

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 288

Issued by the Minister for Immigration and Citizenship

Australian Citizenship Act 2007

Australian Citizenship Amendment Regulations 2009 (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 to be prescribed for carrying out or giving effect to this Act.

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

- 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(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 make consequential amendments to the *Australian Citizenship Regulations 2007* (the Regulations) in relation to amendments to the Act made by Schedule 2 to the *Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009* (the Amendment Act).

In particular, the Regulations provide for a fee exemption or reduction for certain applicants who have previously sought to satisfy a residence requirement including the new *special residence requirement* under sections 22A and 22B of the Act and the renamed *general residence requirement* under section 22 the Act.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence on 21 September 2009.

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

The Office of Best Practice Regulation's Business Cost Calculator and Assessment Checklists were used to determine that there was a low impact and compliance cost on business.

No consultation was conducted, as the amendments have no relevant implications for any external agencies or other bodies.

The Office of Legislative Drafting and Publishing advises that the retrospective commencement of the Regulations does not contravene subsection 12(2) of the *Legislative Instruments Act 2003*:

- (2) A legislative instrument, or a provision of a legislative instrument, has no effect if, apart from this subsection, it would take effect before the date it is registered and as a result:
 - (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would be affected so as to disadvantage that person; or
 - (b) liabilities would be 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 amendments follow from the passage of the *Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009*. They add 2 events, created by the Amendment Act, to statutory tests that are applied to determine whether the standard fee for a citizenship application is to be reduced. The effect of including the events is that an applicant for citizenship whose first application is refused in one of those new circumstances will be able to rely on that refusal as one of the preconditions to paying a reduced fee for making a new application.

Amending the regulations with retrospective effect, to match the date of commencement of the relevant provisions of the Amendment Act, will increase the number of applicants whose first applications have been refused in the circumstances created by the Amendment Act and who may be able to pay the reduced fee for making a new application in the future. The retrospectivity does not impose any detriment on an applicant whose application for citizenship was refused before the commencement of the amending regulations, and only alters the applicant's position to the extent of giving him or her the prospect of access to the reduced application fee.

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

Details of the *Australian Citizenship Amendment Regulations 2009 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that these Regulations are the *Australian Citizenship Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that these Regulations are taken to have commenced on 21 September 2009. This is the date on which Schedule 2 to the *Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009* (the Amendment Act) commenced.

Regulation 3 – Amendment of *Australian Citizenship Regulations 2007*

Subregulation 3(1) provides that Schedule 1 amends the *Australian Citizenship Regulations 2007* (the Principal Regulations).

Subregulation 3(2) provides the amendments made by Schedule 1 apply in relation to an application made under the *Australian Citizenship Act 2007* (the Act) on or after the day on which these Regulations commence.

Schedule 1 – Amendments

Item [1] – Schedule 3, item 7, second column, subparagraph (c)(iii)

This item omits “2007; and” and inserts “2007; or” at the end of subparagraph 7(c)(iii) of Schedule 3 to the Principal Regulations.

This amendment is consequential to the amendment made by item [2] below to ensure the subparagraph 7(c)(iii) is grammatically correct and the language is consistent with new subparagraphs 7(c)(iv) and (v).

Item [2] – Schedule 3, item 7, second column, after subparagraph (c)(iii)

This item inserts “(iv) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (v) paragraph 22B(1)(c), (d), (f) or (g) of the Act; and” at the end of subparagraph 7(c)(iii) of Schedule 3 to the Principal Regulations.

Item 7 of Schedule 3 to the Principal Regulations provides a nil application fee for an application (the ***new application***) under section 21 of the Act if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(3) or (4) of the Act; and (b) the applicant previously made an application (the ***old application***) under: (i) subsection 13(1) of the *Australian Citizenship Act 1948*; or (ii) section 21 of the Act; and (c) 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: (i) paragraphs 13(1)(d) and (e) of the *Australian Citizenship Act 1948*; or (ii) subsection 22(1) of the Act; or (iii) subsection 22(1) of the Act applied by item 5B or subitem 7(8) of Schedule 3 to the *Australian Citizenship (Transitionals and Consequentials)*

Act 2007; and (d) the applicant made the new application within three months after first becoming able to meet the residence requirement.

