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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**AUSTRALIAN CITIZENSHIP BILL 2005**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Citizenship and Multicultural Affairs,  
The Honourable John Cobb MP)

## AUSTRALIAN CITIZENSHIP BILL 2005

### OUTLINE

The Australian Citizenship Bill 2005 (“the Bill”) is intended to replace the *Australian Citizenship Act 1948* (“the Act”). The Act was originally passed in 1948 and has been amended on a number of occasions since that time.

In February 2000, the Australian Citizenship Council (“the ACC”) presented its report entitled *Australian Citizenship for a New Century*. The ACC made 64 recommendations to the Australian Government relating to law, policy and promotion of citizenship in Australia. Most of the recommended legislative changes were made by the *Australian Citizenship Legislation Amendment Act 2002* (“the 2002 Act”).

The only outstanding legislative recommendation adopted by the government is to improve presentation of the Act so that it is ‘logically organised, numbered, consistent and with related matters dealt with together, and ensuring that the balance of matters dealt with between the Act and the Australian Citizenship Regulations conforms to modern standards.’

On 7 July 2004, the Government announced a number of changes, which complemented the policy rationale behind the 2002 legislative changes and also sought to improve the consistency and integrity of the Act. These changes include:

- providing former citizens who renounced their Australian citizenship to acquire or retain another citizenship, or to avoid significant hardship or detriment, the opportunity to resume their Australian citizenship, if they are of good character;
- giving children of former Australian citizens who lost their citizenship under the former Section 17 of the Act the opportunity to apply for Australian citizenship by conferral;
- ensuring consistency and simplicity in the provisions relating to citizenship by descent;
- raising the age for an exemption from the requirement to have a basic knowledge of the English language from 50 to 60 years of age;
- requiring a spouse of an Australian citizen to meet the same requirements for Australian citizenship by conferral as most adult applicants, although allowing wider discretion in relation to residence, where the spouse has a close association with Australia;
- allowing de facto spouses to benefit from this wider discretion in some circumstances; and
- amending the residence discretions to ensure integrity, equity and consistency in the citizenship process.

The Office of Parliamentary Counsel advised that replacement of the 1948 Act was highly desirable in view of the extent of the proposed changes to the Act, in particular the restructuring required to ensure that the legislation is accessible, easy to understand, logically organised and numbered, and conforms to modern standards in respect of the balance of matters dealt with between the Act and the associated regulations.

The Bill replaces the *Australian Citizenship Act 1948* (the old Act). There are three major changes proposed, as follows:

### **1. Structure and location of the provisions**

The purpose is to ensure consistency throughout the Act. This includes changes in terminology, so that the provisions are consistent and easier to understand and apply. As an example:

- most of the definitions are now in proposed Section 3 of Part 1 of the Act;
- acquisition of Australian citizenship in Part 2 of the Act has been restructured and is given new terminology; i.e. Automatic Citizenship, Acquisition of Citizenship by Application, and Cessation of Citizenship;
- Acquisition of Citizenship by Application has been further re-structured to include citizenship by descent, citizenship by conferral and resumption of citizenship;
- the requirements for Acquisition of Citizenship by Application have been ordered more clearly regarding citizenship by conferral;
- the statelessness provisions have been restructured so that they are located with the related provisions;
- evidence of Australian citizenship provisions have been combined into the one Division (Division 4 of Part 2 of the Act);
- applications provisions have been combined into the one Section; and
- notification of decision provisions have been combined into the one section.

### **2. Content**

The objective is to reflect changes in government policy. These are addressed in the following proposed provisions:

- Section 12, Division 1 of Part 2 (citizenship by birth)
- 15 Subdivision A, Division 2 of Part 2 (citizenship by descent);
- 16 Section 21(4), Subdivision B, Division 2 of Part 2 (person aged over 60);
- 17 Section 21(6), Subdivision B, Division 2 of Part 2 (person born to former Australian citizen);
- 18 Section 21(7), Subdivision B, Division 2 of Part 2 (person born in Papua);
- 19 Section 22, Subdivision B, Division 2 of Part 2 (residence requirement)
- 20 Section 22(6), Subdivision B, Division 2 of Part 2 (Ministerial discretion – person engaged in activities beneficial to Australia);

- 21 Section 22(9), Subdivision B, Division 2 of Part 2 (Ministerial discretion – spouse, widow or widower of Australian citizen);
- 22 Section 26(2), Subdivision B, Division 2 of Part 2 (making the pledge of commitment after approval)
- 23 Subdivision C, Division 2 of Part 2 (resumption of citizenship);
- 24 Sections 34(1) and (8), Division 3 of Part 3 (revocation and third party fraud);
- 25 Section 36, Division 3 of Part 2(children of responsible parents who cease to be citizens);
- 26 Sections 17, 24, 34, Division 2 of Part 2, (minister’s decision, identity and security); and
- 27 Division 5 (personal identifiers)

### **3. Repeal**

Certain provisions of the old Act are no longer required and should be repealed. They include:

- 15.4.1.1 various definitions from Section 5, including “Australian consulate, Secretary, electronic communication, prescribed date, return endorsement”
- 15.4.1.2 Sections 139(B) and 13(9E) (children applying on a parents application);
- 15.4.1.3 Sections 14 and 14A (deferral of consideration);
- 15.4.1.4 Section 32 (citizenship in doubt); and
- 15.4.1.5 Sections, 42, 43, 44, 44A, 46, 46A, 47 and 47A (about certificates – these Sections have been combined into Division 4 – Evidence of Australian citizenship).

### **FINANCIAL IMPACT STATEMENT**

These amendments will have minimal financial impact.

## **(i) AUSTRALIAN CITIZENSHIP BILL 2005**

### NOTES ON INDIVIDUAL CLAUSES

The preamble to the Act has been amended to ensure consistency with the change in terminology from ‘citizenship by grant’ to ‘citizenship by conferral’ (refer to Subdivision B of Part 2 of this Act).

### **Part 1 – Preliminary**

#### **Clause 1      Short Title**

The short title by which this Act may be cited is the *Australian Citizenship Act 2005* (the Act).

This Act replaces the *Australian Citizenship Act 1948* (the old Act) and in doing so makes clearer, better structured and easier to understand law relating to citizenship in Australia.

#### **Clause 2      Commencement**

Clause 2(1) provides that Clause 1 and 2 and anything in this Act not elsewhere covered by the table commence on the day on which the Act receives the Royal Assent.

It also provides that proposed Sections 3 to 54 commence on a day to be fixed by Proclamation, however it also makes clear that if any of these provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

A note is provided at the end of the table to indicate that it only relates to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

Proposed subsection 2(2) provides that column 3 of the table contains additional information that is not part of this Act. It explains that this information may be added to or edited in any published version of this Act.

#### **Clause 3      Definitions**

This clause defines certain terms used in the Bill. It draws most of the definitions from the old Act into the one provision, for example, Section 34 of the old Act, which relates to posthumous children.

***adverse security assessment*** has the meaning given by Section 35 of the *Australian Security Intelligence Organisation Act 1979*.

***artificial conception procedure*** includes:

- (a) artificial insemination; and
- (b) the implantation of an embryo in the body of a woman.

***Australia***, when used in a geographical sense, includes the external territories.

***Australian citizen*** has the meaning given by proposed Section 4.

***Australian law*** means a law of the Commonwealth, a State or a Territory.

***child*** includes an adopted child, a step-child and an ex-nuptial child.

***commencement day*** means the day on which proposed Sections 3 to 54 commence.

***disclose***, in relation to identifying information that is a personal identifier, includes providing access to the personal identifier.

***foreign law*** means a law of a foreign country.

***identifying information*** means the following:

- (a) any personal identifier;
- (b) any meaningful identifier derived from any personal identifier;
- (c) any record of a result of analysing any personal identifier or any meaningful identifier derived from any personal identifier;
- (d) any other information derived from:
  - 15.4.1.1.1 any personal identifier; or
  - 15.4.1.1.2 any meaningful identifier derived from any personal identifier; or
  - 15.4.1.1.3 any record of a kind referred to in paragraph (c); that could be used to discover a particular person's identity or to get information about a particular person.

***New Guinea:***

- (a) has the same meaning as ***the Territory of New Guinea*** had in the *Papua New Guinea Act 1949* immediately before 16 September 1975; and

(b) in relation to any time before 4 June 1969—includes a reference to the Island of Nauru.

**old Act** means the *Australian Citizenship Act 1948* as in force at any time before the commencement of this Act.

**ordinarily resident**: a person is taken to be **ordinarily resident** in a country if and only if:

- (a) he or she has his or her home in that country; or
- (b) that country is the country of his or her permanent abode even if he or she is temporarily absent from that country.

However, the person is taken not to be so resident if he or she resides in that country for a special or temporary purpose only.

**Papua** has the same meaning as **the Territory of Papua** had in the *Papua New Guinea Act 1949* immediately before 16 September 1975.

**permanent resident** has the meaning given by Section 5.

**permanent visa** has the same meaning as in the *Migration Act 1958*.

**personal identifier** has the meaning given by Section 10.

**prison** includes any custodial institution at which a person convicted of an offence may be required to serve the whole or a part of any sentence imposed upon the person because of that conviction.

**psychiatric institution** includes a psychiatric Section of a hospital.

**qualified security assessment** has the meaning given by Section 35 of the *Australian Security Intelligence Organisation Act 1979*.

**responsible parent** has the meaning given by Section 6.

**serious prison sentence** means a sentence of imprisonment for a period of at least 12 months.

*serious repeat offender*: a person is a *serious repeat offender* in relation to a serious prison sentence if the sentence was imposed on the person for an offence committed by the person at a time after the person ceased to be confined in prison because of the imposition of another serious prison sentence.

*special category visa* has the same meaning as in the *Migration Act 1958*.

*special purpose visa* has the same meaning as in the *Migration Act 1958*.

*unlawful non-citizen* has the same meaning as in the *Migration Act 1958*.

*visa* has the same meaning as in the *Migration Act 1958*.

#### **Clause 4 Australian Citizen**

This clause defines the term ‘Australian Citizen’. Proposed subsection (1) specifies that ‘Australian citizen’ means a person who is an Australian citizen under Division 1 or 2 of Part 2.

The purpose of this provision is to make clear that citizenship in Australia is a statutory concept and is determined by this Act.

A note is attached to proposed subsection 4(1) which clarifies that a person who is an Australian citizen under the *Australian Citizenship Act 1948* immediately before the commencement day is taken to be an Australian citizen under this Act: A cross reference is provided to item 2 of Schedule 3 to the *Australian Citizenship (Transitional and Consequential) Act 2005*.

*Citizenship under the old Act.*

Proposed subsection 4(2) explains that if under this Act (the 2005 Act), it is necessary to work out if a person was an Australian citizen at a time before the commencement of this Act, this should be worked out under the *Australian Citizenship Act 1948* as in force at that time.

#### **Clause 5 Permanent resident**

Clause 5 clarifies ‘permanent resident’ for the purposes of this Act.

- (1) It specifies that a person is a permanent resident at a particular time if and only if:
  - (a) the person is present in Australia at that time and holds a permanent visa at that time; or
  - (b) both:



- (i) the person is not present in Australia at that time and holds a permanent visa at that time; and
  - (ii) the person has previously been present in Australia and held a permanent visa immediately before last leaving Australia; or
  - (c) the person is covered by a determination in force under subsection (2) at that time.
- (2) The Minister may, by legislative instrument, determine that:
- (a) persons who hold a special category visa or a special purpose visa; or
  - (b) persons who have held a special category visa; or
  - (c) persons who are present in Norfolk Island or the Territory of Cocos (Keeling) Islands;
- and who satisfy specified requirements are, or are during a specified period, persons to whom this subsection applies.

*Permanent resident under the old Act*

- (3) If, under this Act, it is necessary to work out if a person was a permanent resident at a time before the commencement day, work that out under the *Australian Citizenship Act 1948* as in force at that time.

The purpose of the new provision is to replace the complicated definition of ‘permanent resident’ in Section 5A of the old Act, with a simplified definition. Proposed subsection 5(1) covers the situation set out in 5A(1)(bb) of the old Act. Proposed subsection 5(2), by Ministerial determination, covers the 5A(1)(c) and (d) and (2) of the old Act. Proposed subsection 5(3) covers the historical situations set out in 5A(1)(a), (b) and (ba) of the old Act and any time prior to commencement of the new Act, in relation to which it is necessary to determine whether someone was a permanent resident.

**Clause 6 Responsible parent**

This clause defines the term ‘responsible parent’ for the purposes of the Act. This definition of responsible parent is equivalent to subsection 5(2) of the old Act.

Proposed subsection 6(1) specifies that a person is a responsible parent in relation to a child if and only if:

- (a) the person is a parent of the child except where, because of orders made under the *Family Law Act 1975*, the person no longer has any parental responsibility for the child; or
- (b) the person (whether or not a parent of the child) has a residence order in relation to the child; or
- (c) the person (whether or not a parent of the child) has a specific issues order in relation to the child under which the person is responsible for the child’s long-term or day-to-day care, welfare and development; or

- (d) the person (whether or not a parent of the child) has guardianship or custody of the child, jointly or otherwise, under an Australian law or a foreign law, whether because of adoption, operation of law, an order of a court or otherwise.

