

**2002**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT BILL 2002**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the  
Minister for Citizenship and Multicultural Affairs,  
The Hon. Gary Hardgrave MP)

## **AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT BILL 2002**

### **OUTLINE**

1. The Australian Citizenship Legislation Amendment Bill 2002 (“the Bill”) makes a number of amendments to the *Australian Citizenship Act 1948* (“the Citizenship Act”) as part of the Government’s response to the Australian Citizenship Council’s report “Australian Citizenship for a New Century”.

2. The Australian Citizenship Council reported in February 2000. The Government’s response, “Australian Citizenship...a Common Bond”, was released in May 2001.

3. The Government’s response is designed to encourage all Australians to value their citizenship and to update and strengthen aspects of Australian citizenship law. No changes are being made to the basic criteria for the grant of Australian citizenship.

4. The key amendments in the Bill will:

- repeal section 17 of the Citizenship Act so that adult Australian citizens in future do not lose their Australian citizenship on acquisition of another citizenship;
- extend the descent and resumption provisions to give young people more opportunities to acquire Australian citizenship;
- provide for children who acquire Australian citizenship with their responsible parent, or at a later date, to be given their own citizenship certificates; and
- strengthen aspects of the integrity of the Australian citizenship process.

5. The other amendments in the Bill include the insertion of a specific reference to “people smuggling” offences in the existing provision in the Citizenship Act which provides for the deprivation of Australian citizenship in certain circumstances.

6. This amendment does not change the existing policy settings for the deprivation of Australian citizenship under the Citizenship Act. Rather it merely highlights that a person who has committed a “people smuggling” offence before the grant of a certificate and has been sentenced to imprisonment for at least 12 months may be deprived of Australian citizenship.

### **FINANCIAL IMPACT STATEMENT**

7. These amendments will have minimal financial impact.

## AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT BILL 2002

### NOTES ON INDIVIDUAL CLAUSES

#### Clause 1 Short Title

1. The short title by which this Act may be cited is the *Australian Citizenship Legislation Amendment Act 2002*.

#### Clause 2 Commencement

2. Subclause 2(1) contains a table setting out the commencement information for the Act. The subclause also provides that each provision of the 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.

3. The effect of items 1 and 2 of the table is that the following provisions commence on the day on which the Act receives the Royal Assent:

- Sections 1, 2 and 3 of the Act; and
- Schedule 1 of the Act – which contains amendments relating to the repeal of section 17 of the Citizenship Act.

4. The effect of item 3 of the table is that Schedule 2 to the Act commences on a single day to be fixed by Proclamation.

5. The note in subclause 2(1) makes it clear that the table only relates to the provisions of the Act as originally passed by the Parliament and assented to. The table will not be expanded to deal with provisions inserted into the Act after it receives the Royal Assent.

6. Subclause 2(2) provides that column 3 of the table in subclause 2(1) is for additional information that may be included in any published version of the Act but which is not part of the Act.

7. Subclause 2(3) provides that if a provision covered by item 3 of the table does not commence within 6 months of this Act receiving the Royal Assent, then it will commence on the first day after the end of that period.

**Clause 3      Schedule(s)**

8.      This clause provides that each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. In addition, 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*****Item 1           Section 17**

9.       This item repeals section 17 of the Citizenship Act. The effect of that section has been that an Australian citizen aged 18 years or over who does “any act or thing” in order to acquire the nationality or citizenship of another country, ceases to be an Australian citizen when that other citizenship is acquired.

10.      The repeal of section 17 ensures that Australian citizens aged 18 years or over will no longer lose their Australian citizenship if they acquire the nationality or citizenship of another country and as a consequence nor will their children lose Australian citizenship under section 23.

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

11.      This item is a technical amendment consequential to the repeal of section 17 by item 1 of this Schedule.

12.      Section 23 deals with the citizenship status of a child under the age of 18 years where his or her responsible parent has lost (under sections 17 or 19) or renounced (under section 18) Australian citizenship. This item omits a reference to section 17 contained in paragraph 23(1)(a) which is redundant given the repeal of that section by item 1 of this Schedule.

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

13.      This item inserts new subsection 23B(1A) into the Citizenship Act as a consequence of the repeal of section 17 by item 1 of this Schedule.

14.      In certain circumstances, section 23B allows a person who ceased to be an Australian citizen under section 23 to resume Australian citizenship. A person (in particular, a child under the age of 18 years) ceases to be an Australian citizen under section 23 if his or her responsible parent lost (under sections 17 or 19), renounced (under section 18) or is deprived (under section 21) of Australian citizenship and, if applicable, his or her other parent is not an Australian citizen.

15. New subsection 23B(1A) clarifies that a person who meets the requirements of subsection 23B(1) may still resume Australian citizenship where he or she lost that citizenship because his or her responsible parent lost Australian citizenship under section 17. This will be the case despite the repeal of section 17 by item 1 of this Schedule.

