



RESEARCH NOTE

Number 18, 16 October 1995
ISSN 1323-5664

Are You An Australian?

While the rights and responsibilities applicable to Australians derive from a wide range of laws, the Constitution, Commonwealth and State statutes and the common law, there is only one legal determinant of who is an Australian and that is the *Australian Citizenship Act 1948* (the Citizenship Act).

This *Research Note* outlines the rules for the acquisition of Australian citizenship.

Acquisition of Citizenship

The Citizenship Act provides for the acquisition of Australian citizenship in four ways, namely:

- by birth
- by adoption
- by descent and
- by grant.

Acquisition by Birth

(a) Born on or after 20 August 1986

Section 10 of the Citizenship Act deals with the acquisition of citizenship by birth. In general, a person born in Australia on or after 20 August 1986 will be an Australian citizen by virtue of that birth if:

- one of their parents was, at the time of their birth, an Australian citizen or permanent resident; or
- throughout a ten year period commencing from their birth, they have been ordinarily resident in Australia.

(b) Born between 26 January 1949 and 19 August 1986

In general, a person born in Australia between 26 January 1949 and 19 August 1986 is taken to be an Australian citizen by virtue of that birth.

(c) Born prior to 26 January 1949

Prior to 26 January 1949, there was no legal concept of Australian citizenship, people born in Australia prior to that date were British subjects. In general, on and from 26 January 1949 the following British subjects were taken to be Australian citizens:

- a person born in Australia (including territories which are not trust territories) prior to 26 January 1949 who would have been an Australian citizen if the Citizenship Act had been in force at their birth;
- a person born in the Territory of New Guinea prior to 26 January 1949;
- a person naturalised in Australia prior to 26 January 1949;
- a person who had been, prior to 26 January 1949, ordinarily resident in Australia or the Territory of New Guinea, or partly in Australia and the Territory of New Guinea for at least five years;
- a person born outside Australia and the Territory of New Guinea prior to 26 January 1949 who enters Australia

and whose father falls within the above rules;

- a woman who, prior to 26 January 1949, had been married to a person who becomes or, if he is dead, would have become an Australian citizen and who entered Australia before 26 January 1949; and
- an illegitimate child born outside Australia in a British Commonwealth country or the Republic of Ireland prior to 26 January 1949 whose mother at the time of their birth was a British subject ordinarily resident in Australia or the Territory of New Guinea.

Citizenship by Adoption:-

Section 10A of the Citizenship Act requires that two criteria be satisfied for the acquisition of Australian citizenship by adoption. These are that the adoptee:

- has been lawfully adopted by an Australian citizen or by two persons of whom one must be an Australian citizen; and
- was a permanent resident in Australia at the time of adoption.

Citizenship by Descent:-

Section 10B of the Citizenship Act provides that a person born outside Australia is an Australian citizen if:

- their name is registered at an Australian consulate within 18 years of their birth; and

- at least one of their parents was at the time of their birth:
 - an Australian citizen who had acquired Australian citizenship other than by descent; or
 - at least one of their parents was at the time of their birth an Australian citizen who had acquired Australian citizenship by descent and before registration was present in Australia, other than as a prohibited immigrant, prohibited non-citizen, illegal entrant, or in breach of law of a prescribed Territory (ie. Norfolk Island or the Territory of Cocos (Keeling) Islands), for a period/s amounting to not less than two years.

Where a person is not registered as an Australian citizen within 18 years of their birth, they may be registered in accordance with section 10C of the Citizenship Act. Section 10C provides that the Minister must register an applicant if:

- a natural parent of the applicant was an Australian citizen at the time of the applicant's birth; and
- that parent is an Australian citizen at the time an application is made, or is dead and at time of death was an Australian citizen; and
- the applicant was born outside Australia on or after 26 January 1949; and
- are aged 18 years or over; and

- failed for an acceptable reason to become registered under section 10B or section 11 of the Citizenship Act; and
- the Minister is satisfied that they are of good character.

Section 11 of the Citizenship Act provides that Australian citizenship may be acquired through the mother in certain circumstances. The circumstances are:

- where the persons natural mother became an Australian citizen on the creation of Australian citizenship (ie. 26 January 1949);
- the applicant has applied for registration as an Australian citizen within five years after the commencement of section 11 (ie. 18 June 1991); and
- the Minister for Immigration and Ethnic Affairs is satisfied the applicant was present in Australia for any time before 1 May 1987 and that he/she is of good character.

Citizenship by Grant:-

In general, section 13 of the Citizenship Act gives the Minister for Immigration and Ethnic Affairs a discretion, upon an application being made, to grant citizenship to a person who satisfies them in relation to all the following criteria that he/she:

- is a permanent resident
- has reached 18 years of age
- understands the nature of the application
- has been present in Australia as a permanent resident for a

period/s amounting in aggregate to not less than one year during a period of two years immediately preceding the date of lodging the application

- has been present in Australia as a permanent resident for a period/s amounting in aggregate to not less than two years during a period of five years immediately preceding the date of lodging the application
- is of good character
- possesses a basic knowledge of English
- has an adequate knowledge of the responsibilities and privileges of Australian citizenship

if granted Australian citizenship, would be likely to reside, or continue to reside, in Australia or maintain a close and continuing association with Australia.

Ian Ireland
Law and Public Administration
Group
Parliamentary Research
Service

Phone: 06 2772438
 Fax: 06 2772407

Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Parliamentary Research Service and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvas all of the key issues.

© Commonwealth of Australia