

2004-2005

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Australian Citizenship Bill 2005

No. , 2005

(Citizenship and Multicultural Affairs)

A Bill for an Act relating to Australian citizenship

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Definitions	3
4 Australian citizen	5
5 Permanent resident.....	6
6 Responsible parent.....	6
7 Children born on ships or aircraft or after death of parent.....	7
8 Children born as a result of artificial conception procedures	7
9 Confinement in prison or psychiatric institution.....	8
10 Personal identifiers	8
11 Operation of Act	9
Part 2—Australian citizenship	11
Division 1—Automatic acquisition of Australian citizenship	11
12 Citizenship by birth.....	11
13 Citizenship by adoption	11
14 Citizenship for abandoned children	11
15 Citizenship by incorporation of Territory	12
Division 2—Acquisition of Australian citizenship by application	13
Subdivision A—Citizenship by descent	13
16 Application and eligibility for citizenship	13
17 Minister’s decision.....	14
18 Registration.....	15
19 Day citizenship begins	15
Subdivision B—Citizenship by conferral	15
20 Requirements for becoming a citizen	15
21 Application and eligibility for citizenship	15
22 Residence requirement.....	18
23 Relevant defence service	21
24 Minister’s decision.....	21
25 Minister may cancel approval.....	24
26 Pledge of commitment must be made.....	25
27 How pledge of commitment is to be made	26
28 Day citizenship begins etc.	27
Subdivision C—Resuming citizenship	28
29 Application and eligibility for resuming citizenship.....	28

30	Minister's decision.....	29
31	Registration.....	30
32	Day citizenship begins again etc.....	30
Division 3—Cessation of Australian citizenship		31
33	Renunciation.....	31
34	Revocation by Minister.....	32
35	Service in armed forces of enemy country	35
36	Children of responsible parents who cease to be citizens	35
Division 4—Evidence of Australian citizenship		37
37	Evidence of Australian citizenship	37
38	Surrender of evidentiary notice.....	37
39	Altering evidentiary notice	38
Division 5—Personal identifiers		39
Subdivision A—Obtaining personal identifiers		39
40	Request for personal identifiers	39
41	Provision of personal identifiers	39
Subdivision B—Obligations relating to identifying information		39
42	Accessing identifying information.....	39
43	Disclosing identifying information	41
44	Unauthorised modification or impairment of identifying information	42
45	Destroying identifying information	43
Part 3—Other matters		45
46	Application requirements.....	45
47	Notification of decisions.....	45
48	Computerised decision-making	46
49	Evidence of whether computer program is functioning correctly	47
50	False statements or representations.....	48
51	Geographical jurisdiction for offences.....	49
52	Review of decisions	49
53	Delegation.....	49
54	Regulations	50
Schedule 1—Pledge of commitment as a citizen of the Commonwealth of Australia		51
1	Form of pledge no. 1.....	51
2	Form of pledge no. 2.....	51

1 **A Bill for an Act relating to Australian citizenship**

2 **Preamble**

3 The Parliament recognises that Australian citizenship represents
4 formal membership of the community of the Commonwealth of
5 Australia, and Australian citizenship is a common bond, involving
6 reciprocal rights and obligations, uniting all Australians, while
7 respecting their diversity.

8 The Parliament recognises that persons conferred Australian
9 citizenship enjoy these rights and undertake to accept these
10 obligations:

- 11 (a) by pledging loyalty to Australia and its people; and
12 (b) by sharing their democratic beliefs; and
13 (c) by respecting their rights and liberties; and
14 (d) by upholding and obeying the laws of Australia.

1 The Parliament of Australia enacts:

2 **Part 1—Preliminary**
3

4 **1 Short title**

5 This Act may be cited as the *Australian Citizenship Act 2005*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.
11

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections 3 to 54	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1	At the same time as the provisions covered by table item 2.	

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

- 1 (2) Column 3 of the table contains additional information that is not
2 part of this Act. Information in this column may be added to or
3 edited in any published version of this Act.

4 **3 Definitions**

5 In this Act:

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

8 ***artificial conception procedure*** includes:

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

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

13 ***Australian citizen*** has the meaning given by section 4.

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

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

18 ***commencement day*** means the day on which sections 3 to 54
19 commence.

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

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

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

- 24 (a) any personal identifier;
25 (b) any meaningful identifier derived from any personal
26 identifier;
27 (c) any record of a result of analysing any personal identifier or
28 any meaningful identifier derived from any personal
29 identifier;
30 (d) any other information derived from:
-

Section 3

- 1 (i) any personal identifier; or
2 (ii) any meaningful identifier derived from any personal
3 identifier; or
4 (iii) any record of a kind referred to in paragraph (c);
5 that could be used to discover a particular person's identity or
6 to get information about a particular person.

7 ***New Guinea:***

- 8 (a) has the same meaning as *the Territory of New Guinea* had in
9 the *Papua New Guinea Act 1949* immediately before
10 16 September 1975; and
11 (b) in relation to any time before 4 June 1969—includes a
12 reference to the Island of Nauru.

13 ***old Act*** means the *Australian Citizenship Act 1948* as in force at
14 any time before the commencement day.

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

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

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

22 ***Papua*** has the same meaning as *the Territory of Papua* had in the
23 *Papua New Guinea Act 1949* immediately before 16 September
24 1975.

25 ***permanent resident*** has the meaning given by section 5.

26 ***permanent visa*** has the same meaning as in the *Migration Act*
27 *1958*.

28 ***personal identifier*** has the meaning given by section 10.

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

1 **psychiatric institution** includes a psychiatric section of a hospital.

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

4 **responsible parent** has the meaning given by section 6.

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

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

12 **special category visa** has the same meaning as in the *Migration Act*
13 *1958*.

14 **special purpose visa** has the same meaning as in the *Migration Act*
15 *1958*.

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

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

19 **4 Australian citizen**

20 (1) For the purposes of this Act, **Australian citizen** means a person
21 who is an Australian citizen under Division 1 or 2 of Part 2.

22 Note: A person who is an Australian citizen under the *Australian Citizenship*
23 *Act 1948* immediately before the commencement day is taken to be an
24 Australian citizen under this Act: see item 2 of Schedule 3 to the
25 *Australian Citizenship (Transitionals and Consequentials) Act 2005*.

26 *Citizenship under the old Act*

27 (2) If, under this Act, it is necessary to work out if a person was an
28 Australian citizen at a time before the commencement day, work
29 that out under the *Australian Citizenship Act 1948* as in force at
30 that time.

1 **5 Permanent resident**

2 (1) For the purposes of this Act, a person is a *permanent resident* at a
3 particular time if and only if:

4 (a) the person is present in Australia at that time and holds a
5 permanent visa at that time; or

6 (b) both:

7 (i) the person is not present in Australia at that time and
8 holds a permanent visa at that time; and

9 (ii) the person has previously been present in Australia and
10 held a permanent visa immediately before last leaving
11 Australia; or

12 (c) the person is covered by a determination in force under
13 subsection (2) at that time.

14 (2) The Minister may, by legislative instrument, determine that:

15 (a) persons who hold a special category visa or a special purpose
16 visa; or

17 (b) persons who have held a special category visa; or

18 (c) persons who are present in Norfolk Island or the Territory of
19 Cocos (Keeling) Islands;

20 and who satisfy specified requirements are, or are during a
21 specified period, persons to whom this subsection applies.