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

16. This item ensures that the repeal of section 17 of the Citizenship Act will benefit adult Australian citizens who acquire the nationality or citizenship of another country after this Act receives the Royal Assent irrespective of the timing of the “act or thing” which led to that acquisition.

17. However, it will not benefit those adult Australian citizens who lost their Australian citizenship under section 17 by acquiring another nationality or citizenship before this Act receives the Royal Assent.

## SCHEDULE 2 – Other amendments

### Overview

18. This Schedule makes the following amendments to the Citizenship Act:

- Extending the age limit from 18 years to 25 years for a person, born outside Australia and whose parent was an Australian citizen at the time of their birth, to register as an “Australian citizen by descent” – items 2, 29, 31 and 36.
- Providing young ex-Australian citizens with an adequate period after reaching their majority to resume their Australian citizenship where it was renounced in order to retain the nationality or citizenship of another country – items 27 and 35.
- Providing for children under 16 years who acquire Australian citizenship with their responsible parent (or at a later date) to be given their own citizenship certificates – items 6, 7, 8, 9, 18, 21, 22, 23, 38 and 39.
- Strengthening aspects of the integrity of the Australian citizenship process by:
  - requiring the Minister to be satisfied that certain persons are of good character – items 3, 26, 28, 42 and 43;
  - imposing a 10 year ban on the grant of a certificate of Australian citizenship to a person who is a “serious repeat offender” in relation to a sentence of imprisonment – items 11, 17 and 40;
  - introducing a new power for the Minister to revoke, in certain specified circumstances, the grant of a certificate of Australian citizenship before conferral of citizenship – item 20 - and providing review provisions – item 32;
  - introducing a new power for the Minister to defer conferral of Australian citizenship in certain circumstances – item 20; and
  - clarifying that the prohibition on the grant of a certificate of Australian citizenship in paragraphs 13(11)(d) and 13(11)(e) applies to a person who has in certain specified circumstances been released from serving the *whole* of a sentence of imprisonment – items 12, 13, 15 and 41.
- Exempting a person who has completed at least 6 months full-time service as a member of an Australian reserve force from the residence requirements in paragraphs 13(1)(d) and 13(1)(e) for grant of Australian citizenship – items 1, 4 and 37.
- Inserting a note that highlights that a person who has committed a “people smuggling” offence before the grant of a certificate of Australian citizenship may, in certain circumstances, be subject to the deprivation of Australian citizenship under subsection 21(1) of the Citizenship Act – item 24.

- Omitting a transitional provision that is no longer used, correcting drafting errors, providing transitional arrangements for regulations made for the purposes of the Citizenship Act and amending the section heading for section 10C – items 5, 10, 14, 16, 19, 25, 30, 33, 34 and 44 and the note at the end of item 3.

## **Part 1 - Amendments**

### ***Australian Citizenship Act 1948***

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

19. This item inserts a definition of “Australian reserve force” into subsection 5(1) of the Citizenship Act. The definition is based on the definition of the same term in section 4 of the *Defence Act 1903*. The term is used in new subsection 13(3A) which is inserted into the Citizenship Act by item 4 of this Schedule.

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

20. This item amends paragraph 10B(1)(a) to extend the age limit from 18 years to 25 years for a person, born outside Australia and whose parent was an Australian citizen at the time of their birth, to register as an “Australian citizen by descent”.

21. The amendment will ensure that young people have an adequate period of time to decide for themselves whether or not they wish to register for Australian citizenship by descent.

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

22. This item inserts new subsection 10B(1A) into the Citizenship Act.

23. Section 10B sets out the requirements for obtaining Australian citizenship by descent. New subsection 10B(1A) provides that a person aged 18 years or over, who seeks to be registered as an Australian citizen by descent under section 10B, must also satisfy the Minister that he or she is of good character.

24. The insertion of new subsection 10B(1A) brings section 10B in line with section 10C for people aged 18 years or over. Section 10C currently allows a limited group of persons aged 18 years or over to register as Australian citizens by descent and requires that they be of good character.

25. The note at the end of this item amends the heading of section 10C of the Citizenship Act as a consequence of the amendment made to section 10B by item 2 of this Schedule. The new heading for section 10C makes it clear that the provision provides for citizenship by descent for a person aged 18 years or over on 15 January 1992.

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

26. This item inserts new subsection 13(3A) into the Citizenship Act.

27. Subsection 13(1) sets out the requirements that must be met by a person before the Minister may grant a certificate of the Australian citizenship to the person. Paragraphs 13(1)(d) and 13(1)(e) contain the residence requirements that an applicant for Australian citizenship needs to satisfy.

