# Explanatory Statement

*Australian Citizenship Act 2007*

**Citizenship (Authorisation) Revocation and Authorisation Instrument 2017**

(Subsection 27(5))

1. This instrument is made under subsection 27(5) of the *Australian Citizenship Act 2007* (the Act).
2. This instrument revokes instrument IMMI 15/064 made under subsection 27(5) of the Act and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901 (*Interpretation Act*)*. Subsection 33(3) of the Interpretation Act states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument IMMI 17/098 operates to authorise persons or classes of persons to receive the pledge of commitment. Subsection 26(1) of the Act requires that a person must make a pledge of commitment to become an Australian citizen unless they meet the requirements set out in paragraphs 26(1)(a), or (b) or (c). A person required to make a pledge of commitment becomes an Australian citizen on the day on which the pledge of commitment is made.
4. The purpose of the instrument IMMI 17/098 is to update the persons and classes of persons authorised to receive a pledge of commitment. In particular, this instrument operates to exclude from a class of persons who may receive a pledge of commitment: the Mayor of the City of Yarra Council; the Deputy Mayor of the City of Yarra Council; the Chief Executive Officer of the City of Yarra Council; the General Manager of the City of Yarra Council; the Governor-in-Council appointed administrator of the City of Yarra Council; and if the council is placed in administration, the Administrator for the City of Yarra Council.
5. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003* consultation was not necessary. The Instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
6. The Office of Best Practice Regulation (OBPR) has been consulted (OBPR reference 22685).
7. Under section 42 of the *Legislation Act 2003,* the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided.
8. The instrument IMMI 17/098 commences on the day after registration on the Federal Register of Legislation.

**Statement of Compatibility with Human Rights**

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

**Instrument of authorisation under subsection 27(5) of the**

***Australian Citizenship Act 2007* (Instrument number IMMI 15/064)**

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**

This Legislative Instrument revokes Legislative Instrument number IMMI 15/064 (F2015L01358), signed on 17 August 2015 and replaces it with a new Legislative Instrument number IMMI 17/098 signed on 16/08/2017.

Subsection 26(1) of the Citizenship Act requires that a person must make a pledge of commitment to become an Australian citizen unless they meet the requirements set out in paragraphs 26(1)(a), or (b) or (c). A person required to make a pledge of commitment becomes an Australian citizen on the day on which the pledge of commitment is made. Legislative Instrument number IMMI 15/064 allowed authorised persons to receive the pledge of commitment to become an Australian citizen.

The purpose of this Instrument is to remove all authorised persons from the City of Yarra local government council who are eligible to receive a pledge of commitment. This Legislative Instrument amends the authorisation to receive the pledge of commitment for the following office holders:

* Mayor of a local government council, except the Mayor of the City of Yarra;
* Deputy Mayor of a local government council, except the Deputy Mayor of the City of Yarra;
* Chief Executive Officer of a local government council, except the Chief Executive Officer of the City of Yarra;
* General Manager of a local government council; except the General Manager of the City Of Yarra.

**Human rights implications**

This legislative instrument has been considered against key international treaties, in particular the following Convention articles.

Right to equality and non-discrimination

Article 2(1) of the International Covenant of Civil and Political Rights (ICCPR) states:

*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 26 of the ICCPR states:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

The differential treatment of authorised persons from the City of Yarra local government council who previously were eligible to receive a pledge of commitment could amount to a distinction on a prohibited ground under international law on the basis of ‘political or other opinion’.

In its General Comment 18, the UN Human Rights Committee stated:

*The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*

The Government is of the view that this continued differential treatment is for a legitimate purpose and based on relevant objective criteria and that is reasonable and proportionate in the circumstances.  This measure is a proportionate response because the change to remove authorisation of all persons in the City of Yarra local government council to receive the pledge of commitment is required to achieve a policy objective which is to ensure citizenship ceremonies remain apolitical and are not to be used as a form of political expression.

Right to hold opinions without interference

Article 19 of the ICCPR states:

*(1) Everyone shall have the right to hold opinions without interference.*

*(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

*(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others;*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals.*

The Government is of the view that to remove authorisation of all persons in the City of Yarra local government council to receive the pledge of commitment is required to achieve a policy objective which is to ensure citizenship ceremonies remain apolitical and are not to be used as a form of political expression.  This change is therefore a necessary, reasonable and proportionate response to limiting Article 19(1) of the ICCPR to ensure that citizenship ceremonies continue to remains apolitical.

**Conclusion**

This Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights under the ICCPR because those limitations are reasonable, necessary and proportionate.

**The Hon. Alex Hawke MP**

**Assistant Minister for Immigration and Border Protection**