

Australian Citizenship – How Gained

The *Australian Citizenship Act 1948*¹ indicates that Australian Citizenship (may be gained in a number of ways:

Citizenship by birth

S 10

(1) Subject to this section, a person born in Australia after the commencement of this Act shall be an Australian citizen.

(2) Subject to subsection (3), a person born in Australia after the commencement of the *Australian Citizenship Amendment Act 1986* shall be an Australian citizen by virtue of that birth if and only if:

(a) a parent of the person was, at the time of the person's birth, an Australian citizen or a permanent resident; or

(b) the person has, throughout the period of 10 years commencing on the day on which the person was born, been ordinarily resident in Australia.

(3) Subject to subsection (5), a person shall not be an Australian citizen by virtue of this section if, at the time of the person's birth, a parent of the person was an enemy alien and the birth occurred in a place then under occupation by the enemy.

(5) Subsection (3) does not apply in relation to a person if, at the time of the person's birth, a parent of the person:

(a) was an Australian citizen or a permanent resident; and

(b) was not an enemy alien.

(6) A reference in this section to a permanent resident does not include a reference to a person who is, for the purposes of the *Migration Act 1958*, an exempt non-citizen."

Citizenship by adoption

S 10A

"A person, not being an Australian citizen, who:

(a) under a law in force in a State or Territory, is adopted by an Australian citizen or jointly by 2 persons at least one of whom is an Australian citizen; and

(b) at the time of the person's adoption is present in Australia as a permanent resident;

shall be an Australian citizen."

¹ The Sections of the Australian Citizenship Act 1948 quoted here have been extracted from the copy of the Act as made available via the Australian Attorney-General's Department SCALEplus website - <http://scaleplus.law.gov.au/home.htm> - as at 10 January 2004.

Citizenship by descent

S 10B(1)

A person born outside Australia (in this subsection referred to as the *relevant person*) is an Australian citizen if:

(a) the name of the relevant person is registered for the purposes of this section at an Australian consulate, and the registration is the result of an application made within 25 years of the person's birth to register the person's name for those purposes; and

(b) a person, being a parent of the relevant person at the time of the birth of the relevant person:

(i) was at that time an Australian citizen who had acquired Australian citizenship otherwise than by descent; or

(ii) was:

(A) at that time an Australian citizen who had acquired Australian citizenship by descent; and

(B) at any time before the registration of the name of the relevant person (including a time before the birth of the relevant person), present in Australia, otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, as an unlawful non-citizen, or in contravention of a law of a prescribed Territory, for a period of, or for periods amounting in the aggregate to, not less than 2 years.

Citizenship by descent for a person aged 18 or over on 15 January 1992

S10C

(1) A person who is registered under this section is an Australian citizen.

(2) A person may apply to the Minister to be registered under this section.

(3) The application must be in accordance with the approved form.

(4) The Minister must register, in the prescribed manner, an applicant for registration under this section if:

(a) a natural parent of the applicant was an Australian citizen at the time of the birth of the applicant; and

(b) that parent:

(i) is an Australian citizen at the time an application under this section is made; or

(ii) is dead and at the time of his or her death was an Australian citizen; and

(c) the applicant:

(i) was born outside Australia on or after 26 January 1949; and

(ii) is aged 18 years or over on the day on which this section commences; and

(iii) failed for an acceptable reason to become registered as an Australian citizen under:

(A) section 10B; or

(B) (B) section 11 of this Act as in force at any time before the commencement of section 10B; and

(d) the Minister is satisfied that the applicant is of good character.

Note: *acceptable reason* is defined in subsection (5).