28. New subsection 13(3A) provides an exemption from the residence requirements in paragraphs 13(1)(d) and 13(1)(e) for a full-time member of an Australian reserve force. It applies to a person who has completed at least 6 months full-time service as a member of an Australian reserve force. This exemption is in addition to the existing residence concession in subsection 13(3) for persons serving in the permanent forces of the Commonwealth.

29. Although Australian citizenship is now a requirement for service in the reserve forces, this has not always been the case. There may be some people who have spent substantial periods of time in the reserve forces who have not yet acquired Australian citizenship and such people will benefit from new subsection 13(3A).

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

30. This item repeals subparagraph 13(4)(b)(iii) of the Citizenship Act as it is a transitional provision that is no longer used.

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

31. This item inserts new subsections 13(9B) to 13(9E) into the Citizenship Act.

32. Currently, under subsection 13(10) of the Citizenship Act, the Minister may include the name of a child in a certificate of Australian citizenship, if at the time of their responsible parent's citizenship application the child was under 16 years. A child under 16 years may also be included in the responsible parent's certificate at a later date.

33. However, it is preferable that in future children under 16 years be given their own individual certificate of Australian citizenship.

34. Subsection 13(10) (repealed by item 7 of this Schedule) is replaced with new subsections 13(9B) to 13(9E). The objective of these new provisions is to ensure that children under the age of 16 years who acquire Australian citizenship with their responsible parent (or at a later date) can be provided with individual certificates of Australian Citizenship.

35. New subsection 13(9B) applies where an application for an individual certificate of Australian citizenship by a child under 16 years is made at the same time as his or her responsible parent's application for citizenship. It allows the Minister to provide an individual certificate of Australian Citizenship to a child if:

- the child was under 16 years at the time his or her responsible parent applied for Australian citizenship under section 13; and
- the application for an individual certificate is set out in the same document as his or her responsible parent's citizenship application.

36. New subsections 13(9C) and 13(9D) make it clear that the same form may be approved, and used by applicants, for the purposes of an application under both subsections 13(1) and 13(9B).

37. New subsection 13(9E) applies where an application for an individual certificate of Australian citizenship for a child under 16 years is made by his or her responsible parent after the responsible parent has lodged their application for citizenship. It allows the Minister to provide an individual certificate of Australian Citizenship to a child if:

- the child was under 16 years at the time his or her responsible parent applied to include them in their certificate of Australian citizenship; and
- his or her responsible parent is an Australian citizen because of section 15.

**Item 7            Subsection 13(10)**

38. This item repeals subsection 13(10) of the Citizenship Act as a consequence of the insertion of new subsections 13(9B) to 13(9E) into the Act by item 6 of this Schedule.

**Item 8            Subsection 13(11)**

**Item 9            Subsection 13(11)**

39. These items make technical amendments to subsection 13(11) of the Citizenship Act as a consequence of the repeal of subsection 13(10) by item 7 and the insertion of new subsections 13(9B) and 13(9E) by item 6 of this Schedule.

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

40. This item makes a technical amendment to correct a drafting error in subsection 13(11) of the Citizenship Act.

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

41. This item inserts new paragraph 13(11)(ca) into the Citizenship Act.

42. Subsection 13(11) prohibits the Minister from granting a certificate of Australian citizenship to a person where certain circumstances exist. Most of the prohibitions relate to the character of the citizenship applicant.

43. New paragraph 13(11)(ca) provides a new prohibition on the grant of a certificate of Australian citizenship where the relevant person has been confined in an Australian prison. It imposes a 10 year ban on the grant of a certificate of Australian citizenship to a person who is a “serious repeat offender” in relation to a sentence of imprisonment.

44. A definition of “serious repeat offender” for the purposes of new paragraph 13(11)(ca) is inserted into the Citizenship Act by item 17 of this Schedule.

45. The 10 year ban on citizenship runs from the end of any period during which the “serious repeat offender” has been confined in an Australian prison because of the imposition of a sentence of imprisonment.

46. The rationale for new paragraph 13(11)(ca) is that those who continue to offend, after having served a sentence of imprisonment of at least 12 months, should be barred from Australian citizenship for a much longer period than that provided for by existing paragraph 13(11)(c).

47. Under existing paragraph 13(11)(c) of the Citizenship Act, a person sentenced to imprisonment for at least 12 months is subject to a 2 year ban on the grant of a certificate of Australian citizenship after release from prison subject to paragraph 13(11)(d).

48. However, if the person is sentenced to another term of imprisonment of at least 12 months at some time after ceasing to be confined in prison for a preceding sentence of imprisonment of at least 12 months then new paragraph 13(11)(ca) will apply. As a result, this “serious repeat offender” will be subject to a 10 year ban on the grant of a certificate of Australian citizenship after release from prison subject to paragraph 13(11)(d).

