



# **Australian Citizenship Act 2007**

**Act No. 20 of 2007 as amended**

This compilation was prepared on 8 June 2010  
taking into account amendments up to Act No. 51 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act relating to Australian citizenship**

## **Preamble**

The Parliament recognises that Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity.

The Parliament recognises that persons conferred Australian citizenship enjoy these rights and undertake to accept these obligations:

- (a) by pledging loyalty to Australia and its people; and
- (b) by sharing their democratic beliefs; and
- (c) by respecting their rights and liberties; and
- (d) by upholding and obeying the laws of Australia.

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title** *[see Note 1]*

This Act may be cited as the *Australian Citizenship Act 2007*.

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

## Part 1 Preliminary

### Section 2A

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 March 2007
2. Sections 2A to 54	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2007 (see F2007L01653)
3. Schedule 1	At the same time as the provisions covered by table item 2.	1 July 2007

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 2A Simplified outline

The following is a simplified outline of this Act:

#### **What this Act covers**

This Act sets out how you become an Australian citizen, the circumstances in which you may cease to be a citizen and some other matters related to citizenship.

#### **Becoming an Australian citizen**

There are a range of ways you can become an Australian citizen.



*Acquiring citizenship automatically*

Generally, you become an Australian citizen automatically if you are born in Australia and one or both of your parents are Australian citizens or permanent residents when you are born.

There are some other, less common, ways of automatically becoming a citizen.

Division 1 of Part 2 has details about acquiring citizenship automatically.

Also, if you were a citizen under the old Act immediately before the day that this section commences, you will continue to be a citizen: see subsection 4(1).

*Acquiring citizenship by application*

The other way to become an Australian citizen is to apply to the Minister. This is covered by Division 2 of Part 2. There are 4 situations in which you can apply for citizenship.

The first is citizenship by descent. Generally, you would apply for this if you were born outside Australia and one or both of your parents were Australian citizens when you were born. Citizenship by descent is covered by Subdivision A.

The second is citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption: see Subdivision AA.

The third is citizenship by conferral. Generally, you would need to be a permanent resident and willing to make a pledge of commitment to apply for citizenship by conferral. You may need to successfully complete a citizenship test. There are some less common circumstances in which you can apply for citizenship by conferral. Citizenship by conferral is covered by Subdivision B.

The fourth is resuming citizenship. In certain cases where you previously ceased to be an Australian citizen, you can apply for your citizenship to resume. Resuming citizenship is covered by Subdivision C.

The Minister must be satisfied of your identity for you to acquire citizenship by application. Rules about identification are in Division 5 of Part 2.

The Minister may be required to refuse your application on national security grounds.

#### **Ceasing to be an Australian citizen**

There are a number of ways that you can cease to be an Australian citizen.

You can renounce your citizenship.

If you did not automatically become an Australian citizen, the Minister can revoke your citizenship in certain circumstances.

There are some other, less common, ways of ceasing to be a citizen.

Division 3 of Part 2 has details about ceasing to be a citizen.

#### **Evidence that a person is an Australian citizen**

You can apply to the Minister for evidence of your Australian citizenship. This is covered by Division 4 of Part 2.

### **3 Definitions**

In this Act:

*adverse security assessment* has the meaning given by section 35 of the *Australian Security Intelligence Organisation Act 1979*.

*artificial conception procedure* includes:

- (a) artificial insemination; and
- (b) the implantation of an embryo in the body of a woman.

*Australia*, when used in a geographical sense, includes the external Territories.

*Australian citizen* has the meaning given by section 4.

**Australian law** means a law of the Commonwealth, a State or a Territory.

**child**: without limiting who is a child of a person for the purposes of this Act, each of the following is the **child** of a person:

- (a) an adopted child, stepchild or exnuptial child of the person;
- (b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

**commencement day** means the day on which sections 2A to 54 (as originally enacted) commence.

**de facto partner** has the meaning given by the *Acts Interpretation Act 1901*.

**disclose**, in relation to identifying information that is a personal identifier provided under Division 5 of Part 2, includes provide unauthorised access to the personal identifier.

Note: Section 42 deals with authorised access to identifying information.

**entrusted person** means:

- (a) the Secretary of the Department; or
- (b) an APS employee in the Department; or
- (c) a person engaged under section 74 of the *Public Service Act 1999* by the Secretary of the Department; or
- (d) a person engaged by the Commonwealth, the Minister, the Secretary of the Department, or by an APS employee in the Department, to do work for the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act.

**foreign law** means a law of a foreign country.

**identifying information** means the following:

- (a) any personal identifier provided under Division 5 of Part 2;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;

- (d) any other information derived from:
  - (i) any such personal identifier; or
  - (ii) any meaningful identifier derived from any such personal identifier; or
  - (iii) any record of a kind referred to in paragraph (c); that could be used to discover a particular person's identity or to get information about a particular person.

***national security offence*** means:

- (a) an offence against Part II or VII of the *Crimes Act 1914*; or
- (b) an offence against Division 72 of the *Criminal Code*; or
- (c) an offence against Part 5.1, 5.2 or 5.3 of the *Criminal Code*; or
- (d) an offence against the *Australian Security Intelligence Organisation Act 1979*; or
- (e) an offence against the *Intelligence Services Act 2001*; or
- (f) an offence covered by a determination in force under section 6A.

***New Guinea***:

- (a) has the same meaning as ***the Territory of New Guinea*** had in the *Papua New Guinea Act 1949* immediately before 16 September 1975; and
- (b) in relation to any time before 4 June 1969—includes a reference to the Island of Nauru.

***old Act*** means the *Australian Citizenship Act 1948* as in force at any time before the commencement day.

***ordinarily resident***: a person is taken to be ***ordinarily resident*** in a country if and only if:

- (a) he or she has his or her home in that country; or
- (b) that country is the country of his or her permanent abode even if he or she is temporarily absent from that country.

However, the person is taken not to be so resident if he or she resides in that country for a special or temporary purpose only.

***Papua*** has the same meaning as ***the Territory of Papua*** had in the *Papua New Guinea Act 1949* immediately before 16 September 1975.

***permanent resident*** has the meaning given by section 5.

***permanent visa*** has the same meaning as in the *Migration Act 1958*.

***personal identifier*** has the meaning given by section 10.

***prison*** includes any custodial institution at which a person convicted of an offence may be required to serve the whole or a part of any sentence imposed upon the person because of that conviction.

***psychiatric institution*** includes a psychiatric section of a hospital.

***qualified security assessment*** has the meaning given by section 35 of the *Australian Security Intelligence Organisation Act 1979*.

***responsible parent*** has the meaning given by section 6.

***serious prison sentence*** means a sentence of imprisonment for a period of at least 12 months.

***serious repeat offender***: a person is a ***serious repeat offender*** in relation to a serious prison sentence if the sentence was imposed on the person for an offence committed by the person at a time after the person ceased to be confined in prison because of the imposition of another serious prison sentence.

***special category visa*** has the same meaning as in the *Migration Act 1958*.

***special purpose visa*** has the same meaning as in the *Migration Act 1958*.

***Stateless Persons Convention*** means the Convention Relating to the Status of Stateless Persons, done at New York on 28 September 1954 [1974] ATS 20.

Note: The text of the Convention is set out in Australian Treaty Series 1974 No. 20. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

***stepchild***: without limiting who is a stepchild of a person for the purposes of this Act, someone is the ***stepchild*** of a person if he or she would be the person's stepchild except that the person is not legally married to the person's de facto partner.

*unlawful non-citizen* has the same meaning as in the *Migration Act 1958*.

*visa* has the same meaning as in the *Migration Act 1958*.

#### 4 Australian citizen

- (1) For the purposes of this Act, **Australian citizen** means a person who:
- (a) is an Australian citizen under Division 1 or 2 of Part 2; or
  - (b) satisfies both of the following:
    - (i) the person was an Australian citizen under the *Australian Citizenship Act 1948* immediately before the commencement day;
    - (ii) the person has not ceased to be an Australian citizen under this Act.

##### *Citizenship under the old Act*

- (2) If, under this Act, it is necessary to work out if a person was an Australian citizen at a time before the commencement day, work that out under the *Australian Citizenship Act 1948* as in force at that time.

#### 5 Permanent resident

- (1) For the purposes of this Act, a person is a **permanent resident** at a particular time if and only if:
- (a) the person is present in Australia at that time and holds a permanent visa at that time; or
  - (b) both:
    - (i) the person is not present in Australia at that time and holds a permanent visa at that time; and
    - (ii) the person has previously been present in Australia and held a permanent visa immediately before last leaving Australia; or
  - (c) the person is covered by a determination in force under subsection (2) at that time.

- (2) The Minister may, by legislative instrument, determine that:
- (a) persons who hold a special category visa or a special purpose visa; or
  - (b) persons who have held a special category visa; or
  - (c) persons who are present in Norfolk Island or the Territory of Cocos (Keeling) Islands;
- and who satisfy specified requirements are, or are during a specified period, persons to whom this subsection applies.

*Permanent resident under the old Act*

- (3) If, under this Act, it is necessary to work out if a person was a permanent resident at a time before the commencement day, work that out under the *Australian Citizenship Act 1948* as in force at that time.

