

2002

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Australian Citizenship Legislation  
Amendment Bill 2002**

**No.      , 2002**

*(Immigration and Multicultural and Indigenous Affairs)*

**A Bill for an Act to amend the *Australian  
Citizenship Act 1948*, and for other purposes**



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1     **A Bill for an Act to amend the *Australian***  
2     ***Citizenship Act 1948, and for other purposes***

3     The Parliament of Australia enacts:

4     **1 Short title**

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

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, on the day or at the  
10                    time specified in column 2 of the table.  
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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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	
2. Schedule 1	The day on which this Act receives the Royal Assent	
3. Schedule 2	A single day to be fixed by Proclamation, subject to subsection (3)	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by the Parliament and assented to. It will not be expanded to  
3 deal with provisions inserted in this Act after assent.

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

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

### 11 3 Schedule(s)

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13 repealed as set out in the applicable items in the Schedule  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

1  
2 **Schedule 1—Repeal of section 17 of the**  
3 **Australian Citizenship Act 1948**  
4

5 *Australian Citizenship Act 1948*

6 **1 Section 17**

7 Repeal the section.

8 **2 Paragraph 23(1)(a)**

9 Omit “17,”.

10 **3 After subsection 23B(1)**

11 Insert:

12 (1A) To avoid doubt, the reference in subsection (1) to section 23  
13 includes a reference to section 23 as in force at any time before the  
14 repeal of section 17 by the *Australian Citizenship Legislation*  
15 *Amendment Act 2002*.

16 **4 Application of amendment—section 17 of the *Australian***  
17 ***Citizenship Act 1948***

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

1

## Schedule 2—Other amendments

2

### Part 1—Amendments

3

#### *Australian Citizenship Act 1948*

4

##### **1 Subsection 5(1)**

5

6 Insert:

6

7 *Australian reserve force* means:

7

8 (a) the Naval Reserve; or

8

9 (b) the Army Reserve; or

9

10 (c) the Air Force Reserve;

10

11 and includes:

11

12 (d) any reserve force that is a predecessor (whether immediate or  
13 otherwise) of the Naval Reserve; and

12

13

14 (e) any reserve force that is a predecessor (whether immediate or  
15 otherwise) of the Army Reserve; and

14

15

16 (f) any reserve force that is a predecessor (whether immediate or  
17 otherwise) of the Air Force Reserve.

16

17

##### **2 Paragraph 10B(1)(a)**

18

19 Omit “18”, substitute “25”.

19

##### **3 After subsection 10B(1)**

20

21 Insert:

21

22 (1A) If the relevant person referred to in subsection (1) has attained the  
23 age of 18 years, the name of the relevant person must not be  
24 registered for the purposes of this section unless the Minister is  
25 satisfied that the relevant person is of good character.

22

23

24

25

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

26

27

##### **4 After subsection 13(3)**

28

29 Insert:

29

30 (3A) Paragraphs (1)(d) and (e) do not apply in relation to:

30

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

15 **5 Subparagraph 13(4)(b)(iii)**

16 Repeal the subparagraph.

17 **6 After subsection 13(9A)**

18 Insert:

- 19 (9B) Subject to subsection (11), the Minister may, in the Minister's  
20 discretion, on application in accordance with the approved form,  
21 grant a certificate of Australian citizenship to a child if:  
22 (a) the child was under 16 at the time of the application; and  
23 (b) the application is set out in the same document as an  
24 application made under subsection (1) by a responsible  
25 parent of the child for the grant of a certificate of Australian  
26 citizenship to the responsible parent.
- 27 (9C) The same form may be approved for the purposes of  
28 subsections (1) and (9B).
- 29 (9D) An application under subsection (9B) may be set out in the same  
30 document as an application under subsection (1) if the applicant  
31 under subsection (1) is a responsible parent of the applicant under  
32 subsection (9B).
- 33 (9E) Subject to subsection (11), the Minister may, in the Minister's  
34 discretion, on application in accordance with the approved form,

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

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

6 **7 Subsection 13(10)**

7 Repeal the subsection.

8 **8 Subsection 13(11)**

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

10 **9 Subsection 13(11)**

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

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

14 Add “or”.

15 **11 After paragraph 13(11)(c)**

16 Insert:

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

23 **12 Paragraph 13(11)(d)**

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

25 **13 Paragraph 13(11)(d)**

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

29 **14 At the end of paragraph 13(11)(d)**

30 Add “or”.

1 **15 Paragraph 13(11)(e)**

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

3 **16 At the end of paragraph 13(11)(e)**

4 Add “or”.

5 **17 After subsection 13(11)**

6 Insert:

7 (11A) For the purposes of paragraph (11)(ca), if:

8 (a) a serious prison sentence was imposed on a person; and

9 (b) the person was confined in a prison in Australia because of  
10 the imposition of that sentence; and

11 (c) another serious prison sentence was imposed on the person in  
12 relation to an offence committed by the person at a time after  
13 the person ceased to be confined in prison because of the  
14 imposition of the sentence mentioned in paragraph (a);

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

17 (d) a sentence of imprisonment for life; or

18 (e) a sentence of imprisonment for a period of not less than 12  
19 months.