(5) For the purposes of subparagraph (4)(c)(iii), an applicant has an acceptable reason if and only if:

(a) an Australian passport has been issued to the applicant; or

(b) the applicant's name has been on an Electoral Roll under the *Commonwealth Electoral Act 1918*; or

(c) the applicant was unaware of the requirement of registration for the purposes of obtaining Australian citizenship by descent under section 10B or under section 11 of this Act as in force at any time before the commencement of section 10B; or

(d) the applicant has a reason for failing to become registered that is declared by the regulations to be an acceptable reason for the purposes of this section.²

² The relevant provision in the Australian Citizenship Regulations 1960 is Regulation 7H which reads:

“AUSTRALIAN CITIZENSHIP REGULATIONS 1960

- REG 7H

Acceptable reason — section 10C of the Act

The applicant's reason for failing to become registered is an acceptable reason for the purposes of paragraph 10C (5) (d) of the Act if:

(a) there is reason to believe that the applicant applied to be registered as an Australian citizen under:

(i) section 10B of the Act; or

(ii) section 11 of the Act as in force before commencement of section 10B; and

(b) the applicant was not registered because the application was not processed. “

The Regulation as quoted here has been extracted from the copy of the Regulations as made available via the Australian Attorney-General's Department SCALEplus website - <http://scaleplus.law.gov.au/home.htm> - as at 10 January 2004.

Grant of Citizenship (Naturalisation)

The provisions under which the Minister may grant Australian Citizenship are extensive and are covered by section 13 of the Act:

SECT 13

"Grant of Australian citizenship

(1) Subject to this section, the Minister may, in the Minister's discretion, upon application in accordance with the approved form, grant a certificate of Australian citizenship to a person who satisfies the Minister that:

- (a) the person is a permanent resident;
- (b) the person has attained the age of 18 years;
- (c) the person understands the nature of the application;
- (d) the person has been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than one year during the period of 2 years immediately preceding the date of the furnishing of the application;
- (e) the person has been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than 2 years during the period of 5 years immediately preceding the date of the furnishing of the application;
- (f) the person is of good character;
- (g) the person possesses a basic knowledge of the English language;
- (h) the person has an adequate knowledge of the responsibilities and privileges of Australian citizenship; and
- (j) if granted a certificate of Australian citizenship, the person is likely to reside, or to continue to reside, in Australia, or to maintain a close and continuing association with Australia.

(1A) The Minister shall not grant a certificate of Australian citizenship to a person under subsection (1) at a time when the person is not present in Australia unless:

- (a) the person is a permanent resident; and
- (b) the Minister considers that the person is engaged in activities outside Australia that are beneficial to the interests of Australia.

(2) Where, by reason of a physical or mental incapacity, not being a temporary incapacity, an applicant under subsection (1) is not capable of understanding the nature of that application, paragraphs (1)(c), (g) and (h) do not apply in relation to that person.

(3) Paragraphs (1)(d) and (e) do not apply in relation to:

(a) a person who has completed not less than 3 months' relevant defence service; or

(b) a person who has been discharged from relevant defence service, before completing 3 months of that service, as medically unfit for service or further service and who became medically unfit by reason of the person's relevant defence service.

(3A) Paragraphs (1)(d) and (e) do not apply in relation to:

(a) a person who has completed full-time service as a member of an Australian reserve force for a period of, or for periods amounting in the aggregate to, not less than 6 months; or

(b) a person who:

(i) has been discharged from service as a member of an Australian reserve force before completing full-time service as such a member for a period of, or for periods amounting in the aggregate to, 6 months; and

(ii) was so discharged as medically unfit for service or further service; and

(iii) was so discharged while undertaking full-time service as a member of the reserve force; and

(iv) became medically unfit for service because of the person's service as a member of the reserve force.

(4) For the purposes of the application of subsection (1) in relation to an applicant for the grant of a certificate of Australian citizenship:

(a) the Minister shall not take into account, as a period during which the applicant has been present in Australia as a permanent resident, any period during which the applicant has been confined in a prison or has been confined in a psychiatric institution by order of a court made in connection with criminal proceedings against the person; and

(b) subject to paragraph (a), the Minister may, in the Minister's discretion:

(i) treat a period during which the applicant:

(A) was a permanent resident;

(B) was not present in Australia; and

(C) was engaged in activities that the Minister considers beneficial to the interests of Australia;

as a period during which the applicant was present in Australia as a permanent resident;

(ii) treat a period ending before the period of 5 years referred to in paragraph (1)(e), being a period during which the applicant was present in Australia as a permanent resident, as a period within that period of 5 years;

(iv) if the Minister considers that the applicant would suffer significant hardship or disadvantage if a certificate of Australian citizenship were not granted to the applicant—treat a period during which the applicant was

present in Australia otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, as an unlawful non-citizen, or in contravention of a law of a prescribed Territory, as a period during which the applicant was present in Australia as a permanent resident; or

(v) if the Minister considers that an applicant who is a permanent resident was, by reason of an administrative error, not a permanent resident during a period during which the person was present in Australia—treat the period as a period during which the applicant was present in Australia as a permanent resident.

