



Australian Citizenship Legislation Amendment Act 2002

No. 5, 2002

An Act to amend the *Australian Citizenship Act 1948*, and for other purposes

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An Act to amend the *Australian Citizenship Act 1948*, and for other purposes

[Assented to 4 April 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Citizenship Legislation Amendment Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	4 April 2002
2. Schedule 1	The day on which this Act receives the Royal Assent	4 April 2002
3. Schedule 2	A single day to be fixed by Proclamation, subject to subsection (3)	1 July 2002 (<i>see Gazette 2002, No. GN18</i>)

Note: This table relates only 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.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

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- (3) If a provision covered by item 3 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeal of section 17 of the Australian Citizenship Act 1948

Australian Citizenship Act 1948

1 Section 17

Repeal the section.

2 Paragraph 23(1)(a)

Omit “17,”.

3 After subsection 23B(1)

Insert:

- (1A) To avoid doubt, the reference in subsection (1) to section 23 includes a reference to section 23 as in force at any time before the repeal of section 17 by the *Australian Citizenship Legislation Amendment Act 2002*.

4 Application of amendment—section 17 of the *Australian Citizenship Act 1948*

The repeal of section 17 of the *Australian Citizenship Act 1948* by this Schedule applies to an acquisition of nationality or citizenship of a foreign country, where the acquisition occurs after the commencement of this item.

Schedule 2—Other amendments

Part 1—Amendments

Australian Citizenship Act 1948

1 Subsection 5(1)

Insert:

Australian reserve force means:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve;

and includes:

- (d) any reserve force that is a predecessor (whether immediate or otherwise) of the Naval Reserve; and
- (e) any reserve force that is a predecessor (whether immediate or otherwise) of the Army Reserve; and
- (f) any reserve force that is a predecessor (whether immediate or otherwise) of the Air Force Reserve.

2 Paragraph 10B(1)(a)

Omit “18”, substitute “25”.

3 After subsection 10B(1)

Insert:

- (1A) If the relevant person referred to in subsection (1) has attained the age of 18 years, the name of the relevant person must not be registered for the purposes of this section unless the Minister is satisfied that the relevant person is of good character.

Note: The heading to section 10C is altered by omitting “**over 18 years old**” and substituting “**aged 18 or over on 15 January 1992**”.

4 After subsection 13(3)

Insert:

- (3A) Paragraphs (1)(d) and (e) do not apply in relation to:

- (a) a person who has completed full-time service as a member of an Australian reserve force for a period of, or for periods amounting in the aggregate to, not less than 6 months; or
- (b) a person who:
 - (i) has been discharged from service as a member of an Australian reserve force before completing full-time service as such a member for a period of, or for periods amounting in the aggregate to, 6 months; and
 - (ii) was so discharged as medically unfit for service or further service; and
 - (iii) was so discharged while undertaking full-time service as a member of the reserve force; and
 - (iv) became medically unfit for service because of the person's service as a member of the reserve force.

5 Subparagraph 13(4)(b)(iii)

Repeal the subparagraph.

6 After subsection 13(9A)

Insert:

- (9B) Subject to subsection (11), the Minister may, in the Minister's discretion, on application in accordance with the approved form, grant a certificate of Australian citizenship to a child if:
 - (a) the child was under 16 at the time of the application; and
 - (b) the application is set out in the same document as an application made under subsection (1) by a responsible parent of the child for the grant of a certificate of Australian citizenship to the responsible parent.
- (9C) The same form may be approved for the purposes of subsections (1) and (9B).
- (9D) An application under subsection (9B) may be set out in the same document as an application under subsection (1) if the applicant under subsection (1) is a responsible parent of the applicant under subsection (9B).
- (9E) Subject to subsection (11), the Minister may, in the Minister's discretion, on application in accordance with the approved form,

grant a certificate of Australian citizenship to a child if, at the time of the application:

- (a) the child was under 16; and
- (b) a responsible parent of the child is an Australian citizen because of the operation of section 15.

7 Subsection 13(10)

Repeal the subsection.

8 Subsection 13(11)

Omit “or (9)”, substitute “, (9), (9B) or (9E)”.

9 Subsection 13(11)

Omit “or include the name of a person in a certificate of Australian citizenship under subsection (10)”.

10 At the end of paragraphs 13(11)(a), (b) and (c)

Add “or”.

11 After paragraph 13(11)(c)

Insert:

- (ca) if the person is a serious repeat offender in relation to a sentence of imprisonment (within the meaning of subsection (11A))—during the period of 10 years after the end of any period during which the person has been confined in a prison in Australia because of the imposition on the person of that sentence; or

12 Paragraph 13(11)(d)

After “from serving”, insert “the whole or”.

