

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 164**

Issued by the Minister for Immigration and Citizenship

*Australian Citizenship Act 2007*

*Australian Citizenship Regulations 2007*

Section 54 of the *Australian Citizenship Act 2007* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed or necessary or convenient for carrying out or giving effect to this Act.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The purpose of the Regulations is to repeal the *Australian Citizenship Regulations 1960* and prescribe various matters under the Act.

In particular, the Regulations would provide:

- for the registration of persons who are Australian citizens by descent or adoption in accordance with the Hague Convention on Intercountry Adoption or who have resumed Australian citizenship;
- acceptable reasons for failing to make a pledge of commitment;
- arrangements for making a pledge of commitment;
- the form of notice of evidence of Australian citizenship;
- the matters of which an applicant must be informed when asked to provide personal identifiers;
- that translations must be included with non-English information or documentation accompanying applications for Australian citizenship;
- the fees that must accompany applications for Australian citizenship;
- for the refund of the whole or part of a fee; and
- the methods by which the Minister must give notice of a decision under the Act.

Details of the Regulations are set out in Attachment B.

Transitional provisions clarify which provisions apply to applicants who have applications not finally determined at the time the Regulations commence.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence at the same time as sections 2A to 54 of the Act.

The Office of Regulation Review in the Productivity Commission has been consulted and advises that the Regulations are not likely to have a direct effect, or substantial indirect effect, on business and are not likely to restrict competition.

The following external agencies and other bodies were consulted in relation to the Regulations:

- Attorney-General's Department
- Department of Defence
- Office of Regulation Review, Productivity Commission
- Office of Federal Privacy Commissioner
- Professor Kim Rubenstein, Director, Centre for International and Public Law,  
College of Law, Australian National University

No other consultations were conducted in relation to the Schedules to the Regulations as the amendments were considered not to have relevant implications for any external agencies or other bodies.

Section 54 of the *Australian Citizenship Act 2007* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient for carrying out or giving effect to the Act.

In addition to section 54 of the Act, the following provisions may apply:

- section 18 of the Act, which provides that if the Minister approves a person becoming an Australian citizen (by descent), the Minister must register the person in the manner prescribed by the regulations;
- section 19E of the Act, which provides that if the Minister approves a person becoming an Australian citizen (by adoption in accordance with the Hague Convention on Intercountry Adoption), the Minister must register the person in the manner prescribed by the regulations;
- subsection 25(3) of the Act, which provides that the Minister may cancel approval given to a person under section 24 of the Act if a 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 the person's reason for failure to make a pledge of commitment is not one prescribed by the regulations for the purposes of this section;
- subsection 27(2) of the Act, which provides that a pledge of commitment must be made in accordance with arrangements prescribed by the regulations;
- section 31 of the Act, which provides that if the Minister approves a person becoming an Australian citizen again (by resumption), the Minister must register the person in the manner prescribed by the regulations;
- subsection 37(3) of the Act, which provides that a notice stating that a person is an Australian citizen at a particular time must be in a form prescribed by the regulations, and contain any other matter prescribed by the regulations;
- subsection 40(2) of the Act, which provides that a request for personal identifiers in relation to an application made under the Act must inform the person of the matters prescribed by the regulations;
- paragraph 46(1)(c) of the Act, which provides that an application under a provision of the Act must be accompanied by any other information or documents prescribed by the regulations;
- paragraph 46(1)(d) of the Act, which provides that an application under a provision of the Act must be accompanied by the fee (if any) prescribed by the regulations;
- subsection 46(3) of the Act, which provides that 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 46(1)(d); and
- subsection 47(4) of the Act, which provides the Minister must give a notice of a decision under the Act in the manner prescribed by the regulations (which includes electronic form).

**Details of the proposed *Australian Citizenship Regulations 2007***

**Regulation 1 – Name of Regulations**

This regulation provides that these Regulations are the *Australian Citizenship Regulations 2007*.

**Regulation 2 – Commencement**

This regulation provides that these Regulations commence at the same time as sections 2A to 54 of the *Australian Citizenship Act 2007* (the Act).

**Regulation 3 – Repeal**

This regulation provides that the *Australian Citizenship Regulations 1960* (the old Regulations) are repealed.

