

Grant/conferral of Australian citizenship to minors – significant legislative and policy changes.

ATTACHMENT A to Question on Notice

History of citizenship legislative and policy changes concerning children under 18

| Date in force | Policy/Act requirements | Key changes |
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| 1949–1953 | <p><u>LEGISLATION:</u></p> <p>Age of 'Minor' = under 21 years.</p> <p>Provision covering grant of citizenship to minors:</p> <ul style="list-style-type: none"> - Subsection 15(3) of <i>the Australian Citizenship Act 1948</i>: - In effect from 26 January 1949: <ul style="list-style-type: none"> - "15(3) ... Notwithstanding anything contained in the preceding provisions of this Division, the Minister may, upon application in the prescribed form, grant a certificate of naturalization as an Australian citizen to an alien who is not of full age." - Minister had power to waive some of the normal statutory requirements (for adults) for minors (provided applicant was still aged under 21 years at the time of grant/decision). <p>Residence requirement for Alien (non-British subject) adults:</p> <ul style="list-style-type: none"> - Period of 5 years residence in Australia. | <p><u>KEY LEGISLATION:</u></p> <p><i>Nationality and Citizenship Act 1948</i> (renamed <i>Australian Citizenship Act 1948</i> in 1973)</p> <ul style="list-style-type: none"> - Commenced 26 January 1948; - Introduced legal concept of Australian citizenship. <p>Minor = under 21 years</p> <p>Residence requirement (for non-British subject adults) = 5 years.</p> |

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| | <p><u>POLICY:</u></p> <ul style="list-style-type: none"> - In practice although subsection 15(3) enabled all of the normal statutory requirements for adults to be waived for minors, usually only the age and residence requirements were altered. - Children under 21 years expected to: <ul style="list-style-type: none"> - Speak and understand spoken English; - Understand the responsibilities and privileges of citizenship; - Have an intention to continue to reside in Australia; - Have resided in Australia for a specified period (as set out in more detail below). <p>Residence period requirement for minors:</p> <ul style="list-style-type: none"> - In general, Minister chose only to waive/reduce the residence requirement period for minors. While adults were required to have resided in Australia for a period of 5 years, under policy: <ul style="list-style-type: none"> - Non-British subject minors were required to have resided in Australia for 2 years; and - British subject minors did not have to satisfy a residence requirement. - The residence period could be waived/alterd at the Minister’s discretion in cases involving “special compassionate circumstances”. | <p><u>KEY POLICY:</u></p> <ul style="list-style-type: none"> - Minors expected to satisfy the requirements set out in the grant provision for adults, except for the age provision; and a reduced/waived residence requirement. |
| 1954-1955 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - Minister had power to waive some of the normal statutory requirements (for adults) for minors (provided applicant was aged under 21 years at the time of application/intention to apply); - Rest of requirements unaltered. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - Provisions for minors to apply providing applicant was aged under 21 years at the time of application (or when notified of intention to apply). - Previously, the provisions for minors could only be applied if the applicant was still aged under 21 years at the time of decision/grant. |
| | <p><u>POLICY:</u></p> <ul style="list-style-type: none"> - No changes. | <p><u>KEY POLICY CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. |

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| 1956 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - No changes. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. |
| | <p><u>POLICY:</u></p> <p>Unaltered except for the introduction of additional ‘residence status’ requirements for some minors as below:</p> <ul style="list-style-type: none"> ▪ Residence status requirement for: <ul style="list-style-type: none"> - non-European minors (aged 16 or over and under 21, ie. 16-20). ▪ No residence status requirement for: <ul style="list-style-type: none"> - non-European minors aged under 16 years; - all minors with Australian citizen parent(s) (under 21); - minors of parent(s) being naturalised/registered after being granted residence status (under 21). | <p><u>KEY POLICY CHANGES:</u></p> <p>New Requirement:</p> <ul style="list-style-type: none"> - non-European minors (aged 16 or over and under 21, ie. 16-20) must have been authorised to remain in Australia for residence prior to grant of citizenship. |
| 1957-1965 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - No changes. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. |