(5) Paragraph (1)(e) does not apply in relation to a person who was formerly an Australian citizen or who was born in Australia.

(6) Paragraphs (1)(g) and (h) do not apply in relation to a person who satisfies the Minister that the person is suffering (otherwise than temporarily) from a loss, or from a substantial impairment, of hearing, speech or sight.

(7) Paragraph (1)(g) does not apply to a person who has attained the age of 50 years.

(8) Paragraph (1)(h) does not apply to a person who has attained the age of 60 years.

(9) Subject to subsection (11), the Minister may, in the Minister's discretion, upon application in accordance with the approved form, grant a certificate of Australian citizenship to a person:

(a) who has not attained the age of 18 years;

(b) who:

(i) has attained the age of 18 years; and

(ii) has made the application before attaining that age;

(c) who is a permanent resident and is the spouse, widow or widower of an Australian citizen; or

(d) who:

(i) has attained the age of 16 years; and

(ii) is a permanent resident and the spouse of a person who has been granted a certificate of Australian citizenship but has not yet acquired Australian citizenship by virtue of the operation of section 15.

(9A) Subsection (9) does not apply to a person to whom subsection 5A(5) applies.

(9B) Subject to subsection (11), the Minister may, in the Minister's discretion, on application in accordance with the approved form, grant a certificate of Australian citizenship to a child if:

(a) the child was under 16 at the time of the application; and

(b) the application is set out in the same document as an application made under subsection (1) by a responsible parent of the child for the grant of a certificate of Australian citizenship to the responsible parent.

(9C) The same form may be approved for the purposes of subsections (1) and (9B).

(9D) An application under subsection (9B) may be set out in the same document as an application under subsection (1) if the applicant under subsection (1) is a responsible parent of the applicant under subsection (9B).

(9E) Subject to subsection (11), the Minister may, in the Minister's discretion, on application in accordance with the approved form, grant a certificate of Australian citizenship to a child if, at the time of the application:

- (a) the child was under 16; and
- (b) a responsible parent of the child is an Australian citizen because of the operation of section 15.

(11) The Minister shall not grant a certificate of Australian citizenship to a person under subsection (1), (9), (9B) or (9E):

- (a) during any period during which proceedings for an offence against a law of the Commonwealth, a State or a Territory (including proceedings by way of appeal or review) are pending in relation to the person; or
- (b) during any period during which the person is confined to a prison in Australia; or
- (c) during the period of 2 years after the expiration of any period during which the person has been confined in a prison in Australia by reason of the imposition on the person of:
 - (i) a sentence of death that has been commuted to a sentence of imprisonment; or
 - (ii) a sentence of imprisonment for life or for a period of not less than 12 months; or
- (ca) if the person is a serious repeat offender in relation to a sentence of imprisonment (within the meaning of subsection (11A))—during the period of 10 years after the end of any period during which the person has been confined in a prison in Australia because of the imposition on the person of that sentence; or
- (d) if the person has been released from serving the whole or a part of a sentence of imprisonment on parole or upon licence to be at large—during any period during which action can be taken in respect of the person under a law of the Commonwealth, a State or a Territory by way of requiring the person to serve the whole of that sentence, or the whole or a part of the remainder of that sentence, as the case requires; or
- (e) if the person has been released by a court from serving the whole or a part of a sentence of imprisonment upon the person's giving a relevant security—during any period during which action can be taken in respect of the person under a law of the Commonwealth, a State or a Territory by reason of a breach of a condition of that security; or
- (f) during any period during which the person is confined in a psychiatric institution by order of a court made in connection with proceedings of the kind referred to in paragraph (a) in relation to the person; or

(g) if the person has ceased to be an Australian citizen—during the period of 12 months commencing on the day on which the person ceased, or last ceased, to be an Australian citizen.

