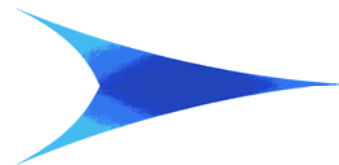


The Southern Cross Group

Promoting Mobility in the Global Community



The Hon Kevin Andrews MP
Minister for Immigration and Citizenship
PO Box 6022
House of Representatives
Parliament House
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Via fax: 0061 2 6273 4144 and 0061 3 9848 2741 – 7 pages in total

By e-mail to Kevin.Andrews.MP@aph.gov.au

8 August 2007

Citizenship Applications Filed at Australian High Commission in Ottawa – Certified Copies

Design Flaws in DIAC Citizenship Forms / Inconsistencies with Citizenship Website

Dear Minister

We write concerning a number of practical matters which are presenting themselves as people make applications for Australian citizenship under the *Australian Citizenship Act 2007*.

Mrs Barbara Armstrong – Certified Copies – AHC Ottawa

The first issue concerns Mrs Barbara Armstrong, who filed her application for resumption of Australian citizenship in person at the Australian High Commission in Ottawa on 2 August 2007.

In accordance with the instructions on DIAC's website on this page:

<http://www.citizenship.gov.au/applying/resuming-citz-docs.htm>

and in line with the instructions on page one of the 07/07 edition of Form 132, Mrs Armstrong presented not only all her original documents along with a completed Form 132, but also photocopies of all her original documents certified as true copies of the originals.

However, the DIAC officer who accepted Mrs Armstrong's resumption application in Ottawa told her that he did not need her set of photocopies certified as true copies of the originals, and instead made a complete fresh set of photocopies behind the counter, certifying them himself on the spot.

The SCG submits that if the AHC in Ottawa is not prepared to accept sets of photocopies certified as true copies of originals in accordance with the instructions on the www.citizenship.gov.au website and Form 132, then it should state this clearly on the AHC Ottawa website.

Further, the www.citizenship.gov.au website and the front of Form 132 should make it clear that applicants filing in Ottawa are subject to different requirements.

Applicants filing in Canada should not be put to the trouble and expense of having such sets of certified copies prepared if the AHC in Ottawa does not require them and is going to reject them.

We note that in many cases, lawyers and other professionals listed in the list of occupations who can complete proof of identity requirements and certify copies of documents for citizenship applications often charge applicants a fee for the service they perform. In the case of the certification of true copies of originals, in some instances, the fee can be per document or per hour. It would appear from Mrs Armstrong's experience that this expense can be avoided by applicants filing with the AHC in Canada.

Further, and more importantly, if the AHC in Ottawa intends to consistently reject photocopies certified as true copies of originals presented by applicants, and is going to always insist on making its own certified copies, the SCG queries why citizenship applicants in Ottawa should be subject to different less burdensome requirements to those lodging their applications in London or in Washington DC or at any other DIAC office.

Design Flaws in Form 132 – Applicant’s Name

While at the AHC in Ottawa, Mrs Armstrong also asked whether the Australian citizenship certificate to be granted if her resumption application is successful would be issued in her current married surname or in her old maiden surname.

The officer behind the counter said that he didn’t know, but he thought it would be issued in her married name. However, he advised that if it came in her maiden name, then she would have to present her marriage certificate/licence along with her new Australian citizenship certificate in order to order an Australian passport.

We ask that you ensure that Mrs Armstrong’s certificate of Australian citizenship be issued in her current married surname of Armstrong.

We point out that the poor design of the 07/07 edition of Form 132 makes it very easy for administrative errors to occur within DIAC in this respect.

Question 1 on Form 132 asks for the applicant’s preferred title (Mr, Mrs, etc). Question 2 asks for “Your name when Australian citizenship was originally acquired” followed by an italicised note stating “(if same as your present name, write “AS ABOVE”)”.