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| | <p><u>POLICY:</u></p> <p>Unaltered except for the introduction of further additional 'residence status' requirements for some minors as below:</p> <ul style="list-style-type: none"> ▪ Residence status requirement for: <ul style="list-style-type: none"> - non-European minors (aged over 16 and under 21) (since 1956); - <u>all 16 and over and under 21 years (ie. 16-20), applying in their own right</u> (new – after 1956, before 1966 - exact date unknown). ▪ No residence status requirement for: <ul style="list-style-type: none"> - under 16s born to Australian citizens; - European under 16s who could be naturalised or registered by inclusion on their father's certificate. | <p><u>KEY POLICY CHANGES:</u></p> <p>New Requirement:</p> <ul style="list-style-type: none"> - all 16 or over and under 21 years (ie. 16-20), applying in their own right, must have been authorised to remain in Australia for residence prior to grant of citizenship. <p>Reason given for change:</p> <ul style="list-style-type: none"> - Abuses of the minor provisions by Chinese minors (using minor provisions as fast-track to citizenship for parents and circumventing migration program). |
| 1966-1968 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - No changes. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. |
| | <p><u>POLICY:</u></p> <p>Unaltered except for the introduction of further additional 'residence status' requirements for some minors as below:</p> <ul style="list-style-type: none"> ▪ Residence status requirement for: <ul style="list-style-type: none"> - all non-European minors (<u>under 21</u>); - all 16 or over and under 21 years (ie. 16-20), applying in their own right (new). ▪ No residence status requirement for: <ul style="list-style-type: none"> - under 16s born to Australian citizens; - European under 16s who could be naturalised or registered by inclusion on their father's certificate. | <p><u>KEY POLICY CHANGES:</u></p> <p>New requirements:</p> <ul style="list-style-type: none"> - Resident status for all non-European minors; <p>Reason for changes:</p> <ul style="list-style-type: none"> - Further abuse of minor provisions by Chinese minors (as noted in above date range). |
| 1969-1972 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - Residence requirement for alien (non-British subject) adults changed from 5 years to 3 years | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - Residence requirement for alien |

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| | <p>residence in Australia.</p> | <p>(non-British subject) adults changed from 5 years to 3 years residence in Australia.</p> |
| | <p><u>POLICY:</u></p> <p>Unaltered except for the introduction of further additional ‘residence status’ requirements for some minors as below:</p> <ul style="list-style-type: none"> ▪ Residence status requirement for: <ul style="list-style-type: none"> - all non-European minors (<u>under 21</u>); - all 16 or over and under 21 years (ie. 16-20), applying in their own right (new). ▪ No residence status requirement for: <ul style="list-style-type: none"> - under 16s born to Australian citizens; - European under 16s who could be naturalised or registered by inclusion on their father’s certificate. | <p><u>KEY POLICY CHANGES:</u></p> <p>New requirements:</p> <ul style="list-style-type: none"> - Resident status for all non-European minors; <p>Reason for changes:</p> <ul style="list-style-type: none"> - Further abuse of minor provisions by Chinese minors (as noted in above date range). |
| <p>1973-1981</p> | <p><u>LEGISLATION:</u></p> <p>Age of ‘Minor’ = under 18 years (to conform with the changes to the Electoral Acts):</p> <ul style="list-style-type: none"> - Paragraph 5(3)(b) , “a person shall be of full age if he has attained the age of eighteen years”. <p>Provision covering grant of citizenship to minors:</p> <ul style="list-style-type: none"> - Subsection 14(8) of <i>the Australian Citizenship Act 1948</i> <ul style="list-style-type: none"> - In effect from 1 December 1973: <ul style="list-style-type: none"> - “14(8)... Notwithstanding anything contained in sub-section (1), the Minister may, upon application in the approved form, grant a certificate of Australian citizenship to a person – (a) who has not attained the age of twenty-one years...” - Minister retained the power to waive some of the normal statutory requirements (for adults) for minors. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> ▪ <i>Nationality and Citizenship Act 1948</i> renamed <i>Australian Citizenship Act 1948</i>. ▪ Age of Minor changed from 21 years to 18 years. ▪ Residence requirement for all adults became 3 years residence in Australia. Previously this applied only to |