13 Paragraph 13(11)(d)

Omit “the whole or a part of the remainder of that sentence”, substitute, “the whole of that sentence, or the whole or a part of the remainder of that sentence, as the case requires”.

14 At the end of paragraph 13(11)(d)

Add “or”.

15 Paragraph 13(11)(e)

After “from serving”, insert “the whole or”.

16 At the end of paragraph 13(11)(e)

Add “or”.

17 After subsection 13(11)

Insert:

(11A) For the purposes of paragraph (11)(ca), if:

- (a) a serious prison sentence was imposed on a person; and
- (b) the person was confined in a prison in Australia because of the imposition of that sentence; and
- (c) another serious prison sentence was imposed on the person in relation to an offence committed by the person at a time after the person ceased to be confined in prison because of the imposition of the sentence mentioned in paragraph (a);

the person is a *serious repeat offender* in relation to the other sentence. For this purpose, a *serious prison sentence* is:

- (d) a sentence of imprisonment for life; or
- (e) a sentence of imprisonment for a period of not less than 12 months.

18 Subsections 13(14) and (15)

Repeal the subsections.

19 Subsection 14A(2)

Omit “, or for periods that in total, exceed”, substitute “that exceeds, or for periods that in total exceed,”.

20 After section 14A

Insert:

**14B Revocation of grant of certificate of Australian citizenship
before conferral of citizenship**

(1) If:

- (a) a certificate of Australian citizenship has been granted to a person under this Division after the commencement of this section; and
- (b) the person has not become an Australian citizen under section 15; and
- (c) either:
 - (i) if it were assumed that the certificate had not been granted and the person were to make a fresh application for the certificate, the Minister would be required to make a decision under section 13 refusing the application; or
 - (ii) the person has failed to make a pledge of commitment within 12 months after the day on which the person was notified of the Minister's decision under section 13 to grant the certificate, and the person does not have an acceptable reason for the failure;

the Minister may, in the Minister's discretion, revoke the grant of the certificate.

- (2) For the purposes of the application of subparagraph (1)(c)(i) to a person to whom a certificate of Australian citizenship has been granted as a result of an application under subsection 13(1) (the **actual application**):
 - (a) paragraphs 13(1)(d) and (e) and subsection 13(4) apply as if the date of the furnishing of the fresh application were the same as the date of the furnishing of the actual application; and
 - (b) the remaining provisions of section 13 apply as if the fresh application had been made on the day before the day on which the Minister makes a decision under subsection (1) of this section whether to revoke the grant of the certificate.
- (3) For the purposes of the application of subparagraph (1)(c)(i) to a person to whom a certificate of Australian citizenship has been granted as a result of an application under subsection 13(9) (the **actual application**):
 - (a) paragraph 13(9)(b) applies as if the fresh application were made on the same day as the actual application; and
 - (b) the remaining provisions of section 13 apply as if the fresh application had been made on the day before the day on

which the Minister makes a decision under subsection (1) of this section whether to revoke the grant of the certificate.

- (4) For the purposes of subparagraph (1)(c)(ii), a reason is an *acceptable reason* if, and only if, the reason is declared by the regulations to be an acceptable reason for the purposes of this section.
- (5) If the Minister revokes the grant of a certificate, the Minister must give the person concerned a written notice of the revocation. The notice may be served personally, by post or by an electronic communication.
- (6) If the Minister revokes the grant of a certificate (whether or not notice has been given under subsection (5)), the person concerned is taken not to be a person to whom a certificate of Australian citizenship has been granted under this Division.

14C Deferral of conferral of Australian citizenship

- (1) If:
 - (a) a certificate of Australian citizenship has been granted to a person under this Division after the commencement of this section; and
 - (b) the person has not become an Australian citizen under section 15; and
 - (c) it appears to the Minister that:
 - (i) a visa held by the person may be cancelled under a provision of the *Migration Act 1958* (whether or not the person has been given any notice to that effect); or
 - (ii) the person has been charged, or may be charged, with an offence under a law of the Commonwealth, a State or a Territory;the Minister may, in the Minister's discretion, defer the conferral of Australian citizenship on the person until the end of a period determined by the Minister.
- (2) The Minister must not defer the conferral of Australian citizenship on a person for a period that exceeds, or for periods that in total exceed, 12 months.

(3) If:

- (a) the Minister decides to defer the conferral of Australian citizenship on a person; and
- (b) the person is present in Australia;

the Minister must give the person a written notice setting out the decision. The notice may be served personally, by post or by an electronic communication.