**Regulation 4 – Definitions**

This regulation defines the following terms and phrases which apply to the Regulations as a whole: *Act*; *Australian mission overseas*; *Centrelink*; *Hague Convention on Intercountry Adoption*; *pledge of commitment*.

Most of the terms and phrases are consistent with those which appeared in regulation 3 of the old Regulations. The term *Hague Convention on Intercountry Adoption* has been introduced for the purpose of administering section 19C of the Act – “Citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption”.

**Regulation 5 – Registration under section 18 of the Act**

This regulation prescribes the manner by which the Minister must register a person under section 18 of the Act if the Minister approves the person becoming an Australian citizen by descent.

Section 18 of the Act relates to an application by a person under section 16 of the Act to become an Australian citizen by descent where the person was born outside Australia (or New Guinea in certain circumstances) and had a parent who was an Australian citizen at the time of his or her birth.

Regulation 5 provides that a person is registered by making a record of the fact that the person is an Australian citizen by descent and including the record on a data storage system kept by the Department.

This is consistent with regulation 7 of the old Regulations.

**Regulation 6 – Registration under section 19E of the Act**

This regulation prescribes the manner by which the Minister must register a person under section 19E of the Act if the Minister approves the person becoming an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption.

Section 19E relates to an application by a person under section 19C of the Act to become an Australian citizen where the applicant is adopted in a Convention country by a person who is an Australian citizen at the time of adoption and has complied with the requirements specified under the Act.

Regulation 6 provides that a person is registered by making a record of the fact that the person is an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption and including the record on a data storage system kept by the Department.

This regulation has been introduced for the purpose of the new provision in section 19E in the Act.

#### Regulation 7 – Prescribed reasons for failing to make a pledge of commitment

This regulation prescribes the reasons for failure to make a pledge of commitment for which a person's approval to become an Australian citizen cannot be cancelled under subsection 25(1) of the Act.

Under subsection 25(1) of the Act, the Minister may cancel an approval given to a person under section 24 if the person is required to make a pledge of commitment under section 26 and has not become an Australian citizen under section 28, and either the eligibility criteria have not been met or the person has not made a pledge of commitment.

Subregulation 7(1) provides that this regulation prescribes reasons for failing to make a pledge of commitment for the purposes of paragraph 25(3)(b) of the Act.

A person has a prescribed reason for failing to make a pledge of commitment if under:

- subregulation 7(2), the person was prevented from making a pledge because the Minister determined under subsection 26(3) of the Act that the making of the pledge should be delayed for a specified period, and either that period has not ended or the person has not yet had a reasonable period since the end of the specified period in which to make a pledge; or
- subregulation 7(3), the person was unable to make a pledge within the relevant period in Australia or at an Australian mission overseas, because during that period the person was overseas:
  - for medical treatment that was not available in Australia; or
  - for a purpose unrelated to medical treatment, and was unexpectedly hospitalised; or
  - to care for a person who was critically ill; or
  - for a funeral and other associated arrangements,
 and either the person still cannot make a pledge for one of these reasons or the person is now able to make a pledge, but the person has not yet had a reasonable period in which to do so; or
- subregulation 7(4), the person was unable to make a pledge within the period because of an administrative error or omission made by the Commonwealth, a State or Territory, or an authority of the Commonwealth, a State or Territory or a local government authority, and either the error or omission has not been rectified or the person has not yet had a reasonable period in which to make a pledge.

Subregulation 7(5) provides that for subregulation (3) or (4), a person has a prescribed reason only if the person gives the Minister a signed statement to support the claim that includes a description of any effort that the person made to make a pledge of commitment within the relevant period, and gives written evidence that supports the statement.

This regulation is substantially consistent with regulation 11 of the old Regulations. It has been expanded to cover people who are overseas for the purpose of attending a funeral and associated arrangements or are overseas and unexpectedly hospitalised. In addition, subparagraph 7(3)(a)(iii) provides that a person has a prescribed reason for failing to make a pledge of commitment if that person was overseas to care for a person who is critically ill. It is no longer a requirement that the critically ill person be a close relative.

#### Regulation 8 – Arrangements for making pledge of commitment

This regulation prescribes how a pledge of commitment is to be made under subsection 27(2) to become an Australian citizen by conferral.

