

Australian Citizenship Amendment Regulations 2002 (No. 1)

2002 No. 85

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 85

Issued by the Authority of the Minister for Citizenship and Multicultural Affairs

Australian Citizenship Act 1948

Australian Citizenship Amendment Regulations 2002 (No. 1)

Section 53 of the Australian Citizenship Act 1948 (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, regulations may be made pursuant to the powers set out in Attachment A.

The purpose of these Regulations is to amend the Australian Citizenship Regulations 1960 (the Regulations) to set out what is an acceptable reason for a person who fails to make a pledge of commitment within 12 months of being granted a certificate of Australian citizenship, to impose a fee for the lodging by a person of a declaration of a wish to resume citizenship, and to make minor technical amendments consequential on the proposed 1 July 2002 commencement of the Australian Citizenship Legislation Amendment Act 2002 (the Amendment Act 2002).

These Regulations:

- declare that it is an acceptable reason for a person to fail to make the pledge of commitment within 12 months after the day of being notified of a decision to grant a certificate of citizenship if:
 - the person was prevented from making the pledge within that period because the Minister deferred conferral under subsection 14C(4) of the Act; or
 - the person was unable to make the pledge because the person had to travel overseas for medical treatment not otherwise available in Australia, or to care for a close relative who was critically ill; or
 - the person was unable to make the pledge because of an administrative error or omission made by the Commonwealth, a State or Territory, or a local government authority;
- impose a fee of \$65 in relation to the lodging of a declaration by a person under 25 years of age that the person wishes to resume Australian citizenship renounced under the Act; and
- Make technical amendments consequential on the commencement of the Amendment Act 2002, for example insert a savings provision in relation to the application by a responsible parent on behalf of an Australian citizen who has not attained the age of 16 years of age for a certificate evidencing citizenship, when the name of the child has already been included on the certificate of the responsible parent under section 13(1) of the Act before that subsection was repealed by the Amendment Act 2002.

Subsection 14B(1) of the Act, as inserted by the Amendment Act 2002, provides that if a certificate of Australian citizenship has been granted to a person, and the person has not become an Australian citizen under section 15 of the Act, and amongst other things, the person failed to make the pledge of commitment within 12 months after the day on which the person was notified of the Minister's decision to grant the certificate, and the person does not have an acceptable reason for the failure, the Minister may, in the Minister's discretion, revoke the grant of citizenship.

Subsection 14B(4) of the Act provides that for the purposes of subparagraph 14B(1)(c)(ii) of the Act, a reason is an acceptable reason if and only if the reason is declared by the regulations to be an acceptable reason for the purposes of this section.

Section 23AA and new section 23AB of the Act provide that a person may give the Minister a declaration in the prescribed form that the person wishes to resume Australian citizenship, and the Minister may register the declaration in the prescribed manner. Sections 23A and 23B provide that a person may make and furnish to the Secretary a declaration in accordance with the prescribed form that the person wishes to resume Australian citizenship, and a person to whom the declaration is furnished shall register the declaration in the prescribed manner.

These Regulations impose a fee of \$65 in relation to the lodging of a declaration that a person wishes to resume Australian citizenship under new section 23AB of the Act. A declaration that is not accompanied by the fee will be invalidly lodged. The quantum of the fee is identical with the fee imposed in relation to the lodging of a declaration that a person wishes to resume citizenship under sections 23AA, 23A or 23B of the Act.

Details of these Regulations are set out in Attachment B.

These Regulations commence on 1 July 2002 and coincide with the commencement of Schedule 2 of the Amendment Act 2002.

ATTACHMENT A

Subsection 14B(4) of the *Australian Citizenship Act 1948* (the Act) provides for the declaration by the *Australian Citizenship Regulations 1960* (the Regulations) of acceptable reasons for a person failing to make a pledge of commitment within 12 months of being notified of a decision to grant a certificate of citizenship;

Paragraphs 23AA(1)(c) and 23AB(1)(d) of the Act, and subsections 23A(1) and 23B(1) of the Act, provide that the Regulations are to prescribe the form on which a person is to declare that the person wishes to resume citizenship;

Subsections 23AA(1) and 23AB(1) of the Act provide that the Regulations are to prescribe the manner in which the Minister may register a declaration made by a person who wishes to resume Australian citizenship;

Subsections 23A(2) and 23B(2) of the Act provide that the Regulations are to prescribe the manner in which a person to whom a declaration is furnished shall register a declaration made by a person who wishes to resume Australian citizenship;

Subparagraph 53(f)(ii) of the Act provides that the Governor-General may make regulations for the imposition and recovery of fees in respect of any registration, the making of any declaration, the grant of any certificate or the making of a pledge of commitment authorised to be made or granted under the Act;

Paragraph 53(g) of the Act provides that the Governor-General may make regulations for the issue of certificates declaratory of the Australian citizenship of persons who are Australian citizens.

