

# ***Australian Citizenship Act 2007***

## **Citizenship by Conferral**

**For individuals born outside Australia after their parent lost Australian citizenship under Section 17 of the *Australian Citizenship Act 1948***

### **Subdivision B—Citizenship by conferral**

#### **19G Simplified outline**

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision in 7 situations:

- you satisfy the general eligibility criteria: see subsection 21(2); or
- you have a permanent physical or mental incapacity: see subsection 21(3); or
- you are aged 60 or over or have a hearing, speech or sight impairment: see subsection 21(4); or
- you are aged under 18: see subsection 21(5); or
- **you were born to a former Australian citizen: see subsection 21(6); or**
- you were born in Papua: see subsection 21(7); or
- you are a stateless person: see subsection 21(8).

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved. You may be refused citizenship even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 24(3); or
- national security: see subsections 24(4) to (4C); or
- non-presence in Australia: see subsection 24(5); or
- offences: see subsection 24(6); or
- cessation of citizenship: see subsection 24(7).

You may need to make a pledge of commitment to become an Australian citizen.

## 20 Requirements for becoming a citizen

A person becomes an Australian citizen under this Subdivision if:

- (a) the Minister decides under subsection 24(1) to approve the person becoming an Australian citizen; and
- (b) if the person is required to make a pledge of commitment to become an Australian citizen—the person makes that pledge.

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

## 21 Application and eligibility for citizenship

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

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

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

### *Person born to former Australian citizen*

- (6) A person is eligible to become an Australian citizen if the Minister is satisfied that:
  - (a) the person was born outside Australia; and
  - (b) a parent of the person was not an Australian citizen at the time of the person's birth; and
  - (c) the parent had ceased to be an Australian citizen under section 17 of the old Act (about dual citizenship) before that time; and
  - (d) the person is of good character at the time of the Minister's decision on the application.

## 24 Minister's decision

- (1) If a person makes an application under section 21, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.

Note: The Minister may cancel an approval: see section 25.

- (1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6), (7) or (8).
- (2) The Minister may refuse to approve the person becoming an Australian citizen despite the person being eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6), (7) or (8).

### *Identity*

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

Note: Division 5 contains the identity provisions.

### *National security*

- (4) If the person is not covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (4A) If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person:
- (a) if subparagraph (4B)(b)(i) applies to the person:
    - (i) has been convicted of a national security offence; or
    - (ii) subject to subsection (4C), has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
  - (b) if subparagraph (4B)(b)(ii) applies to the person—has been convicted of a national security offence.
- (4B) A person is covered by this subsection if:
- (a) at the time the person made the application under section 21, the person:
    - (i) is not a national of any country; and
    - (ii) is not a citizen of any country; and
  - (b) either:
    - (i) the person was born in Australia; or
    - (ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.
- (4C) The Minister may decide that subparagraph (4A)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.

### *Offences*

- (6) The Minister must not approve the person becoming an Australian citizen at a time:
- (a) when proceedings for an offence against an Australian law (including proceedings by way of appeal or review) are pending in relation to the person; or
  - (b) when the person is confined to a prison in Australia; or
  - (c) during the period of 2 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition on the person of a serious prison sentence; or
  - (d) if the person is a serious repeat offender in relation to a serious prison sentence—during the period of 10 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition of that sentence; or
  - (e) if the person has been released from serving the whole or a part of a sentence of imprisonment on parole or licence—during any period

- during which action can be taken under an Australian law to require the person to serve the whole or a part of that sentence; or
- (f) if the person:
- (i) has been released by a court from serving the whole or a part of a sentence of imprisonment; and
  - (ii) has been so released because the person gave a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour;
- during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or
- (g) if, in respect of proceedings for an offence against an Australian law in relation to the person:
- (i) a court does not impose a sentence of imprisonment on the person; and
  - (ii) the court releases the person because the person gives a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour;
- during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or
- (h) during any period during which the person is confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

#### *Cessation of citizenship*

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

#### *Statelessness*

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

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

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

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

- (2) A person must not make a pledge of commitment before the Minister approves the person's application to become an Australian citizen. A

pledge of commitment made by the person before that time is of no effect.

## **28 Day citizenship begins etc.**

### *Persons required to make pledge of commitment*

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

### ***Persons not required to make pledge of commitment***

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

*NOTE: These extracts from Subdivision B of the Australian Citizenship Act 2007 were in force as at 1 July 2007. Later amendments may occur.*