This is nonsensical. Question 1 does not ask for a name, so if the applicant writes “AS ABOVE” in Question 2, they end up giving no name for when they first acquired Australian citizenship and simply referring back to their title. For applicants who have never been known by any other surname (e.g. men and women who have never married), this can have the ridiculous result that they may submit a completed application form which does not state their surname anywhere on it.

Question 3 asks for other names that the applicant has been known by. Married women born in Australia will logically put their married names in Question 3, and their maiden name at date of birth in Question 2. But this can still mean that it is not clear which is the current surname the person is using, especially if the married woman has been married more than once.

A recent example in London illustrates the confusion that these poorly thought through questions on Form 132 are causing even among DIAC officers.

On 24 July 2007, Mrs Julie Peacock in the UK received a letter from DIAC officer Wendy England at the AHC in London acknowledging the lodgement of her citizenship resumption application, addressing her as “Mrs Espie”. Espie was Mrs Peacock’s maiden name, a name she has not used for 40 years. This mistake has no doubt arisen because the first surname given on the Form 132 by Mrs Peacock was “Espie” because Question 2 asks for name at the time citizenship was originally acquired, and no where provides an opportunity to categorically state which is the applicant’s present surname.

The questions concerning name on Form 132 should be modelled on Form 118, which more sensibly first asks for present name, and then whether the applicant has ever been known by any other names.

In the case of a married woman, to obviate the problem of which name goes on the Certificate of Citizenship and to preserve the link with the name of birth when the resumption applicant was originally Australian, the wording might sensibly be:

[All given names] [current married surname], née [maiden surname]

Form 132 – Question 11

Question 11 is unclear as to whether it requires details from the applicant’s current foreign passport (if they have one) or an old Australian passport.

Some resumption applicants have no current passport for their country of current citizenship.

Some resumption applicants have old Australian passports, but some do not.

What information does DIAC require in Question 11 of Form 132?

Form 132 – Questions 12 and 16

Anyone born before 26 January 1949 in Australia was not an Australian citizen at birth because there was no legal concept of Australian citizenship before that date. They usually acquired Australian citizenship under the transitional provisions of the 1948 Act. Some applicants are aware of this nuance, but some are not. Many will make the assumption that they themselves, or their parents were “Australian citizens by birth” from their date of birth, although this is not the case.

The SCG has received a number of e-mail queries from resumption applicants globally asking how to fill in the abovementioned questions in Form 132.

A number of other difficulties in the 07/07 editions of citizenship forms have also come to the SCG’s attention and are outlined below.

Overseas Marriage Certificates as Proof of Name Change

Resumption Applications: In the instructions on the front of the 07/07 edition of Form 132, it is stated that “Overseas marriage certificates are not acceptable evidence of a name change”.

However, the page on DIAC’s citizenship website, as of the date of this letter, setting out the documentation required by resumption applicants states ‘Applicants who are resident overseas can provide overseas marriage certificates as acceptable evidence of a change of name.’¹

The SCG notes that it was told by the Department in an e-mail from Mary-Anne Ellis dated 11 April 2007 that Maltese marriage certificates would be suitable evidence of name change for Maltese resumption applicants provided it had details of the previous legal name of the applicant. Further, in an e-mail to the SCG dated 11 May 2007, Nadine Clode of DIAC stated that “applicants for the resumption of Australian citizenship will be able to submit overseas marriage certificates as evidence of their name change.”

It seems clear that the Department’s policy on overseas marriage certificates as acceptable proof of name change was decided well before the publication of the 07/07 edition of Form 132 on 1 July 2007.

Why, then, does the front of Form 132 not reflect this policy?

The contradiction between what is on the face of Form 132 and what DIAC is advising resumption applicants on its website needs to be resolved. Intending resumption applicants are picking up the inconsistency and are confused by it.

In the absence of any explicit statement from DIAC to the contrary, the SCG is advising all resumption applicants that what is on the DIAC citizenship website trumps what is on the face of Form 132.

