



Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Submission to the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the Australian Citizenship Bill 2005 and the Australian Citizenship (Transitionals and Consequentials) Bill 2005

PURPOSE OF THE BILLS

The two Bills replace the *Australian Citizenship Act 1948* (the old Act) with the *Australian Citizenship Act 2005* (the new Act). The Bill aims to deliver better structured, clearer and more accessible citizenship legislation, drafted in contemporary language.

BACKGROUND

In February 2000, the Australian Citizenship Council (ACC) presented its report entitled *Australian Citizenship for a New Century*. The ACC made 64 recommendations to the Australian government relating to law, policy and promotion of citizenship in Australia. Most of the recommended legislative changes were incorporated into the *Australian Citizenship Legislation Amendment Bill 2002*, the most significant being the repeal of section 17 (about dual citizenship).

On 7 July 2004 the Government announced a number of changes to complement the rationale behind the 2002 legislative changes and to improve the integrity and the consistency of Australian citizenship law. As well, on 8 September 2005 and 14 September 2005, the Government announced further changes to strengthen the integrity of Australia's citizenship legislation and support the Government's ability to counter global threats to national security.

CONTENT OF THE AUSTRALIAN CITIZENSHIP BILL 2005

The structure of the Bill reflects Recommendation 62 of the report of the ACC; that is, that the Act be 'logically organised, numbered, consistent and with related matters dealt with together, and ensuring that the balance of matters dealt with between the Act and the Australian Citizenship Regulations conforms to modern standards'.

In order to make the Act more logically structured, its contents have been reorganised. The Preamble has been amended consistent with changes to terminology. Part 1 of the Bill deals with preliminary matters; Part 2, Division 1 of the Bill deals with all the circumstances by which citizenship is automatically acquired; Division 2 deals with acquisition of citizenship by application; Division 3 deals with the cessation of citizenship; Division 4 deals with evidence; Division 5 introduces a framework for the collection, use and storage of personal identifiers; and Part 3 of the Bill deals with other matters. Schedule 1 to the Bill contains the existing pledge of commitment as a citizen of the Commonwealth of Australia.

Part 1 - Preliminary

Part 1 deals with definitions and the operation of the proposed Act. It proposes to substitute the complicated definition of 'permanent resident' of the old Act with a simplified definition.

Part 2 - Australian Citizenship

Division 1 - Automatic acquisition of Australian citizenship

Division 1 of the Bill brings provisions from the old Act into one place and clearly outlines the circumstances (birth, adoption, abandonment, and on acquisition of a territory) by which a person automatically becomes an Australian citizen.

Division 2 - Acquisition of Australian citizenship by application

Division 2 of the Bill outlines all the circumstances by which a person may acquire Australian citizenship by application. Clauses proposed within the Division include prohibitions on the Minister approving an application for citizenship where the Minister is not satisfied of the identity of the person or where the applicant has been assessed under the *Australian Security Organisation Intelligence Act 1979* as being a direct or indirect threat to security (the prohibitions on identity also apply to applications for renunciation of Australian citizenship under Division 3 and applications for evidence under Division 4). Identity fraud facilitates the international movement of terrorists and other persons of concern. Strengthened proof of identity requirements is therefore essential to the integrity of Australia's citizenship process and, as a consequence, to national security.

The Division also retains the existing discretion of the Minister not to approve applications for Australian citizenship. It has been a uniform feature of naturalisation legislation throughout the Commonwealth for over a century to give the Executive a wide discretion regarding the citizenship of the State.

Subdivision A – Citizenship by descent

This subdivision proposes to combine the three descent provisions and the statelessness provision of the old Act into the one provision. It also proposes to repeal the age limit for citizenship by descent as well as other limiting restrictions (i.e. presence in Australia prior to 1987). This will allow access to Australian citizenship by descent for persons who have not been able to access their entitlement to Australian citizenship (by descent).

