

Client Memorandum

Parliament House
Canberra ACT 2600
Tel: (02) 6277 2476
Fax: (02) 6277 2407
Email: Jennifer.Norberry@aph.gov.au

To: Mr Laurie Ferguson MP
Attention: Warren Gardiner
From: Jennifer Norberry
Group: Law & Bills Digest
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Registration and Australian citizenship

You asked whether Australian laws were changed in 1974 to remove the ability of Britons resident in Australia to obtain Australian citizenship by registration.

Short answer

Laws enabling people from the UK and many other Commonwealth countries to obtain Australian citizenship by registration were changed by the *Australian Citizenship Act 1973*. This Act also repealed provisions which allowed Australian citizenship to be acquired through notification.

The *Australian Citizenship Act 1973* repealed the registration and notification provisions—although transitional provisions meant that people from the UK and other Commonwealth countries had a period of grace in which they could avail themselves of the registration or notification provisions (see below under ‘Transitional Provisions’).

Details

Citizenship by registration and notification

The *Nationality and Citizenship Act 1948*¹ provided that Australian citizenship could be acquired in a number of ways:

- by birth or descent



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- by naturalisation
- by registration or notification—if a person was a citizen of certain Commonwealth countries including the United Kingdom (the list of countries expanded over time to number 31 countries by 1973) and met other eligibility criteria.

As stated above, these provisions were found in what was originally called the *Nationality and Citizenship Act 1948*. The Act was amended several times between 1948 and 1973. Citizens of the United Kingdom and the other listed Commonwealth countries could obtain citizenship in the following ways:

- by registration under Division 2 of the Act. A person who fulfilled the conditions set out in section 12 (eg came from a listed Commonwealth country such as the United Kingdom, was of full age and capacity, had resided in Australia or Papua New Guinea for not less than 12 months and intended to continue to reside there) could apply for a certificate of registration as an Australian citizen. The Minister could grant a certificate of registration to a person who was not of 'full age'. Alternatively, the Minister could include the names of minors in the citizenship certificate granted to a person who was their parent or guardian. People who were granted citizenship in this way did not have to make an oath of allegiance or attend a citizenship ceremony. Citizenship by registration was inserted into the Act in 1948. The provisions relating to registration were amended at various times between 1948 and 1973. I have not attempted to take into account the circumstances that you mention.
- by notification under Division 1A. A person who fulfilled the conditions set out in section 11B (eg who came from a listed Commonwealth country such as the United Kingdom, who was ordinarily resident in Australia or Papua New Guinea for 5 years prior to giving notice and who was not a prohibited immigrant or subject to deportation) could give notice 'stating that the person desires to become an Australian citizen by notification as from the date upon which the notice is received by the [authorised] officer.' Such a notice could not be given by a child under the age of 16 but could be given by their parent or guardian on their behalf. Once notice had been duly given, the Secretary of the relevant department issued a certificate of Australian citizenship. Citizenship by notification was added to the Act in 1969.

Policy rationale for the Australian Citizenship Act 1973

In 1973, the Government of Gough Whitlam introduced the Australian Citizenship Bill 1973 which was designed to change this situation. The reasons for the introduction of the legislation were stated in the Second Reading Speech given by Immigration Minister Al Grassby:

- to remove the 'distinctive' and 'anomalous' regime applying to people from 31 Commonwealth countries by making all applicants for Australian citizenship subject to the same basic requirements for citizenship
- to remove confusion about when people from the 31 Commonwealth countries including Britons became Australian citizens. The Minister said that many people from Commonwealth countries believed that they acquired Australian citizenship automatically by long residence and that this was not the case.

The Minister also said:

I intend to publicise this change throughout Australia and of course people seeking to migrate to Australia will be thoroughly informed by my Department's officers. It is also obviously essential that we try our utmost to remove the general misconception on the part of many British immigrants already here that by long residence they have automatically become citizens. It has been unjust to them to leave them confused about their status. I shall be correcting this in publicity concerning the new Act during the period before and after it is proclaimed to commence.²

Transitional provisions

The *Australian Citizenship Act 1973* contained transitional provisions so as not to disadvantage anyone from the 31 Commonwealth countries who had lived in Australia but had not taken advantage of the registration or notification provisions or who would arrive in the 12 months following the commencement of the new legislation in the expectation that they would be able to register.

- For two years after the commencement of the legislation (the legislation commenced on 1 December 1973) persons from the 31 Commonwealth countries who met the other criteria could apply for and be issued with a certificate of citizenship after one year's residence
- For six months after commencement, people from the 31 Commonwealth countries who had been in Australia for more than 5 years could use the existing notification process. That is, up to and including 31 May 1974 (the repeal of the notification provision took effect on 1 June 1974).

Reasons for not taking out Australian citizenship

As a recent publication by the Department of Immigration and Multicultural and Indigenous Affairs stated:

Only a small number of post-war British migrants applied to become Australian citizens. Many wrongly believed they already were Australian citizens. Others did not see the need, as for many years they were entitled to all the privileges of citizenship. For example, until 25 January 1984 those born in the UK or Ireland could enrol and vote without becoming Australian citizens. British migrants were also eligible to serve in Australia's armed forces without being Australian citizens.³

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1. This Act was later re-named the *Australian Citizenship Act 1948*.
 2. House of Representatives, *Hansard*, 11 April 1973, p. 1312.
 3. DIMIA, *Australian citizenship—Former British child migrants*.