ATTACHMENT B

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Australian Citizenship Amendment Regulations 2002 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that these Regulations commence on the commencement of Schedule 2 to the *Australian Citizenship Legislation Amendment Act 2002*.

Regulation 3 - Amendment of Australian Citizenship Regulations

This regulation provides that Schedule 1 of these Regulations amends the *Australian Citizenship Regulations 1960*.

Schedule 1 - Amendments

Item [1] - Subregulation 3(1), before definition of *authorised office*

This item inserts a definition of an 'Australian mission overseas' into the Regulations.

An Australian mission overseas means a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia.

The purpose of the amendment is to clarify for the Regulations the meaning of the term 'Australian mission overseas'.

Item [2] - Subregulation 3(1), definition of *authorised office*

This item omits a reference to the Department of Immigration and Multicultural Affairs, and inserts a reference to the Department of Immigration and Multicultural and Indigenous Affairs.

The amendment reflects the change of name of the Department of Immigration and Multicultural and Indigenous Affairs.

Item [3] - Subregulation 3(1), after definition of *Centrelink*

This item inserts a definition of a 'certificate evidencing Australian citizenship' into the Regulations.

The definition provides that a certificate evidencing Australian citizenship has the meaning given by regulation 4A.

The insertion of the definition is intended to assist readers navigate the Regulations more felicitously.

Item [4] - Subregulation 3(1), after definition of *Papua*

This item inserts a definition of a 'pledge of commitment' into the Regulations.

The definition provides that a pledge of commitment has the meaning given by section 15 of the Act.

The insertion of the definition is intended to assist readers navigate the Regulations more felicitously.

Item [5] - Regulation 4

This item substitutes regulation 4 with new regulations 4 and 4A.

New regulation 4 substitutes current regulation 4 with a more modern drafting style. No substantive change is intended to new regulation 4.

New subregulation 4A(1) provides that a certificate evidencing Australian citizenship for a person who is an Australian citizen is a certificate that states the person is an Australian citizen, and is an approved form.

The definition of a 'certificate evidencing Australian citizenship' in subregulation 4A(1) is a more accurate description of what had formally been referred to in the Regulations as a 'declaratory certificate of citizenship'.

Subregulation 4A(2) provides that a certificate constitutes evidence of the fact that the person named in the certificate is an Australian citizen. Subregulation 4A(3) provides that a certificate that purports to have been signed by an authorised officer is taken to have been signed by that officer unless the contrary is proved.

The purpose of subregulations 4A(2) and (3) is to clarify the evidentiary effect of a certificate evidencing Australian citizenship.

Item [6] - Regulation 7G, heading

This item substitutes the heading of regulation 7G with a new heading that more accurately describes the content of regulation 7G.

The amendment also reflects the change of terminology effected by these Regulations that describes a 'declaratory certificate of citizenship' as a 'certificate evidencing Australian citizenship'.

Subregulation 7G(1) is also separately amended by Item 24 of these Regulations.

Item [7] - Regulation 8, heading

This item substitutes the heading of regulation 8 with a new heading.

The amendment reflects the change of terminology effected by these Regulations that describes a 'declaratory certificate of citizenship' as a 'certificate evidencing Australian citizenship'.

Subregulations 8(5), (7), (8), (9) and (11), and paragraphs (8)(a) and (8)(b) are also amended by Item 24 of these Regulations.

Item [8] - Subregulation 8(1)

This item omits a reference to a 'declaratory certificate of citizenship in a form approved by the Minister' with a reference to a 'certificate evidencing Australian citizenship'.

The amendment reflects the change of terminology effected by these Regulations that describes a 'declaratory certificate of citizenship' as a 'certificate evidencing Australian citizenship'.

The requirement that a certificate evidencing Australian citizenship be on an approved form is now found in subregulation 4A(1).

Item [9] - Subparagraph 8(5)(a)(iii)

This item substitutes subparagraph 8(5)(a)(iii) with new subparagraphs 8(5)(a)(iii) and (iv).