(4) If the Minister decides to defer the conferral of Australian citizenship on a person until the end of a particular period, the person must not make a pledge of commitment before the end of that period.

21 Subsection 15(1)

After “Division”, insert “(other than subsection 13(9B) or (9E))”.

22 Subsection 15(4)

Repeal the subsection.

23 At the end of section 15

Add:

- (6) A person to whom a certificate of Australian citizenship has been granted under subsection 13(9B) is an Australian citizen on and after:
 - (a) the day on which the responsible parent mentioned in that subsection becomes an Australian citizen under section 15; or
 - (b) if the certificate is granted after the responsible parent becomes an Australian citizen under section 15—the day on which the certificate is granted.
- (7) A person to whom a certificate of Australian citizenship has been granted under subsection 13(9E) is an Australian citizen on and after the day on which the certificate is granted.

24 At the end of subsection 21(1)

Add:

Note: If a person is convicted of a “people smuggling” offence against section 232A, 233 or 233A of the *Migration Act 1958*, and is sentenced to imprisonment for a period of not less than 12 months, the

person may be liable to deprivation of citizenship—see subparagraph (1)(a)(ii) of this section.

25 At the end of paragraph 23AA(1)(e)

Add “and”.

26 After paragraph 23AA(1)(e)

Insert:

- (f) that the person is of good character;

27 After section 23AA

Insert:

23AB Persons may resume citizenship lost under section 18

(1) If:

- (a) a person has ceased to be an Australian citizen because of section 18 (which deals with renunciation of citizenship); and
- (b) the person has not attained the age of 25 years; and
- (c) the person gives the Minister a written statement that complies with subsection (2); and
- (d) the person gives the Minister, together with the statement, a declaration in the prescribed form that the person wishes to resume Australian citizenship;

the Minister may, in the Minister’s discretion, if the Minister is satisfied:

- (e) as to the truth of the matters contained in the statement; and
- (f) in a case where the person has claimed that, if the person had not renounced his or her Australian citizenship, the person would have suffered hardship or detriment of an economic nature—that the person’s circumstances were such as to compel the person to renounce his or her Australian citizenship; and
- (g) that the person is of good character;

register the declaration in the prescribed manner and, on the registration of the declaration, the person making the declaration again becomes an Australian citizen.

- (2) A statement made by a person under paragraph (1)(c) complies with this subsection if the statement is to the effect that:
- (a) the person renounced his or her Australian citizenship in order to retain the nationality or citizenship of a foreign country; and
 - (b) if the person had not renounced his or her Australian citizenship, the person would have suffered significant hardship or detriment;
- and the statement also states that the person:
- (c) has been present in Australia (otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, as an unlawful non-citizen, or in contravention of a law of a prescribed Territory) for a period of, or for periods amounting in the aggregate to, not less than 2 years; and
 - (d) intends that:
 - (i) if the person again becomes an Australian citizen and is residing in Australia at the time when the person so becomes an Australian citizen, the person will continue to reside in Australia after so becoming an Australian citizen; or
 - (ii) if the person again becomes an Australian citizen and is not residing in Australia at the time when the person so becomes an Australian citizen, the person will begin to reside in Australia after so becoming an Australian citizen and before the end of the period of 3 years beginning on the day on which the statement is made; and
 - (e) has maintained a close and continuing association with Australia.
- (3) The Minister may, in the Minister's discretion, on application in accordance with the approved form, include in a declaration registered under subsection (1), either at the time of registering the declaration or by later amending the declaration, the name of a child:
- (a) who has not attained the age of 18 years; and
 - (b) of whom the person who made the declaration is a responsible parent; and

(c) who ceased to be an Australian citizen by reason of the person who made the declaration ceasing to be an Australian citizen;

and, on the inclusion of the name of the child in the declaration, the child again becomes an Australian citizen.

28 Subsection 23B(2)

Repeal the subsection, substitute:

(2) If:

(a) a person makes a declaration under subsection (1); and

(b) the Minister is satisfied that the person is of good character;

the person to whom the declaration is given must register the declaration in the prescribed manner and, on the registration of the declaration, the person making the declaration again becomes an Australian citizen.

29 Subparagraph 23D(3)(a)(i)

Omit “18”, substitute “25”.

30 Subsection 52A(1)

After “review of” insert “the following decisions”.