(11A) For the purposes of paragraph (11)(ca), if:

(a) a serious prison sentence was imposed on a person; and

(b) the person was confined in a prison in Australia because of the imposition of that sentence; and

(c) another serious prison sentence was imposed on the person in relation to an offence committed by the person at a time after the person ceased to be confined in prison because of the imposition of the sentence mentioned in paragraph (a);

the person is a *serious repeat offender* in relation to the other sentence. For this purpose, a *serious prison sentence* is:

(d) a sentence of imprisonment for life; or

(e) a sentence of imprisonment for a period of not less than 12 months.

(12) Where the Minister makes a decision under this section refusing an application and the applicant is present in Australia, the Minister shall cause to be served on the applicant a notice in writing setting out that decision. The notice may be served personally, by post or by an electronic communication.

(13) Nothing in paragraph (4)(a) or subsection (11) shall be taken, by implication, to limit the generality of paragraph (1)(f).

(16) A reference in paragraph (4)(a) or (11)(c) to a period during which a person has been confined in a prison does not include a reference to a period during which the person has been so confined by reason only of the person's serving a sentence relating to a conviction that has subsequently been quashed.

(17) In paragraph (11)(e), *relevant security* means a security given by a person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour"

Resumption of Citizenship – (Subsequent to Loss of Citizenship Under the Provisions of Former Section 17 of the Act)

SECT 23AA Persons may resume citizenship lost in certain circumstances

(1) Where:

(a) a person:

(i) has done a voluntary and formal act, other than marriage, by virtue of which the person acquired the nationality or citizenship of a country other than Australia; or

- (ii) has done any act or thing:
 - (A) the sole or dominant purpose of which; and
 - (B) the effect of which;

was or is to acquire the nationality or citizenship of a foreign country;
being an act or thing that resulted in the person ceasing to be an
Australian citizen;

(b) the person furnishes to the Minister a statement, in writing, to the effect that:

- (i) if the person had not done the act or thing, the person would have suffered significant hardship or detriment; or
- (ii) at the time when the person did the act or thing the person did not know that he or she would, as a consequence of doing the act or thing, cease to be an Australian citizen;

and also stating that the person:

(iii) has been present in Australia (otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, as an unlawful non-citizen, or in contravention of a law of a prescribed territory) for a period of, or for periods amounting in the aggregate to, not less than 2 years;

(iv) intends that:

- (A) if the person again becomes an Australian citizen and is residing in Australia at the time when the person so becomes an Australian citizen, the person will continue to reside in Australia after so becoming an Australian citizen; or
- (B) (B) if the person again becomes an Australian citizen and is not residing in Australia at the time when the person so becomes an Australian citizen, the person will commence to reside in Australia after so becoming an Australian citizen and before the expiration of the period of 3 years commencing on the day on which the statement is made; and

(v) has maintained a close and continuing association with Australia; and

(c) the person furnishes to the Minister together with the statement a declaration in the prescribed form that the person wishes to resume Australian citizenship;

the Minister may, in the Minister's discretion, if the Minister is satisfied:

(d) as to the truth of the matters contained in the statement; and

(e) in a case where the person has claimed that, if the person had not done the act or thing that resulted in the person ceasing to be an Australian citizen, the person would have suffered hardship or detriment of an economic nature—that the person's circumstances were such as to compel the person to do that act or thing; and

(f) that the person is of good character;

register the declaration in the prescribed manner and, upon the registration of the declaration, the person making the declaration again becomes an Australian citizen.

(2) The Minister may, in the Minister's discretion, upon application in accordance with the approved form, include in a declaration registered under subsection (1), either at the time of registering the declaration or by later amending the declaration, the name of a child:

(a) who has not attained the age of 18 years;

(b) of whom the person who made the declaration is a responsible parent; and

(c) who ceased to be an Australian citizen by reason of the person who made the declaration ceasing to be an Australian citizen;

and, upon the inclusion of the name of the child in the declaration, the child again becomes an Australian citizen.

