

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 313

Issued by the Minister for Immigration and Citizenship

Australian Citizenship Act 2007

Australian Citizenship Amendment Regulations 2007 (No. 1)

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.

The following provisions of the Act may apply to the fees associated with an application for Australian citizenship:

- 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(1A) of the Act, which provides that the fee prescribed by the regulations for applications made under section 21, in relation to persons who have sat a test or tests approved in a determination under section 23A of the Act, may include a component that relates to the sitting of that test or tests; and
- 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).

The purpose of the Regulations is to amend the *Australian Citizenship Regulations 2007* (the Principal Regulations) to make various changes to provide for fees associated with the sitting of a test.

In particular, the Regulations amend the Principal Regulations to:

- provide for new fees for applicants for Australian citizenship, including a component that relates to the sitting of a test, to be charged in relation to applicants for Australian citizenship who are required to sit a test;
- allow partial refunds to be paid in certain circumstances where a person has paid the new fee, including the component that relates to the sitting of a test, and the person has not sat the test; and
- provide for different concession fees for certain persons who apply for Australian citizenship and are required to sit a test.

Details of the Regulations are set out in the Attachment.

The new fee structure was approved by the Treasurer during the 2007-08 Budget process and was set so that the Department of Immigration and Citizenship would recover 80% of the ongoing costs associated with processing citizenship applications for applicants required to sit a citizenship test. While the Australian Government's cost recovery guidelines require that fees are set so that agencies recover all of the costs incurred in providing a service, less

than full cost recovery was agreed to avoid discouraging persons from applying for Australian citizenship. This is in line with the Australian Government's policy of encouraging eligible persons to become Australian citizens.

As required by the Office of Best Practice Regulation, a preliminary assessment of the amendments made by the Regulations was undertaken and they were found to no compliance cost to business or impact on competition.

No other external consultation was undertaken as the amendments were considered not to have relevant implications for any external agencies or organisations.

The Regulations commence on 1 October 2007.

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

ATTACHMENT

Details of the *Australian Citizenship Amendment Regulations 2007 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that these Regulations are the *Australian Citizenship Amendment Regulations 2007 (No. 1)*.

Regulation 2 - Commencement

These Regulations commence on 1 October 2007

Regulation 3 – Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 1 amends the *Australian Citizenship Regulations 2007* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] – After subregulation 13(3)

This item amends regulation 13 of the Principal Regulations by inserting new subregulations 13(4) and (5). Regulation 13 provides, under subsection 46(3) of the *Australian Citizenship Act 2007* (the Act), for the refund of the whole or part of a fee prescribed under paragraph 46(1)(d) of the Act.

New subregulation 13(4) provides that, if a person:

- made an application under section 21 of the Act; and
- claimed eligibility in that application on the basis of the general eligibility criteria in subsection 21(2) of the Act; and
- paid the \$40 fee specified in new item 14 or 15A of Schedule 3 to the Principal Regulations; and
- does not satisfy the criteria in subsection 21(2) of the Act because he or she did not sit a test as described in paragraph 21(2A)(a) of the Act;

the Minister may refund \$20 of the fee, which is the component of the fee that relates to the sitting of a test of that kind.

Similarly, new subregulation 13(5) provides that, if a person:

- made an application under section 21 of the Act; and
- claimed eligibility in that application on the basis of the general eligibility criteria in subsection 21(2) of the Act; and
- paid the \$240 fee specified in new item 14A or 15B of Schedule 3 to the Principal Regulations; and

- does not satisfy the criteria in subsection 21(2) of the Act because he or she did not sit a test as described in paragraph 21(2A)(a) of the Act;

the Minister may refund \$120 of the fee, which is the component of the fee that relates to the sitting of a test of that kind.

The purpose of new subregulations 13(4) and (5) is to allow the Minister to refund to a person who makes an application accompanied by a fee of \$240 under new item 14A, or the concession fee of \$40 under new item 14, the component of the fee relating to the sitting of a test where the application is refused only because the person was required to, but did not sit a test before making the application.

New subregulations 13(4) and (5) also allow an applicant to whom new item 15A or 15B, inserted by these Regulations, apply, to have the fee paid by them to be refunded in the event that his or her application is refused only because the person was required to, but did not sit a test before making the application. For further information about new items 15A and 15B, refer can be made to the notes relating to item [3] of Schedule 1 to these Regulations.

