
 - (b) information (**warrant information**) that is about, or obtained from, warrant material.

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- (2) A constable or Commonwealth officer who, under subsection 3ZQU(1) of the *Crimes Act 1914*, may use or make available warrant material, is authorised to make available warrant material or warrant information:
- (a) to a person covered by subsection (4); and
 - (b) for a purpose mentioned in subsection (3).
- (3) A person covered by subsection (4) is authorised to receive and use warrant material and warrant information, or make it available to another person covered by subsection (4), for the following purposes:
- (a) making a decision, or assisting in making a decision, to approve or refuse to approve a person becoming an Australian citizen;
 - (b) making a decision, or assisting in making a decision, to revoke a person's Australian citizenship;
 - (c) making a decision, or assisting in making a decision, to cancel an approval given to a person under section 24.
- Note: Subsection 3ZQU(4) of the *Crimes Act 1914* contemplates that another law of the Commonwealth may require or authorise the use or making available of a document or other thing to persons, or for purposes, in addition to those listed in subsection 3ZQU(1) of that Act.
- (4) The following persons are covered by this subsection:
- (a) the Minister;
 - (b) the Secretary;
 - (c) an APS employee in the Department whose duties include making decisions, or assisting in making decisions, in relation to Australian citizenship.

51B Reports to Parliament

- (1) As soon as practicable after each reporting period, the Minister must table a report in each House of the Parliament that sets out:
- (a) the number of notices given by the Minister under paragraph 33AA(10)(a), 35(5)(a) or 35A(5)(a) during the reporting period; and

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- (b) the number of notices the Minister unsuccessfully attempted to give under paragraph 33AA(10)(a), 35(5)(a) or 35A(5)(a) during the reporting period; and
 - (c) for each notice given or attempted to be given under paragraph 33AA(10)(a) or 35(5)(a)—a brief statement of the matters that are the basis for the notice; and
 - (d) for each notice given or attempted to be given under paragraph 35A(5)(a)—a brief statement of the matters that are the basis for the determination under subsection 35A(1) to which the notice relates.
- (2) The report must not contain information, or content of a document, if:
 - (a) the information or content includes any operationally sensitive information (within the meaning of the *Independent National Security Legislation Monitor Act 2010*); or
 - (b) the disclosure of the information or content would or might prejudice:
 - (i) the security, defence or international relations of Australia; or
 - (ii) the performance by a law enforcement or security agency (within the meaning of the *Independent National Security Legislation Monitor Act 2010*) of its functions; or
 - (c) the disclosure of the information or content would or might endanger a person's safety; or
 - (d) the disclosure of the information or content would be likely to be contrary to the public interest for any other reason.
- (3) For the purposes of this section, **reporting period** means:
 - (a) the period of 6 months beginning on the day this section commences; and
 - (b) each subsequent 6-month period.

51C Briefing of Parliamentary Joint Committee on Intelligence and Security

- (1) This section applies if any of the following events occurs:
 - (a) the Minister gives or unsuccessfully attempts to give a notice under paragraph 33AA(10)(a) or 35(5)(a);
 - (b) the Minister gives or unsuccessfully attempts to give a notice under paragraph 35A(5)(a);
 - (c) the Minister makes a determination under subsection 33AA(12), 35(7) or 35A(7).
- (2) The Minister must, as soon as practicable after the occurrence of the event, inform the Parliamentary Joint Committee on Intelligence and Security in writing.
- (3) Before the later of:
 - (a) the end of 20 sittings days of the House of Representatives after the occurrence of the event; and
 - (b) the end of 20 sittings days of the Senate after the occurrence of the event;the Minister must, if requested to do so by the Parliamentary Joint Committee on Intelligence and Security, arrange for the Committee to be briefed on the event.
- (4) The briefing may be done orally or in writing.
- (5) The briefing must include details of the following:
 - (a) for an event mentioned in paragraph (1)(a):
 - (i) the matters that are the basis for the notice; and
 - (ii) whether the Minister has rescinded the notice and exempted the person to whom the notice related from the effect of the section in relation to the matters that were the basis for the notice;
 - (b) for an event mentioned in paragraph (1)(b):
 - (i) the matters that are the basis for the determination under subsection 35A(1) to which the notice relates;

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- (ii) whether the Minister has revoked under subsection 35A(8) the determination to which the notice relates; and
- (c) for an event mentioned in paragraph (1)(c)—the matters that are the basis for the determination.