Proposed subsection (2) provides that the expressions used in paragraphs (1)(a), (b) and (c) are to have the same meaning as in the *Family Law Act 1975*.

### **Clause 7 Children born on ships or aircraft or after death of parent**

Clause 7 introduces a new provision in relation to children born on ships or aircraft or after death of parent.

This is the equivalent of paragraph 5(3)(a) of the old Act and Section 34 of the old Act.

Proposed subsection (1)(a) provides that a person born on a ship or aircraft registered in Australia or a foreign country is taken to have been born at the place at which the ship or aircraft is registered.

Proposed subsection (1)(b) provides that a person born on a ship or aircraft not registered in Australia or a foreign country and belonging to the government of a country is taken to have been born in that country.

Proposed subsection (2) addresses the case of a person born after death of parent. The status of a parent at the time of the person's birth is taken to be the status of the parent at the time of their death.

### **Clause 8 Children born as a result of artificial conception procedures**

Clause 8 clarifies the status of children born as a result of artificial conception procedures.

This new provision is the equivalent of subsections 5(6), (7) and (8) of the old Act.

Proposed subsection (1) specifies that the child is taken to be a child of a man (and of no other) if the child is born to a woman through artificial conception while married to that man provided the procedure was carried out with his consent, even though the child is not his biological child.

Proposed subsection (2) applies in relation to a purported marriage that is void as if it were a marriage of the husband and wife, unless at the time of the artificial conception procedure, neither party to the purported marriage believed on reasonable grounds that the purported marriage was valid.

## **Clause 9      Confinement in prison or psychiatric institution**

Clause 9 addresses the meaning of confinement in prison or psychiatric institution in the Act.

Proposed subsection (1) is the equivalent of paragraph 5(5)(a) of the old Act. New subsection (2) is the equivalent of subsection 13(16) of the old Act. New subsection (3) is the equivalent of paragraph 5(5)(b) of the old Act.

Proposed subsection (1) provides that the period of prison confinement includes a period during which the person is an escapee from the prison; or is undergoing a sentence of periodic detention in the prison.

Proposed subsection (2) provides that this period of prison confinement does not include a period where a conviction is later quashed.

Proposed subsection (3) provides that a period of confinement by a person in a psychiatric institution by order of a court includes a period where that person has escaped from the institution.

## **Clause 10      Personal identifiers**

Clause 10 inserts a specific definition provision for the meaning of personal identifier in the Act. As explained further below, personal identifiers are a new part of the Act. This clause provides an exhaustive list of what constitutes a “personal identifier”.

Some personal identifiers, such as photographs are already collected in the citizenship process. For example, they are required when applying for citizenship by application and when applying for evidence of Australian citizenship.

However, the old Act does not define a personal identifier, or the circumstances in which a personal identifier may be required, or how the personal identifier is to be provided.

This Act amends the old Act by inserting provisions to provide a legislative framework for the collection, use and storage of personal identifiers, such as photographs and signatures, from non-citizens and from Australian citizens.

“Personal identifier” means any of the following, including any of the following in digital form:

- (a) fingerprints or handprints of a person (including those taken using paper and ink or digital live scanning technologies);

- (b) a measurement of a person's height and weight;
- (c) a photograph or other image of a person's face and shoulders;
- (d) an iris scan;
- (e) a person's signature;
- (f) any other identifier prescribed by the regulations (except an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of Section 23WA of the *Crimes Act 1914*).

Proposed subsection 10(2) specifies the necessary steps to consider before the making of regulations prescribing a personal identifier under new paragraph 10(1)(f).

It provides that before the Governor-General makes regulations, the Minister must be satisfied that:

- (a) obtaining the identifier would not involve carrying out an intimate forensic procedure within the meaning of Section 23WA of the *Crimes Act 1914*; and
- (b) the identifier is an image of, or a measurement or recording of, an external part of the body; and
- (c) obtaining the identifier will promote one or more of the following purposes:
  - (i) assisting in the identification of, and to authenticate the identity of, a person making an application under Part 2;
  - (ii) combating document and identity fraud in citizenship matters;
  - (iii) complementing anti-people smuggling measures.

In practice, the Minister will also consult with the Attorney-General before the Governor-General makes regulations for the purpose of prescribing a new personal identifier under new paragraph 10(1)(f).

To make it clear, a personal identifier requiring an intimate forensic procedure, as defined in Section 23WA of the *Crimes Act 1914*, cannot be prescribed in any regulations made under new paragraph 10(1)(f). Such a personal identifier can only be required if the Act itself is amended to include it. For example, the taking of a sample of blood could not be prescribed as a personal identifier under new paragraph 10(1)(f).

Before prescribing an identifier for the purposes of new paragraph 10(1)(f), the Minister must be satisfied that obtaining the identifier promotes one or more of the following purposes set out in new paragraph 10(2)(c).

Division 5 of Part 2 of this Bill sets out further the identity provisions.

### **Clause 11      Operation of Act**

Clause 11 provides clarification on the scope of operation of this Act.

Proposed subsection (1) and (3) are the equivalent of Sections 6 and 52 of the old Act. Proposed subsection (2) clarifies that the Act will extend, unless the contrary intention appears, to acts, omissions, matters and things outside Australia and also to all persons, irrespective of their nationality or citizenship.

Proposed subsection (1) indicates that it applies to the external Territories.  
Proposed subsection (2) addresses its operation outside Australia.

Proposed subsection (3) affirms the intention of the Parliament in relation to State and Territory laws. It is made clear that this Act will apply to the exclusion of any provisions of a law of a State or Territory that provide for Australian citizenship (whether the law was made before or after the commencement of this Act).

## **Part 2—Australian citizenship**

Part 2 principally reworks Divisions 1, 2 and 4 of Part III of the old Act. Division 1 deals with automatic acquisition of Australian citizenship, Division 2 deals with Australian citizenship where an application is required (descent, conferral and resumption). Division 3 deals with cessation of Australian citizenship.

This Part also incorporates provisions of Part V of the old Act concerning evidence of Australian citizenship and includes a new Division concerning personal identifiers.

### **Division 1—Automatic acquisition of Australian citizenship**

Division 1 of the new Act outlines those circumstances where a person will automatically acquire Australian citizenship by operation of law. This Division brings provisions from the old Act into the one place and clearly outlines that a person can become an Australia citizen (without the need to make an application) following the commencement of the Act, by birth, adoption, abandonment or on acquisition of a territory.

#### **Clause 12      Citizenship by birth**

Clause 12 is the equivalent of Section 10 of the old Act with the exception of former Section 10(6).

It addresses the automatic acquisition of Australian citizenship by birth.

Following the commencement of the *Australian Citizenship Amendment Act 1986*, it was made clear that a person would not automatically acquire Australian citizenship by reason of their birth alone in Australia. Certain additional conditions apply.

Proposed subsection (1) addresses the matters applying to persons born in Australia. Paragraph 1(a) provides that a person born in Australia is an Australian citizen if and only if they have a parent who is either an Australian citizen, or a permanent resident, at the time of their birth. Paragraph 1(b) provides that a person born in Australia is an Australian citizen if and only if the person is ordinarily resident in Australia throughout the period of 10 years beginning on the day the person is born.

Proposed subsection (2) provides for the situation where a person is born in Australia in a time of enemy occupation. The intention is to make clear that a person is not an Australian citizen under this Section if, at the time of birth, the parent is an enemy alien (previously defined); and the place of the birth is under occupation by the enemy. An exception is to be made in cases where the other parent is an Australian citizen or a permanent resident and is not an enemy alien.

Paragraph 10(6) of the old Act has not been incorporated into this new provision as it is no longer relevant. The concept of ‘exempt non citizen’ was removed from the *Migration Act 1958* in 1994.

### **Clause 13      Citizenship by adoption**

Clause 13 is the equivalent of Section 10A of the old Act.

It provides for citizenship by adoption. In these circumstances, a person becomes an Australian citizen if certain requirements are met. The person must be:

- (a) adopted under a law of a State or Territory;
- (b) adopted by a person who is an Australian citizen at the time of the adoption or by 2 persons jointly, where at least one is an Australian citizen at that time; and
- (c) present in Australia as a permanent resident at that time.

### **Clause 14      Citizenship for abandoned children**

Clause 14 is the equivalent of subsection 5(3)(b) of the old Act.

It provides for citizenship for abandoned children. In these cases, a person will be deemed to be an Australian citizen if that person was found abandoned in Australia as a child. A proviso exists specifying that this is the case unless and until the contrary is proved.

### **Clause 15      Citizenship by incorporation of Territory**

Clause 15 is the equivalent of section 33 of the old Act.

It provides for Australian citizenship in circumstances where a Territory is incorporated.

Proposed subsection (1) specifies that a person is an Australian citizen if any territory becomes a part of Australia and the person is included in a class of persons specified in a determination which is made under this Section.

Proposed subsection (2) provides for the making of such determination. This may be effected by the Minister by legislative instrument. The Minister is empowered to determine that specified classes of persons are Australian citizens from a specified day because of their connection with that territory.

Proposed subsection (3) provides the day of commencement. Citizenship begins on the day that the determination is made.

Subsection (4) clarifies that despite subsection 12(2) of the *Legislative Instruments Act 2003*, an instrument made by the Minister under this new Section may be expressed to take effect before the date it is registered under that Act.

## **Division 2—Acquisition of Australian citizenship by application**

Division 2 of the new Act outlines those circumstances where a person will acquire Australian citizenship by application. It restructures provisions within the old Act to bring together in the one place the circumstances whereby a person is required to apply to become an Australian citizen. These are; citizenship by descent (Subdivision A formerly Sections 10B, 10C and 11 of Division 1, Part 3 of the old Act), citizenship by conferral (Subdivision B formerly Division 2, Part 3 of the old Act) and citizenship by resumption (Subdivision C formerly Sections 23AA, 23AB, 23A and 23B of Division 4, Part 3 of the old Act).

### **Subdivision A—Citizenship by descent**

Subdivision A deals with citizenship by descent. This subdivision mirrors the provisions of the old Act as set out more specifically below and also incorporates policy changes removing the age limit for registration of citizenship by descent.

Since the commencement of the Act in 1949, there has been provision for registration of children as citizens by descent in one form or another. For many years the law required that the child be registered within one year of the birth. This was later changed to registration within 18 years of the birth and provision was made for the registration of citizenship by descent of people who were already over the age of 18 years. In 2002, in response to a recommendation by the Australian Citizenship Council, the age limit for registration was increased to 25 years. However, some Australians were not aware of the time limits for registration of a child as a citizen by descent and the result is that in some families there are children eligible for registration as citizens by descent and others who are not because they were not over 18 years in 1984 and are now over 25 years of age.

### **Clause 16 Application and eligibility for citizenship**

Clause 16 outlines the circumstances of application and eligibility for citizenship by descent.

Proposed subsection (1) addresses the requirements concerning application. It provides that a person may make an application to the Minister to become an Australian citizen.

The application requirements are provided for in the note attached at the end of the proposed Section which refers readers to new Section 46. That Section sets out further



specifics in relation to application requirements (which may include the payment of a fee).

*Persons born outside Australia on or after 26 January 1949*

Proposed subsection (2) refers to persons who were born outside Australia *on or after* 26 January 1949 (the date of the commencement of the old Act). It provides for the circumstances where a person born outside Australia on or after 26 January 1949 is eligible to become an Australian citizen. In those circumstances, eligibility exists if:

- (a) a parent of the person was an Australian citizen at the time of the birth; and
- (b) if the parent acquired Australian citizenship by descent
  - (i) the parent was lawfully present in Australia for a total period of at least 2 years at any time before the person made the application; or
  - (ii) the person was not or ever a national or a citizen of any country at the time of application; and
- (c) if the person was 18 years or over at the time of application—the Minister was satisfied they were of good character at the time of the Minister’s decision.

This subsection combines the descent Sections 10B and 10C of the old Act. Both 10B and 10C provided that a person may be eligible if they had a parent who was an Australian citizen at the time of their birth. Section 10B also provided that if that parent was a citizen by descent, then the parent was required to have spent a total of two years in Australia at any time before the person applied for citizenship by descent. Section 23D (3) of the old Act did not require this two year period to be met if the person was not ever a national or citizen of any other country at the time of application.

Both 10B and 10C required that if the person was over the age of 18 then the Minister must be satisfied that they were of good character.

The following requirements in 10B and 10C have not been included in new subsection (2)

- the age limitations - which have been removed because they created clear inconsistencies in eligibility, even within the same family. An extreme example of this is a family of three children; one born in 1980 and eligible under 10B, the other born in 1973 eligible under 10C and another child born in 1977 who is not eligible under either provision; and
- the requirement that a parent of the person must be an Australian citizen at the time of application or dead (10B(2) and 10C(4)(b)).