But the SCG points out that many applicants do not have internet access. This is particularly true of less well to do applicants and elderly applicants. If all they have is the hard copy Form 132, they will believe that the instructions on the Form 132 itself are definitive, and may well be hindered from applying for Australian citizenship because they believe they cannot use their overseas marriage certificate as evidence of name change.

Descent Applications: The 07/07 edition of Form 118 states on its face that “Overseas marriage certificates are not acceptable evidence of a name change”.

The page on DIAC’s citizenship website, as of the date of this letter, also states “Overseas marriage certificates are not acceptable evidence of a change of name”.²

Why are descent applicants subject to different requirements to resumption applicants in this respect?

¹ <http://www.citizenship.gov.au/applying/resuming-citz-docs.htm>

² <http://www.citizenship.gov.au/applying/categories/citz-by-descent-docs.htm>

Many adult descent applicants have lived their entire lives outside Australia and were married outside Australia. Their overseas marriage certificate (officially translated into English if originally in a language other than English) should be sufficient evidence of a name change.

We note that at least one descent application filed in London since 1 July has been accepted and positively decided on the basis that a UK marriage certificate is acceptable evidence of a name change, despite what appears on the front of Form 118 and the Department's citizenship website.

Conferral Applications – People Born to Former Australian Citizens: Form 124 does not contain instructions at the front like Forms 132 and 118. However, Form 1027i (How to apply for conferral of Australian citizenship) states that "Overseas marriage certificates are not acceptable evidence of a change of name".

Further, the page on DIAC's citizenship website, as at the date of this letter, setting out the documentation required for conferral by people born to former Australian citizens also states "Overseas marriage certificates are not acceptable evidence of a change of name".³

Again, the SCG queries why people born to former Australian citizens applying for citizenship by conferral who were married overseas cannot produce their overseas marriage certificates (translated if necessary) as sufficient evidence of name change.

The SCG submits that all three categories of citizenship applicants should be subject to the same requirements in this respect, and that this should be reflected in the instructions on the Forms themselves as well as on DIAC's citizenship website on all appropriate pages.

Police Clearances From Other Countries – How Far Back?

Police clearance requirements and how far back in time an applicant should be required to go concerning countries they have lived in outside Australia for 12 months or more is a matter which the SCG previously raised with you by letter dated 22 June 2007. We have received no response to that letter.

The Department is failing to provide unequivocal advice to applicants as to what is acceptable.

Resumption Applications: We note that the 07/07 edition of Form 132 states on its face that "*For applicants aged 16 or over, a police certificate from all countries they have lived in (except Australia) since the age of 16 is required.*"

But as of the date of this letter, this page on DIAC's citizenship website for resumption applicants states "*If you have lived in any country for a total of 1 year or more in the last 10 years (except Australia), you must get a penal certificate from the authorities in that country.*"

<http://www.citizenship.gov.au/applying/resuming-citz.htm>

A second page for resumption applicants, reached using a link on the page above, states that the following is required: "*for applicants aged 16 or over, a penal certificate from all countries they have lived in (except Australia) for the last 10 years.*"

<http://www.citizenship.gov.au/applying/resuming-citz-docs.htm>

It would seem that resumption applicants only have to go back 10 years, if DIAC's website is to be believed. However, both of these pages on the DIAC website are at odds with what is on the front of Form 132.

The SCG is advising resumption applicants that what is on DIAC's citizenship website trumps what is on the front of the 07/07 edition of Form 132 and will continue to do so in the absence of anything explicit from DIAC to the contrary.

Again, the SCG points out that many applicants do not have internet access and will only see a hard copy of Form 132. While Form 132 contains instructions on its face which are overly burdensome on the matter of police clearances, even if the Department is not insisting that applicants fulfil those instructions, many applicants will be deterred from applying and cannot be expected to know that DIAC has changed its mind since the 07/07 version of the Form was finalised.