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| | <p>Residence requirement for all adults - Period of 3 years residence in Australia.</p> | <p>alien (non-British subject) adults.</p> |
| | <p><u>POLICY:</u></p> <ul style="list-style-type: none"> ▪ Unaltered apart from corresponding changes to ‘age of minor’, new subsection number, new wording of provision. ▪ Waivers/reductions to requirements of adults for minors remained, in practice, only for the residence period which remained as per 1949 policy: <ul style="list-style-type: none"> - Non-British subject minors were required to have resided in Australia for 2 years; and - British subject minors did not have to satisfy a residence requirement. - The residence period could be waived/alterd at the Minister’s discretion in cases involving “special compassionate circumstances”. | <p><u>KEY POLICY CHANGES:</u></p> <ul style="list-style-type: none"> - Unaltered apart from corresponding re-numbering and re-wording of provisions in Act. |
| <p>1982-1983</p> | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - No changes. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. |
| | <p><u>POLICY:</u></p> <p>Policy documents for overseas posts noted the following:</p> <ul style="list-style-type: none"> - As a matter of policy <u>the grant of citizenship in their own right to minor under the age of 18 is generally approved only if:</u> <ul style="list-style-type: none"> - they are the children or adopted children of Australian citizens; or - they have the consent of their responsible parent (if living in Australia). | <p><u>KEY POLICY CHANGES:</u></p> <ul style="list-style-type: none"> - Not necessarily a change to policy but first instance on record with this instruction explicitly recorded. |

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| 1984-1985 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> ▪ Provision covering grant of citizenship to minors: <ul style="list-style-type: none"> - Subsection 13(9) of <i>the Australian Citizenship Act 1948</i> <ul style="list-style-type: none"> - In effect from 22 November 1984: <ul style="list-style-type: none"> - “13(9)... Subject to sub-section (11), the Minister may, in his 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...” - Minister retained the power to waive some of the normal statutory requirements (for adults) for minors. ▪ Significant changes to provisions relating to grant of citizenship to adults that caused the policy requirements for minors to be amended: <ul style="list-style-type: none"> - Paragraph 13(1)(a) – introduction of permanent resident requirement; and - Paragraphs 13(1)(d) and (e) – residence requirement for adults changed from a period of 3 years to residence in Australia as a permanent resident for a period of: <ul style="list-style-type: none"> - 2 years in the 5 years immediately prior to application, including - 1 year in the 2 years immediately prior to application. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> ▪ Grant provision for minors: <ul style="list-style-type: none"> - Essential requirements and powers under provision remained unchanged. ▪ Grant provision for adults changed: <ul style="list-style-type: none"> - Permanent resident requirement; - Residence requirement: <ul style="list-style-type: none"> - Shortened; and - Only residence as permanent resident recognised. ▪ Reason given for the insertion of the permanent resident requirements: <ul style="list-style-type: none"> - To prevent persons claiming periods of temporary and illegal residence as part of the residential requirement. |
| | <p><u>POLICY:</u></p> <ul style="list-style-type: none"> - The policy guidelines for minors were amended to reflect the s13(1) changes for adults: <ul style="list-style-type: none"> - To include a permanent resident requirement for minors; and - To include an expectation that minors would satisfy the new residence requirement of 1 in 2 and 2 in 5 years residence in Australia as permanent residents. | <p><u>KEY POLICY CHANGES:</u></p> <ul style="list-style-type: none"> - Minors expected to be permanent residents prior to grant. - Minors expected to satisfy new residence requirement. |