In addition, the requirement in 10C that the person provide an acceptable reason for failing to register under 10B has also not been included in proposed subsection (2).

Many people were unaware of these limitations and as a consequence have been unable to access their entitlement to citizenship by descent. These amendments will allow them to do so.

*Persons born outside Australia or New Guinea before 26 January 1949*

Proposed subsection (3) refers to persons born outside Australia or New Guinea *before* 26 January 1949 (the date of the commencement of the old Act). It provides that a person born outside Australia or New Guinea before 26 January 1949 is eligible to become an Australian citizen if:

- (a) a parent of the person became an Australian citizen on 26 January 1949; and
- (b) the parent was born in Australia or New Guinea or was naturalised in Australia before the person's birth; and
- (c) the Minister is satisfied that the person is of good character at the time of the Minister's decision on the application.

This provision is the equivalent of Section 11 of the old Act. Section 11 complemented the former subsection 25(3) which provided a person became a citizen automatically (by operation of law) if born outside Australia before 26 January 1949 if the *father* became a citizen on that date. Section 11 of the old Act provided for persons born outside Australia before 26 January 1949 whose *mother* became citizens on that date.

Both Sections 11 and 25(3) required that a person enter Australia prior to 1 May 1987. Section 11 was only in effect from 1991 to 1996. Many people were unaware of these limitations and as a consequence have been unable to access their entitlement to citizenship by descent. This new Section remedies those problems.

Section 11 required that the Minister must be satisfied that the person is of good character as is found in this new Section.

**Clause 17 Minister's decision**

Clause 17 deals with the Minister's decision in relation to the making of an application for citizenship by descent.

Proposed subsection (1) provides that if a person makes an application under this Section, the Minister must approve or refuse the application. Notice of the decision must be given in writing.

Proposed subsection (2) specifies that the Minister must, subject to this Section, approve the person becoming an Australian citizen if the person is eligible to be so approved.

Sections 10B, 10C and 11 of the old Act required the Minister to register a person as an Australian citizen if the person met the eligibility criteria.

*Identity*

Proposed subsection (3) provides that the Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

At the end of this provision a note is made which directs the reader to new Division 5 which contains the identity provisions.

*Risk to security*

Proposed subsection (4) provides that the Minister must not approve the person becoming an Australian citizen at a time when there is an adverse security assessment or a qualified security assessment in force regarding that person that the person is directly or indirectly a risk to security. This assessment is defined as an assessment in force under the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act).

“Adverse security assessment” and “Qualified security assessment” are defined in proposed Section 3 of this Act.

The new provision will prohibit the approval of a citizenship applicant who is assessed by the Australian Security Intelligence Organisation as a risk to the security of Australia.

A ‘security assessment is reviewable under Part IV of the ASIO Act. The review would be undertaken by the Security Appeals Division of the Administrative Appeals Tribunal.

*Cessation of citizenship*

Proposed subsection (5) provides for the situation where a person ceased to be an Australian citizen and subsequently applies for citizenship. In that event, the Minister must not approve the person becoming an Australian citizen for a 12 month period which commences from the day of cessation of their Australian citizenship.

This new subsection is the equivalent of the 12 month period of limitation of acquisition of citizenship by conferral as provided at paragraph 13(11)(g) in the old Act.

**Clause 18 Registration**

Clause 18 requires the Minister to register the person becoming an Australian citizenship if their application for citizenship by descent is approved. This must be done in the manner prescribed by the regulations.

Sections 10B, 10C and 11 of the old Act required the Minister to register a person as an Australian citizen if they were eligible and approved as a citizen by descent.

### **Clause 19 Day citizenship begins**

Clause 19 details the day on which citizenship begins under this subdivision.

Proposed subsection (1) provides that a person becomes an Australian citizen on the day that the Minister approves the application.

Under the old Act (paragraphs 10B (1)(a), 10C(1) and 11(3)) a person becomes a citizen at the point of registration. In practice the recording of the approval may occur at a later date than the approval. The change ensures that once the application has been approved, the person becomes an Australian citizen by descent.

Proposed subsection (2) provides that a person does not become an Australian citizen unless:

- (a) if the person was born on or after 26 January 1949—a parent of the person was an Australian citizen at the time of the person's birth; or
- (b) if the person was born before 26 January 1949—a parent of the person became an Australian citizen on 26 January 1949.

The effect of this provision is that a person who fails to meet the eligibility criteria under clause 16(2)(a) and 16(3)(a) despite being approved, can not be an Australian citizen. This provision has been incorporated into the new Act to put beyond doubt that a person born outside Australia can only acquire citizenship by descent if at the time of the person's birth a parent was an Australian citizen or became an Australian citizen on 26 January 1949.

### **Subdivision B—Citizenship by conferral**

Subdivision B deals with citizenship by conferral. It is the equivalent of citizenship by grant as outlined at Division 2, Part 3 of the old Act. However, the old Act provided that the Minister could 'grant a certificate of Australian citizenship' to a person provided certain requirements under that Act were met. In practice the 'grant of a certificate' was in effect the approval of an application for Australian citizenship which is the new terminology used in the Act.

A successful applicant becomes an Australian citizen only when they have made the pledge of commitment before the Minister or delegate (unless specifically exempt from this requirement as set out further below).

This Subdivision clarifies this process. Evidence of Australian citizenship may be applied for and provided in the form of a written notice (see Division 4 ‘Evidence of Australian citizenship’).

### **Clause 20 Requirements for becoming a citizen**

Clause 20 sets out the requirements for becoming a citizen by conferral.

This clause specifies that a person becomes an Australian citizen if:

- the Minister approves the person becoming an Australian citizen; and
- if the person is required to make a pledge of commitment to become an Australian citizen—the person makes that pledge.

A note is added at the end of this proposed section cross referencing the reader to new Sections 21 to 25 of the Act. These Sections deal with the Minister approving the person becoming an Australian citizen. In addition, reference is made to new Sections 26 and 27 which deal with the making of a pledge of commitment.

### **Clause 21 Application and eligibility for citizenship**

Clause 21 sets out the application and eligibility requirements for citizenship by conferral.

#### *Application requirements*

Proposed subsection (1) provides that a person may make an application to the Minister to become an Australian citizen.

Note 1 is provided at the end of this subsection directing the reader to subsections (2) to (8) which deal with eligibility for conferral.

The application requirements are provided for in note 2 which refers readers to new Section 46. That Section sets out further matters in relation to application requirements (which may include the payment of a fee).

#### *General eligibility*

Proposed subsection (2) outlines the general eligibility provisions for citizenship.

It provides that a person is eligible to become an Australian citizen if the Minister is satisfied that the person:

- is aged 18 or over at the time the person made the application; and

- is a permanent resident at that time; and
- understands the nature of the application at that time; and
- satisfies the residence requirement (referred to in new Section 22), or has completed relevant defence service (referred to in new Section 23), at that time; and
- possesses a basic knowledge of the English language at the time of decision; and
- has an adequate knowledge of the responsibilities and privileges of Australia citizenship at the time of decision on the application; and
- is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
- is of good character at the time of the Minister's decision on the application.

The eligibility criteria within this subsection are the equivalent of Section 13 of the old Act (with the exception of the extension of the residence requirements by 12 months to three years in the five years immediately before the time of application) and the express statement of the times at which the eligibility conditions are assessed. Section 13 of the old Act specified the time of assessment only for the requirement to be a permanent resident and the and for the residence requirements.

*Permanent physical or mental incapacity*

Proposed subsection (3) outlines the eligibility provisions for citizenship where a person has a permanent physical or mental incapacity.

It provides that a person is eligible to become an Australian citizen if the Minister is satisfied that the person:

- is aged 18 or over at the time the person made the application; and
- is a permanent resident at that time; and
- satisfies the residence requirement (referred to in new Section 22), or has completed relevant defence service (referred to in new Section 23), at that time; and
- has a permanent physical or mental incapacity at that time that means the person is not capable of understanding the nature of the application at that time; and
- is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
- is of good character at the time of the Minister's decision on the application.

This new subsection is the equivalent of Section 13(2) of the old Act with the exception of the extension of the residence requirements by 12 months to three years in the five years immediately before the time of application.

*Person aged 60 or over or has hearing, speech or sight impairment*

Proposed subsection (4) outlines the eligibility provisions for citizenship where a person is aged 60 or over or has hearing, speech or sight impairment

It provides that a person is eligible to become an Australian citizen, if the Minister is satisfied that the person:

- is either:
  - aged 60 or over at the time the person made the application; or
  - aged 18 or over at that time and suffering from a permanent loss or substantial impairment of hearing, speech or sight at that time; and
- is a permanent resident at that time; and
- understands the nature of the application at that time.

In addition, the person must

- satisfy the residence requirement (referred to in new Section 22), or has completed relevant defence service (referred to in new Section 23), at that time; and
- be likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
- be of good character at the time of the Minister's decision on the application.

This new subsection is the equivalent of Section 13(6) and 13(8) of the old Act. Section 13(7) of the old Act provides that people over the age of 50 years do not need to possess a basic knowledge of English. This has been raised to 60 years of age, consistent with the 1994 recommendation of the Joint Standing Committee on Migration that that age limit be raised to 60 years. It is also consistent with the exemption for persons aged 60 years to have an adequate knowledge of the responsibilities and privileges of citizenship.

#### *Person aged under 18*

Proposed subsection (5) outlines the eligibility provisions for citizenship where a person is aged under 18 years.

It specifies that a person is eligible to become an Australian citizen if the Minister is satisfied that the person is aged under 18 at the time the person made the application.

This new subsection is the equivalent of Section 13(9) of the old Act.

As a matter of policy, applications considered under this subsection would usually be approved if the applicant meets the criteria in new subsection 2. That is, the applicant is a permanent resident, satisfies the residence requirements, has a basic knowledge of English, the privileges and responsibilities of citizenship, the nature of the application and is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved, and is of good character. In addition, under policy, applications under this subsection would not

usually be approved unless the applicant has a responsible parent (as defined by new Section 25 of this Act) who is an Australian citizen.

*Person born to former Australian citizen*

Proposed subsection (6) outlines the eligibility provisions for citizenship where a person was born to a former Australian citizen.

Under this subsection a person is eligible to become an Australian citizen if the Minister is satisfied that:

- a person was born outside Australia; and
- a parent of the person was not an Australian citizen at the time of the person's birth; and
- the parent had ceased to be an Australian citizen under Section 17 of the old Act before that time; and
- the person is of good character at the time of the Minister's decision on the application.

This new subsection relates to the repeal on 4 April 2002 of Section 17 of the old Act. Prior to its repeal, Section 17 of the old Act provided that, by operation of law, an Australian citizen aged 18 or over ceased to be an Australian citizen if they "*did any act or thing the sole or dominant purpose of which and the effect of which was to acquire the citizenship of another country*".

Many people were not aware of Section 17 nor that they were no longer Australian citizens, until they attempted to register a child as a citizen by descent or sought to renew their Australian passport. In October 2003, a policy change enabled the provision of citizenship to children aged under 18 who were born overseas after their parent lost Australian citizenship under the former Section 17. This was managed by way of Ministerial discretion. New subsection (6) reflects this policy change and enables those aged over 18 to access their Australian heritage.

This new subsection was announced on 7 July 2004 and is consistent with Recommendation 6 of the Senate Committee Report "*They still call Australia home: Inquiry into Australian expatriates*".

*Person born in Papua*

Proposed subsection (7) outlines the eligibility provisions for citizenship where a person was born in Papua to a parent who was born in Australia as now defined.

In these circumstances, a person is eligible to become an Australian citizen if the Minister is satisfied that:



- the applicant was born in Papua before 16 September 1975; and
- a parent of the applicant was born in Australia (within the meaning of this Act at the time the applicant made the application); and
- the parent was an Australian citizen at the time of the applicant's birth; and
- the applicant is of good character at the time of the Minister's decision on the application.

The policy intention is to make clear that the meaning of 'Australia' in this subsection refers to the definition of Australia *at the time* that the applicant makes the application for citizenship and at no other time.

This new subsection provides for acquisition of Australian citizenship for people born in Papua prior to Papua New Guinea (PNG) Independence in 1975 to one or more parents who were born in an Australian State or internal Territory. These people were (prior to PNG Independence) Australian citizens by virtue of their birth in Papua and not eligible for registration as citizens by descent.

This new provision remedies the anomalous situation under the old Act of a unique class of persons who were born in an Australian territory and are the children of Australian citizens, yet have been denied Australian citizenship.

### *Statelessness*

Proposed subsection (8) outlines the eligibility provisions for citizenship where a person would otherwise be stateless. It clarifies that a person is eligible to become an Australian citizen if the Minister is satisfied that the person:

- was born in Australia; and
- is not, at the time the person made the application, a national or citizen of any country and has never been such a national or citizen; and
- does not, at the time the person made the application, have reasonable prospects of acquiring the nationality or citizenship of a foreign country and has never had such reasonable prospects.