31 Before paragraph 52A(1)(aaa)

Insert:

(aaaa) decisions of the Minister under subsection 10B(1A) that the Minister is not satisfied that a person is of good character;

32 After paragraph 52A(1)(a)

Insert:

(ab) decisions of the Minister under section 14B revoking the grant of a certificate;

33 Paragraph 52A(1)(e)

Omit “(2)”, substitute “under subsection 23AA(2)”.

34 Paragraph 52A(1)(e)

Omit “and”.

35 After paragraph 52A(1)(e)

Insert:

- (ea) decisions of the Minister under subsection 23AB(1) refusing to register a declaration or under subsection 23AB(3) refusing to include the name of a child in a declaration;

Part 2—Application of amendments etc.

36 Application of amendments—sections 10B and 23D of the *Australian Citizenship Act 1948*

The amendments of sections 10B and 23D of the *Australian Citizenship Act 1948* made by this Schedule apply in relation to the registration of the name of a person if the application for registration was made after the commencement of this item.

37 Application of amendment—subsection 13(3A) of the *Australian Citizenship Act 1948*

Subsection 13(3A) of the *Australian Citizenship Act 1948* applies in relation to the grant of a certificate of Australian citizenship if the application for the grant was made after the commencement of this item.

38 Application of amendments—inclusion of name of child in a certificate of Australian citizenship

- (1) This item applies if, before the commencement of this item, a decision was made to include the name of a child in a certificate of Australian citizenship under subsection 13(10) of the *Australian Citizenship Act 1948*.
- (2) Despite the amendments made by items 7, 9, 18 and 22 of this Schedule, the *Australian Citizenship Act 1948* continues to apply, in relation to the inclusion of the name of the child in the certificate, as if those amendments had not been made.

39 Transitional—inclusion of name of child in a certificate of Australian citizenship

- (1) For the purposes of this item, an application for the inclusion of the name of a child in a certificate of Australian citizenship is a *pending application* if:
 - (a) the application was made under subsection 13(10) of the *Australian Citizenship Act 1948* before the commencement of this item; and

- (b) the application was not withdrawn before that commencement; and
- (c) no decision on the application was made before that commencement.

(2) If:

- (a) the certificate had not been granted before the commencement of this item; and
- (b) the applicant for the certificate is a responsible parent of the child;

the *Australian Citizenship Act 1948* has effect, in relation to the pending application, as if:

- (c) the pending application were an application under subsection 13(9B) of that Act for the grant of a certificate of Australian citizenship to the child; and
- (d) the pending application had been set out in the same document as the application for the certificate; and
- (e) the responsible parent were the responsible parent mentioned in subsection 13(9B) of that Act.

(3) If:

- (a) the certificate had already been granted before the commencement of this item; and
- (b) the grantee of the certificate is a responsible parent of the child;

the *Australian Citizenship Act 1948* has effect, in relation to the pending application, as if the pending application were an application under subsection 13(9E) of that Act for the grant of a certificate of Australian citizenship to the child.

40 Application of amendment—paragraph 13(11)(ca) of the *Australian Citizenship Act 1948*

Paragraph 13(11)(ca) of the *Australian Citizenship Act 1948* applies in relation to the grant of a certificate of Australian citizenship if the application for the grant was made after the commencement of this item.

41 Application of amendments—paragraphs 13(11)(d) and (e) of the *Australian Citizenship Act 1948*

The amendments of paragraphs 13(11)(d) and (e) of the *Australian Citizenship Act 1948* made by this Schedule apply in relation to the grant of a certificate of Australian citizenship if the application for the grant was made after the commencement of this item.

42 Application of amendments—section 23AA of the *Australian Citizenship Act 1948*

The amendments of section 23AA of the *Australian Citizenship Act 1948* made by this Schedule apply in relation to the registration of a declaration if the declaration was given to the Minister after the commencement of this item.

43 Application of amendment—section 23B of the *Australian Citizenship Act 1948*

The amendment of section 23B of the *Australian Citizenship Act 1948* made by this Schedule applies in relation to the registration of a declaration if the declaration was given to the Secretary, or to a person authorised by the Secretary, after the commencement of this item.

44 Transitional—subsection 23B(2) of the *Australian Citizenship Act 1948*

- (1) This item applies to regulations if:
 - (a) the regulations were made for the purposes of subsection 23B(2) of the *Australian Citizenship Act 1948*; and
 - (b) the regulations were in force immediately before the commencement of this item.
 - (2) The regulations have effect, after the commencement of this item, as if they had been made for the purposes of subsection 23B(2) of the *Australian Citizenship Act 1948* as amended by this Schedule.
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[*Minister's second reading speech made in—
House of Representatives on 13 February 2002
Senate on 13 March 2002*]

(14/02)