20 **18 Subsections 13(14) and (15)**

21 Repeal the subsections.

22 **19 Subsection 14A(2)**

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

25 **20 After section 14A**

26 Insert:

27 **14B Revocation of grant of certificate of Australian citizenship**  
28 **before conferral of citizenship**

29 (1) If:

**Schedule 2** Other amendments  
**Part 1** Amendments

---

- 1 (a) a certificate of Australian citizenship has been granted to a  
2 person under this Division after the commencement of this  
3 section; and  
4 (b) the person has not become an Australian citizen under  
5 section 15; and  
6 (c) either:  
7 (i) if it were assumed that the certificate had not been  
8 granted and the person were to make a fresh application  
9 for the certificate, the Minister would be required to  
10 make a decision under section 13 refusing the  
11 application; or  
12 (ii) the person has failed to make a pledge of commitment  
13 within 12 months after the day on which the person was  
14 notified of the Minister's decision under section 13 to  
15 grant the certificate, and the person does not have an  
16 acceptable reason for the failure;  
17 the Minister may, in the Minister's discretion, revoke the grant of  
18 the certificate.
- 19 (2) For the purposes of the application of subparagraph (1)(c)(i) to a  
20 person to whom a certificate of Australian citizenship has been  
21 granted as a result of an application under subsection 13(1) (the  
22 **actual application**):  
23 (a) paragraphs 13(1)(d) and (e) and subsection 13(4) apply as if  
24 the date of the furnishing of the fresh application were the  
25 same as the date of the furnishing of the actual application;  
26 and  
27 (b) the remaining provisions of section 13 apply as if the fresh  
28 application had been made on the day before the day on  
29 which the Minister makes a decision under subsection (1) of  
30 this section whether to revoke the grant of the certificate.
- 31 (3) For the purposes of the application of subparagraph (1)(c)(i) to a  
32 person to whom a certificate of Australian citizenship has been  
33 granted as a result of an application under subsection 13(9) (the  
34 **actual application**):  
35 (a) paragraph 13(9)(b) applies as if the fresh application were  
36 made on the same day as the actual application; and  
37 (b) the remaining provisions of section 13 apply as if the fresh  
38 application had been made on the day before the day on

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

3                   (4) For the purposes of subparagraph (1)(c)(ii), a reason is an  
4                   ***acceptable reason*** if, and only if, the reason is declared by the  
5                   regulations to be an acceptable reason for the purposes of this  
6                   section.

7                   (5) If the Minister revokes the grant of a certificate, the Minister must  
8                   give the person concerned a written notice of the revocation. The  
9                   notice may be served personally, by post or by an electronic  
10                  communication.

11                  (6) If the Minister revokes the grant of a certificate (whether or not  
12                  notice has been given under subsection (5)), the person concerned  
13                  is taken not to be a person to whom a certificate of Australian  
14                  citizenship has been granted under this Division.

#### 15   **14C Deferral of conferral of Australian citizenship**

16                  (1) If:

17                         (a) a certificate of Australian citizenship has been granted to a  
18                         person under this Division after the commencement of this  
19                         section; and

20                         (b) the person has not become an Australian citizen under  
21                         section 15; and

22                         (c) it appears to the Minister that:

23                                 (i) a visa held by the person may be cancelled under a  
24                                 provision of the *Migration Act 1958* (whether or not the  
25                                 person has been given any notice to that effect); or

26                                 (ii) the person has been charged, or may be charged, with an  
27                                 offence under a law of the Commonwealth, a State or a  
28                                 Territory;

29                                 the Minister may, in the Minister's discretion, defer the conferral  
30                                 of Australian citizenship on the person until the end of a period  
31                                 determined by the Minister.

32                  (2) The Minister must not defer the conferral of Australian citizenship  
33                  on a person for a period that exceeds, or for periods that in total  
34                  exceed, 12 months.

- 1 (3) If:  
2 (a) the Minister decides to defer the conferral of Australian  
3 citizenship on a person; and  
4 (b) the person is present in Australia;  
5 the Minister must give the person a written notice setting out the  
6 decision. The notice may be served personally, by post or by an  
7 electronic communication.
- 8 (4) If the Minister decides to defer the conferral of Australian  
9 citizenship on a person until the end of a particular period, the  
10 person must not make a pledge of commitment before the end of  
11 that period.