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

49. These items amend paragraph 13(11)(d) of the Citizenship Act in order to correct an anomaly.

50. Currently, paragraph 13(11)(d) prohibits the grant of a certificate of Australian citizenship for a certain specified period to a person who has been released from serving a *part* of a sentence of imprisonment on parole or upon licence to be at large. The prohibition does not apply to a person who has been released on parole or upon licence to be at large from serving the *whole* of a sentence of imprisonment.

51. The amendments make it clear that the prohibition in paragraph 13(11)(d) applies to a person who has been released from serving a *part*, or the *whole*, of a sentence of imprisonment on parole or upon licence to be at large.

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

52. This item makes a technical amendment to correct a drafting error in subsection 13(11) of the Citizenship Act.

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

53. This item amends paragraph 13(11)(e) of the Citizenship Act in order to correct an anomaly.

54. Currently, paragraph 13(11)(e) prohibits the grant of a certificate of Australian citizenship for a certain specified period to a person who has been released by a court from serving a *part* of a sentence of imprisonment. The prohibition does not apply to a person who has been released by a court from serving the *whole* of a sentence of imprisonment.

55. The amendments make it clear that the prohibition in paragraph 13(11)(e) applies to a person who is released by a court from serving a *part*, or the *whole*, of a sentence of imprisonment.

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

56. This item makes a technical amendment to correct a drafting error in subsection 13(11) of the Citizenship Act.

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

57. This item inserts new subsection 13(11A) into the Citizenship Act.

58. New subsection 13(11A) provides a definition of “serious repeat offender” for the purposes of new paragraph 13(11)(ca) which is inserted into the Citizenship Act by item 11 of this Schedule.

59. New paragraph 13(11)(ca) provides a new prohibition on the grant of a certificate of Australian citizenship where the relevant person has been confined in an Australian prison. It imposes a 10 year ban on the grant of a certificate of Australian citizenship to a person who is “serious repeat offender” in relation to a sentence of imprisonment.

60. Under new subsection 13(11A), a person is a “serious repeat offender” in relation to a sentence of imprisonment if:

- the person was confined in an Australian prison because of the imposition of a “serious prison sentence” on the person; and
- another “serious prison sentence” was imposed on the person for an offence committed by the person at a time after he or she ceased to be confined in prison for the imposition of the sentence referred to above.

61. “Serious prison sentence” is also defined in new subsection 13(11A). It is a sentence of imprisonment for life or a sentence of imprisonment for a period of not less than 12 months.

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

62. This item repeals subsections 13(14) and 13(15) of the Citizenship Act as a consequence of the repeal of subsection 13(10) by item 7 and the insertion of new subsections 13(9B) and 13(9E) by item 6 of this Schedule.

**Item 19        Subsection 14A(2)**

63. This item makes a technical amendment to subsection 14A(2) of the Citizenship Act to correct a drafting error.

**Item 20        After section 14A**

64. This item inserts new sections 14B and 14C into the Citizenship Act.

65. The acquisition of Australian citizenship is a two-stage process. The first stage is approval for the grant of a certificate of Australian citizenship and the second stage is conferral of Australian citizenship at a ceremony. At the second stage, applicants are required by section 15 of the Citizenship Act to make a pledge of commitment and, upon making the pledge, they become an Australian citizen.

66. Currently, the Citizenship Act does not impose a time limit within which a person who has been approved for the grant of a certificate of Australian citizenship must make the pledge of commitment.

67. Sometimes there can be a considerable gap between the time the person is approved for the grant of a certificate of Australian citizenship and the time of actual conferral. During this period it might be discovered that the person had never actually met, or no longer meets, the requirements for the grant of a certificate of Australian citizenship and therefore should not be entitled to proceed to conferral.

68. In other cases, the person may not choose to make the pledge for a very long period after approval for the grant of a certificate of Australian citizenship, or even not to proceed to make the pledge at all, leaving an undesirable “open ended” long term right to Australian citizenship.

69. New sections 14B and 14C provide the Minister with two new discretionary powers to address these situations.

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

70. New section 14B provides the Minister with a discretionary power to revoke the grant of a certificate of Australian citizenship where:

- that certificate has been granted to a person after the commencement of new section 14B; and
- the person has *not* become an Australian citizen under section 15.

71. There are two broad circumstances in which the grant of a certificate of Australian citizenship may be revoked by the Minister. These are set out in new subparagraphs 14B(1)(c)(i) and 14B(1)(c)(ii).

72. The new power in subparagraph 14B(1)(c)(i) deals with the circumstances described in paragraph 63 above. It requires an assumption to be made that the certificate had not been granted and that the person has made a fresh application for the certificate. If in relation to this fresh application the Minister would be required to make a decision under section 13 of the Citizenship Act refusing the application then the Minister may revoke the certificate that has been granted to the person.