Subregulation 8(1) provides that for subsection 27(2) of the Act, the pledge of commitment must be made in public if it is reasonably practicable, and the person before whom a pledge is made must read aloud the address specified in Schedule 1 to the Regulations to the person making the pledge. The address specified in Schedule 1 is the preamble to the Act, excepting for the words “The Parliament recognises that”.

The note to this provision provides that the Department may notify additional arrangements for making a pledge of commitment, or conducting a ceremony, that are designed to impress upon applicants the responsibilities and privileges of Australian Citizenship.

This regulation is consistent with regulation 12 of the old Regulations. The note in this regulation relates to the arrangements to be followed for a public citizenship ceremony as previously prescribed in subsection 15(2) and section 41 of the *Australian Citizenship Act 1948* (‘the old Act’). These arrangements are currently contained in the Departmental publication “Australian Citizenship Ceremonies Code”.

#### Regulation 9 – Registration under section 31 of the Act

This regulation prescribes the manner by which the Minister must register a person under section 31 of the Act if the Minister approves the person becoming an Australian citizen again.

Section 31 relates to an application by a person under section 29 of the Act to resume Australian citizenship where the person ceased citizenship under the Act as outlined in subsection 29(2) or under the old act as outlined in subsection 29(3) of the Act.

Regulation 9 provides that a person is registered by making a record of the fact that the person is an Australian citizen by resumption of citizenship and including that record on a data storage system kept by the Department.

This regulation is consistent with regulation 15 of the old Regulations.

### Regulation 10 – Form of notice

This regulation prescribes matters for subsection 37(3) of the Act that must be contained in a notice of evidence of a person's Australian citizenship.

Subregulation 10(1) provides that a notice must be given in accordance with the form in Schedule 2 to the Regulations. Subregulation 10(2) provides that the signature of the Minister on the notice may be a facsimile that is printed or stamped.

This regulation is largely consistent with regulation 4A of the old Regulations. Unlike regulation 4A, new regulation 10 will prescribe the form of the notice of evidence of citizenship. However, Schedule 2 to the old Regulations contained prescribed forms of notices.

### Regulation 11 – Personal Identifiers

Regulation 11 prescribes the matters of which a person must be informed for subsection 40(2) of the Act in relation to a request for personal identifiers made under subsection 40(1) of the Act. The matters to be informed include:

- that the person is made fully aware of the reason why one or more personal identifiers must be provided;
- how they will be collected, used and the circumstances in which they can be disclosed;
- that the personal identifiers may be produced in evidence in a court or tribunal in relation to the person; and
- the rights the person has under the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

This regulation supports the introduction of a legislative framework for the collection, use and storage of personal identifiers under the Act.

The meaning of 'personal identifiers' is given in section 10 of the Act.

### Regulation 12 – Information, documents and fees to accompany applications

This regulation prescribes the fees and other information and documents that must accompany an application under a provision of the Act. The particular fees required for applications under the Act are detailed in Schedule 3.

Subregulation 12(1) provides that, for paragraph 46(1)(c) of the Act, if an application for citizenship is accompanied by information or a document in a language other than English, it must also be accompanied by an official English translation. Paragraph 46(1)(c) of the Act, provides that an application must be accompanied by any other information or documents prescribed in the regulations.

A reference to "application" in subsection 46(1) of the Act and regulation 12 is a reference to an ongoing act of applying, and is not to be restricted to one event, for example, the lodgement of an approved form. Under subregulation 12(1), where information or a document in a language other than English accompanies an application, official translated documents must be given when an application is made and throughout the application process, up until the time the Minister makes a decision. Therefore, the obligation to provide official English translation continues after the original lodgement of the relevant approved form for citizenship.

Subregulation 12(2) provides that, for paragraph 46(1)(d) of the Act, an application of the kind mentioned in an item in Schedule 3 to the Regulations must be accompanied by the fee mentioned in the item. Paragraph 46(1)(d) provides that an application under a provision of the Act must be accompanied by the fee (if any) prescribed by the regulations.

#### Regulation 13 – Refund of fees under subsection 46(3) of the Act

This regulation provides for the refund of the whole or part of a fee for the purposes of subsection 46(3) of the Act.