These amendments are consequential to the repeal of subsection 13 (10) of the Act by the Amendment Act 2002.

Subregulation 8(5) provides that where the name of an Australian citizen who has not attained the age of 16 years has been included in a certificate of Australian citizenship under specified provisions, the responsible parent of the person may apply on behalf of the person for a certificate evidencing Australian citizenship.

New subparagraph 8(5)(a)(iii) enables a responsible parent to apply on behalf of the person for a certificate evidencing citizenship when the name of a child has already been included on the certificate of the responsible parent under subsection 13(10) of the Act before that subsection was repealed by the Amendment Act 2002.

New subparagraph 8(5)(a)(iv) enables a responsible parent to apply on behalf of the person for a certificate evidencing citizenship where a decision was made to include the name of a child in a certificate of a responsible parent before the repeal of subsection 13(10) by the Amendment Act 2002, but the name is not yet included in the certificate.

Item [10] - Regulation 8C, head

This item substitutes the heading of regulation 8C with a new heading reflecting the change of terminology effected by these Regulations that now describes a 'declaratory certificate of citizenship' as a 'certificate evidencing Australian citizenship'. Subregulation 8C(1) is also separately amended by Item 24 of these Regulations.

Item [11] - Subparagraph 9(2)(c)(ii)

The item omits the word "furnished" in subparagraph 9(2)(c)(ii), replacing it with the word "lodged".

The purpose of the item is to modernise the language used in the Regulations.

Item [12] - Regulation 10

This item substitutes regulation 10 with a new regulation setting out that a certificate of Australian citizenship granted under specified sections of the Act must be in accordance with specified forms.

Subregulations 10(1) and (2) provide that a certificate of Australian citizenship granted under section 13 and section 32 of the Act must be in accordance with Form 6A and Form 8 respectively.

Subregulation 10(3) provides that a certificate of citizenship that includes the name of a child as a result of the operation of item 38 of the Amendment Act 2002 in saving subsection 13 (10) of the Act, must be in accordance with Form 6.

Item [13] - After regulation 10

This item inserts new regulation 11 setting out the acceptable reasons for failing to make a pledge of commitment under section 14B of the Act.

Subregulation 11(2) provides that for a person who fails to make a pledge of commitment within 12 months after the day of being notified of a decision by the Minister to grant the person a certificate of Australian citizenship, the acceptable reasons are as follows:

- the person was prevented from making the pledge because the Minister deferred conferral under subsection 14C(4) of the Act for a period of time, and either the deferral period has not ended or the deferral period has ended but the person has not yet had a reasonable period of time since the end of the deferral period to make the pledge;
- the person was unable to make the pledge either in Australia or at an Australian mission overseas, because during that period the person had to travel overseas for medical treatment not available in Australia or to care for a close relative who was critically ill, and either the person is still unable to make a pledge for one of the above reasons, or the person is now able to make a pledge but the person has not yet had a reasonable period of time to make the pledge;
- the person was unable to make the pledge because of an administrative error or omission made by the Commonwealth, a State or Territory, an authority thereof, or a local government authority, and either the error or omission has not been rectified, or the error or omission has been rectified but the person has not yet had a reasonable period of time to make the pledge.

Subregulation 11(3) provides that a person claiming to have an acceptable reason mentioned in dot point 2 or 3 above must give the Minister a signed statement to support the claim that includes a description of any effort made by the person to make the pledge, and written evidence that supports the statement.

Finally, subregulation 11 (4) defines a "close relative" for the purpose of paragraph 11 (2)(b) [being dot point 2 above].

Item [14] -Regulations 13A, 13B, 14, 15, 16 and 17

This item substitutes regulations 13A, 13B, 14, 15, 16, and 17 with new regulations 14, 15, and 16.

The matters dealt with in subregulation 13A(1), and regulations 14 and 15, are now set out in new subregulation 14(1). The requirement, previously set out in subregulation 13A(2) that a declaration referred to in subsection 23AA(1) of the Act must be made and furnished in duplicate is omitted. The matters set out in subregulation 13A(3) are now dealt with in subregulation 15(1). The matters referred to in regulation 13B are now dealt with in paragraph 23AA(1)(f) of the Act, introduced by Item 26 of the Amendment Act 2002. The matters set out in regulation 16 are now dealt with in subregulation 14(2). Finally, the matters set out in regulation 17 are now dealt with in regulation 16.