This is to ensure that Australia adhere to its obligations under the *Convention on the Reduction of Statelessness* that no-one born in Australia remain stateless.

This new subsection is the equivalent of paragraphs 23D(1) and (1A) of the old Act.

## **Clause 22     Residence requirement**

### *Residence requirement*

Clause 22 outlines the residence requirement referred to in this Subdivision.

Proposed subsection (1) specifies that, for the purposes of new Section 21, a person satisfies the residence requirement if certain conditions are met.

These are that the person has been present in Australia as a permanent resident for:

- (a) a total period of at least 1 year in the period of 2 years before the day the person made the application; and
- (b) a total period of at least 3 years in the period of 5 years before that day.

New subsection 1(a) is the equivalent of paragraphs 13(1)(d) old Act.

New subsection 1(b) amends paragraph 13(1)(e) of the old Act by extending the requirement by 12 months to three years in the five years immediately before the time of application. This amendment strengthens the integrity of the citizenship process by enabling more time for new arrivals to become familiar with the Australian way of life and the values which they will need to commit to as Australian citizens; and the identification of people who may represent a security risk to Australia.

*Partial exemption—person born in Australia or former Australian citizen*

Proposed subsection (2) provides for partial exemption from the residence requirements. Paragraph (1)(b) does not apply if the person was born in Australia; or was an Australian citizen at any time before the person made the application.

This new subsection is the equivalent of paragraphs 13(5) of the old Act.

*Confinement in prison or psychiatric institution*

Proposed subsection (3) addresses the situation where a person has been confined either in prison or in a psychiatric institution.

In either case, the Minister must not take into account any period for the purposes of satisfying the residence requirement, during which the person has been:

- a) confined in a prison; or
- b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

This new subsection is the equivalent of paragraphs 13(4)(a) of the old Act.

*Ministerial discretion—longer period than 5 year period*

Proposed subsection (4) provides that the Minister may take into account a longer period than the period of 5 years mentioned in paragraph (1)(b).

This new subsection is the equivalent of paragraphs 13(4)(b)(ii) of the old Act.

*Ministerial discretion—administrative error*

Proposed subsection (5) provides for consideration to be given to delays resulting from administrative error. The Minister may treat as a period of permanent residence the period where the person was present in Australia, if the Minister considers the person was present in Australia during that period but, because of an administrative error, was not a permanent resident during that period.

This new subsection is the equivalent of paragraphs 13(4)(b)(v) of the old Act.

*Ministerial discretion—person in Australia would suffer significant hardship or disadvantage*

Proposed subsection (6) empowers the Minister to treat a period as one in which the person was present in Australia as a permanent resident if, the person was present in Australia during that period (except as a permanent resident or an unlawful non-citizen); and the Minister is satisfied that the person will suffer significant hardship or disadvantage if that period were not treated as one during which the person was present in Australia as a permanent resident.

This new subsection is the equivalent of paragraphs 13(4)(b)(iv) of the old Act.

*Ministerial discretion—person in Australia engaged in activities beneficial to Australia*

Subsection (7) allows the Minister to exercise a discretion in relation to the residence requirements where a person is in Australia and engaged in activities which are beneficial to Australia.

The Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

- (a) the person was engaged in activities during that period that the Minister considers to be beneficial to Australia; and
- (b) the person was present in Australia during that period (except as a permanent resident or an unlawful non-citizen).

*Ministerial discretion—person outside Australia engaged in activities beneficial to Australia*

Subsection (8) allows the Minister to exercise a discretion in relation to the residence requirements where a person is outside Australia and engaged in activities which are beneficial to Australia.

The Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

- (a) the person was engaged in activities during that period that the Minister considers to be beneficial to Australia; and
- (b) the person was not present in Australia during that period but was a permanent resident during that period; or
- (c) either:
  - (i) the person has already been present in Australia as a permanent resident for a total period of at least 1 year; or
  - (ii) the Minister is satisfied that the person will suffer significant hardship or disadvantage if that period were not treated as one during which the person was present in Australia as a permanent resident.

The changes to the former 13(4)(b)(i), by way of new subsections (7) and (8), improve the integrity and the equity of the residence discretions.

The objective of the residence requirements in the old Act was to ensure those conferred citizenship had established *close and continuing ties* with Australia. There was significant disparity in terms of achieving this goal between the discretion available in the case of people who spend periods of time overseas following the acquisition of permanent residence (paragraphs 13(4)(b)(i) of the old Act) and the discretion available for people who have lawfully spent time in Australia prior to the grant of permanent residence (paragraphs 13(4)(b)(iv) of the old Act).

Under the old Act, a person could conceivably spend one day in Australia to give effect to their permanent visa and spend two years overseas (as long as they could establish some benefit to Australia). At the same time, a person who spent considerable periods of time in Australia on a temporary visa had to establish that they would suffer significant hardship or disadvantage if not approved for citizenship. Policy also required these people be in Australia continuously for 12 months. This former provision did not adequately reflect the fact that over the years changes under the Migration Act have seen people living temporarily in Australia for considerable periods prior to the grant of permanent residence. This new Act reflects those changes.

*Ministerial discretion—spouse, widow or widower of Australian citizen*

Proposed subsection (9) provides for Ministerial discretion in the case of a spouse, widow or widower of an Australian citizen.

If the person is the spouse, widow or widower of an Australian citizen at the time the person made the application, the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

- (a) the person was a spouse of that Australian citizen during that period; and
- (b) the person was not present in Australia during that period; and
- (c) the person was a permanent resident during that period; and
- (d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

Proposed subsection (10) clarifies that for the purposes of new subsection (9), the meaning of 'spouse' of an Australian citizen includes a person granted a permanent visa as a de-facto spouse of that citizen.

This new subsection amends the Act by requiring that spouses of Australian citizens meet the same criteria as other adult applicants for citizenship. This reflects current policy, and the modern expectation that adult applicants should qualify in their own right rather than relying on a spousal relationship with another person.

However, it is recognised that in some circumstances the spouse of an Australian citizen may have difficulty meeting the residence requirements, for example if they are accompanying their Australian citizen spouse overseas (for example, spouses of Australians working overseas for international organisations). As a result this subsection introduces a new discretion to waive part or all of the residence requirements for the spouse of an Australian citizen who can demonstrate a close and continuing association with Australia.

Associated with this new discretion, a new provision (subsection 24(5)) provides for approval of applications where the spouse is outside Australia.

### **Clause 23     Defence service requirement**

Clause 23 provides for 'relevant defence service' as referred to in this subdivision. It specifies that for the purposes of new Section 21, a person has completed relevant defence service if the person:

- (a) has completed:
  - (i) at least 3 months service in the permanent forces of the Commonwealth; or

- (ii) at least 6 months service in the Naval Reserve, the Army Reserve or Air Force Reserve; or
- (b) was discharged from that service as medically unfit for that service and who became so unfit because of that service.

This new provision is the equivalent of paragraphs 13(3) and (3A) of the old Act.

#### **Clause 24 Minister's decision**

Clause 24 provides further guidance in relation to the Minister's decision made under this Subdivision.

Proposed subsection (1) specifies that if a person makes an application under new Section 21, the Minister must approve or refuse the application. Notice of the decision must be given in writing.

A note is added at the end of this subsection specifying that the Minister may cancel an approval. Referral is made in the note to new Section 25 which addresses this matter in detail.

Proposed subsection (2) provides that the Minister may refuse to approve the person becoming an Australian citizen, despite the person being eligible to be so approved.

The purpose of this subsection is to retain the existing discretion (under Section 13 of the old Act) of the Minister not to approve an application in certain cases.

This discretion has been in existence since the inception of the Act in 1948.

It has been a uniform feature of naturalisation legislation (i.e. citizenship by conferral) throughout the Commonwealth for over a century to give the Executive a wide discretion regarding the approval or refusal of citizenship applications. This is because Australian citizenship by application is a privilege and not a right. The new Act should continue to promote this understanding.

Persons who satisfy the eligibility criteria are generally approved to become citizens. However, it is conceivable that a person could meet the criteria but nevertheless it may not be in the public interest for that person to become an Australian citizen. An example may include a person whom the Australian community would consider as a person who incites hatred or religious intolerance. That person may not necessarily have been convicted of specific offences and may not necessarily fall strictly into the category of refusal on the basis of the good character requirement, but could be within this discretion.

#### *Identity*

Proposed subsection (3) deals with the issue of identity. It makes clear that the Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

At the end of this provision a note is made which directs the reader to new Division 5. That Division contains the identity provisions.

*Risk to security*

Proposed subsection (4) provides that the Minister must not approve the person becoming an Australian citizen at a time when there is an adverse security assessment or a qualified security assessment in force regarding that person that the person is directly or indirectly a risk to security. This assessment is defined as an assessment in force under the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act).

“Adverse security assessment” and “qualified security assessment” are defined in new Section 3 of this Act.

The new provision will prohibit the approval of a citizenship applicant who is assessed by the Australian Security Intelligence Organisation as a risk to the security of Australia.

A ‘security assessment is reviewable under Part IV of the ASIO Act. The review would be undertaken by the Security Appeals Division of the Administrative Appeals Tribunal.

*Person not present in Australia*

Proposed subsection (5) prevents approval of an application for citizenship where a person is not present in Australia if:

- (a) the person is covered by new subsection 21(2) (general eligibility), (3) (persons who have a permanent physical or mental incapacity at the time of application which means that the person is not capable of understanding the application or (4) (persons who are aged 60 or over or to persons who have a hearing, speech or sight impairment at the time of application); and
- (b) the Minister did not apply new subsection 22(9) in relation to the person. (which provides for a discretion for a permanent resident spouse, widow, or widower of an Australian citizen outside Australia that can satisfy the Minister that had a close and continuing association with Australia)

Proposed paragraph (5)(a) is consistent with paragraph 13(1A) of the old Act.

Proposed paragraph (5)(b) enables spouses who may be overseas with their Australian citizen spouse to be approved as an Australian citizen while outside Australia. The

exception is consistent with the introduction of the residence discretion for the spouse of an Australian citizen.

### *Offences*

Proposed subsection (6) prevents the Minister from approving the application for citizenship of a person who is subject to the following offence related provisions:

- (a) when proceedings for an offence against an Australian law (including proceedings by way of appeal or review) are pending in relation to the person; or
- (b) when the person is confined to a prison in Australia; or
- (c) during the period of 2 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition on the person of a serious prison sentence; or
- (d) if the person is a serious repeat offender in relation to a serious prison sentence—during the period of 10 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition of that sentence; or
- (e) if the person has been released from serving the whole or a part of a sentence of imprisonment on parole or licence—during any period during which action can be taken under an Australian law to require the person to serve the whole or a part of that sentence; or
- (f) if the person:
  - (i) has been released by a court from serving the whole or a part of a sentence of imprisonment; and
  - (ii) has been so released because the person gave a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour; during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or
- (g) if, in respect of proceedings for an offence against an Australian law in relation to the person:
  - (i) a court does not impose a sentence of imprisonment on the person; and
  - (ii) the court releases the person because the person gives a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour; during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or



- (h) during any period during which the person is confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

This new subsection is the equivalent of paragraphs 13 (11) (a), (b), (c), (ca), (d) (e) (f) of the old Act.

Proposed paragraph (g) is new. It prohibits an approval of a citizenship application during any period where a person has been released by a court upon the person giving a relevant security and during any period in which action could be taken in respect of the person under a law of the Commonwealth, a State or a Territory by reason of a breach of a condition of that security.

#### *Cessation of citizenship*

Proposed subsection (7) provides that if the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

This new subsection is the equivalent of paragraph 13(11)(g) of the old Act.

#### *Statelessness*

Proposed subsection (8) provides an exception to new subsections (6) and (7), clearly specifying that they do not apply to a person who is stateless (as provided by new subsection 21(8)).

This new subsection is the equivalent of paragraphs 23D(3A) of the old Act.

### **Clause 25      Minister may cancel approval**

Clause 25 provides for certain situations where the Minister may cancel the approval of an application under the proposed new Section 24. Terminology has been amended from revocation of approval in the old Act to cancellation of approval under this Act.

Proposed subsection (1) specifies that the approval given to a person under new Section 25 may be cancelled by the Minister if the person has not become an Australian citizen under new Section 28; and either of the following situations apply:

- the eligibility criteria has not been met; or
- the person has failed to make pledge of commitment

*Eligibility criteria not met*

Proposed subsection (2) provides clarification in relation to the first situation.

This situation arises where certain eligibility criteria can no longer be met. It specifies that this arises if:

- (a) the person is covered by new subsection 21(2), (3) or (4) (*ie: the general eligibility, permanent physical or mental incapacity or a person aged 60 or over*); and
- (b) the Minister is satisfied that, at the time the Minister proposes to cancel the approval, the person is:
  - (i) not a permanent resident; or
  - (ii) not likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia; or
  - (iii) not of good character.