For a fee payable under section 46 of the Act in relation to an application made under sections 16, 19C, 21 and 29 (which relate to making an application to become an Australian citizen), subregulation 13(1) provides that the Minister may refund the whole or part of a fee in any of the following circumstances:

- a person has previously made an application under the same section and a decision on that application has not been made;
- a person has made the application as a result of incorrect advice given by the Department;
- a person is an Australian Citizen;
- a person has paid an incorrect fee with the original application.

For a fee payable under section 46 of the Act, in relation to an application made under section 33 (which relates to renunciation of Australian citizenship), subregulation 13(2) provides that the Minister may refund the whole or part of a fee if either a person has previously made an application under the same section and a decision on that application has not been made or a person has lodged the application as a result of incorrect advice given by the Department.

For a fee payable under section 46 of the Act, in relation to an application made under section 37 (which relates to evidence of Australian citizenship), subregulation 13(3) provides that the Minister may refund the whole or part of a fee in any of the following circumstances:

- a person has previously made an application under the same section and a decision on that application has not been made;
- the person has previously made an application under the same section as a result of incorrect advice and a decision on that application has not been made;
- the person has already been given evidence of his or her Australian citizenship, but a departmental error was made which resulted in an error in the information provided in the evidence.

This regulation is consistent with regulation 23 of the old Regulations. It has been expanded to include circumstances where a person has paid an incorrect fee with the original application.

#### Regulation 14 – Form of notice under section 47 of the Act

This regulation prescribes the manner in which the Minister must give a notice of a decision for the purposes of subsection 47(4) of the Act. A notice of a decision under the Act must be given by either personal delivery, prepaid post to the last address given to the Department, or electronic means.



Deemed receipt provisions have not been included here as it is intended that section 29 of the *Acts Interpretation Act 1901* (AIA Act) and section 14 of the *Electronic Transactions Act 1999* (ET Act) will provide for the time of receipt of a notice of a decision.

Section 29 of the AIA Act provides that where an Act authorises or requires a document to be served by post, unless the contrary intention appears, service is presumed to have been effected “at the time at which the letter would be delivered in the ordinary course of post”. Section 29 does not apply to the personal delivery of a notice of a decision. Section 14 of the ET Act provides for the time of receipt of electronic communications.

### **Schedule 1 – Preamble for citizenship ceremony**

Schedule 1 to the Regulations provides the address that must be read aloud to the person making a pledge of commitment under regulation 8 and in accordance with section 27 of the Act.

### **Schedule 2 – Form of notice**

Schedule 2 to the Regulations provides a form for a notice of evidence of Australian citizenship for the purposes of section 37(3) of the Act and regulation 10 of the Regulations.

The form of notice is similar to Form 6, Schedule 2 to the old Regulations. However, under the Act, this form will provide evidence of Australian citizenship under section 37 of the Act.

The note to the form makes it clear that where the notice is issued to a person who becomes a citizen on the day that they make the pledge of commitment, the person who performs the function of administering the pledge of commitment to the applicant (referred to as the “presiding officer” on the form and in the note) is able to sign his or her signature where indicated on the form if desired.

The note also makes it clear that a presiding officer may only sign the form, when a person is required to make a pledge of commitment in accordance with section 27 of the Act before that presiding officer, to become an Australian citizen at a citizenship ceremony.

The signature of the Minister on the notice may be a facsimile that is printed or stamped in accordance with regulation 10.

In limited circumstances, the names of children who had not attained the age of 16 years at the time of the application, whose application was made prior to 1 July 2002 and whose responsible parent is named in the notice, may be listed on the back of the notice. The Minister’s signature (printed or stamped) should be placed under the names listed on the back of the notice.

### **Schedule 3 – Fees to accompany applications**

Schedule 3 to the Regulations prescribes the fees to be accompanied by applications under the Act for the purposes of subregulation 12(2) and paragraph 46(1)(d) of the Act. An application of the kind mentioned in an item of this Schedule must be accompanied by the fee mentioned in the item.

Item 1 provides that applications made at the same time under section 16 of the Act by two or more siblings must be accompanied by a fee of \$110 for the application by the first sibling, and \$85 for the applications made by the second and subsequent siblings.

Item 2 provides that an application under section 16 of the Act, other than an application mentioned in item 1, must be accompanied by a fee of \$110.

Item 3 provides that applications made at the same time under section 19C of the Act by two or more siblings must be accompanied by a fee of \$110 for the application by the first sibling, and \$85 for the applications made by the second and subsequent siblings.