73. New subsection 14B(2) sets out two requirements for the purposes of the application of subparagraph 14B(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) of the Citizenship Act.

74. New paragraph 14B(2)(a) provides that the residence requirements and concessions in paragraphs 13(1)(d) and 13(1)(e) and subsection 13(4) of the Citizenship Act apply as if the fresh citizenship application were made on the same date as the original application. This ensures that the residence requirements are correctly applied by the Minister when deciding whether or not to revoke the grant of a certificate of Australian citizenship.

75. Under new paragraph 14B(2)(b), the remaining provisions for the grant of Australian citizenship under section 13 of the Citizenship Act apply as if the fresh application had been made on the day before the day on which the Minister makes a decision under subsection 14B(1) whether to revoke the grant of the certificate. This ensures that the current circumstances of the citizenship applicant are considered in deciding whether the person meets the requirements for the grant of a certificate of Australian citizenship under section 13.

76. New subsection 14B(3) sets out two requirements for the purposes of the application of subparagraph 14B(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) of the Citizenship Act.

77. New paragraph 14B(3)(a) provides that paragraph 13(9)(b) applies as if the fresh citizenship application were made on the same date as the original application. This recognises that paragraph 13(9)(b) currently applies to a citizenship applicant who applied for Australian citizenship before attaining the age of 18 years.

78. Under new paragraph 14B(3)(b), the remaining provisions for the grant of Australian citizenship under section 13 of the Citizenship Act apply as if the fresh application had been made on the day before the day on which the Minister makes a decision under subsection 14B(1) whether to revoke the grant of the certificate. This ensures that the current circumstances of the citizenship applicant are considered in deciding whether the person meets the requirements for the grant of a certificate of Australian citizenship under section 13.

79. The new power in subparagraph 14B(1)(c)(ii) deals with the circumstances described in paragraph 64 above. The Minister may revoke the grant of a certificate of Australian citizenship under subparagraph 14B(1)(c)(ii) if the person:

- has failed to make a pledge of commitment within 12 months after being notified of the Minister's decision under section 13 of the Citizenship Act to grant the certificate; and
- does not have an acceptable reason for this failure.

80. Under subsection 14B(4), a reason is an acceptable reason if, and only if, the reason is declared by the *Australian Citizenship Regulations* to be an acceptable reason for the purposes of subparagraph 14B(1)(c)(ii). For example, an acceptable reason may include the situation where a person must travel overseas for an extended period to care for a critically ill immediate relative.

81. Under new subsection 14B(5), if the Minister decides to revoke the grant of a certificate of Australian citizenship, he or she must give the person a written notice of that revocation. This notice may be served personally, by post or by an electronic communication.

82. New subsection 14B(6) provides that if the Minister revokes the grant of a certificate of Australian citizenship, the person concerned is taken not to be a person to whom a certificate has been granted under Division 2 of Part 3 of the Citizenship Act. This is the case whether or not a written notice of the revocation has been given to the person under new subsection 14B(5).

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

83. New section 14C provides the Minister with a discretionary power to defer the conferral of Australian citizenship on a person for a certain specified period where:

- a certificate of Australian citizenship has been granted to a person after the commencement of new section 14C; and
- the person has *not* become an Australian citizen under section 15.

84. This new provision is modelled, so far as is relevant, on existing section 14A which allows for the deferral of the consideration of an application for Australian citizenship made under section 13 of the Citizenship Act before it has been approved.

85. There are two circumstances in which the conferral of Australian citizenship may be deferred by the Minister. These are set out in new subparagraphs 14C(1)(c)(i) and 14C(1)(c)(ii).

86. Under subparagraph 14C(1)(c)(i), the conferral of Australian citizenship may be deferred if it appears to the Minister that a visa held by the person may be cancelled under a provision of the *Migration Act 1958*. This applies whether or not the person has been given any notice to that effect.

87. Under new subparagraph 14C(1)(c)(ii), the conferral of Australian citizenship may be deferred if it appears to the Minister that the person has been charged, or may be charged, with an offence under a law of the Commonwealth, a State or a Territory.

88. The period for which the conferral of Australian citizenship may be deferred by the Minister is set by new subsection 14C(2). This provision provides that conferral must not be deferred for a period that exceeds, or for periods that in total exceed, 12 months.

89. Under new subsection 14C(3), if the Minister decides to defer the conferral of Australian citizenship and that person is in Australia, the Minister must give that person a written notice setting out the decision. This notice may be served personally, by post or by an electronic communication.

90. New subsection 14C(4) provides that if the Minister decides to defer the conferral of Australian citizenship on a person for a particular period then that person must not make a pledge of commitment under section 15 of the Citizenship Act before the end of that period. This means that if a person purported to make the pledge, such making of the pledge would be invalid and would not result in the person becoming an Australian citizen.