## **6 Responsible parent**

- (1) For the purposes of this Act, a person is a ***responsible parent*** in relation to a child if and only if:
- (a) the person is a parent of the child except where, because of orders made under the *Family Law Act 1975*, the person no longer has any parental responsibility for the child; or
  - (b) under a parenting order the child is to live with the person (whether or not the person is a parent of the child); or
  - (c) under a parenting order the person has parental responsibility for the child's long-term or day-to-day care, welfare and development (whether or not the person is a parent of the child); or
  - (d) the person (whether or not a parent of the child) has guardianship or custody of the child, jointly or otherwise, under an Australian law or a foreign law, whether because of adoption, operation of law, an order of a court or otherwise.

- (1A) In paragraph (1)(a):

***parental responsibility*** has the same meaning as in Part VII of the *Family Law Act 1975*.

- (2) Expressions used in paragraphs (1)(b) and (c) have the same meaning as in the *Family Law Act 1975*.

## 6A National security offences

- (1) The Attorney-General may, by legislative instrument, determine that:
  - (a) an offence against a specified provision of a specified Australian law or a specified foreign law; or
  - (b) an offence against an Australian law or a foreign law involving specified conduct;is a national security offence for the purposes of paragraph (f) of the definition of *national security offence* in section 3.
- (2) A determination under subsection (1) applies in relation to:
  - (a) applications made under this Act after the determination takes effect; and
  - (b) applications made under this Act before the determination takes effect that have not been decided before the determination takes effect.

## 7 Children born on ships or aircraft or after death of parent

### *Persons born on ships or aircraft*

- (1) For the purposes of this Act:
  - (a) a person born on a ship or aircraft registered in Australia or a foreign country is taken to have been born at the place at which the ship or aircraft is registered; and
  - (b) a person born on a ship or aircraft not registered in Australia or a foreign country and belonging to the government of a country is taken to have been born in that country.

### *Persons born after death of parent*

- (2) For the purposes of this Act, the status of a parent of a person at the time of the person's birth is, for a parent who died before the birth, taken to be the status of the parent when the parent died.

## 8 Children born as a result of artificial conception procedures or surrogacy arrangements

- (1) This section applies if a child is:
    - (a) a child of a person under section 60H or 60HB of the *Family Law Act 1975*; and
-



- (b) either:
  - (i) a child of the person's spouse or de facto partner under that section; or
  - (ii) a biological child of the person's spouse or de facto partner.
- (2) The child is taken for the purposes of this Act:
  - (a) to be the child of the person and the spouse or de facto partner; and
  - (b) not to be the child of anyone else.

## **9 Confinement in prison or psychiatric institution**

### *Confinement in prison*

- (1) For the purposes of this Act, the period during which a person is confined to a prison includes a period:
  - (a) during which the person is an escapee from the prison; or
  - (b) during which the person is undergoing a sentence of periodic detention in the prison.
- (2) For the purposes of this Act, the period during which a person is confined to a prison does not include a period during which the person has been so confined by reason only of the person serving a sentence relating to a conviction that is later quashed.

### *Confinement in psychiatric institution*

- (3) For the purposes of this Act, the period during which a person is confined in a psychiatric institution by order of a court includes a period during which the person is an escapee from the institution.

## **10 Personal identifiers**

- (1) For the purposes of this Act, a *personal identifier* is any of the following (including any of the following in digital form):
  - (a) fingerprints or handprints of a person (including those taken using paper and ink or digital livescanning technologies);
  - (b) a measurement of a person's height and weight;
  - (c) a photograph or other image of a person's face and shoulders;

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- (d) an iris scan;
  - (e) a person's signature;
  - (f) any other identifier prescribed by the regulations (except an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*).
- (2) Before the Governor-General makes regulations for the purposes of paragraph (1)(f) prescribing an identifier, the Minister must be satisfied that:
- (a) obtaining the identifier would not involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*; and
  - (b) the identifier is an image of, or a measurement or recording of, an external part of the body; and
  - (c) obtaining the identifier is necessary for either or both of the following purposes:
    - (i) assisting in the identification of, and to authenticate the identity of, a person making an application under Part 2 or seeking to sit a test approved in a determination under section 23A;
    - (ii) combating document and identity fraud in citizenship matters;

## 11 Operation of Act

### *External Territories*

- (1) This Act extends to the external Territories.

### *Application outside Australia*

- (2) This Act extends unless the contrary intention appears:
- (a) to acts, omissions, matters and things outside Australia; and
  - (b) to all persons, irrespective of their nationality or citizenship.

### *State and Territory laws*

- (3) It is the intention of the Parliament that this Act apply to the exclusion of any provisions of a law of a State or Territory that provide for Australian citizenship (whether the law was made before or after the commencement day).

## **Part 2—Australian citizenship**

### **Division 1—Automatic acquisition of Australian citizenship**

#### **11A Simplified outline**

The following is a simplified outline of this Division:

The most common way you become an Australian citizen under this Division is by being born in Australia and by having a parent who is an Australian citizen or a permanent resident at the time of your birth.

There are some other, less common, ways of becoming an Australian citizen under this Division. These cover:

- citizenship by being born in Australia and by being ordinarily resident in Australia for the next 10 years: see section 12; and
- citizenship by adoption: see section 13; and
- citizenship for abandoned children: see section 14; and
- citizenship by incorporation of territory: see section 15.

#### **12 Citizenship by birth**

- (1) A person born in Australia is an Australian citizen if and only if:
- (a) a parent of the person is an Australian citizen, or a permanent resident, at the time the person is born; or
  - (b) the person is ordinarily resident in Australia throughout the period of 10 years beginning on the day the person is born.

##### *Enemy occupation*

- (2) However, a person is not an Australian citizen under this section if, at the time the person is born:
- (a) a parent of the person is an enemy alien; and
  - (b) the place of the birth is under occupation by the enemy;

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unless, at that time, the other parent of the person:

- (c) is an Australian citizen or a permanent resident; and
- (d) is not an enemy alien.

**13 Citizenship by adoption**

A person is an Australian citizen if the person is:

- (a) adopted under a law in force in a State or Territory; and
- (b) adopted by a person who is an Australian citizen at the time of the adoption or by 2 persons jointly at least one of whom is an Australian citizen at that time; and
- (c) present in Australia as a permanent resident at that time.

**14 Citizenship for abandoned children**

A person is an Australian citizen if the person is found abandoned in Australia as a child, unless and until the contrary is proved.

**15 Citizenship by incorporation of Territory**

- (1) A person is an Australian citizen if:
  - (a) any territory becomes a part of Australia; and
  - (b) the person is included in a class of persons specified in a determination under this section.

*Determination*

- (2) The Minister may, by legislative instrument, determine that specified classes of persons are Australian citizens from a specified day because of their connection with that territory.

*Day citizenship begins*

- (3) The person becomes an Australian citizen on that day.

*When instrument takes effect*

- (4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, the instrument may be expressed to take effect before the date it is registered under that Act.

## **Division 2—Acquisition of Australian citizenship by application**

### **Subdivision A—Citizenship by descent**

#### **15A Simplified outline**

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision in 2 situations:

- you were born outside Australia on or after 26 January 1949 and a parent of yours was an Australian citizen at the time of your birth: see subsection 16(2); or
- you were born outside Australia or New Guinea before 26 January 1949 and a parent of yours was an Australian citizen on 26 January 1949: see subsection 16(3).

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 17(3); or
- national security: see subsections 17(4) to (4B); or
- cessation of citizenship: see subsection 17(5).

You will be registered if the Minister approves you becoming an Australian citizen.

You do not become an Australian citizen, even if the Minister approves you becoming an Australian citizen, unless a parent of yours was an Australian citizen at a particular time: see section 19A.

## **16 Application and eligibility for citizenship**

- (1) A person may make an application to the Minister to become an Australian citizen.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

### *Persons born outside Australia on or after 26 January 1949*

- (2) A person born outside Australia on or after 26 January 1949 is eligible to become an Australian citizen if:
- (a) a parent of the person was an Australian citizen at the time of the birth; and
  - (b) if the parent was an Australian citizen under this Subdivision or Subdivision AA, or section 10B, 10C or 11 of the old Act (about citizenship by descent), at the time of the birth:
    - (i) the parent has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the person made the application; or
    - (ii) the person is not a national or a citizen of any country at the time the person made the application and the person has never been such a national or citizen; and
  - (c) if the person is or has ever been a national or a citizen of any country, or if article 1(2)(iii) of the Stateless Persons Convention applies to the person, and the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

### *Persons born outside Australia or New Guinea before 26 January 1949*

- (3) A person born outside Australia or New Guinea before 26 January 1949 is eligible to become an Australian citizen if:

- (a) a parent of the person became an Australian citizen on 26 January 1949; and
- (b) the parent was born in Australia or New Guinea or was naturalised in Australia before the person's birth; and
- (c) if the person is or has ever been a national or a citizen of any country, or if article 1(2)(iii) of the Stateless Persons Convention applies to the person—the Minister is satisfied that the person is of good character at the time of the Minister's decision on the application.

### **17 Minister's decision**

- (1) If a person makes an application under section 16, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.
- (1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 16(2) or (3).
- (2) Subject to this section, the Minister must approve the person becoming an Australian citizen if the person is eligible to become an Australian citizen under subsection 16(2) or (3).