Item [2] – Schedule 3, item 7

This item substitutes item 7 of Schedule 3 to the Principal Regulations with new item 7 and inserts new subitem 7A. Schedule 3 provides for the fees which must accompany an application under the Act.

New item 7 provides that no fee is required to accompany an application (the “new application”) under section 21 of the Act where the applicant claims eligibility on the basis of the criteria in subsections 21(3) or (4) of the Act if:

- the applicant previously made an application (the “old application”) under subsection 13(1) of the *Australian Citizenship Act 1948* (the “Old Act”) or section 21 of the Act; and
- the old application was refused solely on the ground that the applicant did not meet the residence requirement set out in:
 - paragraphs 13(1)(d) and (e) of the Old Act; or
 - subsection 22(1) of the Act; or
 - subsection 22(1) of the Act applied by item 5B or subitem 7(8) of Schedule 3 to the *Australian Citizenship (Transitional and Consequential) Act 2007* (the “Transitional and Consequential Act”); and
- the applicant made the new application within 3 months after first being able to meet the residence requirement, and the applicant, in the new application.

Subsection 13(1) of the Old Act provides the criteria which were required to be satisfied for the grant of Australian citizenship. Subsections 21(3) and (4) provide the criteria which must be satisfied for a person to be eligible to become an Australian citizen where they have a permanent physical or mental incapacity, or are aged 60 years or over or have hearing, speech or sight impairment.

Generally, the residence requirement relates to the period of time that a person must be in Australia as lawful non-citizen and permanent resident in order to be eligible to become an Australian citizen. Item 5B and subitem 7(8) of Schedule 3 to the Transitional and Consequential Act provides for the requirements to be met for people who were permanent residents before 1 July 2007 or made an application before 1 July 2007.

The effect of new item 7 is that applicants:

- whose old application was refused solely on the ground of not meeting the relevant residence requirement; and
- who make a new application within 3 months of being able to meet the relevant residence requirement; and
- apply on the basis that they have a permanent physical or mental incapacity, or are aged 60 years or over, or have hearing, speech or sight impairment, and seek to satisfy the relevant criteria in either subsection 21(3) or (4);

do not have to pay a fee when making the new application.

New item 7A provides that no fee is required to accompany an application under subsection 21 of the Act if:

- the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act in the new application;
- the applicant previously made an application (the “old application”) on or after 1 October 2007 under which he or she claimed eligibility under subsection 21(2) of the Act; and
- after considering the old application, the Minister refused to approve the person becoming an Australian citizen only because the Minister was not satisfied that the applicant met the residence requirement set out in:
 - subsection 22(1) applied by item 5B of Schedule 3 to the Transitionals and Consequentials Act; or
 - subsection 22(1) of the Act; and
- the applicant made the new application within 3 months after first being able to meet the residence requirement.

Subsection 21(2) of the Act provides the general eligibility criteria for a person to become an Australian citizen by conferral.

The purpose of new item 7A is to ensure that applicants who have previously made an application to become Australian citizens under the eligibility criteria in subsection 21(2) on or after 1 October 2007, but were refused only on the ground of the residence requirement, do not have to pay a fee when making a new application claiming eligibility under subsection 21(2) within 3 months after first being able to meet the residence requirement.

Item [3] – Schedule 3, items 9 to 15

This item substitutes items 9 to 15 of Schedule 3 to the Principal Regulations with new items 9 to 14, 14A, 14B, 15, 15A and 15B. Schedule 3 provides for the fees which must accompany an application under the Act.

New items 9 to 13 provide for concession fee of \$20 for an application under 21 of the Act for certain applicants who are holders of pensioner concession cards or health care cards and who do not claim eligibility on the basis of the criteria in subsection 21(2).

Subsection 21(2) of the Act provides the general eligibility criteria for a person to become an Australian citizen by conferral and is subject to the requirement in subsection 21(2A) that the person sits and successfully completes a citizenship test.

New items 9 to 13 are, in effect, the same provisions as former items 9 to 13. However, their scope has been limited to an application under section 21 of the Act other than in relation to subsection 21(2) as a consequence of the new citizenship testing requirement, for which an additional fee component is being charged on a partial cost recovery basis.