12 **21 Subsection 15(1)**

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

14 **22 Subsection 15(4)**

15 Repeal the subsection.

16 **23 At the end of section 15**

17 Add:

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

29 **24 At the end of subsection 21(1)**

30 Add:

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

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

3 **25 At the end of paragraph 23AA(1)(e)**

4 Add “and”.

5 **26 After paragraph 23AA(1)(e)**

6 Insert:

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

8 **27 After section 23AA**

9 Insert:

10 **23AB Persons may resume citizenship lost under section 18**

11 (1) If:

12 (a) a person has ceased to be an Australian citizen because of  
13 section 18 (which deals with renunciation of citizenship); and

14 (b) the person has not attained the age of 25 years; and

15 (c) the person gives the Minister a written statement that  
16 complies with subsection (2); and

17 (d) the person gives the Minister, together with the statement, a  
18 declaration in the prescribed form that the person wishes to  
19 resume Australian citizenship;

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

22 (e) as to the truth of the matters contained in the statement; and

23 (f) in a case where the person has claimed that, if the person had  
24 not renounced his or her Australian citizenship, the person  
25 would have suffered hardship or detriment of an economic  
26 nature—that the person’s circumstances were such as to  
27 compel the person to renounce his or her Australian  
28 citizenship; and

29 (g) that the person is of good character;

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

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

1 (c) who ceased to be an Australian citizen by reason of the  
2 person who made the declaration ceasing to be an Australian  
3 citizen;  
4 and, on the inclusion of the name of the child in the declaration, the  
5 child again becomes an Australian citizen.

6 **28 Subsection 23B(2)**

7 Repeal the subsection, substitute:

8 (2) If:

- 9 (a) a person makes a declaration under subsection (1); and  
10 (b) the Minister is satisfied that the person is of good character;  
11 the person to whom the declaration is given must register the  
12 declaration in the prescribed manner and, on the registration of the  
13 declaration, the person making the declaration again becomes an  
14 Australian citizen.

15 **29 Subparagraph 23D(3)(a)(i)**

16 Omit “18”, substitute “25”.

17 **30 Subsection 52A(1)**

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

19 **31 Before paragraph 52A(1)(aaa)**

20 Insert:

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

23 **32 After paragraph 52A(1)(a)**

24 Insert:

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

27 **33 Paragraph 52A(1)(e)**

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

29 **34 Paragraph 52A(1)(e)**

30 Omit “and”.

1 **35 After paragraph 52A(1)(e)**

2           Insert:

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

1

2 **Part 2—Application of amendments etc.**

3 **36 Application of amendments—sections 10B and 23D of the**  
4 ***Australian Citizenship Act 1948***

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

9 **37 Application of amendment—subsection 13(3A) of the**  
10 ***Australian Citizenship Act 1948***

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

15 **38 Application of amendments—inclusion of name of child in**  
16 **a certificate of Australian citizenship**

- 17 (1) This item applies if, before the commencement of this item, a decision  
18 was made to include the name of a child in a certificate of Australian  
19 citizenship under subsection 13(10) of the *Australian Citizenship Act*  
20 *1948*.
- 21 (2) Despite the amendments made by items 7, 9, 18 and 22 of this  
22 Schedule, the *Australian Citizenship Act 1948* continues to apply, in  
23 relation to the inclusion of the name of the child in the certificate, as if  
24 those amendments had not been made.

25 **39 Transitional—inclusion of name of child in a certificate of**  
26 **Australian citizenship**

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

**Schedule 2** Other amendments

**Part 2** Application of amendments etc.

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

5 (2) If:

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

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

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

19 (3) If:

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

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

28 **40 Application of amendment—paragraph 13(11)(ca) of the**  
29 ***Australian Citizenship Act 1948***

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

34 **41 Application of amendments—paragraphs 13(11)(d) and (e)**  
35 **of the *Australian Citizenship Act 1948***

---

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

5           **42 Application of amendments—section 23AA of the**  
6           ***Australian Citizenship Act 1948***

7           The amendments of section 23AA of the *Australian Citizenship Act*  
8           *1948* made by this Schedule apply in relation to the registration of a  
9           declaration if the declaration was given to the Minister after the  
10          commencement of this item.

11          **43 Application of amendment—section 23B of the *Australian***  
12          ***Citizenship Act 1948***

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

17          **44 Transitional—subsection 23B(2) of the *Australian***  
18          ***Citizenship Act 1948***

- 19          (1)       This item applies to regulations if:
- 20                   (a) the regulations were made for the purposes of subsection  
21                   23B(2) of the *Australian Citizenship Act 1948*; and  
22                   (b) the regulations were in force immediately before the  
23                   commencement of this item.
- 24          (2)       The regulations have effect, after the commencement of this item, as if  
25                   they had been made for the purposes of subsection 23B(2) of the  
26                   *Australian Citizenship Act 1948* as amended by this Schedule.  
27