#### *Identity*

- (3) The Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

#### *National security*

- (4) If the person is not covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (4A) If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person has been convicted of a national security offence.

**Part 2** Australian citizenship

**Division 2** Acquisition of Australian citizenship by application

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- (4B) A person is covered by this subsection if:
- (a) at the time the person made the application under section 16, the person:
    - (i) is not a national of any country; and
    - (ii) is not a citizen of any country; and
  - (b) at the time of the person's birth, the person had a parent who was an Australian citizen.

*Cessation of citizenship*

- (5) If the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

**18 Registration**

If the Minister approves the person becoming an Australian citizen, the Minister must register the person in the manner prescribed by the regulations.

**19 Day citizenship begins**

A person becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.

**19A When a person does not become a citizen despite the Minister's approval**

Despite section 19, a person does not become an Australian citizen under this Subdivision, even if the Minister approves the person becoming an Australian citizen, unless:

- (a) if the person was born on or after 26 January 1949—a parent of the person was an Australian citizen at the time of the person's birth; or
- (b) if the person was born before 26 January 1949—a parent of the person became an Australian citizen on 26 January 1949.



## **Subdivision AA—Citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption**

### **19B Simplified outline**

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision if you are adopted outside Australia in accordance with the Hague Convention on Intercountry Adoption by at least 1 Australian citizen.

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved. You may be refused citizenship even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 19D(4); or
- national security: see subsections 19D(5) to (7A); or
- cessation of citizenship: see subsection 19D(8).

You will be registered if the Minister approves you becoming an Australian citizen.

### **19C Application and eligibility for citizenship**

- (1) A person may make an application to the Minister to become an Australian citizen.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

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*Eligibility*

- (2) A person (the *applicant*) is eligible to become an Australian citizen if:
- (a) the applicant is adopted in a Convention country by:
    - (i) a person (the *adopter*) who is an Australian citizen at time of the adoption; or
    - (ii) 2 persons jointly, only one of whom (the *adopter*) is an Australian citizen at the time of the adoption; or
    - (iii) 2 persons jointly, both of whom (the *adopters*) are Australian citizens at the time of the adoption; and
  - (b) an adoption compliance certificate issued in that country is in force for the adoption; and
  - (c) under the Intercountry Adoption regulations, the adoption is recognised and effective for the laws of the Commonwealth and each State and Territory; and
  - (d) the legal relationship between the applicant and the individuals who were, immediately before the adoption, the applicant's parents has been terminated; and
  - (e) if subparagraph (a)(i) or (ii) applies and the adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—the adopter satisfies subsection (3); and
  - (f) if subparagraph (a)(iii) applies and each adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—either or both of the adopters satisfy subsection (3); and
  - (g) if the applicant is aged 18 or over at the time the applicant made the application—the Minister is satisfied that the applicant is of good character at the time of the Minister's decision on the application.
- (3) An adopter satisfies this subsection if the adopter has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the applicant made the application.

*Definitions*

(4) In this section:

***adoption compliance certificate*** has the same meaning as in the Intercountry Adoption regulations.

***Convention country*** has the same meaning as in the Intercountry Adoption regulations.

***Intercountry Adoption regulations*** means the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

**19D Minister's decision**

- (1) If a person makes an application under section 19C, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.
- (2) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 19C(2).
- (3) The Minister may refuse to approve the person becoming an Australian citizen despite the person being eligible to become an Australian citizen under subsection 19C(2).

*Identity*

- (4) The Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

*National security*

- (5) If the person is not covered by subsection (7), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).

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- (6) If the person is covered by subsection (7), the Minister must not approve the person becoming an Australian citizen if the person:
- (a) if subparagraph (7)(b)(i) applies to the person:
    - (i) has been convicted of a national security offence; or
    - (ii) subject to subsection (7A), has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
  - (b) if subparagraph (7)(b)(ii) applies to the person—has been convicted of a national security offence.
- (7) A person is covered by this subsection if:
- (a) at the time the person made the application under section 19C, the person:
    - (i) is not a national of any country; and
    - (ii) is not a citizen of any country; and
  - (b) either:
    - (i) the person was born in Australia; or
    - (ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.
- (7A) The Minister may decide that subparagraph (6)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.

*Cessation of citizenship*

- (8) If the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

**19E Registration**

If the Minister approves the person becoming an Australian citizen, the Minister must register the person in the manner prescribed by the regulations.

### **19F Day citizenship begins**

A person becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.

## **Subdivision B—Citizenship by conferral**

### **19G Simplified outline**

The following is a simplified outline of this Subdivision:

You may be eligible to become an Australian citizen under this Subdivision in 7 situations:

- you satisfy the general eligibility criteria and have successfully completed a citizenship test: see subsections 21(2) and (2A); or
- you have a permanent or enduring physical or mental incapacity: see subsection 21(3); or
- you are aged 60 or over or have a hearing, speech or sight impairment: see subsection 21(4); or
- you are aged under 18: see subsection 21(5); or
- you were born to a former Australian citizen: see subsection 21(6); or
- you were born in Papua: see subsection 21(7); or
- you are a stateless person: see subsection 21(8).

You must make an application to become an Australian citizen. The Minister must approve or refuse you becoming an Australian citizen.

You must be eligible to be an Australian citizen to be approved. You may be refused citizenship even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 24(3); or
- national security: see subsections 24(4) to (4C); or
- non-presence in Australia: see subsection 24(5); or
- offences: see subsection 24(6); or
- cessation of citizenship: see subsection 24(7).

You may need to make a pledge of commitment to become an Australian citizen.

## **20 Requirements for becoming a citizen**

A person becomes an Australian citizen under this Subdivision if:

- (a) the Minister decides under subsection 24(1) to approve the person becoming an Australian citizen; and
- (b) if the person is required to make a pledge of commitment to become an Australian citizen—the person makes that pledge.

Note: Sections 21 to 25 deal with the Minister approving the person becoming an Australian citizen. Sections 26 and 27 deal with the making of a pledge of commitment.

## **21 Application and eligibility for citizenship**

- (1) A person may make an application to the Minister to become an Australian citizen.

Note 1: Subsections (2) to (8) deal with eligibility.

Note 2: Section 46 sets out application requirements (which may include the payment of a fee).

### *General eligibility*

- (2) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
  - (a) is aged 18 or over at the time the person made the application; and

- (b) is a permanent resident:
    - (i) at the time the person made the application; and
    - (ii) at the time of the Minister's decision on the application; and
  - (c) satisfies the general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B), or has completed relevant defence service (see section 23), at the time the person made the application; and
  - (d) understands the nature of an application under subsection (1); and
  - (e) possesses a basic knowledge of the English language; and
  - (f) has an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship; and
  - (g) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
  - (h) is of good character at the time of the Minister's decision on the application.
- (2A) Paragraphs (2)(d), (e) and (f) are taken to be satisfied if and only if the Minister is satisfied that the following apply:
- (a) the person has sat a test approved in a determination under section 23A;
  - (b) the person was eligible to sit that test (worked out in accordance with that determination);
  - (c) the person started that test within the period worked out in accordance with that determination and completed that test within the period (the *relevant test period*) worked out in accordance with that determination;
  - (d) the person successfully completed that test (worked out in accordance with that determination) within the relevant test period.

*Permanent or enduring physical or mental incapacity*

- (3) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
- (a) is aged 18 or over at the time the person made the application; and

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- (b) is a permanent resident:
  - (i) at the time the person made the application; and
  - (ii) at the time of the Minister's decision on the application; and
- (c) satisfies the general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B), or has completed relevant defence service (see section 23), at the time the person made the application; and
- (d) has a permanent or enduring physical or mental incapacity, at the time the person made the application, that means the person:
  - (i) is not capable of understanding the nature of the application at that time; or
  - (ii) is not capable of demonstrating a basic knowledge of the English language at that time; or
  - (iii) is not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time; and
- (e) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
- (f) is of good character at the time of the Minister's decision on the application.

*Person aged 60 or over or has hearing, speech or sight impairment*

- (4) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
  - (a) is:
    - (i) aged 60 or over at the time the person made the application; or
    - (ii) aged 18 or over at the time the person made the application and is suffering from a permanent loss or substantial impairment of hearing, speech or sight at that time; and
  - (b) is a permanent resident:
    - (i) at the time the person made the application; and
    - (ii) at the time of the Minister's decision on the application; and



- (c) understands the nature of the application at the time the person made the application; and
- (d) satisfies the general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B), or has completed relevant defence service (see section 23), at the time the person made the application; and
- (e) is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
- (f) is of good character at the time of the Minister's decision on the application.

*Person aged under 18*

- (5) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:
  - (a) is aged under 18 at the time the person made the application; and
  - (b) is a permanent resident:
    - (i) at the time the person made the application; and
    - (ii) at the time of the Minister's decision on the application.

*Person born to former Australian citizen*

- (6) A person is eligible to become an Australian citizen if the Minister is satisfied that:
  - (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; and
  - (d) if the person is aged 18 or over at the time the person made the application—the person is of good character at the time of the Minister's decision on the application.

*Person born in Papua*

- (7) A person is eligible to become an Australian citizen if the Minister is satisfied that:
  - (a) the person was born in Papua before 16 September 1975; and

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- (b) a parent of the person was born in Australia (within the meaning of this Act at the time the person made the application); and
- (c) the parent was an Australian citizen at the time of the person's birth; and
- (d) the person is of good character at the time of the Minister's decision on the application.