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| 1986-1994 | <u>LEGISLATION:</u> <ul style="list-style-type: none">▪ Provisions relating to automatic citizenship by birth in Australia amended:- Changes to section 10 of the ACA 1948, in effect from 20 August 1986.- Child born in Australia only automatically acquired Australian citizenship if, at the time of their birth, one of their parents was an Australian citizen or permanent resident. | <u>KEY LEGISLATION CHANGES:</u> <ul style="list-style-type: none">▪ <u>Citizenship by birth in Australia:</u> Previously, provided child did not have a diplomat father/parent, they did not require a parent to be an Australian citizen or permanent resident to automatically acquire citizenship through birth in Australia. |
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| <p><u>POLICY IN FORCE:</u> Policy documents set out the following guidelines for decision makers:</p> <ul style="list-style-type: none"> ▪ Aged 16 or 17 years: <ul style="list-style-type: none"> - All the requirements of section 13(1) of the ACA 1948 (except for the age requirement); - <u>Able to waive residence requirement if hardship would result</u> if not granted citizenship. - Consent of a responsible parent living in Australia required. Consent can be waived in special circumstances such as: <ul style="list-style-type: none"> - Responsible parent’s whereabouts cannot be established or they are dead; and - The child would suffer significant hardship or detriment if not granted citizenship. ▪ Under 16 (included in responsible parent’s certificate): <ul style="list-style-type: none"> - Must have PR status; - Be <u>living with the responsible parent in Australia</u> at the time of application and grant; - Consent of a responsible parent living in Australia required; - Responsible parent (living in Australia) must apply on child’s behalf. ▪ Under 16 (parent(s) or adoptive parent(s) not Australian citizens): Can be granted citizenship in their own right in advance of any application by their parent only if it can be shown that: <ul style="list-style-type: none"> - Child is resident in Australia; - Child <u>would suffer immediate material disadvantage</u> if not granted citizenship. ▪ Re: residence requirement for persons under 18 years – The Minister has exercised his discretion under section 13(9) of the Act to exempt applicants from the residence requirements in section 13(1) (d) and (e) if a delegated officer is satisfied that hardship would result if they were not granted Australian citizenship and provided other requirements are met. ▪ Significant hardship or disadvantage: Is, as a matter of policy, normally where an applicant: <ul style="list-style-type: none"> - can demonstrate that he/she has been refused employment solely on the grounds that the employment is restricted only to Australian citizens and that alternative sources of employment are not reasonably available to him/her; or - would be excluded from travelling internationally because he/she cannot obtain a passport because he/she is excluded from travelling with immediate Australian family because of the nationality of the passport/travel document he/she holds or is entitled to hold; or - would not otherwise be eligible to represent or be selected to represent Australia in a national representative team/group because Australian citizenship is a pre-requisite to selection. | <p><u>KEY POLICY IN FORCE:</u></p> <p>Brief summary of significant policy requirements:</p> <ul style="list-style-type: none"> ▪ <u>Aged 16 or 17 years - waive:</u> <ul style="list-style-type: none"> - residence requirement if <u>hardship</u> would result; - consent of responsible parent requirement if child would suffer <u>significant hardship or detriment</u>; ▪ <u>Under 16 (no A/n citiz parent) only approve if child:</u> <ul style="list-style-type: none"> - resident in Australia; and - would suffer immediate material disadvantage. |
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| 1995-2001 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - No changes. <p><u>POLICY:</u></p> <ul style="list-style-type: none"> - Unaltered, however, policy softened in relation to the interpretation of the broad discretion available under s13(9) and s13(10). - Previously the policy guidelines limited the grant of citizenship to children who were permanent residents and only allowed for the waiver of the residence requirement and/or parental consent in extremely limited circumstances. In 1995 it was recognised that this interpretation overstated the effect of the relevant law. The policy guidelines were amended to enable the delegates to use the discretion in appropriate circumstances. <p>Policy documents set out the following amended guidelines for decision makers:</p> <ul style="list-style-type: none"> ▪ Aged 16 or 17 years: <ul style="list-style-type: none"> - Expected to be in Australia as a permanent resident and meet all the requirements (apart from age) of s13(1) of the ACA 1948; - <u>Able to waive residence requirement if it would cause significant hardship or disadvantage;</u> - Consent of a responsible parent living in Australia required. Consent can be waived in special circumstances such as: <ul style="list-style-type: none"> - Responsible parent’s whereabouts cannot be established or they are dead; and - The child would suffer significant hardship or detriment if not granted citizenship. ▪ Under 16 (parent(s) or adoptive parent(s) not Australian citizens): Can be granted citizenship in their own right in advance of any application by their parent only if it can be shown that: <ul style="list-style-type: none"> - Child <u>would suffer significant hardship or disadvantage</u> if not granted citizenship. ▪ Grant of citizenship to children who are not permanent residents <ul style="list-style-type: none"> - Policy is that children be permanent residents of Australia to be eligible for grant of citizenship under s13(9) of the ACA 1948. - Delegates retain discretion in appropriate circumstances to grant Australian citizenship to children who are not permanent residents. Decision makers are obliged to consider the full circumstances of a case where an applicant under 18 years is not a permanent resident. Some circumstances where decision makers might consider exercising their discretion to grant citizenship to a child who is not a permanent resident include cases where an applicant is the child of a responsible parent who is an Australian citizen or permanent resident, and there are exceptional circumstances which would make it unreasonable for applicant to apply for a permanent visa. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. <p><u>KEY POLICY CHANGES:</u></p> <ul style="list-style-type: none"> ▪ Aged 16 or 17 years - waive: <ul style="list-style-type: none"> - residence requirement if <u>significant hardship or disadvantage</u> (previously: “hardship”) would result; ▪ Under 16 (no A/n citz parent) only approve if child: <ul style="list-style-type: none"> - resident in Australia; and - would suffer <u>significant hardship or disadvantage</u> (previously: ‘immediate material disadvantage, and had to be resident in Australia). ▪ Set out that in some cases children who were not PRs could be approved. |
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| 2002 | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - No changes. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. |
| | <p><u>POLICY:</u></p> <p>Unaltered except for:</p> <ul style="list-style-type: none"> - the following policy guideline additions. <ul style="list-style-type: none"> ▪ Aged 16 or 17 years: - Children born to a person granted Australian citizenship on the basis of being the spouse of an Australian citizen were not required to satisfy the additional requirements set out in s13(1). ▪ Under 16 eligible if: <ul style="list-style-type: none"> - A permanent resident or meets the requirements for migration to, or permanent residence in, Australia; and - Has an Australian citizen responsible parent who consents to the application and child is living with that responsible parent, or if the child had no Australian citizen parent, the child would otherwise suffer significant hardship or disadvantage. | <p><u>KEY POLICY CHANGES:</u></p> <ul style="list-style-type: none"> ▪ Aged 16 or 17 years: - Children born to a person granted Australian citizenship on the basis of being the spouse of an Australian citizen were not required to satisfy the additional requirements set out in s13(1) – new policy. ▪ Under 16 eligible only if: - A permanent resident or meets the requirements for migration to, or permanent residence in, Australia. |