New subparagraphs 7(c)(iv) and (v) provide a nil application fee for an application under section 21 of the Act if, among other things, 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: (iv) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (v) paragraph 22B(1)(c), (d), (f) or (g) of the Act.

Section 22A of the Act provides the criteria that an applicant must meet in order to satisfy the special residence requirement for persons engaging in activities that are of benefit to Australia. Paragraphs 22A(1)(c), (d), (f) and (g) provide the following: (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; (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; (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 unlawful non-citizen at any time during the period of 2 years immediately before the day the applicant made the application.

Section 22B of the Act provides the criteria that a person must meet in order to satisfy the special residence requirement for persons engaged in particular kinds of work requiring regular travel outside Australia. Paragraphs 22B(1)(c), (d), (f) and (g) provide the following: (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; (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; (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 unlawful non-citizen at any time during the period of 4 years immediately before the day the person made the application.

The particular paragraphs of the Act specified above enable decision-makers to assess the application fee an applicant is to be charged at the time of application before a full assessment of the residence requirement is made.

The effect of this amendment is to provide for a nil application fee for certain applicants who have previously sought to satisfy a residence requirement including the new *special residence requirement* under sections 22A and 22B of the Act and the renamed *general residence requirement* under section 22 the Act.

The purpose of the proposed Regulations is to make consequential amendments to the Principal Regulations in relation to amendments to the Act made by Schedule 2 to the Amendment Act.

Item [3] – Schedule 3, item 7A, second column, subparagraph (d)(ii)

This item omits “2007; and” and inserts “2007; or” at the end of subparagraph 7A(d)(ii) of Schedule 3 to the Principal Regulations.

This amendment is consequential to the amendment made by item [4] below to ensure the subparagraph 7A(d)(ii) is grammatically correct and the language is consistent with new subparagraphs 7A(d)(iii) and (iv).

Item [4] – Schedule 3, item 7A, second column, after subparagraph (d)(ii)

This item inserts “(iii) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (iv) paragraph 22B(1)(c), (d), (f) or (g) of the Act; and” at the end of subparagraph 7A(d)(ii) of Schedule 3 to the Principal Regulations.

Item 7A of Schedule 3 to the Principal Regulations provides a nil application fee for an application (the *new application*) under section 21 of the Act if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) the applicant previously made an application (the *old application*) on or after 1 October 2007 (when the citizenship test commenced); and (c) under the old application, the applicant claimed eligibility on the basis of the criteria in subsection 21(2) of the Act; and (d) 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: (i) subsection 22(1) of the Act; or (ii) subsection 22(1) of the Act applied by item 5B of Schedule 3 to the *Australian Citizenship (Transitionals and Consequential) Act 2007*; and (e) the applicant made the new application within three months after first becoming able to meet the residence requirement.

New subparagraphs 7A(d)(iii) and (iv) provide a nil application fee for an application under section 21 of the Act if, among other things, 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: (iii) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (iv) paragraph 22B(1)(c), (d), (f) or (g) of the Act.

The particular paragraphs of the Act specified above enable decision-makers to assess the application fee an applicant is to be charged at the time of application before a full assessment of the residence requirement is made. A detailed description of the paragraphs of the Act is provided in item [2] above.

The effect of this amendment is to provide for a nil application fee for certain applicants who have previously sought to satisfy a residence requirement including the new *special residence requirement* under sections 22A and 22B of the Act and the renamed *general residence requirement* under section 22 the Act.

The purpose of the proposed Regulations is to make consequential amendments to the Principal Regulations in relation to amendments to the Act made by Schedule 2 to the Amendment Act.

Item [5] – Schedule 3, item 15A, second column, subparagraph (d)(iii)

This item omits “2007; and” and inserts “2007; or” at the end of subparagraph 15A(d)(iii) of Schedule 3 to the Principal Regulations.

This amendment is consequential to the amendment made by item [6] below to ensure the subparagraph 15A(d)(iii) is grammatically correct and the language is consistent with new subparagraphs 15A(d)(iv) and (v).

Item [6] – Schedule 3, item 15A, second column, after subparagraph (d)(iii)

This item inserts “(iv) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (v) paragraph 22B(1)(c), (d), (f) or (g) of the Act; and” at the end of subparagraph 15A(d)(iii) of Schedule 3 to the Principal Regulations.