The criterion under which the Minister may consider cancelling a person's approval for citizenship under Section 14B of the old Act covers all of the eligibility criteria for the grant of citizenship (under Section 13 of the old Act). This new subsection only lists those criteria under which, in practice, the Minister would consider the cancellation of a person's approval for citizenship by conferral.

*Failure to make pledge of commitment*

Proposed subsection (3) clarifies the second situation. It applies if:

- (a) the person has failed to make a pledge of commitment within 12 months after the day on which the person received notice of the approval; and
- (b) the person's reason for the failure is not one that is prescribed by the regulations for the purposes of this subsection.

This new subsection is the equivalent of paragraphs 14B(1)(c) and 14B(4) of the old Act

*Cancellation of child's approval*

Proposed subsection (4) provides for the situation where a child's approval is cancelled.

It specifies that if:

- a child aged under 16 makes an application under new Section 21 at a particular time; and

- one or more responsible parents of the child make applications under new Section 21 at that time; and
- the Minister decides under new Section 24 to approve the child and one or more of the responsible parents becoming Australian citizens; and
- the Minister cancels the approval given to each responsible parent;

the Minister must, by writing, cancel the approval given to the child.

It is current policy that a child, who has applied at the same time as a responsible parent, does not become an Australian citizen in circumstances where both parent's applications are not approved. To do so would leave the possibility open for the child being prevented obtaining the citizenship of their parent's birth country because they are an Australian citizen.

#### *Effect of cancellation*

Proposed subsection (5) addresses the effect of cancellation. In circumstances where the Minister cancels an approval given to a person, the approval is taken never to have been given.

This provision is the equivalent of paragraph 14B(6) of the old Act.

A note is attached at the end of this new subsection, which states that a person cannot become an Australian citizen under this Subdivision unless the Minister approves the person becoming an Australian citizen.

The intention is to make it clear that this new subsection has the effect that the person will need to make another application if they want to become an Australian citizen.

#### **Clause 26 Pledge of commitment must be made**

Clause 26 outlines a pledge of commitment must be made.

Proposed new subsection (1) outlines the requirement that a person must make a pledge of commitment to become an Australian citizen unless the person:

- (a) is aged under 16 at the time the person made the application to become an Australian citizen; or
- (b) has a permanent physical or mental incapacity at the time the person made the application to become an Australian citizen that means the person is not capable of understanding the nature of the application at that time; or
- (c) is covered by new subsection 21(6), (7) or (8).

A note is provided at the end of this subsection to specify that Section 27 provides further information on how the pledge is to be made.

Proposed subsection 1(a) and (b) is the equivalent of paragraph 15(b) of the old Act. Subsection 1(c) does not require persons who meet the stateless provision to make a pledge. Those covered by 21(6) and (7) are also not required to make a pledge (consistent with the citizens by descent).

Proposed subsection (2) provides that a person must not make a pledge of commitment before the Minister approves the person's application to become an Australian citizen. If a pledge of commitment is made by the person before that time, it will not have any effect.

Proposed subsection (2) has been incorporated into the new Act for the purposes of clarity.

*Delayed making of pledge*

Proposed subsection (3) addresses the occasion where the Minister may defer the making of a pledge. This situation will arise if the Minister is satisfied that:

- a visa held by the person may be cancelled under the *Migration Act 1958* (whether or not the person has been notified at this point); or
- the person has been or may be charged with an offence under an Australian law.

Under these circumstances, where the person is required to make a pledge of commitment and has not done so, the Minister may determine, in writing, that the person cannot make the pledge until the end of a specified period.

Proposed subsection (4) limits this deferral time and states that the Minister must not specify a period that exceeds, or periods that in total exceed, 12 months.

New subsections (3) and (4) are the equivalent of paragraphs 14C(1) and (2) of the old Act. Consistent with the old Act, the decision to defer the making of the pledge is not reviewable under this Act. This is because this is not a decision to cancel an approval. If a decision to cancel an approval is made at some time before the making of the pledge that decision is reviewable (new section 52(1)(c)).

Proposed subsection (5) provides that the Minister may revoke the determination. This must be done in writing.

Proposed subsection (6) provides that if such a determination is in force, the person must not make a pledge of commitment before the end of the specified period. This is the

equivalent of paragraph 14C(4) of the old Act. For the purposes of clarity, this subsection also provides that if a pledge is made before the end of that time it is of no effect.

**Clause 27     How pledge of commitment is to be made**

Clause 27 addresses how the pledge of commitment is to be made.

This is the equivalent of Section 15 of the old Act with the exception of the removal of specified persons as persons before whom the citizenship pledge can be made.

*Form of pledge*

Proposed subsection (1) provides that a pledge of commitment must be made in accordance with forms which are set out in Schedule 1 of the Act.

This is the equivalent of paragraph 15(1)(a)(i) of the old Act.

*Prescribed arrangements*

Proposed subsection (2) states that a pledge of commitment must be made according to arrangements which are prescribed by the regulations.

Matters that may be prescribed by the regulations include that the pledge is to be made in public (provided for by Section 41 of the old Act) and that the validity of the pledge is not affected by reason only that a pledge of commitment was not made before an Australian citizen (provided for in paragraph 15(4A) of the old Act).

*Persons who may receive pledge*

Proposed subsection (3) specifies that the pledge of commitment must be made before:

- 15.4.1.1 the Minister;
- 15.4.1.2 or a person authorised under subsection (4); or
- 15.4.1.3 a person who is included in a class of persons authorised under subsection (5).

Proposed subsection (4) enables the Minister to authorise a person for the purposes of paragraph (3)(b). The authorisation must be given in writing.

Proposed subsection (5) states that the Minister may, by writing, authorise a class of persons for the purposes of paragraph (3)(c).

**Clause 28     Day citizenship begins etc.**

Clause 28 addresses the day on which citizenship begins under this subdivision.

Proposed subsection (1) addresses the situation where a person is required to make a pledge of commitment. In that case, the person becomes an Australian citizen on the day they make the pledge.

Proposed subsection (2) provides for the case where a person is not required to make pledge of commitment. In that situation, (but subject to new subsection (3)), a person not required to make a pledge of commitment becomes an Australian citizen on the day the Minister approves the person becoming an Australian citizen.

Proposed subsection (3) provides for applications made at the same time by a child and one or more responsible parents of the child. In that case, new subsection (2) does not apply to a child aged under 16 at the time the child made the application to become an Australian citizen if:

- (a) one or more responsible parents of the child made applications under new Section 21 at that time; and
- (b) the Minister decided under new Section 24 to approve the child and one or more of the responsible parents becoming Australian citizens.

While the child is not required to take the pledge, it does not fall within new subsection (2) as the child's application is considered and dependent upon the parent's application.

Proposed subsection (4) states that if one or more of the responsible parents become Australian citizens under this Section, the child becomes an Australian citizen on the first day on which a responsible parent becomes an Australian citizen.

The effect of these provisions is to clarify that, if the Minister approves the responsible parents application, whether the child subsequently becomes a citizen will depend upon whether that parent makes a pledge of commitment if required to do so in order to become an Australian citizen.

### **Subdivision C—Resuming citizenship**

This subdivision addresses resumption of citizenship, restructuring provisions within the old Act (Sections 23AA, 23AB, 23A and 23B, Division 4, Part 3). It has also amended provisions from the old Act by removing restrictions and introducing provisions to ensure that former citizens can apply to resume their citizenship regardless of whether they lost or renounced their citizenship in order to acquire or retain another citizenship or to avoid significant hardship or detriment.

This subdivision has been incorporated within this Division, consistent with the aim of bringing together in the one place in the Act, the circumstances which require the making of an application to become an Australian citizen.

**Clause 29 Application and eligibility for resuming citizenship**

Section 29 deals with the issue of application and eligibility for resuming citizenship.

Proposed subsection (1) provides that a person may make an application to the Minister to become an Australian citizen again.

Two notes are attached at the end of this subsection.

- Note 1 directs the reader to new Section 46 which sets out application requirements (which may include the payment of a fee).
- Note 2 states that the person may also apply to become an Australian citizen again under Subdivision A or B.

The resumption provisions within the old Act 23AA, 23AB, 23A, 23B have been combined into new subsections (2) and (3). The eligibility criteria under these subsections have been expanded from the old Act to provide for those who renounced their Australian citizenship for reasons of hardship or detriment (for example, in order to obtain a security clearance to secure employment in the country of their other residence) to resume their Australian citizenship.

*Cessation under this Act*

Subsection (2) outlines that a person may be eligible to become an Australian citizen again under this Subdivision if the person ceases to be a citizen under the Act.

Eligibility criteria are that the person ceased to be an Australian citizen under the renunciation provisions (new Section 33) in order to acquire or retain the nationality or citizenship of a foreign country or to avoid suffering significant hardship or detriment; or if the person is the child of a responsible parent who renounces citizenship (new Section 36).

In addition, a further requirement is that, if the person is aged 18 or over at the time the person made the application, the Minister is satisfied that they are of good character. The assessment of their good character is to be at the time of the Minister's decision on the application.

Two explanatory notes are provided at the end of this subsection.

- Note 1 makes reference also to new Section 32. This addresses the provisions concerning resumption of their former citizenship status.

- Note 2 clarifies that a person who ceases to be an Australian citizen under new Section 35 or 34 may apply to become an Australian citizen again under Subdivision A or B, which may be a different status.

### *Cessation under old Act*

Proposed subsection (3) outlines that a person may be eligible to become an Australian citizen again under this subdivision where a person ceased to be an Australian citizen under the old Act.

A person is eligible to become an Australian citizen again under this Subdivision if:

- (a) the person ceased to be an Australian citizen under:
  - i. Section 17 (about dual citizenship) of the old Act; or
  - ii. Section 18 (about renunciation) of the old Act in order to acquire or retain the nationality or citizenship of a foreign country or to avoid suffering significant hardship or detriment; or
  - iii. Section 20 (about residence outside Australia) of the old Act; or
  - iv. Section 23 (about children) of the old Act; and
- (a) if the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

### **Clause 30 Minister’s decision**

Clause 30 provides further direction in relation to the Minister’s decision under this Subdivision.

Proposed subsection (1) specifies that if a person makes an application under new Section 29, the Minister must approve or refuse to approve the person becoming an Australian citizen again. Notice of the decision must be in writing.

Proposed subsection (2) provides that the Minister may refuse to approve the person becoming an Australian citizen again despite the person being eligible to be so approved.

The purpose of this subsection is to retain the existing discretion in the old Act for the Minister not to approve an application in certain cases.

This discretion has been in existence since the inception of the Act in 1948.

It has been a uniform feature of naturalisation legislation (i.e. citizenship by conferral) throughout the Commonwealth for over a century to give the Executive a wide discretion regarding the approval or refusal of citizenship applications. This is because Australian



citizenship by application is a privilege and not a right. The new Act should continue to promote this understanding.

Persons who satisfy the eligibility criteria are generally approved to become citizens. However, it is conceivable that a person could meet the criteria but nevertheless it may not be in the public interest for that person to become an Australian citizen. An example may include a person whom the Australian community would consider as a person who incites hatred or religious intolerance. That person may not necessarily have been convicted of specific offences and may not necessarily fall strictly into the category of refusal on the basis of the good character requirement, but could be within this discretion

### *Identity*

Proposed subsection (3) provides that the Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

At the end of this provision a note is made which directs the reader to new Division 5 which contains the identity provisions.

### *Risk to security*

Proposed subsection (4) provides that the Minister must not approve the person becoming an Australian citizen at a time when there is an adverse security assessment or a qualified security assessment in force regarding that person that the person is directly or indirectly a risk to security. This assessment is defined as an assessment in force under the *Australian Security Intelligence Organisation Act 1979* (ASIO Act).

“Adverse security assessment” and “qualified security assessment” are defined in Section 3 of this Act.

The new provision will prohibit the approval of a citizenship applicant who is assessed by the Australian Security Intelligence Organisation as a risk to the security of Australia.

A ‘security assessment is reviewable under Part IV of the ASIO Act. The review would be undertaken by the Security Appeals Division of the Administrative Appeals Tribunal.

### **Clause 31 Registration**

Clause 31 sets out the requirements for registration of the approval for resumption of citizenship.

It states that if the Minister approves the person becoming an Australian citizen again, the Minister must register the person in the manner prescribed by the regulations.

**Clause 32 Day citizenship begins again etc.**

Section 32 addresses the day on which citizenship begins under this subdivision.

Proposed subsection (1) provides that a person becomes an Australian citizen again on the day on which the Minister approves the person becoming an Australian citizen again.

*Same kind of citizenship—former citizen under this Act*

Proposed subsection (2) makes it clear that the type of citizenship previously renounced under this Act will be the same kind of citizenship which is taken up again by the person.

In other words, if the person was previously an Australian citizen under Subdivision A or B, the person becomes an Australian citizen again under that same Subdivision. It is the clear policy intention of the legislation that a person cannot resume a different citizenship to that previously held. It should be noted that this is in contrast to the person's ability to separately apply for a new type of citizenship.