Item 4 provides that an application under section 19C of the Act other than an application mentioned in item 3 must be accompanied by a fee of \$110.

Item 5 provides that there is nil fee for an application under section 21 of the Act where the applicant has completed at least three months:

- service in the permanent forces of the Commonwealth; or
- National Service under section 26 of the *National Service Act 1951* as in force at any time before 26 November 1964.

Item 6 provides that there is nil fee for an application under section 21 of the Act where the applicant entered Australia from the United Kingdom or Malta between 22 September 1947 and 31 December 1967 inclusive, and was a ward of the Minister under the *Immigration (Guardianship of Children) Act 1946*.

Item 7 provides that there is nil fee for an application under section 21 of the Act where the applicant has previously had an application for citizenship refused solely on the grounds of not satisfying the residence requirements of subsection 22(1) of the Act, or paragraphs 13(1)(d) or (e) of the old Act, and applied within three months of being able to satisfy the residence requirements.

Item 8 provides that there is nil fee for an application under section 21 of the Act where the applicant has applied under subsection 21(8) (which relates to stateless people born in Australia).

Item 9 provides that an application under section 21 of the Act where the applicant holds a pensioner concession card or health care card endorsed by Centrelink with one of the following codes: AGE (Age Pension); AGE BLIND (Age Pension for the Blind); CAR (Carer Payment) ; DSP (Disability Support Pension); DSP BLIND (Disability Support Pension for the Blind); MAA (Mature Age Allowance); NSA (New Start Allowance); PPP (Parenting Payment); PTA (Partner Allowance); SAL (Sickness Allowance); SPL (Special Benefit); WDA (Widow Allowance); WFA, WFD, and WFW (Wife Pensions); must be accompanied by a fee of \$20 with their application.

Item 10 provides that an application under section 21 of the Act where the applicant holds a pensioner concession card endorsed by Centrelink, with the code PPS (Parenting Payment (Single)), and produces evidence that the applicant is over 60 years of age, and has been in receipt of PPS for at least 9 months; must be accompanied by a fee of \$20 with their application.

Item 11 provides that an application under section 21 of the Act where the applicant holds a health care card, endorsed by Centrelink with the code PA (Partner Allowance) and produces evidence that the applicant is:

- the partner of a holder of a pensioner concession card endorsed by Centrelink with one of the following codes: AGE (Age Pension); AGE BLIND (Age Pension or the Blind); CAR (Carer Payment); DSP (Disability Support Pension); DSP BLIND (Disability Support Pension for the Blind); MAA (Mature Age Allowance); WFA, WFD, and WFW (Wife Pensions); or
- the partner of a holder of a health care card, endorsed by Centrelink with the code SL (Special Benefit) and who has received the SL benefit for at least 46 of the previous 52 weeks;

must be accompanied by a fee of \$20.

Item 12 provides that an application under section 21 of the Act where the applicant holds a health care card, endorsed by Centrelink with the code SL (Special Benefit), and produces evidence that the applicant has received the SL benefit for at least 46 of the previous 52 weeks, must be accompanied by a fee of \$20.

Item 13 provides an application under section 21 of the Act where the applicant holds a pensioner concession card, endorsed by the Department of Veterans' Affairs, for Age Service, Invalidity Service or Partner Service pension or an Income Support Supplement, must be accompanied by a fee of \$20.

Item 14 provides that there is nil fee for an application under section 21 of the Act by a child under the age of 16 who applies for citizenship at the same time and on the same form as a responsible parent.

Item 15 provides that an application under section 21 of the Act, apart from an application in items 5 to 14, must be accompanied by a fee of \$120.

Item 16 provides that there is nil fee for an application under section 29 of the Act by a child, under the age of 16, who makes an application at the same time and on the same form as a responsible parent.

Item 17 provides that an application under section 29 of the Act, other than an application mentioned in item 16, must be accompanied by a fee of \$65.

Item 18 provides that an application under section 33 of the Act must be accompanied by a fee of \$260.

Item 19 provides that there is nil fee for an application under section 37 of the Act that is made at the same time and on the same form as an application under section 21 or 29 of the Act.

Item 20 provides that an application under section 37 of the Act, other than an application mentioned in item 19, must be accompanied by a fee of \$55.