Item 15A of Schedule 3 to the Principal Regulations provides a \$20 concession application fee for an application under section 21 of the Act (the *new application*) made on or after 1 October 2007 (when the citizenship test commenced) if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) the applicant made a previous application (the *old application*) before 1 October 2007; and (c) either: (i) the old application was accompanied by the fee of \$120; or (ii) the old application was accompanied by the fee of \$20, and subparagraphs 14(b)(i), (ii), (iii) and (iv) (that relate to certain concessions) applies to the new applicant in relation to the new application; and (d) 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: (i) paragraph 13(1)(d) or (e) of the *Australian Citizenship Act 1948*; or (ii) subsection 22(1) of the Act; or (iii) subsection 22(1) of the Act applied by item 5B or subitem 7(8) of Schedule 3 to the *Australian Citizenship (Transitionals and Consequential) Act 2007*; and (e) the new application was made within three months after the applicant became able to satisfy the residence requirement.

New subparagraphs 15A(d)(iv) and (v) provide a \$20 concession application fee for an application under section 21 of the Act if, among other things, 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: (iv) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (v) paragraph 22B(1)(c), (d), (f) or (g) of the Act.

The particular paragraphs of the Act specified above enable decision-makers to assess the application fee an applicant is to be charged at the time of application before a full assessment of the residence requirement is made. A detailed description of the paragraphs of the Act is provided in item [2] above.

The effect of this amendment is to provide for a \$20 concession application fee for certain applicants who have previously sought to satisfy a residence requirement including the new *special residence requirement* under sections 22A and 22B of the Act and the renamed *general residence requirement* under section 22 the Act.

The purpose of the proposed Regulations is to make consequential amendments to the Principal Regulations in relation to amendments to the Act made by Schedule 2 to the Amendment Act.

Item [7] – Schedule 3, item 15B, second column, subparagraph (d)(iii)

This item omits “2007; and” and inserts “2007; or” at the end of subparagraph 15B(d)(iii) of Schedule 3 to the Principal Regulations.

This amendment is consequential to the amendment made by item [8] below to ensure the subparagraph 15B(d)(iii) is grammatically correct and the language is consistent with new subparagraphs 15B(d)(iv) and (v).

Item [8] – Schedule 3, item 15B, second column, after subparagraph (d)(iii)

This item inserts “(iv) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (v) paragraph 22B(1)(c), (d), (f) or (g) of the Act; and” at the end of subparagraph 15B(d)(iii) of Schedule 3 to the Principal Regulations.

Item 15B of Schedule 3 to the Principal Regulations provides a \$130 application fee for an application under section 21 of the Act (the *new application*) made on or after 1 October 2007 (when the citizenship test commenced) if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) the applicant made a previous application (the *old application*) before 1 October 2007; and (c) either: (i) the old application was accompanied by the fee of \$120; or (ii) the old application was accompanied by the fee of \$20, and none of subparagraphs 14(b)(i), (ii), (iii) and (iv) (that relate to certain concessions) applies to the applicant in relation to the new application; and (d) 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: (i) paragraph 13(1)(d) or (e) of the *Australian Citizenship Act 1948*; or (ii) subsection 22(1) of the Act; or (iii) 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*; and (e) the new application was made within three months after the applicant became able to satisfy the residence requirement.

New subparagraphs 15B(d)(iv) and (v) provide a \$130 application fee for an application under section 21 of the Act if, among other things, 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: (iv) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (v) paragraph 22B(1)(c), (d), (f) or (g) of the Act.

The particular paragraphs of the Act specified above enable decision-makers to assess the application fee an applicant is to be charged at the time of application before a full assessment of the residence requirement is made. A detailed description of the paragraphs of the Act is provided in item [2] above.

The effect of this amendment is to provide for a reduced \$130 application fee for certain applicants who have previously sought to satisfy a residence requirement including the new *special residence requirement* under sections 22A and 22B of the Act and the renamed *general residence requirement* under section 22 the Act.

The purpose of the Regulations is to make consequential amendments to the Principal Regulations in relation to amendments to the Act made by Schedule 2 to the Amendment Act.