It is also proposed that a person becomes an Australian citizen at the time of approval as opposed to the time of registration. A provision is also proposed which will prohibit a person becoming an Australian citizen by descent if they have ceased to be an Australian citizen within the previous 12 months (this provision is consistent with an existing provision for citizenship by conferral in the old Act).

This proposed subdivision also includes a provision that makes it absolutely clear in law that a person is never taken to have been an Australian citizen if they were never eligible because they did not have an Australian citizen parent at the time of their birth or a parent who became an Australian citizen on 26 January 1949.

Subdivision B – Citizenship by conferral

This subdivision proposes only one change to the existing eligibility criteria for the conferral of Australian citizenship. This change is the extension of the residential qualifying period from not less than two years in the previous five years to not less than three years in the

previous five years. The requirement for one year's residence in the two years before the application will remain. This strengthens the integrity of the citizenship process by allowing more time for the identification of people who may be a threat to national security.

The subdivision also proposes changes to the discretions for the residence requirement by providing for persons who are engaged in activities beneficial to Australia, whether in Australia as a temporary entrant or outside Australia as a permanent resident, to count some of that time for the purpose of the residential qualifying period, provided that they have resided in Australia for at least one year as a permanent resident¹.

A spouse specific discretion has also been proposed to waive part or all of the residence requirements for spouses resident outside Australia. In such circumstances an application may also be approved at a time when the spouse is outside Australia. The definition of spouse has been expanded to ensure it is consistent with other Commonwealth legislation. The subdivision also proposes that spouses of Australian citizens will be required to meet the same requirements for Australian citizenship by conferral as most adult applicants, which supports the modern expectation that adult applicants should qualify in their own right.

The only other proposed change to the existing discretions for citizenship by conferral is to increase from 50 to 60 years the age after which applicants for Australian citizenship are exempt from the requirement to have a basic knowledge of English. This proposed change will align this age with the age at which an applicant is exempt from the requirement to have an adequate knowledge of the responsibilities and privileges of Australian citizenship.

It is also proposed to introduce a new prohibition on the approval of an application during any period in which a person has been released by a court on the giving of a security and during any period in which action can be taken by a court for breach of that security. This proposed provision supports a change in approach by courts to impose an obligation in the first instance rather than a conviction or sentence.

The subdivision proposes extending the eligibility criteria to the children of Australians who have been unable to access Australian citizenship. The first group comprises the children of former Australian citizens who lost their citizenship under section 17 of the old Act. This proposed change supports the rationale behind the repeal of section 17 in the 2002 changes to Australian citizenship legislation.

The second group comprises the small number of persons born in Papua before Papua New Guinea independence who have a parent born in Australia (as now defined). This new provision remedies the anomalous situation under the old Act of a unique class of people who were born in an Australian territory and are the children of Australian citizens, yet have been denied Australian citizenship.

¹ Following introduction of the Bill a minor amendment to clause 22(7) has been identified as necessary to ensure it is consistent with clause 22(8). Amendment will provide equal application of exemption to the residential qualifying period for both permanent and temporary residence during which the applicant is engaged in activities beneficial to Australia. It is proposed that this be moved as a government amendment following debate in the House of Representatives.

This subdivision also proposes the introduction of a number of provisions which go to making it clearer and easier to understand citizenship legislation. These include the introduction of provisions that outline the point at which the eligibility criteria are assessed and the only circumstances in which a person's approval for citizenship can be cancelled. A new provision is also proposed which provides that the Minister may cancel an earlier decision to not allow a person to make a pledge for a period of up to 12 months. The subdivision also proposes that a pledge of commitment made by a person has no effect unless that person has been approved to become an Australian citizen.

The provision in the old Act that provided for children to be included on a parent's citizenship application will continue to apply, but will be more appropriately provided for through approved form arrangements in the Regulations, as opposed to primary legislation. As is current practice, children will continue to be considered as applicants in their own right. Other changes are also proposed to legislate current practices in relation to children who apply on the same application form as one or more of their parents. These are: that the child does not become a citizen until the day on which one or more of their parents become an Australian citizen; and where both parents' approvals to become Australian citizens are cancelled, the child's approval to become an Australian citizen will also be cancelled. These requirements seek to address the issue of split families.