³ <http://www.citizenship.gov.au/applying/categories/born-former-citz-docs.htm>

Descent Applications: The 07/07 edition of Form 118, like Form 132, states that *“For applicants aged 16 or over, a police certificate from all countries they have lived in (except Australia) since the age of 16 is required.”*

One page of DIAC’s citizenship website for descent applicants contradicts this, stating: *If you have lived in any country for a total of 1 year or more in the last 10 years (except Australia), you must get a penal clearance certificate from the authorities in that country.*

<http://www.citizenship.gov.au/applying/categories/citz-by-descent.htm>

However, a second page of the DIAC citizenship website for descent applicants, reached from a link on the page above, directly contradicts this in turn and instead matches what is on the front of Form 118, stating: *“for applicants aged 16 or over, a penal certificate from all countries they have lived in (except Australia) since the age of 16 if the absences totalled 12 months or more”.*

<http://www.citizenship.gov.au/applying/categories/citz-by-descent-docs.htm>

DIAC’s own citizenship website is inconsistent with itself concerning police clearances for descent applicants.

What does DIAC require from descent applicants concerning police clearances?

Conferral Applications – People Born to Former Australian Citizens: Form 1027i states that *“Overseas police clearance certificates must be provided for each country you have lived in since you were granted a permanent visa if you were over the age of 16 years and the absences totalled 12 months or more”.*

This is unhelpful and confusing for those applying for conferral under Section 21(6) of the 2007 Act because in almost all cases they will not have been granted a permanent visa for Australia and will be resident outside Australia.

One page of DIAC citizenship website for Section 21(6) applicants states: *“If you have lived in any country for a total of 1 year or more in the last 10 years (except Australia), you must get a penal certificate from the authorities in that country. Penal certificates are not required for persons under the age of 16 years.”*

<http://www.citizenship.gov.au/applying/categories/born-former-citz.htm>

However, a second page of the DIAC citizenship website for Section 21(6) applicants states *“if you have lived in any country for a total of 1 year (except Australia), you must get a penal certificate from the authorities in that country.”*

<http://www.citizenship.gov.au/applying/categories/born-former-citz-docs.htm>

This statement is even more confusing because it fails to state at all how far back in time a Section 21(6) applicant is required to go with police clearances. One could be forgiven for thinking, reading that particular page of the DIAC website, that Section 21(6) applicants have to provide police clearances for all countries they have lived in for 12 months or more since they were born.

What does DIAC require for Section 21(6) applicants concerning police clearances?

Whatever its policy is, it should be stated clearly on Form 1027i, and on the above two website pages of DIAC’s site, and the information in those three locations should not be internally contradictory.

The SCG submits that adult resumption, descent and Section 21(6) conferral applicants should all be subject to identical rules on police clearances: they should only be required to provide clearances for countries outside Australia that they have lived in for 12 months or more going back the last 10 years.

Police Clearances from 16 and 17 Year Olds

On 22 June 2007 we queried with you the legal basis on which the Department justifies its requirement that citizenship applicants for resumption and descent aged 16 and 17 provide police clearance certificates.

We await your response on this issue.

Form 118 – Use for Applicants born both before and after 26 January 1949

The Department is requiring that Section 16(2) and Section 16(3) descent applicants all use Form 118. However, Form 118 is designed wholly with Section 16(2) applicants in mind, i.e. its questions assume that all applicants are born on or after 26 January 1949.

Questions 17 and 25 on Form 118 are particularly inappropriate for descent applicants born before 26 January 1949. The correct answer to these questions for all Section 16(3) descent applicants will be “No”, because no one was an Australian citizen before 26 January 1949. If a Section 16(3) applicant is aware of this when filling in Form 118, and gives the correct legal answer, the Form then instructs them to skip the next three questions. But it is submitted that DIAC will need the information in the next three questions answered by Section 16(3) applicants.

For Section 16(3) applicants, the Department needs to establish that the person’s parent became an Australian citizen on 26 January 1949.

