

Forthcoming Reforms to Give Thousands Access to Australian Citizenship

After considerable lobbying by the Southern Cross Group and others over several years, (the then) Australian Citizenship Minister the Hon Gary Hardgrave MP announced on 7 July 2004 that the Government has decided to carry out a number of further reforms to the *Australian Citizenship Act 1948* ("the Act") which will benefit many former Australian citizens overseas and their overseas-born children (who may not previously have had access to Australian citizenship).

Legislation to bring about the reforms still has to be drafted, passed by both houses of Parliament in Canberra and receive Royal Assent before it will come into effect. It is expected to be in place in mid-to-late 2005.

The planned reforms follow the 2002 repeal of Section 17 of the Act. From 26 January 1949 to the date of its repeal on 4 April 2002, Section 17 operated to strip people of their Australian citizenship when they acquired another citizenship as an adult, thereby preventing dual citizenship.

Thousands of Australians who became naturalised citizens (particularly in the UK, the US and Canada) while Section 17 was in force forfeited their Australian citizenship, many unwittingly. If they had minor children who were Australian citizens at the date of their loss, the child forfeited citizenship with the parent (unless the other parent remained Australian).

Although it has been possible to resume Australian citizenship lost under Section 17 since the mid 1980s, many who have made their homes outside Australia on a permanent basis have been unable to qualify for resumption because the Act currently requires them to make a declaration that they intend to return to reside in Australia within three years.

Simplified Resumption of Lost Australian Citizenship

Once the proposed reforms become law, the only criterion for resumption of Australian citizenship by people who lost their Australian citizenship when they acquired another country's citizenship will be that the person is of good character. Former Australian citizens living abroad, with no intention to return to live in Australia, will thereby be able to become dual citizens.

Surviving Australian war brides in the US (most now in their 80s) are a particular group that will benefit from the planned amendments. It is estimated that up to 15,000 women from Australia married US servicemen during or just after World War II, many moving to the US with their husbands and subsequently taking out US citizenship, thereby giving up their Australian citizenship.

Access to Australian Citizenship for Overseas-Born Children

Additional planned reforms will benefit the children of Australian war brides and other overseas-born children of Australian citizens and former Australian citizens.

Individuals born outside Australia to Australian mothers before 26 January 1949 will soon be able to apply for registration as Australian citizens by descent. Historical sex-discrimination in the law had generally only allowed people born overseas to Australian fathers before this date to become Australian citizens.

Further, many children born overseas to an Australian citizen parent on or after 26 January 1949 missed out on becoming Australian citizens by descent, often because their Australian parent did not register them with the Australian authorities while they were minors, and/or due to particular quirks in the law which presently exclude certain pockets of people from citizenship.

Once the proposed reforms become law, the only requirements that will apply to a person born outside Australia seeking registration as an Australian citizen by descent will be that:

- at least one parent was an Australian citizen at the time of the person's birth;
- the person is of good character if 18 years or over; and
- if a parent of the applicant acquired Australian citizenship by descent themselves, that parent must have spent a total of two years in Australia as a lawful resident.

Children born overseas to individuals who had lost their Australian citizenship under Section 17 by the date of the child's birth will also be encompassed in the reforms. If presently under the age of 18, these children already qualify to apply for Australian citizenship by grant, under a policy change introduced in 2003. For people who are now 18 years or over, the Act will soon be amended to provide for grant of citizenship to a person of good character who was born overseas after their parent lost citizenship under the former Section 17.

Those who previously formally renounced their Australian citizenship under Section 18 will also have access to simplified resumption.

Non-Australian Spouses – Citizenship While Living Outside Australia

Finally, there is good news for the non-Australian spouses of Australian citizens where the couple is living outside Australia. Non-Australian spouses will have easier access to Australian citizenship by grant (naturalisation) while they live abroad: a spouse-specific residence discretion will be introduced, to waive part or all of the Australian residence requirements for naturalisation, based on a demonstrable close and continuing association with Australia.

The Southern Cross Group <http://www.southern-cross-group.org> website provides full details of the proposed legislation. Sign up to the SCG's free e-bulletin list using the button on the site to be kept up to date on the passage of the legislation through Parliament and its coming into force. Those who are unclear about how the reforms will affect them personally should contact info@southern-cross-group.org.

A federal election was held in Australia on 9 October 2004, and the Coalition government which undertook to make the changes in July 2004 was returned to office. Following the election, the Hon Peter McGauran MP became the new Minister for Citizenship and Multicultural Affairs. It is expected that legislation to bring about the above changes will be introduced into Parliament in Canberra in 2005, and that the Australian Labor Party, in Opposition, broadly supports the amendments.

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