52 Review of decisions

- (1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions:
 - (a) a decision under section 17 to refuse to approve a person becoming an Australian citizen;
 - (aa) a decision under section 19D to refuse to approve a person becoming an Australian citizen;
 - (b) a decision under section 24 to refuse to approve a person becoming an Australian citizen;
 - (c) a decision under section 25 to cancel an approval given to a person under section 24;
 - (d) a decision under section 30 to refuse to approve a person becoming an Australian citizen again;
 - (e) a decision under section 33 to refuse to approve a person renouncing his or her Australian citizenship, except a refusal because of the operation of subsection 33(5) (about war);
 - (f) a decision under section 34 or subsection 36(1) to revoke a person's Australian citizenship.

Citizenship by conferral decision

- (2) However, if:
 - (a) the Minister makes a decision under section 24 to refuse to approve a person becoming an Australian citizen; and
 - (b) the Minister's reasons for the decision did not refer to the eligibility ground in subsection 21(8) (about statelessness); and
 - (c) the person was aged 18 or over at the time the person made the application to become an Australian citizen;

a person (the *applicant*) cannot apply for review of that decision unless the applicant is a permanent resident.

- (3) For the purposes of the Administrative Appeals Tribunal reviewing a decision of a kind referred to in paragraph (1)(b):
- (a) the Tribunal must not exercise the power under subsection 22A(1A) or 22B(1A); and
 - (b) the Tribunal must not review any exercise of the power or any failure to exercise the power.

53 Delegation

- (1) The Minister may, by writing, delegate to any person all or any of the Minister's functions or powers under this Act or the regulations.
- (2) However, subsection (1) does not apply in relation to the function under subsection 23A(1) (about approval of citizenship test).

54 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Pledge of commitment as a citizen of the Commonwealth of Australia

Note: See section 27.

1 Form of pledge no. 1

From this time forward, under God,
I pledge my loyalty to Australia and its people,
whose democratic beliefs I share,
whose rights and liberties I respect, and
whose laws I will uphold and obey.