22 *Permanent resident under the old Act*

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

27 **6 Responsible parent**

28 (1) For the purposes of this Act, a person is a *responsible parent* in
29 relation to a child if and only if:

30 (a) the person is a parent of the child except where, because of
31 orders made under the *Family Law Act 1975*, the person no
32 longer has any parental responsibility for the child; or

- 1 (b) the person (whether or not a parent of the child) has a
2 residence order in relation to the child; or
- 3 (c) the person (whether or not a parent of the child) has a
4 specific issues order in relation to the child under which the
5 person is responsible for the child's long-term or day-to-day
6 care, welfare and development; or
- 7 (d) the person (whether or not a parent of the child) has
8 guardianship or custody of the child, jointly or otherwise,
9 under an Australian law or a foreign law, whether because of
10 adoption, operation of law, an order of a court or otherwise.
- 11 (2) Expressions used in paragraphs (1)(a), (b) and (c) have the same
12 meaning as in the *Family Law Act 1975*.

13 **7 Children born on ships or aircraft or after death of parent**

14 *Persons born on ships or aircraft*

- 15 (1) For the purposes of this Act:
- 16 (a) a person born on a ship or aircraft registered in Australia or a
17 foreign country is taken to have been born at the place at
18 which the ship or aircraft is registered; and
- 19 (b) a person born on a ship or aircraft not registered in Australia
20 or a foreign country and belonging to the government of a
21 country is taken to have been born in that country.

22 *Persons born after death of parent*

- 23 (2) For the purposes of this Act, the status of a parent of a person at the
24 time of the person's birth is, for a parent who died before the birth,
25 taken to be the status of the parent when the parent died.

26 **8 Children born as a result of artificial conception procedures**

- 27 (1) If:
- 28 (a) a child is born to a woman as a result of the carrying out of
29 an artificial conception procedure while the woman was
30 married to a man; and
- 31 (b) the procedure was carried out with the man's consent; and
- 32 (c) the child is not biologically the child of the man;

Section 9

1 then, for the purposes of this Act, the child is taken to be a child of
2 the man and of no other man.

- 3 (2) Subsection (1) applies in relation to a purported marriage that is
4 void as if:
5 (a) the purported marriage were a marriage; and
6 (b) the parties to the purported marriage were husband and wife;
7 unless, at the time of the carrying out of the artificial conception
8 procedure, neither party to the purported marriage believed on
9 reasonable grounds that the purported marriage was valid.

10 **9 Confinement in prison or psychiatric institution**

11 *Confinement in prison*

- 12 (1) For the purposes of this Act, the period during which a person is
13 confined to a prison includes a period:
14 (a) during which the person is an escapee from the prison; or
15 (b) during which the person is undergoing a sentence of periodic
16 detention in the prison.
- 17 (2) For the purposes of this Act, the period during which a person is
18 confined to a prison does not include a period during which the
19 person has been so confined by reason only of the person serving a
20 sentence relating to a conviction that is later quashed.

21 *Confinement in psychiatric institution*

- 22 (3) For the purposes of this Act, the period during which a person is
23 confined in a psychiatric institution by order of a court includes a
24 period during which the person is an escapee from the institution.

25 **10 Personal identifiers**

- 26 (1) For the purposes of this Act, a *personal identifier* is any of the
27 following (including any of the following in digital form):
28 (a) fingerprints or handprints of a person (including those taken
29 using paper and ink or digital livescanning technologies);
30 (b) a measurement of a person's height and weight;
31 (c) a photograph or other image of a person's face and shoulders;

- 1 (d) an iris scan;
2 (e) a person's signature;
3 (f) any other identifier prescribed by the regulations (except an
4 identifier the obtaining of which would involve the carrying
5 out of an intimate forensic procedure within the meaning of
6 section 23WA of the *Crimes Act 1914*).
- 7 (2) Before the Governor-General makes regulations for the purposes of
8 paragraph (1)(f) prescribing an identifier, the Minister must be
9 satisfied that:
- 10 (a) obtaining the identifier would not involve the carrying out of
11 an intimate forensic procedure within the meaning of
12 section 23WA of the *Crimes Act 1914*; and
13 (b) the identifier is an image of, or a measurement or recording
14 of, an external part of the body; and
15 (c) obtaining the identifier will promote one or more of the
16 following purposes:
17 (i) assisting in the identification of, and to authenticate the
18 identity of, a person making an application under Part 2;
19 (ii) combating document and identity fraud in citizenship
20 matters;
21 (iii) complementing anti-people smuggling measures.

22 **11 Operation of Act**

23 *External Territories*

- 24 (1) This Act extends to the external Territories.

25 *Application outside Australia*

- 26 (2) This Act extends unless the contrary intention appears:
27 (a) to acts, omissions, matters and things outside Australia; and
28 (b) to all persons, irrespective of their nationality or citizenship.

29 *State and Territory laws*

- 30 (3) It is the intention of the Parliament that this Act apply to the
31 exclusion of any provisions of a law of a State or Territory that

Part 1 Preliminary

Section 11

- 1 provide for Australian citizenship (whether the law was made
2 before or after the commencement day).

1

2 **Part 2—Australian citizenship**

3 **Division 1—Automatic acquisition of Australian**
4 **citizenship**

5 **12 Citizenship by birth**

- 6 (1) A person born in Australia is an Australian citizen if and only if:
7 (a) a parent of the person is an Australian citizen, or a permanent
8 resident, at the time the person is born; or
9 (b) the person is ordinarily resident in Australia throughout the
10 period of 10 years beginning on the day the person is born.

11 *Enemy occupation*

- 12 (2) However, a person is not an Australian citizen under this section if,
13 at the time the person is born:
14 (a) a parent of the person is an enemy alien; and
15 (b) the place of the birth is under occupation by the enemy;
16 unless, at that time, the other parent of the person:
17 (c) is an Australian citizen or a permanent resident; and
18 (d) is not an enemy alien.

19 **13 Citizenship by adoption**

- 20 A person is an Australian citizen if the person is:
21 (a) adopted under a law of a State or Territory; and
22 (b) adopted by a person who is an Australian citizen at the time
23 of the adoption or by 2 persons jointly at least one of whom
24 is an Australian citizen at that time; and
25 (c) present in Australia as a permanent resident at that time.

26 **14 Citizenship for abandoned children**

- 27 A person is an Australian citizen if the person is found abandoned
28 in Australia as a child, unless and until the contrary is proved.

Part 2 Australian citizenship

Division 1 Automatic acquisition of Australian citizenship

Section 15

1 **15 Citizenship by incorporation of Territory**

- 2 (1) A person is an Australian citizen if:
- 3 (a) any territory becomes a part of Australia; and
- 4 (b) the person is included in a class of persons specified in a
- 5 determination under this section.

6 *Determination*

- 7 (2) The Minister may, by legislative instrument, determine that
- 8 specified classes of persons are Australian citizens from a specified
- 9 day because of their connection with that territory.

10 *Day citizenship begins*

- 11 (3) The person becomes an Australian citizen on that day.

12 *When instrument takes effect*

- 13 (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*,
- 14 the instrument may be expressed to take effect before the date it is
- 15 registered under that Act.

1

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

3

4 **Subdivision A—Citizenship by descent**

5 **16 Application and eligibility for citizenship**

6

- (1) A person may make an application to the Minister to become an Australian citizen.

7

8

Note: Section 46 sets out application requirements (which may include the payment of a fee).

9

10

Persons born outside Australia on or after 26 January 1949

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- (2) A person born outside Australia on or after 26 January 1949 is eligible to become an Australian citizen if:

12

13

- (a) a parent of the person was an Australian citizen at the time of the birth; and

14

15

- (b) if the parent was an Australian citizen under this Subdivision, or section 10B, 10C or 11 of the old Act (about citizenship by descent), at the time of the birth:

16

17

18

- (i) the parent has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the person made the application; or

19

20

21

- (ii) the person is not a national or a citizen of any country at the time the person made the application and the person has never been such a national or citizen; and

22

23

24

25

- (c) if the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister's decision on the application.