**Item 21      Subsection 15(1)**

91. This item makes a technical amendment to subsection 15(1) of the Citizenship Act as a consequence of the insertion of new subsections 13(9B) and (9E) into the Act by item 6 of this Schedule.

**Item 22      Subsection 15(4)**

92. This item repeals subsection 15(4) as a consequence of the repeal of subsection 13(10) by item 7 and the insertion of new subsections 13(9B) and (9E) by item 6 of this Schedule.

93. New subsections 15(6) and 15(7), which are inserted into the Act by item 23 of this Schedule, replace subsection 15(4).

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

94. This item inserts new subsections 15(6) and 15(7) into the Citizenship Act to replace subsection 15(4) which is repealed by item 22 of this Schedule.

95. The new subsections clarify when a person to whom a certificate of Australian citizenship has been granted under new subsection 13(9B) or 13(9E), becomes an Australian citizen.

96. New subsection 15(6) applies to a person to whom a certificate has been granted under new subsection 13(9B) which is inserted into the Citizenship Act by item 6 of this Schedule. This person becomes an Australian citizen on and after:

- the day on which his or her responsible parent, who is mentioned in new subsection 13(9B), becomes an Australian citizen under section 15 of the Citizenship Act; or
- if the certificate is granted after his or her responsible parent becomes an Australian citizen under section 15 – the day on which the certificate is granted.

97. This ensures that a person granted a certificate under new subsection 13(9B) does not become an Australian citizen prior to his or her responsible parent.

98. New subsection 15(7) applies to a person to whom a certificate has been granted under new subsection 13(9E) which is inserted into the Citizenship Act by item 6 of this Schedule. This person becomes an Australian citizen on and after the day on which the certificate is granted.

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

99. This item inserts a note after subsection 21(1) of the Citizenship Act.

100. The note highlights that a person who is convicted of a “people smuggling” offence against section 232A, 233 or 233A of the *Migration Act 1958* and sentenced to imprisonment for at least 12 months may be deprived of Australian citizenship under section 21 of the Citizenship Act where the other requirements of subparagraph 21(1)(a)(ii) are met.

101. This amendment does *not* change or in any way affect the existing power for the deprivation of Australian citizenship under section 21 of the Citizenship Act.

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

102. This item makes a technical amendment to subsection 23AA of the Citizenship Act which is consequential to the amendment made to the same provision by item 26 of this Schedule.

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

103. This item inserts new paragraph 23AA(1)(f) into the Citizenship Act.

104. Section 23AA allows a person to resume Australian citizenship that was lost in certain circumstances. Currently, a person seeking to resume Australian citizenship pursuant to this provision is *not* required to satisfy any requirements as to his or her good character.

105. In order to maintain the integrity of the Australian citizenship process, new paragraph 23AA(1)(f) will require a person seeking to resume Australian citizenship under section 23AA to satisfy the Minister that he or she is a person of good character.

**Item 27            After section 23AA**

106. This item inserts new section 23AB into the Citizenship Act.

107. Under section 18 of the Citizenship Act, a person may renounce his or her Australian citizenship subject to certain requirements.

108. There are circumstances where young Australians choose to renounce Australian citizenship to retain another nationality or citizenship without fully appreciating the long-term implications for their contact with Australia.

109. Currently, the Act does not allow such persons to resume Australian citizenship. However, the insertion of new subsection 23AB into the Citizenship Act will change this. It will provide young ex-Australian citizens with an adequate period after reaching their majority to resume their Australian citizenship where it was renounced in order to retain the nationality or citizenship of another country.

110. New subsection 23AB(1) applies where:

- a person under the age of 25 years has ceased to be an Australian citizen under section 18 of the Act; and
- he or she gives the Minister a written statement that complies with new subsection 23AB(2) and a declaration in the prescribed form that the person wishes to resume Australian citizenship.

111. The Minister may register the declaration in the prescribed manner if satisfied that:

- the matters contained in the statement are true;
- where the person has claimed that he or she would have suffered hardship or detriment of an economic nature if he or she had not renounced Australian citizenship – that the person’s circumstances were such as to compel him or her to renounce their Australian citizenship; and
- that the person is of good character.

112. If the Minister registers the declaration then the person making the declaration will again become an Australian citizen on registration.

113. New subsection 23AB(2) sets out the information that a written statement provided to the Minister under new paragraph 23AB(1)(c) must contain. The required information mirrors (as far as relevant) that which is currently required by section 23AA of the Citizenship Act which allows a person to resume Australian citizenship lost under section 17.