A note is added to the end of new subsection (2) which outlines that one of the effects of this subsection is that the Minister is able to revoke the person's (resumed) citizenship and refers the reader to new Section 34.

*Same kind of citizenship—former citizen under old Act*

Proposed subsection (3) deals with a similar issue to new subsection (2) only applying this to the situation under the old Act.

It seeks to make the policy intention clear that a person cannot take up a different citizenship that was not held previously.

As a consequence, it provides that if the person, before ceasing to be an Australian citizen, was an Australian citizen under the provision set out in column 2 of the following table, the person becomes an Australian citizen again under the provision set out in column 3 of the table. Note this is in contrast to the person's ability to separately apply for a new type of citizenship.

An explanatory table as outlined below is provided for further clarification.

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Same kind of citizenship

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Column 1	Column 2	Column 3
Item	Provision under which person was a citizen	Provision under which person becomes a citizen again
1	Section 10B, 10C or 11 of the old Act	Subdivision A of this Division
2	Division 2 of Part III of the old Act	Subdivision B of this Division

A note is added at the end of this subsection making it clear that one of the effects of this subsection is that the Minister is able to revoke the person's (resumed) citizenship and refers the reader to new Section 34.

### **Division 3—Cessation of Australian citizenship**

Division 3 of the Act outlines the circumstances where a person ceases to be an Australian citizen. This is a renaming of the former "Loss of Citizenship" division (Division 4, Part 3) of the old Act.

#### **Clause 33 Renunciation**

Clause 33 provides for the renunciation of a person's Australian citizenship.

Proposed subsection (1) enables a person to renounce their Australian citizenship. This must be done by application to the Minister.

The application requirements are provided for in the note attached at the end of subsection (1) which refers the reader to new Section 46. Section 46 further sets out the application requirements (which may include the payment of a fee).

This new provision is the equivalent of Section 18 of the old Act.

#### *Minister's decision*

Proposed subsection (2) provides that the Minister must by writing either approve or refuse to approve the person renouncing his or her Australian citizenship.

Proposed subsection (3) provides that subject to this Section, the Minister must approve the person renouncing his or her Australian citizenship if the Minister is satisfied that:

- the person is aged 18 or over, and is a national or citizen of a foreign country, at the time the person made the application; or

- the person was born, or is ordinarily resident, in a foreign country and is not entitled, under the law of that country, to acquire the nationality or citizenship of that country because the person is an Australian citizen.

The purpose of this provision is to ensure that the person will not become stateless on surrendering their Australian citizenship.

Proposed subsection (4) provides that the Minister must not approve the person renouncing his or her Australian citizenship unless the Minister is satisfied of the identity of the person.

The intention here is to ensure that another person, through failure to appropriately identify an applicant, will not lose their Australian citizenship.

At the end of this subsection a note is made which directs the reader to new Division 5 which contains the identity provisions.

Proposed subsection (5) provides that the Minister may refuse to approve the person renouncing his or her Australian citizenship if the person:

- is a national or citizen of a foreign country at the time the person made the application; and
- made the application during a war in which Australia is engaged.

The intention is to ensure that a person is not able to absolve themselves from their responsibilities as an Australian citizen in time of war, by renouncing citizenship.

Proposed subsection (6) provides that the Minister must not approve the person renouncing his or her Australian citizenship if the Minister considers that it would not be in the interests of Australia to do so.

Proposed subsection (7) outlines the circumstances which prevent the Minister from approving a person renouncing their citizenship. The Minister must not approve the person's application to renounce citizenship unless the Minister is satisfied that the person:

- is a national or citizen of a foreign country immediately before the Minister's decision on the application; or
- will become a national or citizen of a foreign country immediately after the approval, if the Minister approves the application.

The purpose of this subsection is to provide a person with the opportunity to renounce their Australian citizenship. A person's application to renounce will only ever be

approved if the Minister is satisfied that at the exact time of renunciation the person will become a national or citizen of another country. This is to ensure the person does not become stateless.

#### *Time citizenship ceases*

Proposed subsection (8) clarifies the time at which Australian citizenship ceases, following the approval by the Minister of an application to renounce that citizenship. If the Minister approves a person renouncing his or her Australian citizenship, the person ceases to be an Australian citizen at the time of the approval.

A note is provided at the end of this subsection which states that a child of the person may also cease to be an Australian citizen and reference is made to new Section 36 (which deals with the circumstances under which a child ceases to be an Australian citizen).

#### **Clause 34     Revocation by Minister**

Clause 34 provides for a person's Australian citizenship to be revoked by the Minister. The terminology has been amended from deprivation in the old Act to revocation under this Act to reflect current usage.

#### *Citizenship by descent*

Proposed subsection (1) addresses the issue of revocation where a person has acquired citizenship by descent.

It provides that the Minister, by written notice, may revoke a person's Australian citizenship if:

- (a) the person is an Australian citizen under the descent provisions (i.e. Subdivision A of Division 2 – including relevant resumption under Section 32); and
- (b) either of the following apply:
  - (i) the person has been convicted of an offence against Section 50 of this Act or against Section 137.1 or 137.2 of the Criminal Code in relation to the person's application to become an Australian citizen;
  - (ii) the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and
- (c) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.

New subsection (1)(a) is similar to Regulation 7C of the Australian Citizenship Regulations 1960 enabling the Minister to cancel the registration of a person's name if satisfied the registration has been made on the basis of false information. However, this subsection has been amended to require that a person be *convicted* of an offence against Section 50 of this Act (the equivalent of Section 50 of the old Act) or the related Sections of the Criminal Code.

New subsection (1)(b) is consistent with new paragraph (2)(b)(iv) which introduces a new power to revoke Australian citizenship if the person obtained approval to become an Australian citizen as result of third-party fraud, that is, the fraud was perpetrated by a person other than the person registered as a citizen by descent.

New subsection (1)(c) provides for those situations where the Minister is satisfied that the person's continued citizenship is contrary to the public interest.

#### *Citizenship by conferral*

Proposed subsection (2) addresses the issue of revocation, where a person has acquired citizenship by conferral.

It provides that the Minister, by written notice, may revoke a person's Australian citizenship if:

- (a) the person is an Australian citizen under conferral provisions (ie: Subdivision B of Division 2 (including relevant resumption under new Section 32); and
- (b) any of the following apply:
  - (i) the person has been convicted of an offence against Section 50 of this Act or against 137.1 or 137.2 of the Criminal Code in relation to the person's application to become an Australian citizen;
  - (ii) the person has, at any time after making the application to become an Australian citizen, been convicted of a serious offence within the meaning of subsection (5);
  - (iii) the person obtained the Minister's approval to become an Australian citizen as a result of migration-related fraud within the meaning of subsection (6);
  - (iv) the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and
- (c) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.

Proposed subsection (3) provides that the Minister must not decide under subsection (2) to revoke a person's Australian citizenship if:

- (a) the person has, at any time after making the application to become an Australian citizen, been convicted of a serious offence within the meaning of subsection (5); and
- (b) the Minister is satisfied that the person would, if the Minister were to revoke the person's Australian citizenship, become a person who is not a national or citizen of any country.

Subsections (2) and (3) are consistent with Section 21 of the old Act. Amendments include the incorporation of relevant Criminal Code provisions into paragraph 2(b)(i) and paragraph 2(b)(iv) to revoke a person's approval to become a citizen as result of third party fraud. The third party provision is consistent with the other provisions in that the person who committed the fraud must be first convicted of an offence (that led directly to the approval of citizenship) before revocation can be considered. Also consistent with the other revocation provisions it can only proceed if it would be contrary to the public interest for the person to remain an Australian citizen.

The power to revoke a person's Australian citizenship has not been delegated by the Minister and as a matter of practice is carried out in accordance with the principles of natural justice and procedural fairness.

#### *Time citizenship ceases*

Proposed subsection (4) deals with the time that citizenship ceases under these provisions.

It provides that if the Minister revokes a person's Australian citizenship, the person ceases to be an Australian citizen at the time of the revocation.

A note is provided at the end of this subsection which states that a child of the person may also cease to be an Australian citizen and reference is made to Section 36 (which deals with the circumstances under which a child ceases to be an Australian citizen).

#### *Serious offence*

Proposed subsection (5) defines "convicted of a serious offence" for the purpose of this Section. It clarifies that a person has been convicted of a serious offence if:

- they have been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to death or to a serious prison sentence; and
- they have committed the offence at any time before the person became an Australian citizen.

This is similar to the ‘offences’ within paragraph 21(1)(ii) of the old Act. However, the offence provision has been extended from the time of the approval of the application up until the time the person becomes an Australian citizen. It is possible that it could be up to 12 months between the person being approved and the time of the pledge. This provides for revocation in circumstances where an offence has been committed at any time up until the person actually becomes a citizen by making the pledge of commitment.

#### *Migration-related fraud*

Proposed subsection (6) addresses the issue of revocation due to migration related fraud.

For the purposes of this Section, it clarifies the concept of migration related fraud. It states that a person obtained the Minister’s approval to become an Australian citizen as a result of migration-related fraud if and only if:

- a) at any time, the person was convicted of an offence committed at any time before the Minister gave the approval against:
  - Section 234, 236, 243 or 244 of the Migration Act 1958; or
  - Section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the Criminal Code.
- a) the act or omission that constituted the offence was connected with the person’s entry into Australia or the grant to the person of a visa or of a permission to enter and remain in Australia.

Proposed subsection (7) provides additional clarification stating that subsection (6) does not apply to a person in respect of an offence if the Minister is satisfied that the act or omission that constituted that offence was not in any way (whether directly or indirectly) material to the person becoming a permanent resident.

This is the equivalent of paragraphs 21(1A) and (1B) of the old Act.

#### *Third-party fraud*

Proposed subsection (8) addresses the issue of revocation due to third party fraud. It states that, for the purposes of this Section, a person (the applicant) obtained the Minister’s approval to become an Australian citizen as a result of third-party fraud if and only if:

- at any time, another person was convicted of an offence against Section 134.1, 135.2, 135.4, 136.1, 137.1, 137.2, 139.1, 141.1, 142.1, 142.2, 144.1, 145.1, 145.2,



- 145.4, 145.5 or 149.1 of the Criminal Code that the other person committed at any time before the Minister gave the approval; and
- the act or omission that constituted the offence was connected with the Minister approving the applicant becoming an Australian citizen.

Subsection (8) is new.

*Charge proved but no conviction*

Proposed subsection (9) defines “conviction of an offence” for the purpose of this Section to be:

- in relation to a law of the Commonwealth—includes a reference to the making of an order under Section 19B of the *Crimes Act 1914* in relation to the offence; and
- in relation to a law of a State or Territory or a foreign country—includes a reference to the making of an order under the corresponding provision of a law of the State or Territory or foreign country in relation to the offence.

This is the equivalent of paragraphs 21(2) of the old Act.

**Clause 35 Service in armed forces of enemy country**

Clause 35 provides for automatic cessation of Australian citizenship as a result of a person’s service in the armed forces of another country.

This is the equivalent of Section 19 of the old Act.

Proposed subsection (1) provides that a person ceases to be an Australian citizen if the person:

- is a national or citizen of a foreign country; and
- serves in the armed forces of a country at war with Australia.

Proposed subsection (2) provides that the person ceases to be an Australian citizen at the time the person commences to serve.

A note is provided at the end of this Section which states that a child of the person may also cease to be an Australian citizen and reference is made to new Section 36 (which deals with the circumstances under which a child ceases to be an Australian citizen).

**Clause 36 Children of responsible parents who cease to be citizens**

Clause 36 provides for the children of responsible parents who cease to be citizens.

Proposed subsection (1) provides for the situation where a person ceases to be an Australian citizen at a particular time, (*termed the cessation time*) and the consequent effects upon their children.

Where cessation of Australian citizenship occurs under new Section 33 (renunciation), 34 (revocation) or 35 (service in armed forces of enemy country) and the person is a responsible parent of a child aged under 18, the Minister may revoke the child's Australian citizenship. If the Minister does so, the child ceases to be an Australian citizen at the cessation time of the revocation of the parent.

This revocation must be by written notice.

This subsection introduces a discretion regarding the child's Australian citizenship should a responsible parent cease to be an Australian citizen under Sections 33 and 35 of the Act. In the old Act cessation was by operation of law.

*Exception—another responsible parent*

Proposed subsection (2) provides for an exception to subsection (1). This will operate where, at the relevant time of revocation (*the cessation time*), there is a responsible parent who is an Australian citizen; and if there ceases to be such a responsible parent because of the death of a responsible parent—at any time after that death.

This subsection is the equivalent of paragraph 23(3) of the old Act.

*Exception—statelessness*

Proposed subsection (3) provides an exception to revocation in order to prevent statelessness of the child. The Minister must not revoke a child's Australian citizenship under subsection (1) if the Minister is satisfied that the child would then become a person who is not a national or citizen of any country.