26

27

28

29

Persons born outside Australia or New Guinea before 26 January 1949

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31

- (3) A person born outside Australia or New Guinea before 26 January 1949 is eligible to become an Australian citizen if:

32

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 17

- 1 (a) a parent of the person became an Australian citizen on
2 26 January 1949; and
3 (b) the parent was born in Australia or New Guinea or was
4 naturalised in Australia before the person's birth; and
5 (c) the Minister is satisfied that the person is of good character at
6 the time of the Minister's decision on the application.

7 **17 Minister's decision**

- 8 (1) If a person makes an application under section 16, the Minister
9 must, by writing, approve or refuse to approve the person
10 becoming an Australian citizen.
11 (2) Subject to this section, the Minister must approve the person
12 becoming an Australian citizen if the person is eligible to be so
13 approved.

14 *Identity*

- 15 (3) The Minister must not approve the person becoming an Australian
16 citizen unless the Minister is satisfied of the identity of the person.
17 Note: Division 5 contains the identity provisions.

18 *Risk to security*

- 19 (4) The Minister must not approve the person becoming an Australian
20 citizen at a time when an adverse security assessment or a qualified
21 security assessment in respect of the person is in force under the
22 *Australian Security Intelligence Organisation Act 1979* that the
23 person is directly or indirectly a risk to security (within the
24 meaning of section 4 of that Act).

25 *Cessation of citizenship*

- 26 (5) If the person has at any time ceased to be an Australian citizen, the
27 Minister must not approve the person becoming an Australian
28 citizen during the period of 12 months starting on the day on which
29 the person ceased, or last ceased, to be an Australian citizen.

1 **18 Registration**

2 If the Minister approves the person becoming an Australian citizen,
3 the Minister must register the person in the manner prescribed by
4 the regulations.

5 **19 Day citizenship begins**

6 (1) A person becomes an Australian citizen under this Subdivision on
7 the day on which the Minister approves the person becoming an
8 Australian citizen.

9 (2) However, a person does not become an Australian citizen under
10 this Subdivision unless:

11 (a) if the person was born on or after 26 January 1949—a parent
12 of the person was an Australian citizen at the time of the
13 person's birth; or

14 (b) if the person was born before 26 January 1949—a parent of
15 the person became an Australian citizen on 26 January 1949.

16 **Subdivision B—Citizenship by conferral**

17 **20 Requirements for becoming a citizen**

18 A person becomes an Australian citizen under this Subdivision if:

19 (a) the Minister approves the person becoming an Australian
20 citizen; and

21 (b) if the person is required to make a pledge of commitment to
22 become an Australian citizen—the person makes that pledge.

23 Note: Sections 21 to 25 deal with the Minister approving the person
24 becoming an Australian citizen. Sections 26 and 27 deal with the
25 making of a pledge of commitment.

26 **21 Application and eligibility for citizenship**

27 (1) A person may make an application to the Minister to become an
28 Australian citizen.

29 Note 1: Subsections (2) to (8) deal with eligibility.

30 Note 2: Section 46 sets out application requirements (which may include the
31 payment of a fee).

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 21

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General eligibility

- (2) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
- (a) is aged 18 or over at the time the person made the application; and
 - (b) is a permanent resident at that time; and
 - (c) understands the nature of the application at that time; and
 - (d) satisfies the residence requirement (see section 22), or has completed relevant defence service (see section 23), at that time; and
 - (e) possesses a basic knowledge of the English language at the time of the Minister's decision on the application; and
 - (f) has an adequate knowledge of the responsibilities and privileges of Australian citizenship at the time of the Minister's decision on the application; and
 - (g) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
 - (h) is of good character at the time of the Minister's decision on the application.

Permanent physical or mental incapacity

- (3) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
- (a) is aged 18 or over at the time the person made the application; and
 - (b) is a permanent resident at that time; and
 - (c) satisfies the residence requirement (see section 22), or has completed relevant defence service (see section 23), at that time; and
 - (d) has a permanent physical or mental incapacity at that time that means the person is not capable of understanding the nature of the application at that time; and
 - (e) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and

- 1 (f) is of good character at the time of the Minister's decision on
2 the application.

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

- 4 (4) A person is eligible to become an Australian citizen if the Minister
5 is satisfied that the person:
6 (a) is:
7 (i) aged 60 or over at the time the person made the
8 application; or
9 (ii) aged 18 or over at the time the person made the
10 application and is suffering from a permanent loss or
11 substantial impairment of hearing, speech or sight at
12 that time; and
13 (b) is a permanent resident at that time; and
14 (c) understands the nature of the application at that time; and
15 (d) satisfies the residence requirement (see section 22), or has
16 completed relevant defence service (see section 23), at that
17 time; and
18 (e) is likely to reside, or to continue to reside, in Australia or to
19 maintain a close and continuing association with Australia if
20 the application were to be approved; and
21 (f) is of good character at the time of the Minister's decision on
22 the application.

23 *Person aged under 18*

- 24 (5) A person is eligible to become an Australian citizen if the Minister
25 is satisfied that the person is aged under 18 at the time the person
26 made the application.

27 *Person born to former Australian citizen*

- 28 (6) A person is eligible to become an Australian citizen if the Minister
29 is satisfied that:
30 (a) the person was born outside Australia; and
31 (b) a parent of the person was not an Australian citizen at the
32 time of the person's birth; and

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 22

- 1 (c) the parent had ceased to be an Australian citizen under
2 section 17 of the old Act (about dual citizenship) before that
3 time; and
4 (d) the person is of good character at the time of the Minister's
5 decision on the application.

6 *Person born in Papua*

- 7 (7) A person is eligible to become an Australian citizen if the Minister
8 is satisfied that:
9 (a) the person was born in Papua before 16 September 1975; and
10 (b) a parent of the person was born in Australia (within the
11 meaning of this Act at the time the person made the
12 application); and
13 (c) the parent was an Australian citizen at the time of the
14 person's birth; and
15 (d) the person is of good character at the time of the Minister's
16 decision on the application.

17 *Statelessness*

- 18 (8) A person is eligible to become an Australian citizen if the Minister
19 is satisfied that the person:
20 (a) was born in Australia; and
21 (b) is not, at the time the person made the application, a national
22 or citizen of any country and has never been such a national
23 or citizen; and
24 (c) does not, at the time the person made the application, have
25 reasonable prospects of acquiring the nationality or
26 citizenship of a foreign country and has never had such
27 reasonable prospects.

28 **22 Residence requirement**

- 29 (1) For the purposes of section 21, a person satisfies the *residence*
30 *requirement* if the person has been present in Australia as a
31 permanent resident for:
32 (a) a total period of at least 1 year in the period of 2 years before
33 the day the person made the application; and

- 1 (b) a total period of at least 3 years in the period of 5 years
2 before that day.

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

- 5 (2) Paragraph (1)(b) does not apply if the person:
6 (a) was born in Australia; or
7 (b) was an Australian citizen at any time before the person made
8 the application.

9 *Confinement in prison or psychiatric institution*

- 10 (3) The Minister must not take into account any period during which
11 the person has been:
12 (a) confined in a prison; or
13 (b) confined in a psychiatric institution by order of a court made
14 in connection with proceedings for an offence against an
15 Australian law in relation to the person.

16 *Ministerial discretion—longer period than 5 year period*

- 17 (4) The Minister may take into account a longer period than the period
18 of 5 years mentioned in paragraph (1)(b).

19 *Ministerial discretion—administrative error*

- 20 (5) The Minister may treat a period as one in which the person was
21 present in Australia as a permanent resident if the Minister
22 considers the person was present in Australia during that period
23 but, because of an administrative error, was not a permanent
24 resident during that period.