114. The written statement must contain the following information:

- the person renounced his or her Australian citizenship in order to retain the citizenship of another country and that if he or she did not do this then the person would have suffered significant hardship or detriment;
- the person has been lawfully in Australia for a period of, or for periods amounting to, at least 2 years;
- a statement that:
  - if the person is already residing in Australia – that the person intends to continue to reside in Australia after he or she again becomes an Australian citizen; or
  - if the person is not residing in Australia – that the person intends to begin to reside in Australia after again becoming an Australia citizen and within 3 years of making the statement; and
- the person has maintained a close and continuing association with Australia.

115. New subsection 23AB(3) ensures that a child who is under 18 years of age and who ceased to be an Australian citizen because his or her responsible parent renounced their Australian citizenship under section 18 can also resume Australian citizenship where that parent has made a declaration under new paragraph 23AB(1)(d).

116. The Minister is provided with a discretion to include the name of such a child in a declaration registered under new subsection 23AB(1). This may be done either at the time of registering the declaration or by later amending the declaration. The child again becomes an Australian citizen on the inclusion of his or her name in the declaration.

#### **Item 28            Subsection 23B(2)**

117. This item repeals and substitutes subsection 23B(2) of the Citizenship Act.

118. Section 23B allows a person to resume Australian citizenship lost under section 23 of the Citizenship Act. Currently, a person seeking to resume Australian citizenship pursuant to this provision is *not* required to satisfy any requirements as to his or her good character.

119. In order to maintain the integrity of the Australian citizenship process, new paragraph 23B(2)(b) will require a person seeking to resume Australian citizenship under section 23B to satisfy the Minister that he or she is a person of good character.

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

120. This item makes an amendment to subparagraph 23D(3)(a)(i) of the Citizenship Act as a consequence of the amendment made to paragraph 10B(1)(a) by item 2 of this Schedule.

**Item 30      Subsection 52A(1)**

121. This item makes a technical amendment to subsection 52A(1) of the Citizenship Act.

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

122. This item inserts new paragraph 52A(1)(aaaa) into the Citizenship Act.

123. This new paragraph provides that a decision of the Minister under new subsection 10B(1A) that he or she is not satisfied that the person is of good character is reviewable by the Administrative Appeals Tribunal (“the AAT”).

124. New subsection 10B(1A) is inserted into the Citizenship Act by item 3 of this Schedule.

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

125. This item inserts new paragraph 52A(1)(ab) into the Citizenship Act.

126. This new paragraph provides that a decision of the Minister under new section 14B revoking the grant of a certificate of Australian citizenship is reviewable by the AAT. New subsection 14B is inserted into the Citizenship Act by item 20 of this Schedule.

127. Decisions made under new section 14C, which is also inserted into the Act by item 20 of this Schedule, are not reviewable by the AAT. New subsection 14C allows the Minister to defer the conferral of Australian citizenship in certain circumstances.

128. The absence of review rights for decisions made under new section 14C is consistent with the existing provision in relation to decisions made under section 14A to defer the consideration of an application for Australian citizenship.

**Item 33 Paragraph 52A(1)(e)****Item 34 Paragraph 52A(1)(e)**

129. These items make technical amendments to correct drafting errors in paragraph 52A(1)(e) of the Citizenship Act.

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

130. This item inserts new paragraph 52A(1)(ea) into the Citizenship Act.

131. This new paragraph provides that the following decisions of the Minister are reviewable by the AAT:

- a decision under new subsection 23AB(1) refusing to register a declaration; and
- a decision under new subsection 23AB(3) refusing to include the name of a child in a declaration.

132. New subsection 23AB is inserted into the Citizenship Act by item 27 of this Schedule.

**Part 2 – Application of amendments etc.****Item 36 Application of amendments – sections 10B and 23D of the *Australian Citizenship Act 1948***

133. This item deals with the application of the amendments made by items 2, 3 and 29 of this Schedule to sections 10B and 23D of the Citizenship Act.

134. The amendments to section 10B relate to the requirements for Australian citizenship by descent. The amendments to section 23D are technical and consequential to the amendments made to section 10B.

135. These amendments apply to an application for the registration of the name of a person under section 10B that was made after the commencement of this item.

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

136. This item deals with the application of new subsection 13(3A), which is inserted into the Citizenship Act by item 4 of this Schedule.

137. New subsection 13(3A) provides an exemption from the residence requirements in paragraphs 13(1)(d) and 13(1)(e) for a person who has completed full-time service as a member of an Australian reserve force for a period totalling 6 months.

138. It applies in relation to an application for the grant of a certificate of Australian citizenship that was made after the commencement of this item.

**Item 38            Application of amendments – inclusion of name of child in a certificate of Australian citizenship**

139. This item deals with the application of the amendments made by items 7, 9, 18 and 22 of this Schedule. These amendments are consequential to the repeal of subsection 13(10) by item 7 and the insertion of new subsections 13(9B) and 13(9E) into the Citizenship Act by item 6 of this Schedule.

