

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 90

Issued by the Minister for Immigration and Citizenship

Australian Citizenship Act 2007

Australian Citizenship Amendment Regulations 2008 (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 this Act to be prescribed or necessary or convenient for carrying out or giving effect to this Act.

Section 21 of the Act sets out who may apply for Australian citizenship.

The following provisions of the Act relate to the fees associated with an application for 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; and
- 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 an approved citizenship test may include a component that relates to the sitting of that test.

The purpose of the Regulations is to amend the *Australian Citizenship Regulations 2007* (the Principal Regulations) to ensure that a person applying for Australian citizenship under subsection 21(2) of the Act (which sets out the general eligibility criteria) will not be required to pay a second fee to sit the citizenship test.

In particular, the Regulations amend the Principal Regulations to provide that where an applicant made a previous application under subsection 21(2) of the Act and paid a fee that included a component that relates to the sitting of a test or tests, he or she will not be required to pay the test fee component a second time when making a subsequent application under subsection 21(2).

Details of the Regulations are set out in the Attachment.

The Regulations are taken to have commenced on 1 October 2007.

The Regulations have retrospective effect by removing the component of the fee relating to the sitting of a citizenship test for certain applications for citizenship made from 1 October 2007, which is the date the *Australian Citizenship Amendment (Citizenship Testing) Act 2007* came into effect.

The Office of Legislative Drafting and Publishing advises that the amendments made by the Regulations are not contrary to subsection 12(2) of the *Legislative Instruments Act 2003* as the change does not result in:

- the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration being affected so as to disadvantage that person; or
- liabilities being imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

The Department of Immigration and Citizenship has identified applicants who have paid the test fee component twice and will be able to refund these applicants once these amendment Regulations commence.

The Office of Best Practice Regulation's Business Cost Calculator and Assessment Checklists were used to determine that there was no compliance cost on business or impact on competition in relation to these amendments.

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

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

ATTACHMENT

Details of the *Australian Citizenship Amendment Regulations 2008 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Australian Citizenship Amendment Regulations 2008 (No. 1)*

Regulation 2 – Commencement

This regulation provides for the Regulations to be taken to have commenced on 1 October 2007. The effect of this provision is that these amendments apply to applications made on or after 1 October 2007.

Regulation 3 – Amendment of *Australian Citizenship Regulations 2007*

This regulation provides that the *Australian Citizenship Regulations 2007* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Schedule 3, item 14A

This amendment is consequential to the amendment in item [3] below, which inserts new fee items 15C and 15D in Schedule 3 to the Principal Regulations. The amendment in this item has the effect of excluding new fee items 15C and 15D from fee item 14A of Schedule 3 to the Principal Regulations. Schedule 3 provides for the fees which must accompany an application under a provision of the Act.

The purpose of this amendment is to make clear that applicants who have already sat the citizenship test and are covered by 15C and 15D do not have to pay the fee prescribed in item 14A again. The fee of \$240 provided for by fee item 14A includes the full citizenship test fee component and the administrative fee component.

Item [2] – Schedule 3, item 15

This amendment is consequential to the amendment in item [3] below, which inserts new fee items 15C and 15D in Schedule 3 to the Principal Regulations. The amendment in this item has the effect of excluding new fee items 15C and 15D from item 15, to make clear that applicants who have already sat the citizenship test and are covered by 15C and 15D do not have to pay the fee prescribed in item 15 again. The fee prescribed in item 15 is intended to apply to applications under section 21 of the Act who are not required to sit a test under subsection 21(2A) of the Act.

Item [3] – Schedule 3, after item 15B

This item inserts new fee items 15C and 15D in Schedule 3 to the Principal Regulations.

New item 15C provides that an application (the “new application”) under section 21 of the Act, other than an application mentioned in items 5, 6, 7A, 14 and 15D, is required to be accompanied by a fee of \$20 where the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act if:

- the applicant provides evidence of their eligibility for a concession as prescribed in paragraphs 9(a), 10(a), 10(b), 10(c), 11(a), 11(b), 12(a), 12(b) or 13(a) of the Principal Regulations;
- the applicant previously made an application (the “old application”) on or after 1 October 2007; and
- under the old application, the applicant sat a test as described in paragraph 21(2A)(a) of the Act.

New item 15D provides that an application (the “new application”) under section 21 of the Act, other than an application mentioned in items 5, 6, 7A, 14 and 15C, is required to be accompanied by a fee of \$120 where the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act if:

- the applicant previously made an application (the “old application”) on or after 1 October 2007; and
- under the old application, the applicant sat a test as described in paragraph 21(2A)(a) of the Act.

The purpose of new items 15C and 15D is to ensure that applicants who have already paid the citizenship test fee component do not have to pay the citizenship test fee component again when they make a new application under subsection 21(2) of the Act. Item 15C provides for a concession fee of \$20 for certain applicants who are holders of pensioner concession cards or health care cards.