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

- 27 (6) The Minister may treat a period as one in which the person was
28 present in Australia as a permanent resident if:
29 (a) the person was present in Australia during that period (except
30 as a permanent resident or an unlawful non-citizen); and

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 22

- 1 (b) the Minister is satisfied that the person will suffer significant
2 hardship or disadvantage if that period were not treated as
3 one during which the person was present in Australia as a
4 permanent resident.

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

- 7 (7) The Minister may treat a period not exceeding 12 months as one in
8 which the person was present in Australia as a permanent resident
9 if:
10 (a) the person was engaged in activities during that period that
11 the Minister considers to be beneficial to Australia; and
12 (b) the person was present in Australia during that period (except
13 as a permanent resident or an unlawful non-citizen).

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

- 16 (8) The Minister may treat a period as one in which the person was
17 present in Australia as a permanent resident if:
18 (a) the person was engaged in activities during that period that
19 the Minister considers to be beneficial to Australia; and
20 (b) the person was not present in Australia during that period but
21 was a permanent resident during that period; and
22 (c) either:
23 (i) the person has already been present in Australia as a
24 permanent resident for a total period of at least 1 year;
25 or
26 (ii) the Minister is satisfied that the person will suffer
27 significant hardship or disadvantage if that period were
28 not treated as one during which the person was present
29 in Australia as a permanent resident.

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

- 32 (9) If the person is the spouse, widow or widower of an Australian
33 citizen at the time the person made the application, the Minister

- 1 may treat a period as one in which the person was present in
2 Australia as a permanent resident if:
- 3 (a) the person was a spouse of that Australian citizen during that
4 period; and
 - 5 (b) the person was not present in Australia during that period;
6 and
 - 7 (c) the person was a permanent resident during that period; and
 - 8 (d) the Minister is satisfied that the person had a close and
9 continuing association with Australia during that period.
- 10 (10) For the purposes of subsection (9), *spouse*, of an Australian citizen,
11 includes a person granted a permanent visa as a de facto spouse of
12 that citizen.

13 **23 Relevant defence service**

- 14 For the purposes of section 21, a person has completed *relevant*
15 *defence service* if the person:
- 16 (a) has completed:
 - 17 (i) at least 3 months service in the permanent forces of the
18 Commonwealth; or
 - 19 (ii) at least 6 months service in the Naval Reserve, the
20 Army Reserve or Air Force Reserve; or
 - 21 (b) was discharged from that service as medically unfit for that
22 service and who became so unfit because of that service.

23 **24 Minister's decision**

- 24 (1) If a person makes an application under section 21, the Minister
25 must, by writing, approve or refuse to approve the person
26 becoming an Australian citizen.
- 27 Note: The Minister may cancel an approval: see section 25.
- 28 (2) The Minister may refuse to approve the person becoming an
29 Australian citizen despite the person being eligible to be so
30 approved.

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 24

1 *Identity*

2 (3) The Minister must not approve the person becoming an Australian
3 citizen unless the Minister is satisfied of the identity of the person.

4 Note: Division 5 contains the identity provisions.

5 *Risk to security*

6 (4) The Minister must not approve the person becoming an Australian
7 citizen at a time when an adverse security assessment or a qualified
8 security assessment in respect of the person is in force under the
9 *Australian Security Intelligence Organisation Act 1979* that the
10 person is directly or indirectly a risk to security (within the
11 meaning of section 4 of that Act).

12 *Person not present in Australia*

13 (5) If:
14 (a) the person is covered by subsection 21(2), (3) or (4); and
15 (b) the Minister did not apply subsection 22(9) in relation to the
16 person;
17 the Minister must not approve the person becoming an Australian
18 citizen at a time when the person is not present in Australia unless
19 the Minister considers the person is engaging in activities at that
20 time that are beneficial to Australia.

21 *Offences*

22 (6) The Minister must not approve the person becoming an Australian
23 citizen at a time:
24 (a) when proceedings for an offence against an Australian law
25 (including proceedings by way of appeal or review) are
26 pending in relation to the person; or
27 (b) when the person is confined to a prison in Australia; or
28 (c) during the period of 2 years after the end of any period
29 during which the person has been confined to a prison in
30 Australia because of the imposition on the person of a serious
31 prison sentence; or
32 (d) if the person is a serious repeat offender in relation to a
33 serious prison sentence—during the period of 10 years after

- 1 the end of any period during which the person has been
2 confined to a prison in Australia because of the imposition of
3 that sentence; or
- 4 (e) if the person has been released from serving the whole or a
5 part of a sentence of imprisonment on parole or licence—
6 during any period during which action can be taken under an
7 Australian law to require the person to serve the whole or a
8 part of that sentence; or
- 9 (f) if the person:
- 10 (i) has been released by a court from serving the whole or a
11 part of a sentence of imprisonment; and
- 12 (ii) has been so released because the person gave a security,
13 with or without sureties, by recognizance or otherwise,
14 that the person will comply with conditions relating to
15 the person's behaviour;
16 during any period during which action can be taken against
17 the person under an Australian law because of a breach of a
18 condition of that security; or
- 19 (g) if, in respect of proceedings for an offence against an
20 Australian law in relation to the person:
- 21 (i) a court does not impose a sentence of imprisonment on
22 the person; and
- 23 (ii) the court releases the person because the person gives a
24 security, with or without sureties, by recognizance or
25 otherwise, that the person will comply with conditions
26 relating to the person's behaviour;
27 during any period during which action can be taken against
28 the person under an Australian law because of a breach of a
29 condition of that security; or
- 30 (h) during any period during which the person is confined in a
31 psychiatric institution by order of a court made in connection
32 with proceedings for an offence against an Australian law in
33 relation to the person.

34 *Cessation of citizenship*

- 35 (7) If the person has at any time ceased to be an Australian citizen, the
36 Minister must not approve the person becoming an Australian

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 25

1 citizen during the period of 12 months starting on the day on which
2 the person ceased, or last ceased, to be an Australian citizen.

3 *Statelessness*

4 (8) However, subsections (6) and (7) do not apply to a person covered
5 by subsection 21(8) (about statelessness).

6 **25 Minister may cancel approval**

7 (1) The Minister may, by writing, cancel an approval given to a person
8 under section 24 if:

- 9 (a) the person has not become an Australian citizen under
10 section 28; and
11 (b) either of the following 2 situations apply.

12 *Eligibility criteria not met*

13 (2) The first situation applies if:

- 14 (a) the person is covered by subsection 21(2), (3) or (4); and
15 (b) the Minister is satisfied that, at the time the Minister
16 proposes to cancel the approval, the person is:
17 (i) not a permanent resident; or
18 (ii) not likely to reside, or to continue to reside, in Australia
19 or to maintain a close and continuing association with
20 Australia; or
21 (iii) not of good character.

22 *Failure to make pledge of commitment*

23 (3) The second situation applies if:

- 24 (a) the person has failed to make a pledge of commitment within
25 12 months after the day on which the person received notice
26 of the approval; and
27 (b) the person's reason for the failure is not one that is prescribed
28 by the regulations for the purposes of this subsection.

29 *Cancellation of child's approval*

30 (4) If:

- 1 (a) a child aged under 16 makes an application under section 21
2 at a particular time; and
3 (b) 1 or more responsible parents of the child make applications
4 under section 21 at that time; and
5 (c) the Minister decides under section 24 to approve the child
6 and 1 or more of the responsible parents becoming Australian
7 citizens; and
8 (d) the Minister cancels the approval given to each responsible
9 parent;
10 the Minister must, by writing, cancel the approval given to the
11 child.

