

# 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  
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**Via fax: 0061 2 6273 4144 and 0061 3 9848 2741 – 3 pages in total**

**By e-mail to [Kevin.Andrews.MP@aph.gov.au](mailto:Kevin.Andrews.MP@aph.gov.au)**

22 June 2007

## **Good Character Requirements / Police Clearances - Australian Citizenship Act 2007**

Dear Minister

We write concerning the documentary requirements for demonstrating good character in applications under the *Australian Citizenship Act 2007* ("2007 Act").

### **Police Clearances Demanded from 16 and 17 Year-Olds – *Ultra Vires* for Resumption and Descent Applications**

The Department of Immigration and Citizenship is intending to impose administrative requirements on applicants that go beyond the scope of the law as enacted in the 2007 Act, i.e., which are *ultra vires*.

Section 29 of the 2007 Act sets out eligibility criteria for the resumption of Australian citizenship. Whether the original citizenship was lost under the 2007 Act or under the 1948 Act, in both cases, the 2007 Act states that the person is eligible to become an Australian citizen again:

*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.*

Section 16 of the 2007 Act sets out eligibility criteria for Australian citizenship by descent. For persons born outside Australia on or after 26 January 1949, the Act provides that a person is eligible to become an Australian if (among other things):

*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.*

For both resumption and descent applications under the 2007 Act, therefore, it is beyond doubt that the Australian Parliament only intends that the Minister need be satisfied as to good character for adult applicants.

The term "good character" is not defined in the 2007 Act. Under the 1948 Act, a large part of the assessment of good character involves establishing whether or not an applicant has a criminal record. Therefore police clearance certificates or criminal record checks are required by the Department as evidence of good character.

Since 28 March 2007, in preparation for the entry into force of the 2007 Act, the Department has had information on the **[citizenship.gov.au](http://citizenship.gov.au)** website setting out the supporting documentation that will be required for applications under the 2007 Act.

On the website pages dealing with resumption<sup>1</sup> and descent<sup>2</sup> applications under the 2007 Act, since 28 March, and at the date of this letter, the Department states the following requirement:

*for applicants aged 16 or over, a police certificate from all countries they have lived in (except Australia) since the age of 16 if the absences totalled 12 months or more. Information about how to obtain police certificates is available in the form 47P.*

The administrative requirement created by the Department for 16 and 17 year-old applicants for resumption and descent to provide evidence of good character goes beyond the scope of the Act itself. It is therefore *ultra vires*.

The Southern Cross Group is advising all individuals known to it who are minors and who will be making descent and resumption applications under the 2007 Act that the 2007 Act does not require them to provide police clearances.

### **Period Covered by Police Checks**

The SCG notes that under the current 1948 Act, two different police clearance regimes are in place.

Applications for resumption and descent made from offshore, or where the applicant is on-shore but has spent considerable time overseas, only require police clearances for those countries, outside Australia, in which the applicant has resided for the previous 10 years.

However, applicants for grant of citizenship under the 1948 Act are presently obliged to provide a full history of overseas police checks covering the time since being granted permanent residence, regardless of the period of time which has elapsed – the 10-year limit does not apply.

Under the 2007 Act, the ***citizenship.gov.au*** website stipulates at the date of this letter, for resumption, descent and conferral applications, that all applicants aged 16 or over will have to provide police clearance certificates covering the entire period of their lives since the age of 16.

This represents a significant change of policy for resumption and descent applicants.

The SCG asks the Minister to explain why such a policy change is considered appropriate and necessary under the 2007 Act.

The SCG submits that the new requirement to provide police clearance coverage for the entire period of one's life since the age of 16 can in some instances in resumption and descent cases be impossible for applicants to fulfil, and may be so burdensome that a number of applicants will be deterred from making applications despite their lack of criminal records.

The Minister no doubt understands that in this age of global mobility, many people in the Australian diaspora are what the SCG terms "serial expats". They move out of Australia for a particular job or purpose, and then find that career or family or both lead them to move to a second country, and then perhaps a third country, and then on to others over several decades.

Several Australian-born war brides in the United States who naturalized in the US after 26 January 1949 have told the SCG that they have lived in a number of countries, often because their US-servicemen husbands stayed in the military after World War II and undertook successive overseas postings. For these women, now all in their eighties and nineties, the prospect of having to obtain police clearances all the way back to the 1940s from several foreign countries is extremely daunting. It is unlikely that these women will make applications for resumption if the Department insists on police clearances from them dating back to the time they were 16.

One potential resumption applicant who has recently contacted the SCG is the elderly widow of a Swiss diplomat, who travelled the world with her husband during his 35-year career. She would need to obtain police clearances from Switzerland, Belgium, Poland, Egypt, South Korea, the USA, Kenya, Chile and Thailand to fulfil the stipulation going back to age 16 currently on the Department's website for resumption applicants under

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<sup>1</sup> <http://www.citizenship.gov.au/law-and-policy/new-act/na-resumption.htm>

<sup>2</sup> [http://www.citizenship.gov.au/law-and-policy/new-act/na\\_descent.htm](http://www.citizenship.gov.au/law-and-policy/new-act/na_descent.htm)

the 2007 Act. She has written to the SCG that “this is useless”, and asked “is there no provision for a more intelligent solution?”

Another Australian-born individual, who lost his Australian citizenship under Section 17 in 1971 on taking out Canadian citizenship, would like to resume his citizenship but feels that the “back to age 16” requirement for police clearances may prevent him because of the fact that he has lived in numerous countries over the years, including Canada, Japan, Kenya and Singapore.

The SCG points out that all resumption applicants are former Australian citizens. Most were born in Australia. The present arrangements under the 1948 Act requiring police clearances only for the last 10 years should be sufficient to satisfy the Minister that these people are of good character.

Similarly, those who are eligible to apply for citizenship by descent are born into Australian families. For this reason, the SCG submits that in descent cases as well, the current 10-year requirement should be kept in place under the 2007 Act.

Quite apart from the provision of police clearances, all criminal history has to be declared on application forms in any event. Further, there is scope under the 2007 for Australian citizenship to be cancelled in cases of deception.

### **Use of Form 47P**

On its website pages dealing with documentary requirements for resumption, descent and conferral applications under the 2007 Act, the Department presently refers potential applicants to Form 47P and provides a hyperlink to the full text of the Form.

This is causing considerable confusion among overseas-based applicants within the SCG’s caseload.

Form 47P was designed to be used in an immigration/visa context, and not for citizenship.

The Form states in the third paragraph on page one that police clearances are only required going back 10 years. This is in direct contradiction to what is presently on the Department’s three website pages for descent, resumption and conferral applications under the 2007 Act, which require police clearance coverage going back to the age of 16.

In addition, applicants based in a number of countries listed on Form 47P, who know about the requirements for obtaining criminal record checks in those countries, have drawn to the SCG’s attention that the details on the Form are in some cases now outdated and/or wrong. Although the Form states that “details shown are subject to change without notice by the authorities of the relevant country, and the Australian government can take no responsibility for their accuracy”, the SCG submits that if the Department takes it upon itself to provide this information at all, it should be thoroughly and regularly updated.

More importantly, the Department must make clear which instructions on the front of Form 47P apply or do not apply to citizenship applicants.

We trust that you will give this matter your personal attention and look forward to a response signed by yourself as soon as possible.

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)