2 Form of pledge no. 2

From this time forward,
I pledge my loyalty to Australia and its people,
whose democratic beliefs I share,
whose rights and liberties I respect, and
whose laws I will uphold and obey.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Citizenship Act 2007	20, 2007	15 Mar 2007	s 2A–54 and Sch 1: 1 July 2007 (s 2(1) items 2, 3) Remainder: 15 Mar 2007 (s 2(1) item 1)	
Family Law Amendment (Shared Parental Responsibility) Act 2006	46, 2006	22 May 2006	Sch 8 (item 2): 1 July 2007 (s 2(1) item 8)	—
as amended by Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 2 (items 19, 20): 15 Mar 2007 (s 2(1) item 55)	—
Australian Citizenship Amendment (Citizenship Testing) Act 2007	142, 2007	17 Sept 2007	Sch 1: 1 Oct 2007 (s 2(1) item 2) Remainder: 17 Sept 2007 (s 2(1) item 1)	Sch 1 (items 12, 13)
Migration Legislation Amendment Act (No. 1) 2008	85, 2008	15 Sept 2008	Sch 5 (items 1A–2, 6–10, 12, 13, 15, 16): 15 Mar 2009 (s 2(1) item 5) Sch 5 (items 3–5, 14): 7 Oct 2008 (s 2(1) item 7)	Sch 5 (items 14, 16)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 10 (items 1–12): 15 Mar 2009 (s 2(1) item 29) Sch 10 (item 76): 1 July 2009 (s 2(1) item 28)	Sch 10 (items 8, 12)
Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009	90, 2009	21 Sept 2009	Sch 1: 9 Nov 2009 (s 2(1) item 2) Sch 2 (items 1–6, 8): 21 Sept 2009 (s 2(1) items 1, 3)	Sch 1 (item 9) and Sch 2 (item 8)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 5 (item 2): 1 Nov 2010 (s 2(1) item 7)	—
Australian Citizenship Amendment (Defence Families) Act 2012	119, 2012	12 Sept 2012	Sch 1: 1 Jan 2013 s 2(1) item 2)	Sch 1 (item 3)
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 13) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Australian Citizenship Amendment (Special Residence Requirements) Act 2013	57, 2013	21 June 2013	22 June 2013 (s 2)	Sch 1 (item 19)
Migration Legislation Amendment Act (No. 1) 2014	106, 2014	24 Sept 2014	Sch 5 (items 1, 3): 25 Sept 2014 (s 2(1) item 2)	Sch 5 (item 3)
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 7 (item 7): never commenced (s 2(1) item 9) Sch 7 (items 8, 9, 11): 4 Nov 2014 (s 2(1) items 10, 11, 13) Sch 7 (item 10): 18 Apr 2015 (s 2(1) item 12)	Sch 7 (item 11)
as amended by				
Migration Amendment (Protection and Other Measures) Act 2015	35, 2015	13 Apr 2015	Sch 5 (item 1): 14 Apr 2015 (s 2(1) item 11)	—
Australian Citizenship Amendment (Intercountry Adoption) Act 2015	7, 2015	25 Feb 2015	25 Feb 2015 (s 2)	Sch 1 (item 9)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 43): 5 Mar 2016 (s 2(1) item 2)	—
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 6, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Australian Citizenship Amendment (Allegiance to Australia) Act 2015	166, 2015	11 Dec 2015	Sch 1 and Sch 2 (items 1, 9): 12 Dec 2015 (s 2(1) item 1)	Sch 1 (item 8) and Sch 2 (item 9)
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 39, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 1 (items 27–30: 30 June 2018 (s 2(1) item 2) Sch 2 (item 10): 29 Dec 2018 (s 2(1) item 3)	—
Statute Update (Regulations References) Act 2020	18, 2020	6 Mar 2020	Sch 1 (items 19, 20): 6 Sept 2020 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2A	am No 142, 2007; No 7, 2015
s 3	am No 85, 2008; No 144, 2008; No 116, 2014; No 67, 2018
s 6	am No 46, 2006; No 144, 2008
s 6A	am No 31, 2018
s 8	rs No 144, 2008
s 10	am No 142, 2007
Part 2	
Division 1	
s 15	am No 126, 2015
Division 2	
Subdivision A	
s 16	am No 85, 2008
Subdivision AA	
Subdivision AA heading.....	rs No 7, 2015
s 19B	am No 7, 2015
s 19C	am No 7, 2015; No 18, 2020
Subdivision B	
s 19G	am No 142, 2007; No 90, 2009
s 21	am No 142, 2007; No 85, 2008; No 90, 2009; No 119, 2012
s 22	am No 85, 2008; No 144, 2008; No 90, 2009
s 22A	ad No 90, 2009
	am No 57, 2013
s 22B	ad No 90, 2009
	am No 57, 2013
s 22C	ad No 90, 2009
s 23	am No 85, 2008
	rs No 119, 2012

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 164, 2015
s 23A	ad No 142, 2007
	am No 90, 2009
s 24	am No 85, 2008; No 90, 2009; No 57, 2013
s 26	am No 90, 2009
Subdivision C	
s 29	am No 57, 2013
Division 3	
s 32A	am No 57, 2013; No 166, 2015
s 33	am No 166, 2015
s 33AA	ad No 166, 2015
s 34	am No 85, 2008; No 144, 2008; No 57, 2013; No 7, 2015
s 34A	ad No 57, 2013
s 35	rs No 166, 2015
s 35AA	ad No 166, 2015
s 35AB	ad No 166, 2015
s 35A	ad No 166, 2015
	am No 67, 2018
s 35B	ad No 166, 2015
s 36	am No 57, 2013; No 166, 2015
s 36A	ad No 166, 2015
Division 4	
s 38	am No 57, 2013
Division 5	
Subdivision A	
s 40	am No 142, 2007
Subdivision B	
s 43	am No 51, 2010; No 197, 2012
Part 3	
Division 1	
Division 1	ad No 116, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 45A	ad No 116, 2014
s 45B	ad No 116, 2014
s 45C	ad No 116, 2014
s 45D	ad No 116, 2014
Division 2	
Division 2 heading.....	ad No 116, 2014
s 46	am No 142, 2007; No 90, 2009
s 51A	ad No 106, 2014
s 51B	ad No 166, 2015
s 51C	ad No 166, 2015
s 52	am No 57, 2013
s 53	am No 142, 2007