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| <p>2003-06/2007</p> | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> - No changes. | <p><u>KEY LEGISLATION CHANGES:</u></p> <ul style="list-style-type: none"> - No changes. |
| | <p><u>POLICY:</u></p> <p>Unaltered except for an additional set of provisions for:</p> <ul style="list-style-type: none"> - children born to parent's who lost their citizenship under s17; - children adopted overseas by Australian citizen parents. <p>For reference, we have also included the main policy guidelines for the other child grant provisions:</p> <ul style="list-style-type: none"> ▪ Under 18 – born after a responsible parent lost citizenship under s17 of the ACA 1948 (re: dual citizenship): <ul style="list-style-type: none"> - Not required to be a permanent resident; - Parent not required to have subsequently resumed Australian citizenship; - Replaced with s21(6) in ACA 2007, 'conferral for persons born to former Australian citizens'. ▪ Under 18 – adopted overseas: <ul style="list-style-type: none"> - Child must hold a permanent visa; - At least one adoptive parent must be an Australian citizen. ▪ Aged 16 or 17 years: <ul style="list-style-type: none"> - PR (or meets requirements for migration to, or permanent residence in, Australia) - meets requirements of s13(1) – except age and residence requirements if this would cause significant hardship or disadvantage - has responsible parent who is Australian citizen and who consents to application - unless parents' whereabouts cannot be established, or parents are dead, and applicant would suffer significant hardship or detriment if not granted citizenship. ▪ Under 16 <ul style="list-style-type: none"> - PR (or meets requirements for migration to, or permanent residence in, Australia) - Living with responsible parent who is Australian citizen and who consents to application - If parents not Australian citizens, and child would otherwise suffer significant hardship or disadvantage. ▪ Permanent Resident requirement - policy guidance provided: Decision makers must consider full circumstances of case - may be appropriate approve outside of policy if child (other than adopted child) has Australian citizen responsible parent and exceptional circumstances would make it unreasonable to apply for permanent visa. | <p><u>KEY POLICY CHANGES:</u></p> <ul style="list-style-type: none"> ▪ Under 18 – born after a responsible parent lost citizenship under s17 of the ACA 1948 (re: dual citizenship) - Not required to be a permanent resident; ▪ Under 18 – adopted overseas - Child must hold a permanent visa and At least one adoptive parent must be an Australian citizen. |