Separate questions should be included on Form 118 where appropriate for those born prior to 26 January 1949 and on or after that date.

For all descent applicants, questions 17 and 25 of Form 118 also raise the same issue as for Questions 12 and 16 on Form 132. Many applicants will assume that parents born in Australia prior to 26 January 1949 were Australian citizens from the time of their birth when they were not.

Form 124 – Use by Section 21(6) Applicants (born abroad to a former Australian citizen)

The SCG submits that the Department’s attempt to have a “one size fits all” application form for all categories of citizenship by conferral applicants is inappropriate.

Form 124 is designed to be used by migrants in Australia naturalizing.

Many of its questions are inapplicable and simply confusing for those not in that category. The SCG is hearing from many conferral applicants applying under Section 21(6) based overseas that Form 124 is causing difficulties. Although the Department does state on its website:

Please note: *There may be requirements listed in Form 124 that are not applicable to your circumstances. If in doubt, please contact the office where you will lodge the application*⁴

the SCG does not consider that this is sufficient guidance for Section 21(6) applicants. In particular, Section 21(6) applicants who do not have internet access are not going to see that statement and are going to assume that they have to answer all the questions on Form 124 even if they are not required for their special circumstances.

Question 9 on Form 124 – which asks for previous country of residence – is inappropriate for Section 21(6) applicants.

Question 11 – which asks for the date the applicant first entered Australia as the holder of a permanent visa – is also inappropriate, as is Question 12, which asks about other Australian visas, and Question 13, which asks about residence exemptions or discretion.

Question 14 should include a field for the person to enter their current country in the address field, as Section 21(6) applicants are in general not living in Australia.

Question 15 should include space for the applicant to put their country code before the telephone area code.

Question 17 is inapplicable for Section 21(6) applicants, but is causing confusion because it gives the misleading impression that adult Section 21(6) applicants overseas may be able to include their children (regardless of where born) under 16 on the application.

Question 19 as regards parents’ Australian citizenship and date acquired raises the issues already raised above for Questions 12 and 16 on Form 132.

⁴ www.citizenship.gov.au/applying/categories/born-former-citz.htm

Question 20 is worded for applicants living in Australia. An applicant living outside Australia is not necessarily going to understand that the term “overseas” here refers to countries outside Australia. For them, “overseas” includes Australia. In any event, Question 20 is inapplicable to Section 21(6) applicants because it refers to the period since the applicant gained a permanent residence visa for Australia, and Section 21(6) applicants are not required to have such visas.

The whole of Part G on Form 124 is also inapplicable to Section 21(6) applicants, but is nevertheless causing confusion among them.

Form 1027i also confuses Section 21(6) applicants by pointing out that conferral applicants can apply online. It should be made clear that Section 21(6) applicants cannot apply online unless they meet very specific criteria.

The SCG urges the Minister to instruct the Department to design a separate, tailored, application form specifically for Section 21(6) citizenship by conferral cases. The same form might also feasibly be used for Section 21(5) applicants.

That form, and future editions of all citizenship application forms, should be tested on sample audiences before being published in final form. In light of the gross errors in the design of the current edition of Form 132, it would appear that the Department has not been properly testing its draft citizenship forms.

Until the 07/07 editions of citizenship forms are updated and corrected, all applicants for Australian citizenship (resumption, descent and conferral) who contact DIAC offices either overseas or in Australia requesting hard copies of citizenship application forms should be also sent a separate DIAC guidance document outlining which instructions on the face of the form they will be using are no longer DIAC policy, and stating the present DIAC policy on all of these matters.

We look forward to your response on all of these matters.

Kind regards,

Anne MacGregor
Co-founder

Cc: Mr Tony Burke, MP
Shadow Minister for Immigration, Integration and Citizenship

Ms Mary–Anne Ellis, DIAC (via e-mail only)

Ms Nadine Clode, DIAC (via e-mail only)

Mrs Barbara Armstrong

Mrs Julie Peacock