*Statelessness*

- (8) A person is eligible to become an Australian citizen if the Minister is satisfied that:
  - (a) the person was born in Australia; and
  - (b) the person:
    - (i) is not a national of any country; and
    - (ii) is not a citizen of any country; and
  - (c) the person has:
    - (i) never been a national of any country; and
    - (ii) never been a citizen of any country; and
  - (d) the person:
    - (i) is not entitled to acquire the nationality of a foreign country; and
    - (ii) is not entitled to acquire the citizenship of a foreign country.

**22 General residence requirement**

- (1) Subject to this section, for the purposes of section 21 a person satisfies the ***general residence requirement*** if:
  - (a) the person was present in Australia for the period of 4 years immediately before the day the person made the application; and
  - (b) the person was not present in Australia as an unlawful non-citizen at any time during that 4 year period; and
  - (c) the person was present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.

*Overseas absences*

(1A) If:

- (a) the person was absent from Australia for a part of the period of 4 years immediately before the day the person made the application; and
- (b) the total period of the absence or absences was not more than 12 months;

then, for the purposes of paragraph (1)(a), the person is taken to have been present in Australia during each period of absence.

(1B) If:

- (a) the person was absent from Australia for a part of the period of 12 months immediately before the day the person made the application; and
- (b) the total period of the absence or absences was not more than 90 days; and
- (c) the person was a permanent resident during each period of absence;

then, for the purposes of paragraph (1)(c), the person is taken to have been present in Australia as a permanent resident during each period of absence.

*Confinement in prison or psychiatric institution*

(1C) Subject to subsection (5A), the person is taken not to satisfy paragraph (1)(a) if, at any time during the 4 year period mentioned in that paragraph, the person was:

- (a) confined in a prison; or
- (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

*Partial exemption—person born in Australia or former Australian citizen*

(2) Paragraphs (1)(a) and (b) do not apply if the person:

- (a) was born in Australia; or
- (b) was an Australian citizen at any time before the person made the application.

*Ministerial discretion—administrative error*

- (4A) For the purposes of paragraph (1)(b), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers the person was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.
- (5) For the purposes of paragraph (1)(c), the Minister may treat a period as one in which the person was present in Australia as a permanent resident if the Minister considers the person was present in Australia during that period but, because of an administrative error, was not a permanent resident during that period.

*Ministerial discretion—confinement in prison or psychiatric institution*

- (5A) The Minister may decide that subsection (1C) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

*Ministerial discretion—person in Australia would suffer significant hardship or disadvantage*

- (6) For the purposes of paragraph (1)(c), the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:
- (a) the person was present in Australia during that period (except as a permanent resident or an unlawful non-citizen); and
  - (b) the Minister is satisfied that the person will suffer significant hardship or disadvantage if that period were not treated as one during which the person was present in Australia as a permanent resident.

*Ministerial discretion—spouse, de facto partner or surviving spouse or de facto partner of Australian citizen*

- (9) If the person is the spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen at the time the person made the application, the Minister may treat a period as one in

which the person was present in Australia as a permanent resident if:

- (a) the person was a spouse or de facto partner of that Australian citizen during that period; and
- (b) the person was not present in Australia during that period; and
- (c) the person was a permanent resident during that period; and
- (d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

(10) In subsection (9):

*surviving spouse or de facto partner* of a person who has died means a person who was the person's spouse or de facto partner immediately before the person died and who has not later become the spouse or de facto partner of another person.

*Ministerial discretion—person in an interdependent relationship*

(11) If, at the time the person made the application, the person:

- (a) holds a permanent visa granted to the person because the person was in an interdependent relationship with an Australian citizen; and
- (b) is in that interdependent relationship;

then, for the purposes of paragraph (1)(c), the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

- (c) the person held that visa during that period and the person was in that interdependent relationship during that period; and
- (d) the person was not present in Australia during that period; and
- (e) the person was a permanent resident during that period; and
- (f) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

### **22A Special residence requirement—persons engaging in activities that are of benefit to Australia**

(1) Subject to this section, for the purposes of section 21 a person (the *applicant*) satisfies the *special residence requirement* if:

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- (a) the following apply:
  - (i) the applicant is seeking to engage in an activity specified under subsection 22C(1);
  - (ii) the applicant's engagement in that activity would be of benefit to Australia;
  - (iii) the applicant needs to be an Australian citizen in order to engage in that activity;
  - (iv) in order for the applicant to engage in that activity, there is insufficient time for the applicant to satisfy the general residence requirement (see section 22); and
- (b) the head of an organisation specified under subsection 22C(2), or a person whom the Minister is satisfied holds a senior position in that organisation, has given the Minister a notice in writing stating that the applicant has a reasonable prospect of being engaged in that activity; and
- (c) the applicant was present in Australia for a total of at least 180 days during the period of 2 years immediately before the day the applicant made the application; and
- (d) the applicant was present in Australia for a total of at least 90 days during the period of 12 months immediately before the day the applicant made the application; and
- (e) the applicant was ordinarily resident in Australia throughout the period of 2 years immediately before the day the applicant made the application; and
- (f) the applicant was a permanent resident for the period of 2 years immediately before the day the applicant made the application; and
- (g) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 2 years immediately before the day the applicant made the application.

*Confinement in prison or psychiatric institution*

- (2) Subject to subsection (3), the applicant is taken not to satisfy paragraph (1)(c) if, at any time during the 2 year period mentioned in that paragraph, the applicant was:
  - (a) confined in a prison; or

- (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the applicant.
- (3) The Minister may decide that subsection (2) does not apply in relation to the applicant if, taking into account the circumstances that resulted in the applicant's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the applicant.

*Ministerial discretion—administrative error*

- (4) For the purposes of paragraph (1)(f), the Minister may treat a period as one in which the applicant was a permanent resident if the Minister considers that, because of an administrative error, the applicant was not a permanent resident during that period.
- (5) For the purposes of paragraph (1)(g), the Minister may treat a period as one in which the applicant was not present in Australia as an unlawful non-citizen if the Minister considers the applicant was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

**22B Special residence requirement—persons engaged in particular kinds of work requiring regular travel outside Australia**

- (1) Subject to this section, for the purposes of section 21 a person satisfies the *special residence requirement* if:
  - (a) at the time the person made the application, the person is engaged in work of a kind specified under subsection 22C(3) and the person is required to regularly travel outside Australia because of that work; and
  - (b) the following apply:
    - (i) the person was engaged in that kind of work for a total of at least 2 years during the period of 4 years immediately before the day the person made the application;
    - (ii) for the whole or part of that 4 year period when the person was engaged in that kind of work, the person regularly travelled outside Australia because of that work; and

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- (c) the person was present in Australia for a total of at least 480 days during the period of 4 years immediately before the day the person made the application; and
- (d) the person was present in Australia for a total of at least 120 days during the period of 12 months immediately before the day the person made the application; and
- (e) the person was ordinarily resident in Australia throughout the period of 4 years immediately before the day the person made the application; and
- (f) the person was a permanent resident for the period of 12 months immediately before the day the person made the application; and
- (g) the person was not present in Australia as an unlawful non-citizen at any time during the period of 4 years immediately before the day the person made the application.

*Confinement in prison or psychiatric institution*

- (2) Subject to subsection (3), the person is taken not to satisfy paragraph (1)(c) if, at any time during the 4 year period mentioned in that paragraph, the person was:
  - (a) confined in a prison; or
  - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (3) The Minister may decide that subsection (2) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

*Ministerial discretion—administrative error*

- (4) For the purposes of paragraph (1)(f), the Minister may treat a period as one in which the person was a permanent resident if the Minister considers that, because of an administrative error, the person was not a permanent resident during that period.
- (5) For the purposes of paragraph (1)(g), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers the person was



present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

### **22C Special residence requirement—legislative instruments**

- (1) The Minister may, by legislative instrument, specify activities for the purposes of subparagraph 22A(1)(a)(i).
- (2) The Minister may, by legislative instrument, specify organisations for the purposes of paragraph 22A(1)(b).
- (3) The Minister may, by legislative instrument, specify kinds of work for the purposes of paragraph 22B(1)(a).

### **23 Relevant defence service**

For the purposes of section 21, a person has completed *relevant defence service* if the person:

- (a) has completed:
  - (i) at least 90 days service in the permanent forces of the Commonwealth; or
  - (ii) at least 6 months service in the Naval Reserve, the Army Reserve or Air Force Reserve; or
- (b) was discharged from that service as medically unfit for that service and who became so unfit because of that service.

### **23A Citizenship test**

- (1) The Minister must, by written determination, approve a test for the purposes of subsection 21(2A) (about general eligibility for citizenship).

Note: The test must be related to the eligibility criteria referred to in paragraphs 21(2)(d), (e) and (f).

*Successful completion of the test*

- (2) A determination under subsection (1) must specify what amounts to successful completion of the test.

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*Eligibility criteria for sitting the test*

- (3) A determination under subsection (1) may set out the eligibility criteria a person must satisfy to be able to sit the test.