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| <p>07/2007 - present</p> | <p><u>LEGISLATION:</u></p> <ul style="list-style-type: none"> ▪ Change of legislation: <ul style="list-style-type: none"> - <i>Australian Citizenship Act 1948</i>, repealed 1 July 2007; - <i>Australian Citizenship Act 2007</i>, commenced 1 July 2007; - <i>Australian Citizenship (Transitionals & Consequentials) Act 2007</i>, commenced 1 July 2007. ▪ Provisions covering conferral of citizenship to minors: <ul style="list-style-type: none"> - Subsection 21(5) of the <i>Australian Citizenship Act 2007</i>: <ul style="list-style-type: none"> - <u>'Citizenship by conferral – Person aged under 18'</u>: <ul style="list-style-type: none"> - "21(5)... A person is eligible to become an Australian citizen if the Minister is satisfied that the person is aged under 18 at the time the person made the application". - Minister <u>retained the power to exercise additional policy guidelines</u> through the <i>Minister's Decision</i> provision at subsection 24(2) of the <i>Australian Citizenship Act 2007</i>: <ul style="list-style-type: none"> - "24(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) or (7)." - Subsection 21(6) of the <i>Australian Citizenship Act 2007</i>: <ul style="list-style-type: none"> - <u>'Citizenship by conferral – Person born to former Australian citizen'</u>: <ul style="list-style-type: none"> - "21(6)... A person is eligible to become an Australian citizen if the Minister is satisfied that: <ul style="list-style-type: none"> (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..." - Subsection 21(8) of the <i>Australian Citizenship Act 2007</i>: <ul style="list-style-type: none"> - <u>'Citizenship by conferral – Stateless'</u>: <ul style="list-style-type: none"> - "21(8)... A person is eligible to become an Australian citizen if the Minister is satisfied that: <ul style="list-style-type: none"> (a) the person was born in Australia; and (b) the person: <ul style="list-style-type: none"> (i) is not a national of any country; and (ii) is not a citizen of any country..." | <p><u>KEY LEGISLATION CHANGES:</u></p> <p>Repeal of previous Act.</p> <p>Introduction of current Act.</p> <ul style="list-style-type: none"> ▪ Subsection 21(5) introduced to replace the grant provision for minors under subsection 13(9). ▪ Introduction of Minister's Discretion at subsection 24(2), where Minister may refuse application even though applicant eligible to become Australian citizen including under s21(5): ▪ Introduction of new provision (s21(6)), which provides citizenship for children born overseas to a parent who lost their Australian citizenship under s17 of the old Act prior to the child's birth. ▪ Introduction of new provision (section 19C), providing citizenship for children adopted overseas under full and permanent Hague adoptions: <ul style="list-style-type: none"> - Child does not need to hold permanent visa. |
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| | <ul style="list-style-type: none">▪ Provision covering citizenship for children adopted overseas in accordance with the Hague Convention on Intercountry Adoption:<ul style="list-style-type: none">- Section 19C of <i>the Australian Citizenship Act 2007</i>. | |
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| | <p><u>POLICY:</u></p> <p>Policy guidelines to support the use of the Minister’s Discretion at subsection 24(2) of the ACA 2007, in relation to applications made under subsection 21(5) of the ACA 2007:</p> <ul style="list-style-type: none"> ▪ Aged 16 or 17 years <ul style="list-style-type: none"> - permanent resident - meets general eligibility requirements of s21 (except residence requirements if this would cause significant hardship or disadvantage); - Do not need consent of responsible parent. ▪ Under 16: <ul style="list-style-type: none"> - hold a permanent visa; - living with Australian citizen responsible parent who consents to application; - If living with responsible parent who is not Australian citizen, and would otherwise suffer significant hardship or disadvantage. ▪ Adopted children (not full and permanent Hague adoptions): <ul style="list-style-type: none"> - Required to satisfy same requirements as other under 18s, including being permanent residents or holding a permanent visa. ▪ Policy outlining discretion: <p>In the case of an applicant who does not meet the policy requirements (now ‘guidelines’), decision makers must consider the full circumstances of the case to determine whether the application nevertheless warrants approval because of the exceptional (now ‘unusual’) nature of those circumstances. (following line now deleted from upcoming ACIs:) The circumstances would need to be very unusual to warrant approval of an application outside policy.</p> ▪ <u>Refusing an application</u> <p>The discretion in section 24(2) to refuse to approve an applicant becoming an Australian citizen despite being eligible under section 21(5) would usually be exercised where the applicant does not meet the policy requirements (now ‘guidelines’). In making a decision whether to refuse or approve an application, the primary considerations that need to be taken into account are the best interests of the child and the policy requirements (now ‘guidelines’).</p> ▪ <u>Best interests of the child</u> <p>This consideration only applies if the child is or would be less than 18 years of age at the time of decision on the application and the child is living in Australia.</p> | <p><u>KEY POLICY CHANGES:</u></p> <p>Policy guidelines to support the use of the Minister’s Discretion at subsection 24(2) of the ACA 2007, in relation to applications made under subsection 21(5) of the ACA 2007.</p> |
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