140. Subitem 38(1) applies to a decision that has been made *before* the commencement of the amendments in this Schedule to include the name of a child in a certificate of Australian citizenship under subsection 13(10) of the Citizenship Act.

141. This is the case where the child was included in their responsible parent's application for Australian citizenship or where their responsible parent has already been granted a certificate of Australian citizenship and later applies to include their child.

142. Subitem 38(2) provides that despite the amendments made by items 7, 9, 18 and 22, the Citizenship Act continues to apply, in relation to the inclusion of the name of the child in a certificate, as if those amendments had not been made.

143. For decisions made *before* the commencement of this item, a child under 16 years will be included in the responsible parent's certificate of Australian citizenship as provided for by subsection 13(10) prior to its repeal by item 7 of this Schedule.

**Item 39            Transitional – inclusion of name of child in a certificate of Australian citizenship**

144. This item allows for certain children to be given their own individual certificate of Australian citizenship, notwithstanding that their responsible parent had originally applied for the inclusion of the child's name in their certificate under subsection 13(10) of the Citizenship Act before the commencement of this item.

145. This is achieved by defining certain applications under subsection 13(10) as "pending applications" and providing for such applications to be treated as if they were applications under new subsection 13(9B) or 13(9E) after the commencement of this item.

146. Subitem 39(1) defines a “pending application” as:

- an application made under subsection 13(10), and not withdrawn, before the commencement of this item; and
- an application which has not been decided before the commencement of this item.

147. Subitem 39(2) applies to a “pending application” if a certificate of Australian citizenship has *not* been granted and a child is included in their responsible parent’s application for Australian citizenship.

148. In this circumstance, the child will be granted his or her own individual certificate as if the “pending application” were an application under new subsection 13(9B), which is inserted into the Citizenship Act by item 6 of this Schedule.

149. Subitem 39(3) applies to a “pending application” if a certificate of Australian citizenship has already been granted to the responsible parent before the commencement of the amendments in this Schedule and an application is lodged before the commencement of this item to include the child in the responsible parent’s certificate of Australian citizenship.

150. In this circumstance, the child will be granted his or her own individual certificate as if the “pending application” were an application under new subsection 13(9E), which is also inserted into the Citizenship Act by item 6 of this Schedule.

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

151. This item deals with the application of new paragraph 13(11)(ca) which is inserted into the Citizenship Act by item 11 of this Schedule.

152. This new provision imposes a 10 year ban on the grant of a certificate of Australian citizenship to a person who is a “serious repeat offender” (as defined by new subsection 13(11A)) in relation to a sentence of imprisonment.

153. New paragraph 13(11)(ca) applies to an application for the grant of a certificate of Australian citizenship that was made after the commencement of this item.

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

154. This item deals with the application of the amendments made by items 12, 13, 14, 15 and 16 of this Schedule to paragraphs 13(11)(d) and 13(11)(e) of the Citizenship Act.

155. The amendments make it clear that the prohibition in paragraphs 13(11)(d) and 13(11)(e) applies to a person who has in certain specified circumstances been released from serving a part, or the *whole*, of a sentence of imprisonment. They also make technical amendments to correct drafting errors in subsection 13(11).

156. These amendments to paragraphs 13(11)(d) and 13(11)(e) apply to an application for the grant of a certificate of Australian citizenship that was made after the commencement of this item.

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

157. This item deals with the application of the amendments made by items 25 and 26 of this Schedule to section 23AA of the Citizenship Act.

158. The amendments insert new paragraph 23AA(1)(f) into the Citizenship Act which requires a person seeking to resume Australian citizenship under section 23AA to satisfy the Minister that he or she is a person of good character. They also make a consequential amendment to section 23AA.

159. These amendments to section 23AA apply to the registration of a declaration given to the Minister under paragraph 23AA(1)(c) after the commencement of this item.

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

160. This item deals with the application of the amendment made by item 28 of this Schedule to section 23B of the Citizenship Act.

161. The amendment inserts new paragraph 23B(2)(b) into the Citizenship Act which requires a person seeking to resume Australian citizenship under section 23B to satisfy the Minister that he or she is a person of good character.

162. This amendment to section 23B applies to the registration of a declaration given under subsection 23B(1) to the Secretary, or to a person authorised by the Secretary, after the commencement of this item.

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

163. This item applies to regulations made for the purposes of subsection 23B(2) of the Citizenship Act that were in force immediately before the commencement of this item.

164. Subitem 44(2) sets out the transitional arrangements for these regulations after the commencement of this item. It ensures that the regulations have effect as if they had been made for the purposes of subsection 23B(2) of the Citizenship Act as amended by item 28 of this Schedule.

165. The effect of subitem 44(2) is that the regulations that currently exist for the purposes of subsection 23B(2) do not have to be re-made as a consequence of the amendment made by item 28 of this Schedule.