Note: The eligibility criteria for sitting the test cannot be inconsistent with this Act and in particular subsection 21(2) (about the general eligibility criteria for becoming an Australian citizen).

- (4) For the purposes of subsection (3), the determination may provide that a person is not eligible to sit the test unless the person is a permanent resident and the Minister is satisfied of the identity of the person.
- (5) Subsection (4) does not limit subsection (3).

*Period for sitting and completing the test*

- (5A) A determination under subsection (1) may provide for the period within which a person must start the test and for the period within which a person must complete the test.

*Other matters*

- (6) A determination under subsection (1) may cover any other matter related to the test the Minister thinks appropriate.

*Determination not a legislative instrument*

- (7) A determination made under subsection (1) is not a legislative instrument.

**24 Minister's decision**

- (1) If a person makes an application under section 21, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.

Note: The Minister may cancel an approval: see section 25.

- (1A) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 21(2), (3), (4), (5), (6), (7) or (8).

- (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).

*Identity*

- (3) The Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

*National security*

- (4) If the person is not covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (4A) If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person:
- (a) if subparagraph (4B)(b)(i) applies to the person:
    - (i) has been convicted of a national security offence; or
    - (ii) subject to subsection (4C), has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
  - (b) if subparagraph (4B)(b)(ii) applies to the person—has been convicted of a national security offence.
- (4B) A person is covered by this subsection if:
- (a) at the time the person made the application under section 21, the person:
    - (i) is not a national of any country; and
    - (ii) is not a citizen of any country; and
  - (b) either:
    - (i) the person was born in Australia; or
    - (ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.

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- (4C) The Minister may decide that subparagraph (4A)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.
- (4D) To avoid doubt, subsection (4A) applies to a person who is eligible to become an Australian citizen under subsection 21(8).

*Person not present in Australia*

- (5) If:
- (a) the person is covered by subsection 21(2), (3) or (4); and
  - (aa) the Minister is satisfied that the person did not satisfy the special residence requirement referred to in section 22A or 22B; and
  - (b) the Minister did not apply subsection 22(9) in relation to the person; and
  - (c) the Minister did not apply subsection 22(11) in relation to the person;
- the Minister must not approve the person becoming an Australian citizen at a time when the person is not present in Australia.

*Offences*

- (6) The Minister must not approve the person becoming an Australian citizen at a time:
- (a) when proceedings for an offence against an Australian law (including proceedings by way of appeal or review) are pending in relation to the person; or
  - (b) when the person is confined to a prison in Australia; or
  - (c) during the period of 2 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition on the person of a serious prison sentence; or
  - (d) if the person is a serious repeat offender in relation to a serious prison sentence—during the period of 10 years after the end of any period during which the person has been confined to a prison in Australia because of the imposition of that sentence; or

- (e) if the person has been released from serving the whole or a part of a sentence of imprisonment on parole or licence— during any period during which action can be taken under an Australian law to require the person to serve the whole or a part of that sentence; or
- (f) if the person:
  - (i) has been released by a court from serving the whole or a part of a sentence of imprisonment; and
  - (ii) has been so released because the person gave a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour;  
during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or
- (g) if, in respect of proceedings for an offence against an Australian law in relation to the person:
  - (i) a court does not impose a sentence of imprisonment on the person; and
  - (ii) the court releases the person because the person gives a security, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to the person's behaviour;  
during any period during which action can be taken against the person under an Australian law because of a breach of a condition of that security; or
- (h) during any period during which the person is confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

*Cessation of citizenship*

- (7) If the person has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.

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*Statelessness*

- (8) However, subsections (6) and (7) do not apply to a person covered by subsection 21(8) (about statelessness).

**25 Minister may cancel approval**

- (1) The Minister may, by writing, cancel an approval given to a person under section 24 if:
- (a) the person has not become an Australian citizen under section 28; and
  - (b) either of the following 2 situations apply.

*Eligibility criteria not met*

- (2) The first situation applies if:
- (a) the person is covered by subsection 21(2), (3) or (4); and
  - (b) the Minister is satisfied that, at the time the Minister proposes to cancel the approval, the person is:
    - (i) not a permanent resident; or
    - (ii) not likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia; or
    - (iii) not of good character.

*Failure to make pledge of commitment*

- (3) The second situation applies if:
- (a) the person has failed to make a pledge of commitment within 12 months after the day on which the person received notice of the approval; and
  - (b) the person's reason for the failure is not one that is prescribed by the regulations for the purposes of this subsection.

*Cancellation of child's approval*

- (4) If:
- (a) a child aged under 16 makes an application under section 21 at a particular time; and
  - (b) 1 or more responsible parents of the child make applications under section 21 at that time; and

(c) the Minister decides under section 24 to approve the child and 1 or more of the responsible parents becoming Australian citizens; and

(d) the Minister cancels the approval given to each responsible parent;

the Minister must, by writing, cancel the approval given to the child.

*Effect of cancellation*

(5) If the Minister cancels an approval given to a person, the approval is taken never to have been given.

Note: A person cannot become an Australian citizen under this Subdivision unless the Minister approves the person becoming an Australian citizen. This subsection has the effect that the person will need to make another application if the person wants to become an Australian citizen.

## **26 Pledge of commitment must be made**

(1) A person must make a pledge of commitment to become an Australian citizen unless the person:

(a) is aged under 16 at the time the person made the application to become an Australian citizen; or

(b) has a permanent or enduring physical or mental incapacity, at the time the person made the application to become an Australian citizen, that means the person:

(i) is not capable of understanding the nature of the application at that time; or

(ii) is not capable of demonstrating a basic knowledge of the English language at that time; or

(iii) is not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time; or

(c) is covered by subsection 21(6), (7) or (8).

Note: See section 27 for how the pledge is to be made.

(2) A person must not make a pledge of commitment before the Minister approves the person's application to become an Australian citizen. A pledge of commitment made by the person before that time is of no effect.

*Delayed making of pledge*

- (3) If the person is required to make a pledge of commitment and has not done so, the Minister may determine, in writing, that the person cannot make the pledge until the end of a specified period if the Minister is satisfied that:
  - (a) a visa held by the person may be cancelled under the *Migration Act 1958* (whether or not the person has been given any notice to that effect); or
  - (b) the person has been or may be charged with an offence under an Australian law.
- (4) The Minister must not specify a period that exceeds, or periods that in total exceed, 12 months.
- (5) The Minister may, by writing, revoke a determination.
- (6) If a determination is in force in relation to a person, the person must not make a pledge of commitment before the end of the period specified in the determination. A pledge of commitment made by the person before that time is of no effect.

**27 How pledge of commitment is to be made**

*Form of pledge*

- (1) A pledge of commitment must be made in accordance with either of the forms set out in Schedule 1.

*Prescribed arrangements*

- (2) A pledge of commitment must be made in accordance with the arrangements prescribed by the regulations.

Note: The regulations may provide for a pledge of commitment to be made in public.

*Persons who may receive pledge*

- (3) A pledge of commitment must be made before:
  - (a) the Minister; or
  - (b) a person authorised under subsection (4); or
  - (c) a person who is included in a class of persons authorised under subsection (5).



- (4) The Minister may, by writing, authorise a person for the purposes of paragraph (3)(b).
- (5) The Minister may, by legislative instrument, authorise a class of persons for the purposes of paragraph (3)(c).

## **28 Day citizenship begins etc.**

### *Persons required to make pledge of commitment*

- (1) A person required to make a pledge of commitment becomes an Australian citizen under this Subdivision on the day on which the person makes the pledge.

### *Persons not required to make pledge of commitment*

- (2) Subject to subsection (3), a person not required to make a pledge of commitment becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.

### *Applications made at the same time by child and responsible parents*

- (3) Subsection (2) does not apply to a child aged under 16 at the time the child made the application to become an Australian citizen if:
  - (a) 1 or more responsible parents of the child made applications under section 21 at that time; and
  - (b) the Minister decided under section 24 to approve the child and 1 or more of the responsible parents becoming Australian citizens.
- (4) If 1 or more of the responsible parents become Australian citizens under this section, the child becomes an Australian citizen on the first day on which a responsible parent becomes an Australian citizen.

## **Subdivision C—Resuming citizenship**

### **28A Simplified outline**

The following is a simplified outline of this Subdivision:

**Part 2** Australian citizenship

**Division 2** Acquisition of Australian citizenship by application

Section 29

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You may be eligible to become an Australian citizen under this Subdivision if you ceased to be an Australian citizen under this Act or the old Act.

You must make an application to become an Australian citizen again. The Minister must approve or refuse you becoming an Australian citizen again.

You must be eligible to be an Australian citizen again to be approved. You may be refused citizenship again even if you are eligible.

The Minister may be required to refuse your application on grounds relating to:

- non-satisfaction of identity: see subsection 30(3); or
- national security: see subsections 30(4) to (7).

You will be registered if the Minister approves you becoming an Australian citizen again.

**29 Application and eligibility for resuming citizenship**

- (1) A person may make an application to the Minister to become an Australian citizen again.

Note 1: Section 46 sets out application requirements (which may include the payment of a fee).

Note 2: The person may also apply to become an Australian citizen again under Subdivision A, AA or B.

