

# **EXPLANATORY STATEMENT**

## **Select Legislative Instrument No. 267, 2013**

Issued by the Minister for Immigration and Border Protection

*Australian Citizenship Act 2007*

*Australian Citizenship Amendment (Foreign Currency) Regulation 2013*

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

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

The purpose of the Regulation is to amend references in the *Australian Citizenship Regulations 2007* ('the Citizenship Regulations') to incorporate by reference the instruments made under subregulations 5.36(1) and 5.36(1A) of the *Migration Regulations 1994* ('the Principal Regulations') which relate to the payment of fees in foreign currencies and foreign countries. These new instruments will be made by the Minister after the Regulation and will commence on 1 January 2014. The instruments will set out the application fee amounts in foreign currencies which would correspond to amounts payable in Australian dollars.

Amending the Citizenship Regulations allows a person to pay the fee for an application made under the Citizenship Act in a foreign country and using a foreign currency. Without this amendment, it is possible that clients making applications at overseas posts may suffer hardship, as there would be no provision in the Principal Regulations to indicate how much application fee is payable in a currency other than the Australian dollar.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's overall assessment is that the Regulation amendment is compatible with human rights as it does not raise any human rights issues. The Statement can be found in **Attachment B**.

Details of the Regulation are set out in **Attachment C**.

The Office of Best Practice Regulation ('the OBPR') 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 OBPR consultation reference is 2013/16057.

Because the amendments will not be likely to have a direct, or a substantial indirect, effect on business or restrict competition, or impact significantly on other government departments, non-government organisations, businesses or other interested parties, no consultation outside the Department of Immigration and Border Protection was undertaken.

The Citizenship Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 1 January 2014.

**AUTHORISING PROVISIONS**

Section 54 of the *Australian Citizenship Act 2007* ('the Citizenship Act') provides that the Governor-General may make regulations prescribing 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, the following provisions may apply:

- paragraph 46(1)(d) of the Citizenship Act, which provides that an application made under a provision of the Act must be accompanied by the fee (if any) prescribed by the Citizenship Regulations.
- subsection 46(3) of the Citizenship Act, which provides that the Citizenship 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) of the Act.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Australian Citizenship Regulations 2007 - Regulation 12A Fees to Accompany Applications**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Regulation 12A of the *Australian Citizenship Regulations 2007* (the Regulations) sets out among other things, in which foreign currencies and countries a citizenship application fee may be paid and how the exchange rate is to be calculated.

The acceptable foreign currencies and countries are set out in legislative instruments made under the *Migration Regulations 1994*.

The relevant instruments, *Places and Currencies for Paying of Fees* and *Payment of Visa Application Charges and Fees in Foreign Currencies*, are updated in January and July each year and are given a new instrument number each time.

Consequently, to ensure that citizenship application fees can continue to be paid in foreign currencies and countries, subregulation 12A(7) of the Regulations must be amended to specify the updated instrument numbers.

The updating of the instrument numbers is the only change and is merely technical in nature. There is no change to the substantive content of the instrument.

#### **Human rights implications**

The amendment has been assessed against the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Regulation amendment is compatible with human rights as it does not raise any human rights issues.

**The Hon. Scott Morrison MP, Minister for Immigration and Border Protection**

**Details of the *Australian Citizenship Amendment (Foreign Currency) Regulation 2013***

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Australian Citizenship Amendment (Foreign Currency) Regulation 2013*.

**Section 2 – Commencement**

This section provides the Regulation commence on 1 January 2014.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Australian Citizenship Act 2007* ('the Citizenship Act').

The purpose of this section is to set out the Act under which the Regulation is made.

**Section 4 – Schedule(s)**

This section provides that each instrument that is specified in a Schedule to this Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The purpose of this section is to provide for how the amendments in this Regulation operate.

**Schedule 1 – Amendments**

**Item [1] – Subregulation 12A(7), definitions of *conversion instrument* and *places and currencies instrument***

Instruments made under the *Migration Regulations 1994* ('the Principal Regulations') are incorporated in the *Australian Citizenship Regulations 2007* ('the Citizenship Regulations') because the Citizenship Act does not currently permit the Minister for Immigration and Border Protection to make instruments under the Citizenship Regulations.

*New definition of 'conversion instrument'*

This item provides that 'conversion instrument' means the instrument titled *Payment of Visa Application Charges and Fees in Foreign Currencies*, (IMMI 13/126) that commences on 1 January 2014.

The definition of 'conversion instrument' is relevant to provisions in the Citizenship Regulations which allow a person, who makes an application under the Act, to pay the prescribed fee in a foreign currency specified in the conversion instrument.

This item amends the definition of ‘conversion instrument’ currently in subregulation 12A(7) of the Citizenship Regulations by omitting the reference to the instrument numbered IMMI 13/045, which commenced on 1 July 2013, and substituting a reference to the instrument numbered IMMI 13/126 that will commence on 1 January 2014.

The new definition of ‘conversion instrument’ incorporates, by reference, a new instrument titled ‘Payment of Visa Application Charges and Fees in Foreign Currencies’, (IMMI 13/126) that will be made under subregulation 5.36(1A) of the Principal Regulations following the Regulation. The new instrument will commence on 1 January 2014 and will set out application fee amounts in foreign currencies which will correspond to amounts payable in Australian dollars.

Amending the definition of ‘conversion instrument’ will allow a person to pay the fee for an application made under the Citizenship Act in a foreign currency. Without this amendment, it is possible that clients making applications at overseas posts may suffer hardship, as there would be no provision in the Principal Regulations to indicate how much application fee is payable in a currency other than the Australian dollar.

Due to the operation of section 14 of the *Legislative Instruments Act 2003*, it is not possible to incorporate by reference the instrument made under subregulation 5.36(1A) of the Migration Regulations as in force from time to time. Rather, the new instrument is incorporated, by reference, at the time of commencement of the Regulations.

#### *New definition of ‘places and currencies instrument’*

This item also amends the definition of ‘places and currencies instrument’ by repealing the reference to the instrument numbered IMMI 13/046, which commenced on 1 July 2013, and substituting a reference to the instrument numbered IMMI 13/127 that will commence on 1 January 2014.

The definition of ‘places and currencies instrument’ is relevant to provisions in the Citizenship Regulations which allow a person, who makes an application under the Citizenship Act, to pay the prescribed fee in a foreign country and a foreign currency specified in the ‘places and currencies instrument’.

The new definition of ‘places and currencies instrument’ incorporates, by reference, a new instrument titled ‘Places and Currencies for Paying of Fees’ (IMMI 13/127) that will be made under subregulation 5.36(1) of the Principal Regulations. The new instrument will commence on 1 January 2014 and will set out the places and currencies for the payment of fees.

Amending the definition of ‘places and currencies instrument’ will allow a person to pay the fee for an application made under the Citizenship Act in a foreign country and using a foreign currency. Without this amendment, clients making applications at overseas posts may suffer hardship, since they will not be able to pay application fees in the country they are in, or in a currency other than the Australian dollar.

Due to the operation of section 14 of the *Legislative Instruments Act 2003*, it is not possible to incorporate, by reference, the instrument made under subregulation 5.36(1) of the Principal Regulations as in force from time to time. Rather, the new instrument is incorporated by reference at the time of commencement of the Regulations.

Item [2] – Transitional arrangements

The section provides that the amendments made by Schedule 1 apply in relation to an application made under Division 2, 3 or 4 of Part 2 of the Citizenship Act on or after 1 January 2014.