12 *Effect of cancellation*

- 13 (5) If the Minister cancels an approval given to a person, the approval
14 is taken never to have been given.

15 Note: A person cannot become an Australian citizen under this Subdivision
16 unless the Minister approves the person becoming an Australian
17 citizen. This subsection has the effect that the person will need to
18 make another application if the person wants to become an Australian
19 citizen.

20 **26 Pledge of commitment must be made**

- 21 (1) A person must make a pledge of commitment to become an
22 Australian citizen unless the person:
23 (a) is aged under 16 at the time the person made the application
24 to become an Australian citizen; or
25 (b) has a permanent physical or mental incapacity at the time the
26 person made the application to become an Australian citizen
27 that means the person is not capable of understanding the
28 nature of the application at that time; or
29 (c) is covered by subsection 21(6), (7) or (8).

30 Note: See section 27 for how the pledge is to be made.

- 31 (2) A person must not make a pledge of commitment before the
32 Minister approves the person's application to become an Australian
33 citizen. A pledge of commitment made by the person before that
34 time is of no effect.

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 27

1

Delayed making of pledge

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- (3) If the person is required to make a pledge of commitment and has not done so, the Minister may determine, in writing, that the person cannot make the pledge until the end of a specified period if the Minister is satisfied that:

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- (a) a visa held by the person may be cancelled under the *Migration Act 1958* (whether or not the person has been given any notice to that effect); or
(b) the person has been or may be charged with an offence under an Australian law.

11

12

- (4) The Minister must not specify a period that exceeds, or periods that in total exceed, 12 months.

13

- (5) The Minister may, by writing, revoke a determination.

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17

- (6) If a determination is in force in relation to a person, the person must not make a pledge of commitment before the end of the period specified in the determination. A pledge of commitment made by the person before that time is of no effect.

18

27 How pledge of commitment is to be made

19

Form of pledge

20

21

- (1) A pledge of commitment must be made in accordance with either of the forms set out in Schedule 1.

22

Prescribed arrangements

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- (2) A pledge of commitment must be made in accordance with the arrangements prescribed by the regulations.

25

26

Note: The regulations may provide for a pledge of commitment to be made in public.

27

Persons who may receive pledge

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- (3) A pledge of commitment must be made before:
(a) the Minister; or
(b) a person authorised under subsection (4); or

- 1 (c) a person who is included in a class of persons authorised
2 under subsection (5).
- 3 (4) The Minister may, by writing, authorise a person for the purposes
4 of paragraph (3)(b).
- 5 (5) The Minister may, by legislative instrument, authorise a class of
6 persons for the purposes of paragraph (3)(c).

7 **28 Day citizenship begins etc.**

8 *Persons required to make pledge of commitment*

- 9 (1) A person required to make a pledge of commitment becomes an
10 Australian citizen under this Subdivision on the day on which the
11 person makes the pledge.

12 *Persons not required to make pledge of commitment*

- 13 (2) Subject to subsection (3), a person not required to make a pledge of
14 commitment becomes an Australian citizen under this Subdivision
15 on the day on which the Minister approves the person becoming an
16 Australian citizen.

17 *Applications made at the same time by child and responsible 18 parents*

- 19 (3) Subsection (2) does not apply to a child aged under 16 at the time
20 the child made the application to become an Australian citizen if:
21 (a) 1 or more responsible parents of the child made applications
22 under section 21 at that time; and
23 (b) the Minister decided under section 24 to approve the child
24 and 1 or more of the responsible parents becoming Australian
25 citizens.
- 26 (4) If 1 or more of the responsible parents become Australian citizens
27 under this section, the child becomes an Australian citizen on the
28 first day on which a responsible parent becomes an Australian
29 citizen.

1 **Subdivision C—Resuming citizenship**

2 **29 Application and eligibility for resuming citizenship**

- 3 (1) A person may make an application to the Minister to become an
4 Australian citizen again.

5 Note 1: Section 46 sets out application requirements (which may include the
6 payment of a fee).

7 Note 2: The person may also apply to become an Australian citizen again
8 under Subdivision A or B.

9 *Cessation under this Act*

- 10 (2) A person is eligible to become an Australian citizen again under
11 this Subdivision if:

- 12 (a) the person ceased to be an Australian citizen under:

- 13 (i) section 33 (about renunciation) in order to acquire or
14 retain the nationality or citizenship of a foreign country
15 or to avoid suffering significant hardship or detriment;
16 or

- 17 (ii) section 36 (about children); and

- 18 (b) if the person is aged 18 or over at the time the person made
19 the application—the Minister is satisfied that the person is of
20 good character at the time of the Minister’s decision on the
21 application.

22 Note 1: See also section 32 (which is about persons resuming their former
23 citizenship status).

24 Note 2: A person who ceases to be an Australian citizen under section 34 or
25 35 may apply to become an Australian citizen again under
26 Subdivision A or B.

27 *Cessation under old Act*

- 28 (3) A person is eligible to become an Australian citizen again under
29 this Subdivision if:

- 30 (a) the person ceased to be an Australian citizen under:

- 31 (i) section 17 (about dual citizenship) of the old Act; or

- 32 (ii) section 18 (about renunciation) of the old Act in order to
33 acquire or retain the nationality or citizenship of a

- 1 foreign country or to avoid suffering significant
2 hardship or detriment; or
3 (iii) section 20 (about residence outside Australia) of the old
4 Act; or
5 (iv) section 23 (about children) of the old Act; and
6 (b) if the person is aged 18 or over at the time the person made
7 the application—the Minister is satisfied that the person is of
8 good character at the time of the Minister’s decision on the
9 application.

10 **30 Minister’s decision**

- 11 (1) If a person makes an application under section 29, the Minister
12 must, by writing, approve or refuse to approve the person
13 becoming an Australian citizen again.
- 14 (2) The Minister may refuse to approve the person becoming an
15 Australian citizen again despite the person being eligible to be so
16 approved.

17 *Identity*

- 18 (3) The Minister must not approve the person becoming an Australian
19 citizen again unless the Minister is satisfied of the identity of the
20 person.

21 Note: Division 5 contains the identity provisions.

22 *Risk to security*

- 23 (4) The Minister must not approve the person becoming an Australian
24 citizen again at a time when an adverse security assessment or a
25 qualified security assessment in respect of the person is in force
26 under the *Australian Security Intelligence Organisation Act 1979*
27 that the person is directly or indirectly a risk to security (within the
28 meaning of section 4 of that Act).

Part 2 Australian citizenship

Division 2 Acquisition of Australian citizenship by application

Section 31

1 **31 Registration**

2 If the Minister approves the person becoming an Australian citizen
3 again, the Minister must register the person in the manner
4 prescribed by the regulations.

5 **32 Day citizenship begins again etc.**

6 (1) A person becomes an Australian citizen again on the day on which
7 the Minister approves the person becoming an Australian citizen
8 again.

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

10 (2) If the person, before ceasing to be an Australian citizen, was an
11 Australian citizen under Subdivision A or B, the person becomes
12 an Australian citizen again under that Subdivision.

13 Note: One of the effects of this subsection is that the Minister is able to
14 revoke the person's citizenship: see section 34.

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

16 (3) If the person, before ceasing to be an Australian citizen, was an
17 Australian citizen under the provision set out in column 2 of the
18 following table, the person becomes an Australian citizen again
19 under the provision set out in column 3 of the table.

20

Same kind of citizenship

Column 1 Item	Column 2 Provision under which person was a citizen	Column 3 Provision under which person becomes a citizen again
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1	Section 10B, 10C or 11 of the old Act	Subdivision A of this Division
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2	Division 2 of Part III of the old Act	Subdivision B of this Division
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21 Note: One of the effects of this subsection is that the Minister is able to
22 revoke the person's citizenship: see section 34.