*Cessation under this Act*

- (2) A person is eligible to become an Australian citizen again under this Subdivision if:

(a) the person ceased to be an Australian citizen under:

- (i) section 33 (about renunciation) in order to acquire or retain the nationality or citizenship of a foreign country or to avoid suffering significant hardship or detriment;  
or

(ii) section 36 (about children); and

- (b) if the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

Note 1: See also section 32 (which is about persons resuming their former citizenship status).

Note 2: A person who ceases to be an Australian citizen under section 34 or 35 may apply to become an Australian citizen again under Subdivision A, AA or B.

#### *Cessation under old Act*

- (3) A person is eligible to become an Australian citizen again under this Subdivision if:
  - (a) the person ceased to be an Australian citizen under:
    - (i) section 17 (about dual citizenship) of the old Act; or
    - (ii) section 18 (about renunciation) of the old Act in order to acquire or retain the nationality or citizenship of a foreign country or to avoid suffering significant hardship or detriment; or
    - (iii) section 20 (about residence outside Australia) of the old Act; or
    - (iv) section 23 (about children) of the old Act; and
  - (b) if the person is aged 18 or over at the time the person made the application—the Minister is satisfied that the person is of good character at the time of the Minister’s decision on the application.

### **30 Minister’s decision**

- (1) If a person makes an application under section 29, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen again.
- (1A) The Minister must not approve the person becoming an Australian citizen again unless the person is eligible to become an Australian citizen again under subsection 29(2) or (3).
- (2) The Minister may refuse to approve the person becoming an Australian citizen again despite the person being eligible to become an Australian citizen again under subsection 29(2) or (3).

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*Identity*

- (3) The Minister must not approve the person becoming an Australian citizen again unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

*National security*

- (4) If the person is not covered by subsection (6), the Minister must not approve the person becoming an Australian citizen again at a time when an adverse security assessment, or a qualified security assessment, in respect of the person is in force under the *Australian Security Intelligence Organisation Act 1979* that the person is directly or indirectly a risk to security (within the meaning of section 4 of that Act).
- (5) If the person is covered by subsection (6), the Minister must not approve the person becoming an Australian citizen again if the person:
- (a) if subparagraph (6)(b)(i) applies to the person:
    - (i) has been convicted of a national security offence; or
    - (ii) subject to subsection (7), has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to a period of imprisonment of at least 5 years; or
  - (b) if subparagraph (6)(b)(ii) applies to the person—has been convicted of a national security offence.
- (6) A person is covered by this subsection if:
- (a) at the time the person made the application under section 29, the person:
    - (i) is not a national of any country; and
    - (ii) is not a citizen of any country; and
  - (b) either:
    - (i) the person was born in Australia; or
    - (ii) the person was born outside Australia and, at the time of the person's birth, the person had a parent who was an Australian citizen.
- (7) The Minister may decide that subparagraph (5)(a)(ii) does not apply in relation to a person if, taking into account the

circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.

### 31 Registration

If the Minister approves the person becoming an Australian citizen again, the Minister must register the person in the manner prescribed by the regulations.

### 32 Day citizenship begins again etc.

- (1) A person becomes an Australian citizen again on the day on which the Minister approves the person becoming an Australian citizen again.

*Same kind of citizenship—former citizen under this Act*

- (2) If the person, before ceasing to be an Australian citizen, was an Australian citizen under Subdivision A, AA or B, the person becomes an Australian citizen again under that Subdivision.

Note: One of the effects of this subsection is that the Minister is able to revoke the person's citizenship: see section 34.

*Same kind of citizenship—former citizen under old Act*

- (3) If the person, before ceasing to be an Australian citizen, was an Australian citizen under the provision set out in column 2 of the following table, the person becomes an Australian citizen again under the provision set out in column 3 of the table.

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<b>Same kind of citizenship</b>		
<b>Column 1 Item</b>	<b>Column 2 Provision under which person was a citizen</b>	<b>Column 3 Provision under which person becomes a citizen again</b>
1	Section 10B, 10C or 11 of the old Act	Subdivision A of this Division
2	Division 2 of Part III of the old Act	Subdivision B of this Division

Note: One of the effects of this subsection is that the Minister is able to revoke the person's citizenship: see section 34.

## **Division 3—Cessation of Australian citizenship**

### **32A Simplified outline**

The following is a simplified outline of this Division:

There are 4 ways in which you can cease to be an Australian citizen:

- you may renounce your Australian citizenship: see section 33; or
- if you did not automatically become an Australian citizen, the Minister can revoke your citizenship: see section 34; or
- you serve in the armed forces of a country at war with Australia: see section 35; or
- if you are the child of a responsible parent who ceases to be an Australian citizen, the Minister can revoke your citizenship in some situations: see section 36.

### **33 Renunciation**

- (1) A person may make an application to the Minister to renounce the person's Australian citizenship.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

*Minister's decision*

- (2) The Minister must, by writing, approve or refuse to approve the person renouncing his or her Australian citizenship.
- (3) Subject to this section, the Minister must approve the person renouncing his or her Australian citizenship if the Minister is satisfied that:
- (a) the person is aged 18 or over, and is a national or citizen of a foreign country, at the time the person made the application; or

- (b) the person was born, or is ordinarily resident, in a foreign country and is not entitled, under the law of that country, to acquire the nationality or citizenship of that country because the person is an Australian citizen.
- (4) The Minister must not approve the person renouncing his or her Australian citizenship unless the Minister is satisfied of the identity of the person.
- Note: Division 5 contains the identity provisions.
- (5) The Minister may refuse to approve the person renouncing his or her Australian citizenship if the person:
- (a) is a national or citizen of a foreign country at the time the person made the application; and
  - (b) made the application during a war in which Australia is engaged.
- (6) The Minister must not approve the person renouncing his or her Australian citizenship if the Minister considers that it would not be in the interests of Australia to do so.
- (7) The Minister must not approve the person renouncing his or her Australian citizenship unless the Minister is satisfied that the person:
- (a) is a national or citizen of a foreign country immediately before the Minister's decision on the application; or
  - (b) will, if the Minister approves the application, become a national or citizen of a foreign country immediately after the approval.

*Time citizenship ceases*

- (8) If the Minister approves a person renouncing his or her Australian citizenship, the person ceases to be an Australian citizen at the time of the approval.

Note: A child of the person may also cease to be an Australian citizen: see section 36.

### **34 Revocation by Minister**

*Citizenship by descent or for persons adopted in accordance with the Hague Convention on Intercountry Adoption*

- (1) The Minister may, by writing, revoke a person's Australian citizenship if:
  - (a) the person is an Australian citizen under Subdivision A or AA of Division 2 (including because of the operation of section 32); and
  - (b) either of the following apply:
    - (i) the person has been convicted of an offence against section 50 of this Act, or section 137.1 or 137.2 of the *Criminal Code*, in relation to the person's application to become an Australian citizen;
    - (ii) the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and
  - (c) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.

*Citizenship by conferral*

- (2) The Minister may, by writing, revoke a person's Australian citizenship if:
  - (a) the person is an Australian citizen under Subdivision B of Division 2 (including because of the operation of section 32); and
  - (b) any of the following apply:
    - (i) the person has been convicted of an offence against section 50 of this Act, or section 137.1 or 137.2 of the *Criminal Code*, in relation to the person's application to become an Australian citizen;
    - (ii) the person has, at any time after making the application to become an Australian citizen, been convicted of a serious offence within the meaning of subsection (5);
    - (iii) the person obtained the Minister's approval to become an Australian citizen as a result of migration-related fraud within the meaning of subsection (6);



- (iv) the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and
  - (c) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.
- (3) However, the Minister must not decide under subsection (2) to revoke a person's Australian citizenship if:
- (a) the Minister may revoke the person's Australian citizenship under that subsection only because of the application of subparagraph (2)(b)(ii); and
  - (b) the Minister is satisfied that the person would, if the Minister were to revoke the person's Australian citizenship, become a person who is not a national or citizen of any country.

*Time citizenship ceases*

- (4) If the Minister revokes a person's Australian citizenship, the person ceases to be an Australian citizen at the time of the revocation.

Note: A child of the person may also cease to be an Australian citizen: see section 36.

*Serious offence*

- (5) For the purposes of this section, a person has been **convicted of a serious offence** if:
- (a) the person has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to death or to a serious prison sentence; and
  - (b) the person committed the offence at any time before the person became an Australian citizen.

*Migration-related fraud*

- (6) For the purposes of this section, a person obtained the Minister's approval to become an Australian citizen as a result of **migration-related fraud** if and only if:
- (a) at any time, the person was convicted of an offence against:
    - (i) section 234, 236 or 243, or former section 244 (as in force before its repeal by the *Same-Sex Relationships*

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*(Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008*), of the *Migration Act 1958*; or

(ii) section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the *Criminal Code*;

that the person committed at any time before the Minister gave the approval; and

(b) the act or omission that constituted the offence was connected with the person's entry into Australia or the grant to the person of a visa or of a permission to enter and remain in Australia.

(7) Subsection (6) does not apply to a person in respect of an offence if the Minister is satisfied that the act or omission that constituted that offence was not in any way (whether directly or indirectly) material to the person becoming a permanent resident.