New subregulation 14(1) prescribes that for paragraphs 23AA(1)(c) and 23AB(1)(d), and subsections 23A(1) and 23B(1), of the Act, a declaration that a person wishes to resume Australian citizenship must be made in accordance with Form 10.

New subregulation 14(2) imposes a fee of \$65 payable on the lodging of a declaration mentioned in subregulation 14(1). Regulation 16 omitted by these Regulations had previously provided that a fee of \$65 is payable in respect of a declaration furnished for the purposes of sections 23AA, 23A or 23B of the Act. New subregulation 14(2) reimposes this fee in relation to

those sections, and also imposes a new fee set at the same amount in relation to a declaration given under new section 23AB of the Act introduced by the Amendment Act 2002.

New regulation 15 prescribes for the purposes of section 23AA, 23AB, 23A and 23B of the Act how a declaration by a person of a wish to resume Australian citizenship is registered. A declaration is registered, in the case of a declaration given under section 23AA and 23AB of the Act, by the Minister, and in the case of a declaration furnished under sections 23A and 23B of the Act, by the person to whom the declaration was given. The Minister, or the person to whom the declaration was given, must make a record of the fact that the person who made the declaration has resumed his or her citizenship, and include the record on a data storage system kept by the Department.

Subregulation 13A(3) omitted by these Regulations had previously prescribed the manner of registration of a declaration for the purposes of section 23AA of the Act. No manner of registration had previously been prescribed for the purposes of sections 23A and 23B of the Act.

New regulation 16 provides that if a declaration under section 23AA, 23AB, 23A or 23B of the Act is registered, an authorised officer must issue to the person a certificate evidencing Australian citizenship as soon as practicable. This requirement had been set out in respect of section 23AA, 23A, and 23B of the Act by regulation 17 omitted by these Regulations.

Item [15] - Subregulation 23(2)

This item effects a minor amendment to subregulation 23(2) of the Act replacing the reference to regulation 16 omitted by these Regulations with a reference to new subregulation 14(2).

The amendment also modernises the language of subregulation 23(2).

Item [16] - Sub-paragraph 23(2)(a)(i)

This item inserts a reference to new section 23AB into subparagraph 23(2)(a)(i).

The amendment is consequential on the insertion of new section 23AB into the Act by the Amendment Act 2002.

Item [17] - Subparagraph 23 (2)(a)(i)

The item omits the word "furnished" in subparagraph 23(2)(a)(i), replacing it with the word "lodged".

The purpose of the item is to modernise the language used in the Regulations.

Item [18] - Subparagraph 23 (2)(a)(ii)

The item omits the word "furnished" in subparagraph 23(2)(a)(ii), replacing it with the word 'lodged'.

The purpose of the item is to modernise the language used in the Regulations.

Item [19] - Schedule 2, Form 6

This item is consequential on the substitution of regulation 10 by item 12 of these Regulations.

This item substitutes Form 6 "Certificate of Australian Citizenship", made pursuant to now repealed subregulation 10(1), with a new Form 6 "Certificate of Australian Citizenship", made under new subregulation 10(3).

Item [20] - Schedule 2, after Form 6

This item is consequential on the substitution of regulation 10 by item 12 of these Regulations.

This item inserts new Form 6A "Certificate of Australian Citizenship", made under new subregulation 10(1).

Item [21] - Schedule 2, Form 8

This item is consequential on the substitution of regulation 10 by item 12 of these Regulations.

This item inserts new Form 8 "Certificate of Australian Citizenship" made under new subregulation 10(2). New Form 8 also updates the reference on the Certificate to the Minister for Citizenship and Multicultural Affairs.

Item [22] - Schedule 2, Form 9

This item substitutes Form 9 "Declaration of renunciation of Australian Citizenship" with an updated form.

Item [23] - Schedule 2, Form 10

This item substitutes Form 10 "Declaration of desire to resume Australian citizenship", with a new form containing references to differently configured provisions of the Regulations.

Item [24] - Further amendments - certificate evidencing Australian citizenship

This item makes minor technical amendments to specified subregulations and paragraphs of the Regulations by omitting each mention of 'declaratory certificate of citizenship' or 'declaratory certificate' and inserting 'certificate evidencing Australian citizenship'.

These amendments reflect the change of name of the 'declaratory certificate of citizenship' to the more accurate 'certificate evidencing Australian citizenship'.