1

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

3 **33 Renunciation**

4 (1) A person may make an application to the Minister to renounce the
5 person's Australian citizenship.

6 Note: Section 46 sets out application requirements (which may include the
7 payment of a fee).

8 *Minister's decision*

9 (2) The Minister must, by writing, approve or refuse to approve the
10 person renouncing his or her Australian citizenship.

11 (3) Subject to this section, the Minister must approve the person
12 renouncing his or her Australian citizenship if the Minister is
13 satisfied that:

14 (a) the person is aged 18 or over, and is a national or citizen of a
15 foreign country, at the time the person made the application;
16 or

17 (b) the person was born, or is ordinarily resident, in a foreign
18 country and is not entitled, under the law of that country, to
19 acquire the nationality or citizenship of that country because
20 the person is an Australian citizen.

21 (4) The Minister must not approve the person renouncing his or her
22 Australian citizenship unless the Minister is satisfied of the identity
23 of the person.

24 Note: Division 5 contains the identity provisions.

25 (5) The Minister may refuse to approve the person renouncing his or
26 her Australian citizenship if the person:

27 (a) is a national or citizen of a foreign country at the time the
28 person made the application; and

29 (b) made the application during a war in which Australia is
30 engaged.

Part 2 Australian citizenship

Division 3 Cessation of Australian citizenship

Section 34

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

4 (7) The Minister must not approve the person renouncing his or her
5 Australian citizenship unless the Minister is satisfied that the
6 person:

7 (a) is a national or citizen of a foreign country immediately
8 before the Minister's decision on the application; or

9 (b) will, if the Minister approves the application, become a
10 national or citizen of a foreign country immediately after the
11 approval.

12 *Time citizenship ceases*

13 (8) If the Minister approves a person renouncing his or her Australian
14 citizenship, the person ceases to be an Australian citizen at the time
15 of the approval.

16 Note: A child of the person may also cease to be an Australian citizen: see
17 section 36.

18 **34 Revocation by Minister**

19 *Citizenship by descent*

20 (1) The Minister may, by writing, revoke a person's Australian
21 citizenship if:

22 (a) the person is an Australian citizen under Subdivision A of
23 Division 2 (including because of the operation of section 32);
24 and

25 (b) either of the following apply:

26 (i) the person has been convicted of an offence against
27 section 50 of this Act, or section 137.1 or 137.2 of the
28 *Criminal Code*, in relation to the person's application to
29 become an Australian citizen;

30 (ii) the person obtained the Minister's approval to become
31 an Australian citizen as a result of third-party fraud
32 within the meaning of subsection (8); and

- 1 (c) the Minister is satisfied that it would be contrary to the public
2 interest for the person to remain an Australian citizen.

3 *Citizenship by conferral*

- 4 (2) The Minister may, by writing, revoke a person's Australian
5 citizenship if:
6 (a) the person is an Australian citizen under Subdivision B of
7 Division 2 (including because of the operation of section 32);
8 and
9 (b) any of the following apply:
10 (i) the person has been convicted of an offence against
11 section 50 of this Act, or section 137.1 or 137.2 of the
12 *Criminal Code*, in relation to the person's application to
13 become an Australian citizen;
14 (ii) the person has, at any time after making the application
15 to become an Australian citizen, been convicted of a
16 serious offence within the meaning of subsection (5);
17 (iii) the person obtained the Minister's approval to become
18 an Australian citizen as a result of migration-related
19 fraud within the meaning of subsection (6);
20 (iv) the person obtained the Minister's approval to become
21 an Australian citizen as a result of third-party fraud
22 within the meaning of subsection (8); and
23 (c) the Minister is satisfied that it would be contrary to the public
24 interest for the person to remain an Australian citizen.
- 25 (3) However, the Minister must not decide under subsection (2) to
26 revoke a person's Australian citizenship if:
27 (a) the person has, at any time after making the application to
28 become an Australian citizen, been convicted of a serious
29 offence within the meaning of subsection (5); and
30 (b) the Minister is satisfied that the person would, if the Minister
31 were to revoke the person's Australian citizenship, become a
32 person who is not a national or citizen of any country.

Section 34

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Time citizenship ceases

- (4) If the Minister revokes a person's Australian citizenship, the person ceases to be an Australian citizen at the time of the revocation.

Note: A child of the person may also cease to be an Australian citizen: see section 36.

Serious offence

- (5) For the purposes of this section, a person has been **convicted of a serious offence** if:

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

Migration-related fraud

- (6) For the purposes of this section, a person obtained the Minister's approval to become an Australian citizen as a result of **migration-related fraud** if and only if:

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

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

1 *Third-party fraud*

- 2 (8) For the purposes of this section, a person (the *applicant*) obtained
3 the Minister's approval to become an Australian citizen as a result
4 of *third-party fraud* if and only if:
5 (a) at any time, another person was convicted of an offence
6 against section 50 of this Act, or section 134.1, 135.2, 135.4,
7 136.1, 137.1, 137.2, 139.1, 141.1, 142.1, 142.2, 144.1, 145.1,
8 145.2, 145.4, 145.5 or 149.1 of the *Criminal Code*, that the
9 other person committed at any time before the Minister gave
10 the approval; and
11 (b) the act or omission that constituted the offence was
12 connected with the Minister approving the applicant
13 becoming an Australian citizen.

14 *Charge proved but no conviction*

- 15 (9) A reference in this section to a conviction of an offence:
16 (a) in relation to a law of the Commonwealth—includes a
17 reference to the making of an order under section 19B of the
18 *Crimes Act 1914* in relation to the offence; and
19 (b) in relation to a law of a State or Territory or a foreign
20 country—includes a reference to the making of an order
21 under the corresponding provision of a law of the State or
22 Territory or foreign country in relation to the offence.

23 **35 Service in armed forces of enemy country**

- 24 (1) A person ceases to be an Australian citizen if the person:
25 (a) is a national or citizen of a foreign country; and
26 (b) serves in the armed forces of a country at war with Australia.
27 (2) The person ceases to be an Australian citizen at the time the person
28 commences to so serve.

29 Note: A child of the person may also cease to be an Australian citizen: see
30 section 36.

31 **36 Children of responsible parents who cease to be citizens**

- 32 (1) If:
-

Part 2 Australian citizenship

Division 3 Cessation of Australian citizenship

Section 36

- 1 (a) a person ceases to be an Australian citizen at a particular time
2 (the *cessation time*) under section 33, 34 or 35; and
3 (b) at the cessation time, the person is a responsible parent of a
4 child aged under 18;
5 then:
6 (c) the Minister may, by writing, revoke the child's Australian
7 citizenship; and
8 (d) if the Minister does so—the child ceases to be an Australian
9 citizen at the time of the revocation.

10 *Exception—another responsible parent*

- 11 (2) If, at the cessation time, another responsible parent of the child is
12 an Australian citizen, subsection (1) does not apply to the child:
13 (a) while there is a responsible parent who is an Australian
14 citizen; and
15 (b) if there ceases to be such a responsible parent because of the
16 death of a responsible parent—at any time after that death.

17 *Exception—statelessness*

- 18 (3) The Minister must not revoke a child's Australian citizenship
19 under subsection (1) if the Minister is satisfied that the child would
20 then become a person who is not a national or citizen of any
21 country.

1

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

3 **37 Evidence of Australian citizenship**

4 (1) A person may make an application to the Minister for evidence of
5 the person's Australian citizenship.

6 Note: Section 46 sets out application requirements (which may include the
7 payment of a fee).

8 *Notice*

9 (2) The Minister may give the person a written notice stating that the
10 person is an Australian citizen at a particular time.