*Third-party fraud*

(8) For the purposes of this section, a person (the *applicant*) obtained the Minister's approval to become an Australian citizen as a result of *third-party fraud* if and only if:

(a) at any time, another person was convicted of an offence against section 50 of this Act, or section 134.1, 135.2, 135.4, 136.1, 137.1, 137.2, 139.1, 141.1, 142.1, 142.2, 144.1, 145.1, 145.2, 145.4, 145.5 or 149.1 of the *Criminal Code*, that the other person committed at any time before the Minister gave the approval; and

(b) the act or omission that constituted the offence was connected with the Minister approving the applicant becoming an Australian citizen.

*Charge proved but no conviction*

(9) A reference in this section to a conviction of an offence:

(a) in relation to a law of the Commonwealth—includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence; and

(b) in relation to a law of a State or Territory or a foreign country—includes a reference to the making of an order under the corresponding provision of a law of the State or Territory or foreign country in relation to the offence.

### **35 Service in armed forces of enemy country**

- (1) A person ceases to be an Australian citizen if the person:
  - (a) is a national or citizen of a foreign country; and
  - (b) serves in the armed forces of a country at war with Australia.
- (2) The person ceases to be an Australian citizen at the time the person commences to so serve.

Note: A child of the person may also cease to be an Australian citizen: see section 36.

### **36 Children of responsible parents who cease to be citizens**

- (1) If:
  - (a) a person ceases to be an Australian citizen at a particular time (the *cessation time*) under section 33, 34 or 35; and
  - (b) at the cessation time, the person is a responsible parent of a child aged under 18;then:
  - (c) the Minister may, by writing, revoke the child's Australian citizenship; and
  - (d) if the Minister does so—the child ceases to be an Australian citizen at the time of the revocation.

*Exception—another responsible parent*

- (2) If, at the cessation time, another responsible parent of the child is an Australian citizen, subsection (1) does not apply to the child:
  - (a) while there is a responsible parent who is an Australian citizen; and
  - (b) if there ceases to be such a responsible parent because of the death of a responsible parent—at any time after that death.

*Exception—statelessness*

- (3) The Minister must not revoke a child's Australian citizenship under subsection (1) if the Minister is satisfied that the child would then become a person who is not a national or citizen of any country.

## **Division 4—Evidence of Australian citizenship**

### **37 Evidence of Australian citizenship**

- (1) A person may make an application to the Minister for evidence of the person's Australian citizenship.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

#### *Notice*

- (2) The Minister may give the person a notice stating that the person is an Australian citizen at a particular time.
- (3) The notice must:
- (a) be in a form prescribed by the regulations; and
  - (b) contain any other matter prescribed by the regulations.

#### *Identity*

- (4) The Minister must not give the person such a notice unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

#### *Evidentiary status*

- (5) A notice is prima facie evidence of the matters in the notice.

#### *Cancellation*

- (6) The Minister may, by writing, cancel a notice given to a person under this section.

### **38 Surrender of evidentiary notice**

#### *Request for surrender*

- (1) If:
- (a) the Minister makes a decision under section 34 to revoke a person's Australian citizenship; and

- (b) at the time of the revocation, there is in force a notice under section 37 in relation to the person;  
the Minister may request the person to surrender the notice to the Minister.
- (2) If the Minister makes a decision under subsection 37(6) to cancel a notice given to a person under section 37, the Minister may request the person to surrender the notice to the Minister.

*Form of request*

- (3) A request given to a person under subsection (1) or (2) must:
- (a) be made in writing; and
  - (b) specify the day on or before which the person must surrender the notice (which must be a day at least 28 days after the day on which the Minister makes the request); and
  - (c) specify how the person is to surrender the notice to the Minister; and
  - (d) contain a statement to the effect that a failure to comply with the request is an offence.

*Offence*

- (4) A person commits an offence if:
- (a) the person is given a request that is in accordance with this section; and
  - (b) the person fails to comply with the request.

Penalty for contravention of this subsection: 10 penalty units.

### **39 Altering evidentiary notice**

A person commits an offence if:

- (a) the person alters, or causes or permits to be altered, a notice; and
- (b) the notice was given to a person under section 37.

Penalty: Imprisonment for 12 months.

## **Division 5—Personal identifiers**

### **Subdivision A—Obtaining personal identifiers**

#### **40 Request for personal identifiers**

- (1) For the purposes of the Minister being satisfied of the identity of:
- (a) a person in relation to an application under this Part; or
  - (b) a person who has sought to sit a test approved in a determination under section 23A;
- the following persons may request the person, in writing, to provide one or more specified personal identifiers:
- (c) the Minister;
  - (d) a person authorised under subsection (3);
  - (e) a person who is included in a class of persons authorised under subsection (4).

##### *Form of request*

- (2) A request must inform the person of the matters prescribed by the regulations.

##### *Authorisations*

- (3) The Minister may, by writing, authorise a person for the purposes of paragraph (1)(d).
- (4) The Minister may, by legislative instrument, authorise a class of persons for the purposes of paragraph (1)(e).

#### **41 Provision of personal identifiers**

The regulations may prescribe the procedures and requirements that apply to the provision of a personal identifier by a person under this Division.

## **Subdivision B—Obligations relating to identifying information**

### **42 Accessing identifying information**

- (1) A person commits an offence if:
  - (a) the person accesses identifying information; and
  - (b) the person is not authorised under this section to access the identifying information for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

- (1A) This section does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) This section does not apply if the access is through:
  - (a) a disclosure that is a permitted disclosure within the meaning of section 43; or
  - (b) a disclosure to which section 43 does not apply because of the operation of subsection 43(1A).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

#### *Authorisation*

- (3) The Minister may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.
- (4) The Minister must specify in an authorisation under subsection (3), as the purpose or purposes for which access is authorised, one or more of the following purposes:
  - (a) either or both of the purposes set out in paragraph 10(2)(c);
  - (b) disclosing identifying information in accordance with this Division;
  - (c) administering or managing the storage of identifying information;

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- (d) making identifying information available to the person to whom it relates;
- (e) modifying identifying information to enable it to be matched with other identifying information;
- (f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
- (g) the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act;
- (h) complying with Australian laws.

**43 Disclosing identifying information**

- (1) A person commits an offence if:
- (a) the person's conduct causes disclosure of identifying information; and
  - (b) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

(1A) If:

- (a) a disclosure of identifying information is made to a person who is not an entrusted person; and
- (b) the disclosure is a permitted disclosure;

this section does not apply in relation to any further disclosure of that identifying information by a person who is not an entrusted person.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Paragraph 3 of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988* may apply to further disclosures of that identifying information by a person who is not an entrusted person.

- (1B) This section does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).



- (2) A **permitted disclosure** is a disclosure that:
- (b) is for the purposes of this Act or the regulations or of the *Migration Act 1958* or the regulations made under that Act; or
  - (c) is for the purpose of administering or managing the storage of identifying information; or
  - (d) is for the purpose of making the identifying information in question available to the person to whom it relates; or
  - (da) is to an agency of the Commonwealth, a State or a Territory in order to verify that a person is an Australian citizen; or
  - (e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or
  - (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth, a State or a Territory; or
  - (eb) is required by an Australian law; or
  - (f) is for the purpose of a proceeding, before a court or tribunal, relating to the person to whom the identifying information in question relates; or
  - (g) is for the purpose of an investigation by the Privacy Commissioner or the Ombudsman relating to action taken by the Department; or
  - (h) takes place with the written consent of the person to whom the identifying information in question relates.

#### **44 Unauthorised modification or impairment of identifying information**

##### *Unauthorised modification*

- (1) A person commits an offence if:
- (a) the person causes any unauthorised modification of identifying information; and
  - (b) the person intends to cause the modification; and
  - (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

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*Unauthorised impairment*

- (2) A person commits an offence if:
- (a) the person causes any unauthorised impairment of:
    - (i) the reliability of identifying information; or
    - (ii) the security of the storage of identifying information; or
    - (iii) the operation of a system by which identifying information is stored; and
  - (b) the person intends to cause the impairment; and
  - (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

*Exception*

- (2A) If:
- (a) a disclosure of identifying information is made to a person who is not an entrusted person; and
  - (b) the disclosure is a permitted disclosure within the meaning of section 43;

this section does not apply in relation to any modification or impairment of that identifying information by a person who is not an entrusted person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

*Interpretation*

- (3) In this section:
- (a) modification of identifying information; or
  - (b) impairment of the reliability of identifying information; or
  - (c) impairment of the security of the storage of identifying information; or
  - (d) impairment of the operation of a system by which identifying information is stored;
- by a person is **unauthorised** if the person is not entitled to cause that modification or impairment.
- (4) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

- (5) For the purposes of this section, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (6) For the purposes of subsection (3), if:
  - (a) a person causes any modification or impairment of a kind mentioned in that subsection; and
  - (b) the person does so under a warrant issued under an Australian law;the person is entitled to cause that modification or impairment.

#### **45 Destroying identifying information**

- (1) A person commits an offence if:
  - (a) the person is the responsible person for identifying information; and
  - (b) the person fails to destroy the identifying information as soon as practicable after the person is no longer required under the *Archives Act 1983* to keep the identifying information.

Penalty: Imprisonment for 2 years, or 120 penalty units, or both.

Note: See section 24 of the *Archives Act 1983* on the obligation to keep the identifying information.