New item 14 provides for a \$40 fee for an application under section 21 of the Act if the applicant claims eligibility on the basis of the criteria in subsection 21(2) and the applicant is the holder of a pensioner concession cards or health care card and meets the relevant requirements in new items 9 to 13 as specified in new paragraph 14(b). Of this fee, the component that relates to the sitting of a citizenship test is \$20.

New item 14A provides for a \$240 fee for an application under section 21 of the Act if the applicant claims eligibility on the basis of the criteria in subsection 21(2) and the application is not an application mentioned in items 5 to 14 or items 14B to 15B. Of this fee, the component that relates to the sitting of a test is \$120.

New item 14B provides that no fee is payable 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. New item 14B is the same as former item 14.

New item 15 provides for a \$120 fee for an application under section 21 of the Act, other than an application mentioned in items 5 to 14B or item 15A or 15B. New item 15 is essentially the same as former item 15, however, it has been amended so that it also exclude applications mentioned in new fee items 15A and 15B.

New item 15A provides for a \$20 fee for applications made under section 21 of the Act (the “new application”) on or after 1 October 2007 (that is, on or after the commencement of these Regulations) if:

- the applicant claims eligibility on the basis of the criteria in subsection 21(2); and
- the applicant made a previous application (the “old application”) before 1 October 2007; and
- either:
 - the old application was accompanied by the fee of \$20; or
 - the old application was accompanied by the fee of \$120 and subparagraph 14(b)(i), (ii), (iii) or (iv) applies to the applicant in relation to the new application; and
- the old application was refused solely on the grounds that the applicant did not meet the residence requirement set out in:
 - paragraphs 13(1)(d) or (e) of the Old Act; or
 - subsection 22(1) of the Act; or
 - subsection 22(1) of the Act applied by item 5B or subitem 7(8) of Schedule 3 to the Transitionals and Consequential Act; and
- the applicant made the new application within 3 months after first being able to meet the residence requirement.

New item 15B provides for a \$120 fee for applications made under section 21 of the Act (the “new application”) on or after 1 October 2007 (that is, on or after the commencement of these Regulations) if:

- the applicant claims eligibility on the basis of the criteria in subsection 21(2); and

- the applicant made a previous application (the “old application”) before 1 October 2007; and
- either:
 - the old application was accompanied by the fee of \$120; or
 - the old application was accompanied by the fee of \$20 and none of subparagraphs 14(b)(i), (ii), (iii) and (iv) applies to the applicant in relation to the new application; and
- the old application was refused solely on the grounds that the applicant did not meet the residence requirement set out in:
 - paragraphs 13(1)(d) or (e) of the Old Act; or
 - subsection 22(1) of the Act; or
 - subsection 22(1) of the Act applied by item 5B or subitem 7(8) of Schedule 3 to the Transitionals and Consequentials Act; and
- the applicant made the new application within 3 months after first being able to meet the residence requirement.

The purpose of new items 15A and 15B is to require applicants, whose old application was refused solely on the basis of not meeting the relevant residence requirement and who claim eligibility on the basis of the criteria in subsection 21(2) of the Act, to pay the citizenship testing fee component which would normally be required to be paid under either new item 14 or 14A.

In relation to new paragraphs 15A(b) and 15B(b), the old application could be either an application under subsection 13(1) of the Old Act before 1 July 2007 or under subsection 21(1) of the Act on or after 1 July 2007 and before 1 October 2007.

New paragraph 15A(c) provides for circumstances where an applicant either:

- paid the concession fee of \$20; or
- paid the full fee of \$120 with the old application, but has since become the holder of a pensioner concession card or health care card (and met other related requirements), as required in new subparagraphs 14(b)(i), (ii), (iii) and (iv), when making the new application.

Similarly, new paragraph 15B(c) provides for circumstances where an applicant either:

- paid the full fee of \$120; or
- being a holder of a pensioner concession card or health care card (and met other related requirements) when the old application was made and paid the concession \$20 fee, but has since ceased to be such a card holder, or does not meet the related requirements, as required in new subparagraphs 14(b)(i), (ii), (iii) and (iv), when making the new application.

Generally, the residence requirement relates to the period of time that a person must be in Australia as lawful non-citizen and permanent resident in order to be eligible to become an Australian citizen. Item 5B and subitem 7(8) of Schedule 3 to the Transitionals and Consequentials Act provides for the requirements to be met for people who were permanent residents before 1 July 2007 or made an application before 1 July 2007.