This subsection is the equivalent of the statelessness exception in Section 23(2) of the old Act.

The power to revoke a person's Australian citizenship has not been delegated by the Minister and as a matter of practice is carried out in accordance with the principles of natural justice.

## **Division 4—Evidence of Australian citizenship**

Division 4 of the new Act outlines evidence of Australian citizenship.

Consistent with the approach to make clearer, better structured and easier to understand citizenship law, this Division simplifies numerous provisions under the old Act which deal with the process of obtaining evidence of Australian citizenship. As a consequence, Sections 36, 42, 43, 44, 44A, 45, 46, 46A, 47, 47A, 48 and 49 of Part V of the old Act have been streamlined).

### **Clause 37 Evidence of Australian citizenship**

Clause 37 outlines provisions addressing evidence of Australian citizenship.

Proposed subsection (1) provides that a person may make an application to the Minister for evidence of the person's Australian citizenship.

The application requirements are provided for in the note attached at the end of the subsection which refers the reader to new Section 46. That Section sets out further application requirements (which may include the payment of a fee).

#### *Notice*

Proposed subsection (2) indicates that the Minister may give the person a written notice, stating that the person is an Australian citizen at a particular time. This is a discretionary power.

Proposed subsection (3) provides that the notice must contain any other matter prescribed by the regulations.

#### *Identity*

Proposed subsection (4) prevents the Minister from giving the person such a notice unless the Minister is satisfied of the identity of the person. At the end of this subsection a note is made which directs the reader to new Division 5 which contains the identity provisions.

#### *Evidentiary status*

Proposed subsection (5) clarifies the status of such notice providing that it is prima facie evidence of the matters in the notice.

#### *Cancellation*

Subsection (6) provides that the Minister may cancel a notice given to a person under this Section. The notice of cancellation is to be given in writing.

There is no merits review in relation to the cancellation of such notice as cancellation of such notice has no effect on a person's citizenship status. Proposed Section 52 provides for the review of decisions affecting a person's status as an Australian citizen under the Act.

### **Clause 38 Surrender of evidentiary notice**

Clause 38 provides for the surrender of evidentiary notice.

#### *Request for surrender*

Proposed subsection (1) addresses the situation where a request is made for the surrender of an evidentiary notice. If the Minister makes a decision to revoke a person's Australian citizenship (under new Section 34) and the person holds a notice under new Section 37, (i.e. giving evidence of their Australian citizenship) the Minister may request the person to surrender the notice. This is equivalent to Section 48(1)(a) of the old Act.

Proposed subsection (2) states that if the Minister makes a decision to cancel such notice, a request may be made to the person to surrender the notice. The request is to be made by the Minister and the notice must be surrendered to the Minister. The purpose is to ensure that the person is no longer able to use this as evidence of Australian citizenship when this is no longer the case.

#### *Form of request*

Proposed subsection (3) specifies the form that the request must take. It provides that a request given to a person under subsection (1) or (2) must:

- be made in writing; and
- specify the day on or before which the person must surrender the notice (at least 28 days after the day of the request); and
- specify how the person is to surrender the notice to the Minister; and
- contain a statement that a failure to comply with the request is an offence.

#### *Offence*

Proposed subsection (4) provides that a person commits an offence if:

- the person is given a request that is in accordance with this Section; and
- the person fails to comply with the request.

Penalty for contravention of this subsection is 10 penalty units.

Section 48(3) of the old Act provided for offences for contravention of Section 48 (1)(a) of the old Act equivalent to subsection (1).

### **Clause 39     Altering evidentiary notice**

Clause 39 provides that an offence has been committed if a person alters a notice submitted under new Section 37.

This is consistent with Section 49 of the old Act. A technical amendment has been made to express the monetary penalties in penalty units rather than dollar amounts.

## **Division 5—Personal identifiers**

Division 5 of the new Act provides for personal identifiers.

This Division enhances the Government's ability to accurately identify, or authenticate the identity of persons seeking to become Australian citizens by application and persons seeking evidence of their Australian citizenship. It is consistent with the current requirements for proof of identity within the citizenship process.

At the same time, it provides protection for persons who are required to provide their personal identifiers. For example, it specifically prohibits a type of personal identifier that involves the use of an intimate forensic procedure.

Under this Act, personal identifiers are not required in order to make a valid application but are tied to the criteria to be satisfied before an application under the Act is approved.

Similar to the *Australian Passports Act 2005*, this Act provides that before an application for Australian citizenship is approved (descent, conferral or resumption) and before an application for evidence of citizenship is approved, the Minister must be satisfied of the person's identity. These circumstances will be outlined in the regulations.

The personal identifiers will be required to be provided by the person in order for the Minister to be satisfied. The types of personal identifiers required from citizens and non-citizens will be the same. These are outlined in new Section 50.

This Division contains detailed provisions regulating the access, disclosure and destruction of identifying information. This Act protects the privacy of non-citizens and citizens by placing limits on the access and disclosure of identifying information provided under its provisions. For example, identifying information will not be disclosed to a foreign country.

The proposed measures in this Act will contribute towards the whole-of-government approach, and international strategies, to combat identity fraud and misrepresentation by uniquely verifying identities of non-citizens applying for citizenship and ensuring those persons seeking evidence of their Australian citizenship are Australian citizens.

Identity and document fraud facilitates the international movement of terrorists and other persons of concern. Enhanced border security through strengthened proof of identity requirements is therefore essential to ensure the integrity of Australia's citizenship procedures and to enhance national security.

The drafting of the provisions, including the offence provisions, within this Division are consistent with provisions introduced into the Migration Act 1958 by the *Migration Legislation Amendment (Identification and Authentication) Act 2004*.

### **Subdivision A—Obtaining personal identifiers**

Subdivision A is about obtaining personal identifiers.

#### **Clause 40 Request for personal identifiers**

##### *Request for personal identifiers*

Clause 40 specifies that a request may be made for personal identifiers.

Proposed subsection (1) provides that in order to enable the Minister to be satisfied of the identity of a person in relation to an application concerning Australian citizenship, a request may be made of a person to provide one or more personal identifiers.

The request may be for one or more specified personal identifiers. The request must be in writing.

The persons who may request the applicant to provide personal identifiers are identified as follows:

- (a) the Minister;
- (b) a person authorised under subsection (3); or
- (c) a person who is included in a class of persons authorised under subsection (4).

##### *Form of request*

Proposed subsection (2) provides that such request must inform the person of the matters prescribed by the regulations.

The information that may be prescribed in the regulations may include such matters as:

- the purpose and reasons for provision of the identifier;
- the way in which the identifier may be provided;
- the ways in which the information that is collected can be used;
- the circumstances in which the information obtained may be disclosed to third parties; and
- the right to make a complaint to the Privacy Commissioner, or to make an application under the *Freedom of Information Act 1982* and how he or she may do so.

### *Authorisations*

Proposed subsection (3) provides that the Minister may authorise a person, for the purposes of paragraph (1)(b), who may issue the request for a personal identifier.

This authorisation must be in writing. It is intended that the Legislative Instruments regulations cover this authorisation.

Proposed subsection (4) provides that the Minister may authorise a class of persons, for the purposes of paragraph (1)(c), who may issue the request for a personal identifier.

This authorisation must be in writing. The proposed effect is to authorise an individual to request identifiers.

It is intended that the Legislative Instruments regulations cover this authorisation.

Proposed subsection (3) and (4) allow the Minister to authorise officers to request one or more types of personal identifiers under the Act. For example, one class of officers may be authorised to request personal identifiers in relation to measurements, photographs and signatures, whereas another class of officers may be authorised to request personal identifiers in relation to fingerprints.

### **Clause 41 Provision of personal identifiers**

Clause 41 addresses the issue of providing personal identifiers.

### *Regulations*

Proposed subsection (1) gives a regulation making power. It specifies that the regulations may prescribe the procedures and requirements that apply to the provision of a personal identifier by a person under this Division.

Regulations prescribing situations in which persons may provide personal identifiers and the types of personal identifiers required will largely mirror the current situations in

which proof of identity to determine status is required in the citizenship context. For example, photographs and signatures are required in relation to applications from non-citizens for citizenship by conferral and applications from citizens for evidence of Australian citizenship. Applicants are asked to provide these personal identifiers to an officer of the Department by attaching their photo (verified by an acceptable third party) signing the application and sending it to the Department.

This Section also provides a framework for changes to implement future proof of identity decisions i.e. the use of iris scans.

### **Subdivision B—Obligations relating to identifying information**

This subdivision outlines the obligations in relation to treatment of identifying information and consequent offence and penalty provisions where a breach arises.

#### **Clause 42 Accessing identifying information**

Clause 42 deals with the responsibilities in relation to accessing identifying information and offences for non authorised access.

Proposed subsection (1) provides that a person commits an offence if:

- (a) the person accesses identifying information; and
- (b) the person is not authorised to access the identifying information for the purpose for which they accessed it.

A penalty of imprisonment for 2 years, or 120 penalty units, or both is prescribed.

Proposed subsection (2) provides an exception to this Section by expressly stating that an offence is not committed in the case of permitted disclosure. It makes clear that this Section does not apply if the access is through a disclosure that is a permitted disclosure within the meaning of new Section 43.

A note is attached at the end of this subsection to make clear that a defendant bears an evidential burden in relation to the matter in new subsection (2). Reference is made to subsection 13.3(3) of the Criminal Code to assist the reader further.

#### *Authorisation*

Proposed subsection (3) addresses the issue of authorisation. It empowers the Minister to authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation. The authorisation must be in writing.



Proposed subsection (4) gives further information in relation to the authorisation. It indicates that the Minister must specify the purpose or purposes for which access is authorised. One or more of the following purposes must be identified:

- (a) one or more of the purposes set out in paragraph 10(2)(c);
- (b) disclosing identifying information in accordance with this Division;
- (c) administering or managing the storage of identifying information;
- (d) making identifying information available to the person to whom it relates;
- (e) modifying identifying information to enable it to be matched with other identifying information;
- (f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
- (g) making decisions under this Act or the regulations, or under the *Migration Act 1958* or the regulations made under that Act;
- (h) complying with Australian laws.

Proposed subsection (5) contains a further limitation in relation to the identified purposes above. It states that the Minister must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:

- (a) investigating an offence against an Australian law; or
- (b) prosecuting a person for such an offence;

if the identifying information in question relates to a personal identifier of a type prescribed by the regulations for the purposes of this Section.

### **Clause 43     Disclosing identifying information**

Clause 43 addresses the issue of disclosing identifying information.

Subsection (1) provides that a person commits an offence if:

- (a) the person's conduct causes disclosure of identifying information; and
- (b) the disclosure is not a permitted disclosure.

The penalty for committing this offence is imprisonment for 2 years, or 120 penalty units, or both.

Proposed subsection (2) defines 'a permitted disclosure' as a disclosure that:

- (a) is for the purpose of data-matching in order to identify, or authenticate the identity of, a person for the purposes of this Act; or
- (b) is for the purposes of this Act; or
- (c) is for the purpose of administering or managing the storage of identifying information; or
- (d) is for the purpose of making the identifying information in question available to the person to whom it relates; or

- (e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or
- (f) is for the purpose of a proceeding, before a court or tribunal, relating to the person to whom the identifying information in question relates; or
- (g) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to a request for the provision of a personal identifier; or
- (h) takes place with the written consent of the person to whom the identifying information in question relates.

Proposed subsection (3) provides that a disclosure is not a permitted disclosure if:

- (a) it is a disclosure of identifying information relating to a personal identifier of a type prescribed by the regulations for the purposes of this Section; and
- (b) it is for the purpose of:
  - i. investigating an offence against an Australian law; or
  - ii. prosecuting a person for such an offence.

Proposed subsection 3 provides that disclosure is not permitted for the purposes of investigating an offence or prosecuting an offence in particular circumstances. These situations arise where the identifying information in question relates to a personal identifier of a type prescribed by the regulations for the purposes of this Section.

This is outside the purposes for which a personal identifier is to be required.

#### **Clause 44     Unauthorised modification or impairment of identifying information**

Clause 44 addresses the issue of unauthorised modification or impairment of identifying information.

##### *Unauthorised modification*

Proposed subsection (1) provides that a person commits an offence if:

- (a) the person causes any unauthorised modification of identifying information; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

The penalty under this provision is imprisonment for 2 years, or 120 penalty units, or both.

##### *Unauthorised impairment*

Proposed subsection (2) provides that a person commits an offence if:

- (a) the person causes any unauthorised impairment of:
  - i. the reliability of identifying information; or

- ii. the security of the storage of identifying information; or
- iii. the operation of a system by which identifying information is stored; and
- (a) the person intends to cause the impairment; and
- (b) the person knows that the impairment is unauthorised.

The penalty under this provision is imprisonment for 2 years, or 120 penalty units, or both.