Subdivision C – Citizenship by resumption

This subdivision combines the four provisions for resumption in the old Act into the one provision. It also amends the provisions by allowing former citizens of any age to apply to resume their citizenship regardless of whether they lost or renounced their citizenship in order to acquire or retain the citizenship of another country (because the law of some countries required its citizens to renounce their other citizenship to access certain benefits and rights) or in order to avoid significant hardship or disadvantage (because some former citizens had to renounce their Australian citizenship to obtain a security clearance in order to work in the country of their other citizenship). The only other requirement is that persons over the age of 18 must be of good character.

Division 3 - Cessation of Australian citizenship

Division 3 of the Bill outlines the circumstances, consistent with the old Act, in which a person can cease to be an Australian citizen (renunciation, service in the armed forces of another country at war with Australia and revocation).

The Division proposes to extend the current revocation provision by allowing revocation where a conferred dual citizen is convicted of a serious criminal offence committed at any time before they become an Australian citizen. It introduces a new provision to revoke Australian citizenship where the approval to become an Australian citizen, by either conferral or descent, was on the basis of third party fraud. A new provision is also proposed which provides for the Minister to revoke Australian citizenship by descent if the person has been convicted of an offence relating to false or misleading information or documents. The old Act did not require a conviction.

The Division introduces a discretion regarding the cessation of a child's citizenship should a responsible parent cease to be an Australian citizen. The discretion is consistent with Australia's international obligations. In the old Act a child's cessation was by operation of law.

Division 4 – Evidence of Australian citizenship

Consistent with the approach to make clearer, better structured and easier to understand citizenship law, Division 4 of the Bill streamlines the numerous provisions under the old Act which dealt with the obtaining, surrendering and altering of evidentiary notices of Australian citizenship.

Division 5 – Personal identifiers

Division 5 of the Bill proposes to amend the old Act by inserting provisions to provide a legislative framework for the collection, use and storage of personal identifiers, such as photographs and signatures. The old Act does not define a personal identifier or the circumstances in which a personal identifier may be required or how the personal identifier is to be provided. Some personal identifiers are already collected in the citizenship process. They are required, for example, when applying for citizenship by application and when applying for evidence of Australian citizenship.

The proposed Division provides protection for persons who are required to provide their personal identifiers (i.e. it prohibits a type of personal identifier that involves the use of any intimate forensic procedure). It also contains detailed measures regulating the access, disclosure and destruction of identifying information. It will protect the privacy of non-citizens and citizens by placing limits on the access and disclosure of identifying information under its provisions (i.e. identifying information will not be disclosed to a third country).

Part 3 - Other matters

Part 3 of the Bill brings together the general administration of the proposed Act. This includes application requirements and computerised decision making, which are consistent with the provisions in the old Act. The Part also brings together numerous provisions in the old Act concerning the notification of decisions and amending the provisions to provide for notices to be given to applicants outside Australia. It also includes the review provisions, with all decisions made under the old Act to be reviewable under the proposed Act. Also included are provisions relating to delegations which will operate in the same way as under the old Act; for example, under the old Act the Minister did not delegate the power to revoke a person's Australian citizenship and will not do so under this proposed Act.

Summary

This Bill achieves its purpose by delivering better structured, clearer and more accessible citizenship legislation, drafted in contemporary language and, more importantly, it promotes the existing inclusive and non-discriminatory approach to Australian citizenship legislation.

CONTENTS OF THE AUSTRALIAN CITIZENSHIP (TRANSITIONALS AND CONSEQUENTIALS) BILL 2005

The repeal of the old Act requires a number of requisite consequential amendments to various items of portfolio and non portfolio legislation. The proposed transitional and consequential amendments are contained in the *Australian Citizenship (Transitionals and Consequentials) Bill 2005*. The proposed amendments in the Bill are technical in nature and do not make substantive changes to the operation of the affected legislation.