SECT 23AB

Persons may resume citizenship lost under section 18

(1) If:

(a) a person has ceased to be an Australian citizen because of section 18 (**which deals with renunciation of citizenship**)³; and

(b) the person has not attained the age of 25 years; and

(c) the person gives the Minister a written statement that complies with subsection (2); and

(d) the person gives the Minister, together with the statement, a declaration in the prescribed form that the person wishes to resume Australian citizenship;

the Minister may, in the Minister's discretion, if the Minister is satisfied:

(e) as to the truth of the matters contained in the statement; and

(f) in a case where the person has claimed that, if the person had not renounced his or her Australian citizenship, the person would have suffered hardship or detriment of an economic nature—that the person's circumstances were such as to compel the person to renounce his or her Australian citizenship; and

(g) that the person is of good character;

register the declaration in the prescribed manner and, on the registration of the declaration, the person making the declaration again becomes an Australian citizen.

(2) A statement made by a person under paragraph (1)(c) complies with this subsection if the statement is to the effect that:

³ Emphasis added.

(a) the person renounced his or her Australian citizenship in order to retain the nationality or citizenship of a foreign country; and

(b) if the person had not renounced his or her Australian citizenship, the person would have suffered significant hardship or detriment;

and the statement also states that the person:

(c) has been present in Australia (otherwise than as a prohibited immigrant, as a prohibited non-citizen, as an illegal entrant, as an unlawful non-citizen, or in contravention of a law of a prescribed Territory) for a period of, or for periods amounting in the aggregate to, not less than 2 years; and

(d) intends that:

(i) if the person again becomes an Australian citizen and is residing in Australia at the time when the person so becomes an Australian citizen, the person will continue to reside in Australia after so becoming an Australian citizen; or

(ii) if the person again becomes an Australian citizen and is not residing in Australia at the time when the person so becomes an Australian citizen, the person will begin to reside in Australia after so becoming an Australian citizen and before the end of the period of 3 years beginning on the day on which the statement is made; and

(e) has maintained a close and continuing association with Australia.

(3) The Minister may, in the Minister's discretion, on application in accordance with the approved form, include in a declaration registered under subsection (1), either at the time of registering the declaration or by later amending the declaration, the name of a child:

(a) who has not attained the age of 18 years; and

(b) of whom the person who made the declaration is a responsible parent; and

(c) who ceased to be an Australian citizen by reason of the person who made the declaration ceasing to be an Australian citizen;

and, on the inclusion of the name of the child in the declaration, the child again becomes an Australian citizen.

SECT 23A

Persons may resume citizenship lost under section 20⁴

(1) A person who, under section 20 of the *Nationality and Citizenship Act 1948*, ceased to be an Australian citizen may, within one year after the date of commencement of this section or the date on which the person attains the age of 18 years, whichever is the later, or within such further period as the Minister, in special circumstances, allows, make and furnish to the Secretary or to a person authorized by the Secretary by instrument in

⁴ Section 20 was repealed by Act No. 63 of 1958.

Sid's question. It referred to ??????

writing for the purposes of this section a declaration in accordance with the prescribed form that the person wishes to resume Australian citizenship.

(2) A person to whom a declaration is furnished under subsection (1) shall register the declaration in the prescribed manner and, upon the registration of the declaration, the person making the declaration again becomes an Australian citizen.

SECT 23B

Persons may resume citizenship lost under section 23

(1) A person who, under section 23, has ceased or ceases to be an Australian citizen may, within one year after attaining the age of 18 years or within such further period as the Minister, in special circumstances, allows, make and furnish to the Secretary or to a person authorized by the Secretary by instrument in writing for the purposes of this section a declaration in accordance with the prescribed form that the person wishes to resume Australian citizenship.

(1A) To avoid doubt, the reference in subsection (1) to section 23 includes a reference to section 23 as in force at any time before the repeal of section 17 by the *Australian Citizenship Legislation Amendment Act 2002*.⁵

(2) If:

(a) a person makes a declaration under subsection (1); and

(b) the Minister is satisfied that the person is of good character;

the person to whom the declaration is given must register the declaration in the prescribed manner and, on the registration of the declaration, the person making the declaration again becomes an Australian citizen.

⁵ Emphasis added.