### *Interpretation*

Proposed subsection (3) clarifies what is regarded as unauthorised modification or impairment of identifying information. This arises where the person is not entitled to cause that modification or impairment. It specifies that

- (a) modification of identifying information; or
- (b) impairment of the reliability of identifying information; or
- (c) impairment of the security of the storage of identifying information; or
- (d) impairment of the operation of a system by which identifying information is stored;

by a person is unauthorised, if the person is not entitled to cause that modification or impairment.

Proposed subsection (4) provides for ‘unauthorised’ modification or impairment of identifying information. Any such act caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

The issue is essentially one of fact i.e. whether an appropriate authorisation is held by the person to do the act, rather than their purpose for so doing.

To make it clear, it is the *form* of the personal information and not the content of the information that may be necessary to modify for the purpose of being able to use the information (i.e. compare it with information already held by the department) or in the context of being able to store the information.

Proposed subsection (5) provides further interpretation on ‘causing’ unauthorised modification or impairment. It makes clear that a person causes any such unauthorised modification or impairment if the person’s conduct substantially contributes to it.

Proposed subsection (6) provides a further exception in relation to modification or impairment of identifying information. If a person causes any modification or impairment of a kind mentioned in subsection (3) and they do so under a warrant issued under an Australian law, they are entitled to cause that modification or impairment.

## **Clause 45     Destroying identifying information**

Clause 45 addresses offences related to the failure to destroy identifying information.

New subsection (1) provides that a person commits an offence if:

- (a) they are the responsible person for identifying information; and
- (b) they fail to destroy it as soon as practicable after they are no longer required under the *Archives Act 1983* to keep it.

The penalty under this provision is imprisonment for 2 years, or 120 penalty units, or both.

A note is provided at the end of this subsection referring the reader to Section 24 of the *Archives Act 1983* on the obligation to keep the identifying information.

Proposed subsection (2) provides that this Section does not apply if the identifying information is:

- (a) a personal identifier that is any of the following:
  - i. a measurement of a person's height and weight;
  - ii. a photograph or other image of a person's face and shoulders;
  - iii. a person's signature; or
- (b) identifying information derived from or relating to such a personal identifier.

A note is provided at the end of this subsection stating that a defendant bears an evidential burden in relation to the matters in subsection (2) and directs the reader to subsection 13.3(3) of the Criminal Code.

### *Definitions*

Proposed subsection (3) defines the responsible person for identifying information. This is the person who has day-to-day control of the database (in cases where the identifying information is stored on a database).

In other cases, it is the person who has day-to-day responsibility for the system under which the identifying information is stored.

Proposed subsection (4) gives clarification to the term 'destroyed' for the purposes of this Section. In this case, identifying information is destroyed if:

- (a) in the case of identifying information that is a personal identifier—it is physically destroyed; and

- (b) in any other case—any means of identifying it with the person to whom it relates is destroyed.

Proposed subsection (5) defines ‘database’ for the purposes of this Section. This is defined as a discrete body of information stored by electronic means, containing indexes of persons who have provided personal identifiers in accordance with a request under this Division; and their identifying information.

## **Part 3—Other matters**

Part 3 of the Act addresses other matters. It brings together remaining provisions that relate to the general administration of the Act, consistent with provisions in Part V of the old Act. These include application requirements, notification of decisions made under the Act, computerised decisions, the review of decisions, delegations and making of regulations.

### **Clause 46 Application requirements**

Clause 46 outlines the requirements for an application under the Act.

Proposed subsection (1) provides that an application under a provision of this Act must:

- (a) be on the relevant form approved by the Minister for the purposes of that provision; and
- (b) contain the information required by the form; and
- (c) be accompanied by any other information or documents prescribed by the regulations; and
- (d) be accompanied by the fee (if any) prescribed by the regulations.

#### *Approval of forms*

Proposed subsection (2) specifies that the Minister may approve one or more forms for the purposes of a provision of this Act relating to the making of an application. The approval by the Minister should be in writing,

A note is added to the end of this subsection to serve as an example. This indicates that there are two ways to become an Australian citizen by descent under Section 16 and specifies that the Minister may approve one form for the purposes of that Section or may approve two different forms.

#### *Remission, refund or waiver of fees*

Proposed subsection (3) states 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 (1)(d).

### **Clause 47 Notification of decisions**

Clause 47 provides for the notification of decisions under this Act.

Proposed subsection (1) provides that if the Minister makes a decision under the Act in relation to a person, the Minister must give the person notice of the decision.

Proposed subsection (2) provides for notification in the case of an application by a child. In this case, the Minister satisfies the requirement of notification in subsection (1) if the Minister gives a parent of the child notice of the decision.

*Reasons for adverse decision*

Proposed subsection (3) outlines the requirement to include reasons within the notification for that decision in the case where the decision is an adverse decision.

*Form of notice*

Proposed subsection (4) specifies the form of notice. It requires the Minister to give the notice in the manner prescribed by the regulations. This may include electronic form.

*Procedural defect does affect validity of decision*

Proposed subsection (5) provides for the case of procedural defect, making clear that a failure to comply with subsection (3) or (4) does not affect the validity of the decision.

**Clause 48 Computerised decision-making**

Clause 48 addresses the subject of computerised decision-making. This is the equivalent of Sections 36A and 36B of the old Act.

*Computer-based decisions*

Proposed subsection (1) provides for computer-based decisions. It specifies that the Minister may, arrange for the use of computer programs for any purposes for which the Minister may, or must carry out the following powers, under this Act or the regulations:

- (a) make a decision; or
- (b) exercise any power or comply with any obligation; or
- (c) do anything else related to making a decision or exercising a power or complying with an obligation.

The computer based programs should be under the Minister's control

Proposed subsection (2) provides that the Minister is taken to have:

- (a) made a decision; or
- (b) exercised a power or complied with an obligation; or
- (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation;

that was made, exercised, complied with, or done by the operation of a computer program under such an arrangement.

*Minister may substitute his or her own decision*

Proposed subsection (3) provides that the Minister may substitute his or her own decision (the substituted decision) for a decision (the initial decision) made by the operation of a computer program under such an arrangement. This is permitted if:

- (a) a notice under new Section 49 relates to the computer program and to the initial decision; and
- (b) the notice states that the computer program was not functioning correctly; and
- (c) the substituted decision could have been made under the same provision of this Act or the regulations as the initial decision; and
- (d) the substituted decision is more favourable to the applicant.

Proposed subsection (4) provides that the Minister does not have a duty to consider whether to exercise the power under new subsection (3) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

The purpose of this provision is to put beyond doubt that this is a discretionary provision which may be exercised by the Minister. The Minister cannot be required to exercise such power, irrespective of who makes such request.

Proposed subsection (5) provides for the operation of a substituted decision of the Minister (in accordance with subsection (3)). It states that a substituted decision has effect despite any law of the Commonwealth, or any rule of common law, to the contrary effect.

**Clause 49 Evidence of whether computer program is functioning correctly**

Clause 49 outlines details on the issue of notices. This is the equivalent of Section 46B of the old Act.

*Issue of notices*

Proposed subsection (1) provides that in citizenship proceedings, a notice signed by an authorised person stating whether or not a specified computer program was functioning correctly:

- (a) at a specified time or during a specified period; and
- (b) in relation to specified outcomes from the operation of that program under an arrangement made under subsection 48(1);

is prima facie evidence of the matters stated in the notice.



*Ministerial authorisations*

Proposed subsection (2) enables the Minister to authorise a person to issue notices under this Section. This must be done in writing.

Proposed subsection (3) provides that the Minister may authorise a class of persons to issue notices under this Section. This must be in writing.

*Definitions*

Proposed subsection (4) provides further definitions for the purposes of this Section as follows:

*Authorised person means:*

- (a) an APS employee in the Department; or
- (b) a person authorised under subsection (2) to issue notices under this Section;
- or
- (c) any person who is included in a class of persons authorised under subsection (3) to issue notices under this Section.

*citizenship proceedings means:*

- (a) proceedings in a court (including criminal proceedings) that relate to this Act (including an offence against this Act); or
- (b) proceedings that relate to an application for review under Section 52.

*functioning correctly:* a computer program is functioning correctly if:

- (a) outcomes from its operation comply with this Act and the regulations; and
- (b) those outcomes would be valid if they were made by the Minister otherwise than by the operation of the computer program.

**Clause 50 False statements or representations**

Clause 50 addresses offences related to the provision of false statements or representations.

This is the equivalent of Section 50 of the old Act. A technical amendment has been made to express the monetary penalties in penalty units rather than dollar amounts.

Proposed subsection (1) provides that a person commits an offence if:

- (a) they make, or cause or permit to be made, a representation or statement; and
- (b) they do so knowing that the representation or statement is false or misleading in a material particular; and
- (c) they do so for a purpose of or in relation to this Act.

The penalty under this subsection is imprisonment for 12 months.

Proposed subsection (2) provides that a person commits an offence if:

- (a) they conceal, or cause or permit to be concealed, a material circumstance; and
- (b) they do so for a purpose of or in relation to this Act.

The penalty under this subsection is imprisonment for 12 months.

### **Clause 51      Geographical jurisdiction for offences**

Clause 51 states that Section 15.4 of the Criminal Code (extended geographical jurisdiction – category D) applies to all offences against this Act.

Section 15.4 of the Criminal Code refers to Category D jurisdiction as follows:

#### *15.4 Extended geographical jurisdiction—category D*

If a law of the Commonwealth provides that this Section applies to a particular offence, the offence applies:

- (a) whether or not the conduct constituting the alleged offence occurs in Australia; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Australia.

This is the widest form of geographic application.

It is anticipated that offences within this Act may include situations where the result of the conduct may not occur in Australia. These would not be captured by the standard jurisdictional provisions. As it is express policy intention to cover these offences in this Act, Category D, extended jurisdiction provisions has been applied to ensure that all situations are covered.

The offences in the Act include the following:

- Subsection 38(4) makes it an offence for a person to fail to comply with a request by the Minister and surrender evidence of their Australian citizenship issued under Section 37.
- Subsection 39 makes it an offence for a person to alter or cause or permit to be altered to a notice given to a person under Section 37.
- Subsection 50 makes it an offence for a person to knowingly make, cause or permit to be made a representation or statement that is false or misleading in a particular matter for the purposes of or in relation to this Act.

- Division 5 offences (Sections 42, 43, 44 and 45) all relate to the access, disclosure or other misuse of personal identifiers. The protection of personal information is of paramount importance and this information must be protected. Its misuse must be prevented.

## **Clause 52      Review of decisions**

Clause 52 provides for the review of decisions. It is the equivalent of Section 52A of the old Act. All decisions which were reviewable under the old Act are reviewable under the new Act (with the exception of Section 47 (about amending certificates) in the old Act, however, there is no equivalent provision in this new Act).

Proposed subsection (1) provides that an application may be made to the Administrative Appeals Tribunal for review of the following decisions: /

- (a) a decision under Section 17 to refuse to approve a person becoming an Australian citizen;
- (b) a decision under Section 24 to refuse to approve a person becoming an Australian citizen;
- (c) a decision under Section 25 to cancel an approval given to a person under Section 24;
- (d) a decision under Section 30 to refuse to approve a person becoming an Australian citizen again;
- (e) a decision under Section 33 to refuse to approve a person renouncing his or her Australian citizenship, except a refusal because of the operation of subsection 33(5) (about war);
- (f) a decision under Section 34 or subsection 36(1) to revoke a person's Australian citizenship.

### *Citizenship by conferral decision*

Proposed subsection (2) states that a person (the applicant) cannot apply for review of a decision under new Section 24 to refuse to approve a person becoming an Australian citizen unless the applicant is a permanent resident.

Proposed subsection (3) provides that new subsection (2) does not apply if the decision was made in relation to a person aged under 18 at the time the person made the application to become an Australian citizen.

## **Clause 53      Delegation**

Clause 53 provides for the making of delegations. It specifies that the Minister may, by writing, delegate to any person all or any of the Minister's functions or powers under this Act or the regulations.

This provision is the equivalent of Section 37 of the old Act. All delegations under the old Act will operate in the same way under the new Act. For example: under the old Act the Minister did not delegate the power to revoke a person of their Australian citizenship and will not do so under this Act.

#### **Clause 54     Regulations**

Clause 54 provides for the making of regulations under this Act. It is the equivalent of Section 53 of the old Act. It provides that that 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.

#### **Schedule 1—Pledge of commitment as a citizen of the Commonwealth of Australia**

Schedule 1 provides for a pledge of commitment as a citizen of the Commonwealth of Australia. There are two forms as follows:

##### **1        Form of pledge no. 1**

From this time forward, under God,  
I pledge my loyalty to Australia and its people,  
whose democratic beliefs I share,  
whose rights and liberties I respect, and  
whose laws I will uphold and obey.

##### **2        Form of pledge no. 2**

From this time forward,  
I pledge my loyalty to Australia and its people,  
whose democratic beliefs I share,  
whose rights and liberties I respect, and  
whose laws I will uphold and obey.

Notice under this schedule refers readers to new Section 27 (about making of the pledges).

This schedule is the equivalent of schedule 2 of the old Act