11 (3) The notice must:

12 (a) be in a form prescribed by the regulations; and

13 (b) contain any other matter prescribed by the regulations.

14 *Identity*

15 (4) The Minister must not give the person such a notice unless the
16 Minister is satisfied of the identity of the person.

17 Note: Division 5 contains the identity provisions.

18 *Evidentiary status*

19 (5) A notice is prima facie evidence of the matters in the notice.

20 *Cancellation*

21 (6) The Minister may, by writing, cancel a notice given to a person
22 under this section.

23 **38 Surrender of evidentiary notice**

24 *Request for surrender*

25 (1) If:

Part 2 Australian citizenship

Division 4 Evidence of Australian citizenship

Section 39

- 1 (a) the Minister makes a decision under section 34 to revoke a
2 person's Australian citizenship; and
3 (b) at the time of the revocation, there is in force a notice under
4 section 37 in relation to the person;
5 the Minister may request the person to surrender the notice to the
6 Minister.
- 7 (2) If the Minister makes a decision under subsection 37(6) to cancel a
8 notice given to a person under section 37, the Minister may request
9 the person to surrender the notice to the Minister.

10 *Form of request*

- 11 (3) A request given to a person under subsection (1) or (2) must:
12 (a) be made in writing; and
13 (b) specify the day on or before which the person must surrender
14 the notice (which must be a day at least 28 days after the day
15 on which the Minister makes the request); and
16 (c) specify how the person is to surrender the notice to the
17 Minister; and
18 (d) contain a statement to the effect that a failure to comply with
19 the request is an offence.

20 *Offence*

- 21 (4) A person commits an offence if:
22 (a) the person is given a request that is in accordance with this
23 section; and
24 (b) the person fails to comply with the request.

25 Penalty for contravention of this subsection: 10 penalty units.

26 **39 Altering evidentiary notice**

- 27 A person commits an offence if:
28 (a) the person alters, or causes or permits to be altered, a notice;
29 and
30 (b) the notice was given to a person under section 37.

31 Penalty: Imprisonment for 12 months.

1

2 **Division 5—Personal identifiers**

3 **Subdivision A—Obtaining personal identifiers**

4 **40 Request for personal identifiers**

- 5 (1) For the purposes of the Minister being satisfied of the identity of a
6 person in relation to an application under this Part, the following
7 persons may request the applicant, in writing, to provide one or
8 more specified personal identifiers in relation to the application:
9 (a) the Minister;
10 (b) a person authorised under subsection (3);
11 (c) a person who is included in a class of persons authorised
12 under subsection (4).

13 *Form of request*

- 14 (2) A request must inform the person of the matters prescribed by the
15 regulations.

16 *Authorisations*

- 17 (3) The Minister may, by writing, authorise a person for the purposes
18 of paragraph (1)(b).
19 (4) The Minister may, by legislative instrument, authorise a class of
20 persons for the purposes of paragraph (1)(c).

21 **41 Provision of personal identifiers**

22 The regulations may prescribe the procedures and requirements
23 that apply to the provision of a personal identifier by a person
24 under this Division.

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

26 **42 Accessing identifying information**

- 27 (1) A person commits an offence if:

Section 42

- 1 (a) the person accesses identifying information; and
2 (b) the person is not authorised under this section to access the
3 identifying information for the purpose for which the person
4 accessed it.

5 Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

- 6 (2) This section does not apply if the access is through a disclosure
7 that is a permitted disclosure within the meaning of section 43.

8 Note: A defendant bears an evidential burden in relation to the matter in
9 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

10 *Authorisation*

- 11 (3) The Minister may, in writing, authorise a specified person, or any
12 person included in a specified class of persons, to access
13 identifying information of the kind specified in the authorisation.

- 14 (4) The Minister must specify in an authorisation under subsection (3),
15 as the purpose or purposes for which access is authorised, one or
16 more of the following purposes:

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

- 32 (5) However, the Minister must not specify as a purpose for which
33 access is authorised a purpose that will include or involve the
34 purpose of:

- 1 (a) investigating an offence against an Australian law; or
2 (b) prosecuting a person for such an offence;
3 if the identifying information in question relates to a personal
4 identifier of a type prescribed by the regulations for the purposes of
5 this section.

6 **43 Disclosing identifying information**

- 7 (1) A person commits an offence if:
8 (a) the person's conduct causes disclosure of identifying
9 information; and
10 (b) the disclosure is not a permitted disclosure.

11 Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

- 12 (2) A *permitted disclosure* is a disclosure that:
13 (a) is for the purpose of data-matching in order to identify, or
14 authenticate the identity of, a person for the purposes of this
15 Act; or
16 (b) is for the purposes of this Act; or
17 (c) is for the purpose of administering or managing the storage
18 of identifying information; or
19 (d) is for the purpose of making the identifying information in
20 question available to the person to whom it relates; or
21 (e) takes place under an arrangement entered into with an agency
22 of the Commonwealth, or with a State or Territory or an
23 agency of a State or Territory, for the exchange of identifying
24 information; or
25 (f) is for the purpose of a proceeding, before a court or tribunal,
26 relating to the person to whom the identifying information in
27 question relates; or
28 (g) is for the purpose of an investigation by the Privacy
29 Commissioner or the Ombudsman relating to a request for
30 the provision of a personal identifier; or
31 (h) takes place with the written consent of the person to whom
32 the identifying information in question relates.

- 33 (3) However, a disclosure is not a permitted disclosure if:

Section 44

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

7 **44 Unauthorised modification or impairment of identifying**
8 **information**

9 *Unauthorised modification*

- 10 (1) A person commits an offence if:
11 (a) the person causes any unauthorised modification of
12 identifying information; and
13 (b) the person intends to cause the modification; and
14 (c) the person knows that the modification is unauthorised.

15 Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

16 *Unauthorised impairment*

- 17 (2) A person commits an offence if:
18 (a) the person causes any unauthorised impairment of:
19 (i) the reliability of identifying information; or
20 (ii) the security of the storage of identifying information; or
21 (iii) the operation of a system by which identifying
22 information is stored; and
23 (b) the person intends to cause the impairment; and
24 (c) the person knows that the impairment is unauthorised.

25 Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

26 *Interpretation*

- 27 (3) In this section:
28 (a) modification of identifying information; or
29 (b) impairment of the reliability of identifying information; or

- 1 (c) impairment of the security of the storage of identifying
2 information; or
3 (d) impairment of the operation of a system by which identifying
4 information is stored;
5 by a person is *unauthorised* if the person is not entitled to cause
6 that modification or impairment.
- 7 (4) Any such modification or impairment caused by the person is not
8 unauthorised merely because he or she has an ulterior purpose for
9 causing it.
- 10 (5) For the purposes of this section, a person causes any such
11 unauthorised modification or impairment if the person's conduct
12 substantially contributes to it.
- 13 (6) For the purposes of subsection (3), if:
14 (a) a person causes any modification or impairment of a kind
15 mentioned in that subsection; and
16 (b) the person does so under a warrant issued under an
17 Australian law;
18 the person is entitled to cause that modification or impairment.

19 **45 Destroying identifying information**

- 20 (1) A person commits an offence if:
21 (a) the person is the responsible person for identifying
22 information; and
23 (b) the person fails to destroy the identifying information as soon
24 as practicable after the person is no longer required under the
25 *Archives Act 1983* to keep the identifying information.
- 26 **Penalty:** Imprisonment for 2 years, or 120 penalty units, or both.
- 27 **Note:** See section 24 of the *Archives Act 1983* on the obligation to keep the
28 identifying information.
- 29 (2) This section does not apply if the identifying information is:
30 (a) a personal identifier that is any of the following:
31 (i) a measurement of a person's height and weight;
32 (ii) a photograph or other image of a person's face and
33 shoulders;

Section 45

- 1 (iii) a person's signature; or
2 (b) identifying information derived from or relating to such a
3 personal identifier.

4 Note: A defendant bears an evidential burden in relation to the matters in
5 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

6 *Definitions*

- 7 (3) For the purposes of this section, the **responsible person** for
8 identifying information is:
9 (a) if the identifying information is stored on a database—the
10 person who has day-to-day control of the database; or
11 (b) otherwise—the person who has day-to-day responsibility for
12 the system under which the identifying information is stored.
- 13 (4) For the purposes of this section, identifying information is
14 **destroyed** if:
15 (a) in the case of identifying information that is a personal
16 identifier—it is physically destroyed; and
17 (b) in any other case—any means of identifying it with the
18 person to whom it relates is destroyed.
- 19 (5) For the purposes of this section, a **database** is a discrete body of
20 information stored by electronic means, containing:
21 (a) indexes of persons who have provided personal identifiers in
22 accordance with a request under this Division; and
23 (b) their identifying information.

1

2

Part 3—Other matters

3

4

46 Application requirements

5

- (1) An application under a provision of this Act must:
- 6 (a) be on the relevant form approved by the Minister for the
 - 7 purposes of that provision; and
 - 8 (b) contain the information required by the form; and
 - 9 (c) be accompanied by any other information or documents
 - 10 prescribed by the regulations; and
 - 11 (d) be accompanied by the fee (if any) prescribed by the
 - 12 regulations.

13

Approval of forms

14

- (2) The Minister may, by writing, approve one or more forms for the
- 15 purposes of a provision of this Act under which an application may
- 16 be made.

17

Note: For example, there are 2 ways to become an Australian citizen by

18 descent under section 16. The Minister may approve 1 form for the

19 purposes of that section or may approve 2 different forms.

20

Remission, refund or waiver of fees

21

- (3) The regulations may make provision for and in relation to the
- 22 remission, refund or waiver of any fees of a kind referred to in
- 23 paragraph (1)(d).

24

47 Notification of decisions

25

- (1) If the Minister makes a decision under this Act in relation to a
- 26 person, the Minister must give the person notice of the decision.

27

Child

28

- (2) If the person is a child, the Minister satisfies the requirement in
- 29 subsection (1) if the Minister gives a parent of the child notice of
- 30 the decision.

Section 48

1 *Reasons for adverse decision*

- 2 (3) If the decision is an adverse decision, the notice must include the
3 reasons for the decision.

4 *Form of notice*

- 5 (4) The Minister must give the notice in the manner prescribed by the
6 regulations (which includes electronic form).

7 *Procedural defect does not affect validity of decision*

- 8 (5) A failure to comply with subsection (3) or (4) does not affect the
9 validity of the decision.

10 **48 Computerised decision-making**

11 *Computer-based decisions*

- 12 (1) The Minister may, by writing, arrange for the use, under the
13 Minister's control, of computer programs for any purposes for
14 which the Minister may, or must, under this Act or the regulations:

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

- 19 (2) The Minister is taken to have:

- 20 (a) made a decision; or
21 (b) exercised a power or complied with an obligation; or
22 (c) done something else related to the making of a decision or
23 the exercise of a power or the compliance with an obligation;
24 that was made, exercised, complied with or done by the operation
25 of a computer program under such an arrangement.

26 *Minister may substitute his or her own decision*

- 27 (3) The Minister may substitute a decision (the *substituted decision*)
28 for a decision (the *initial decision*) made by the operation of a
29 computer program under such an arrangement if:

- 1 (a) a notice under section 49 relates to the computer program and
2 to the initial decision; and
3 (b) the notice states that the computer program was not
4 functioning correctly; and
5 (c) the substituted decision could have been made under the
6 same provision of this Act or the regulations as the initial
7 decision; and
8 (d) the substituted decision is more favourable to the applicant.
- 9 (4) The Minister does not have a duty to consider whether to exercise
10 the power under subsection (3) in respect of any decision, whether
11 he or she is requested to do so by the applicant or by any other
12 person, or in any other circumstances.
- 13 (5) Subsection (3) has effect despite any law of the Commonwealth, or
14 any rule of common law, to the contrary effect.

15 *Arrangement not a legislative instrument*

- 16 (6) An arrangement under subsection (1) is not a legislative
17 instrument.

18 **49 Evidence of whether computer program is functioning correctly**

19 *Issue of notices*

- 20 (1) In citizenship proceedings, a notice signed by an authorised person
21 stating whether or not a specified computer program was
22 functioning correctly:
23 (a) at a specified time or during a specified period; and
24 (b) in relation to specified outcomes from the operation of that
25 program under an arrangement made under subsection 48(1);
26 is prima facie evidence of the matters stated in the notice.

27 *Ministerial authorisations*

- 28 (2) The Minister may, by writing, authorise a person to issue notices
29 under this section.
- 30 (3) The Minister may, by legislative instrument, authorise a class of
31 persons to issue notices under this section.
-

Section 50

1 *Definitions*

2 (4) In this section:

3 ***authorised person*** means:

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

9 ***citizenship proceedings*** means:

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

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

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

21 **50 False statements or representations**

22 (1) A person commits an offence if:

- 23 (a) the person makes, or causes or permits to be made, a
24 representation or statement; and
25 (b) the person does so knowing that the representation or
26 statement is false or misleading in a material particular; and
27 (c) the person does so for a purpose of or in relation to this Act.

28 Penalty: Imprisonment for 12 months.

29 (2) A person commits an offence if:

- 30 (a) the person conceals, or causes or permits to be concealed, a
31 material circumstance; and
32 (b) the person does so for a purpose of or in relation to this Act.

1 Penalty: Imprisonment for 12 months.

2 **51 Geographical jurisdiction for offences**

3 Section 15.4 of the *Criminal Code* (extended geographical
4 jurisdiction—category D) applies to all offences against this Act.

5 **52 Review of decisions**

- 6 (1) An application may be made to the Administrative Appeals
7 Tribunal for review of the following decisions:
- 8 (a) a decision under section 17 to refuse to approve a person
9 becoming an Australian citizen;
 - 10 (b) a decision under section 24 to refuse to approve a person
11 becoming an Australian citizen;
 - 12 (c) a decision under section 25 to cancel an approval given to a
13 person under section 24;
 - 14 (d) a decision under section 30 to refuse to approve a person
15 becoming an Australian citizen again;
 - 16 (e) a decision under section 33 to refuse to approve a person
17 renouncing his or her Australian citizenship, except a refusal
18 because of the operation of subsection 33(5) (about war);
 - 19 (f) a decision under section 34 or subsection 36(1) to revoke a
20 person's Australian citizenship.

21 *Citizenship by conferral decision*

- 22 (2) However, a person (the *applicant*) cannot apply for review of a
23 decision under section 24 to refuse to approve a person becoming
24 an Australian citizen unless the applicant is a permanent resident.
- 25 (3) Subsection (2) does not apply if the decision was made in relation
26 to a person aged under 18 at the time the person made the
27 application to become an Australian citizen.

28 **53 Delegation**

29 The Minister may, by writing, delegate to any person all or any of
30 the Minister's functions or powers under this Act or the
31 regulations.

1 **54 Regulations**

2 The Governor-General may make regulations prescribing matters:

3 (a) required or permitted by this Act to be prescribed; or

4 (b) necessary or convenient to be prescribed for carrying out or
5 giving effect to this Act.

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

4 Note: See section 27.
5
6

7 **1 Form of pledge no. 1**

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

13 **2 Form of pledge no. 2**

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