- (2) This section does not apply if the identifying information is:
  - (a) a personal identifier that is any of the following:
    - (i) a measurement of a person's height and weight;
    - (ii) a photograph or other image of a person's face and shoulders;
    - (iii) a person's signature; or
  - (b) identifying information derived from or relating to such a personal identifier.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

#### *Definitions*

- (3) For the purposes of this section, the **responsible person** for identifying information is:
  - (a) if the identifying information is stored on a database—the person who has day-to-day control of the database; or

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- (b) otherwise—the person who has day-to-day responsibility for the system under which the identifying information is stored.
- (4) For the purposes of this section, identifying information is *destroyed* if:
  - (a) in the case of identifying information that is a personal identifier—it is physically destroyed; and
  - (b) in any other case—any means of identifying it with the person to whom it relates is destroyed.
- (5) For the purposes of this section, a *database* is a discrete body of information stored by electronic means, containing:
  - (a) indexes of persons who have provided personal identifiers in accordance with a request under this Division; and
  - (b) their identifying information.

## **Part 3—Other matters**

### **46 Application requirements**

- (1) An application under a provision of this Act must:
  - (a) be on the relevant form approved by the Minister for the purposes of that provision; and
  - (b) contain the information required by the form; and
  - (c) be accompanied by any other information or documents prescribed by the regulations; and
  - (d) be accompanied by the fee (if any) prescribed by the regulations.
- (1A) For applications made under section 21 by persons who, in order to be eligible to become an Australian citizen under subsection 21(2), must have sat a test approved in a determination under section 23A, the fee prescribed by the regulations may include a component that relates to the sitting of that test.

#### *Approval of forms*

- (2) The Minister may, by writing, approve one or more forms for the purposes of a provision of this Act under which an application may be made.

Note: For example, there are 2 ways to become an Australian citizen by descent under section 16. The Minister may approve 1 form for the purposes of that section or may approve 2 different forms.

#### *Children aged under 16*

- (2A) An application under a provision of this Act by a child aged under 16 must be set out:
  - (a) on a form that contains no other application; or
  - (b) on a form that also contains an application by 1 responsible parent of the child.

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*Remission, refund or waiver of fees*

- (3) The regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph (1)(d).

**47 Notification of decisions**

- (1) If the Minister makes a decision under this Act in relation to a person, the Minister must give the person notice of the decision.

*Child*

- (2) If the person is a child, the Minister satisfies the requirement in subsection (1) if the Minister gives a parent of the child notice of the decision.

*Reasons for adverse decision*

- (3) If the decision is an adverse decision, the notice must include the reasons for the decision.

*Form of notice*

- (4) The Minister must give the notice in the manner prescribed by the regulations (which includes electronic form).

*Procedural defect does not affect validity of decision*

- (5) A failure to comply with subsection (3) or (4) does not affect the validity of the decision.

**48 Computerised decision-making**

*Computer-based decisions*

- (1) The Minister may, by writing, arrange for the use, under the Minister's control, of computer programs for any purposes for which the Minister may, or must, under this Act or the regulations:
  - (a) make a decision; or
  - (b) exercise any power or comply with any obligation; or
  - (c) do anything else related to making a decision or exercising a power or complying with an obligation.

- (2) The Minister is taken to have:
- (a) made a decision; or
  - (b) exercised a power or complied with an obligation; or
  - (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation;
- that was made, exercised, complied with or done by the operation of a computer program under such an arrangement.

*Minister may substitute his or her own decision*

- (3) The Minister may substitute a decision (the *substituted decision*) for a decision (the *initial decision*) made by the operation of a computer program under such an arrangement if:
- (a) a notice under section 49 relates to the computer program and to the initial decision; and
  - (b) the notice states that the computer program was not functioning correctly; and
  - (c) the substituted decision could have been made under the same provision of this Act or the regulations as the initial decision; and
  - (d) the substituted decision is more favourable to the applicant.
- (4) The Minister does not have a duty to consider whether to exercise the power under subsection (3) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.
- (5) Subsection (3) has effect despite any law of the Commonwealth, or any rule of common law, to the contrary effect.

*Arrangement not a legislative instrument*

- (6) An arrangement under subsection (1) is not a legislative instrument.

## **49 Evidence of whether computer program is functioning correctly**

*Issue of notices*

- (1) In citizenship proceedings, a notice signed by an authorised person stating whether or not a specified computer program was functioning correctly:

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- (a) at a specified time or during a specified period; and
  - (b) in relation to specified outcomes from the operation of that program under an arrangement made under subsection 48(1);
- is prima facie evidence of the matters stated in the notice.

*Ministerial authorisations*

- (2) The Minister may, by writing, authorise a person to issue notices under this section.
- (3) The Minister may, by legislative instrument, authorise a class of persons to issue notices under this section.

*Definitions*

- (4) In this section:

***authorised person*** means:

- (a) an APS employee in the Department; or
- (b) a person authorised under subsection (2) to issue notices under this section; or
- (c) any person who is included in a class of persons authorised under subsection (3) to issue notices under this section.

***citizenship proceedings*** means:

- (a) proceedings in a court (including criminal proceedings) that relate to this Act (including an offence against this Act); or
- (b) proceedings that relate to an application for review under section 52.

***functioning correctly***: a computer program is ***functioning correctly*** if:

- (a) outcomes from its operation comply with this Act and the regulations; and
- (b) those outcomes would be valid if they were made by the Minister otherwise than by the operation of the computer program.



**50 False statements or representations**

- (1) A person commits an offence if:
- (a) the person makes, or causes or permits to be made, a representation or statement; and
  - (b) the person does so knowing that the representation or statement is false or misleading in a material particular; and
  - (c) the person does so for a purpose of or in relation to this Act.

Penalty: Imprisonment for 12 months.

- (2) A person commits an offence if:
- (a) the person conceals, or causes or permits to be concealed, a material circumstance; and
  - (b) the person does so for a purpose of or in relation to this Act.

Penalty: Imprisonment for 12 months.

**51 Geographical jurisdiction for offences**

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Act.

**52 Review of decisions**

- (1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions:
- (a) a decision under section 17 to refuse to approve a person becoming an Australian citizen;
  - (aa) a decision under section 19D to refuse to approve a person becoming an Australian citizen;
  - (b) a decision under section 24 to refuse to approve a person becoming an Australian citizen;
  - (c) a decision under section 25 to cancel an approval given to a person under section 24;
  - (d) a decision under section 30 to refuse to approve a person becoming an Australian citizen again;
  - (e) a decision under section 33 to refuse to approve a person renouncing his or her Australian citizenship, except a refusal because of the operation of subsection 33(5) (about war);

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- (f) a decision under section 34 or subsection 36(1) to revoke a person's Australian citizenship.

*Citizenship by conferral decision*

- (2) However, if:
  - (a) the Minister makes a decision under section 24 to refuse to approve a person becoming an Australian citizen; and
  - (b) the Minister's reasons for the decision did not refer to the eligibility ground in subsection 21(8) (about statelessness); and
  - (c) the person was aged 18 or over at the time the person made the application to become an Australian citizen;a person (the *applicant*) cannot apply for review of that decision unless the applicant is a permanent resident.

**53 Delegation**

- (1) The Minister may, by writing, delegate to any person all or any of the Minister's functions or powers under this Act or the regulations.
- (2) However, subsection (1) does not apply in relation to the function under subsection 23A(1) (about approval of citizenship test).

**54 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Schedule 1—Pledge of commitment as a citizen of the Commonwealth of Australia**

Note: See section 27.

### **1 Form of pledge no. 1**

From this time forward, under God,  
I pledge my loyalty to Australia and its people,  
whose democratic beliefs I share,  
whose rights and liberties I respect, and  
whose laws I will uphold and obey.

### **2 Form of pledge no. 2**

From this time forward,  
I pledge my loyalty to Australia and its people,  
whose democratic beliefs I share,  
whose rights and liberties I respect, and  
whose laws I will uphold and obey.



**Table of Acts****Notes to the *Australian Citizenship Act 2007*****Note 1**

The *Australian Citizenship Act 2007* as shown in this compilation comprises Act No. 20, 2007 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Freedom of Information Amendment (Reform) Act 2010*, see Act No. 51, 2010.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Citizenship Act 2007</i>	20, 2007	15 Mar 2007	Ss. 2A–54 and Schedule 1: 1 July 2007 (see F2007L01653) Remainder: Royal Assent	
<i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i>	46, 2006	22 May 2006	Schedule 8 (item 2): (a)	S. 2(1) (am. by 73, 2008, Sch. 2 [item 19])
<b>as amended by</b> <i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 2 (items 19, 20): 15 Mar 2007	—
<i>Australian Citizenship Amendment (Citizenship Testing) Act 2007</i>	142, 2007	17 Sept 2007	Schedule 1: 1 Oct 2007 (see F2007L03867) Remainder: Royal Assent	Sch. 1 (items 12, 13)
<i>Migration Legislation Amendment Act (No. 1) 2008</i>	85, 2008	15 Sept 2008	Schedule 5 (items 1A–2, 6–10, 12, 13, 15, 16): 15 Mar 2009 Schedule 5 (items 3–5, 14): 7 Oct 2008 (see F2008L03538)	Sch. 5 (items 14, 16)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008</i>	144, 2008	9 Dec 2008	Schedule 10 (items 1–12): 15 Mar 2009 (see F2009L00259) Schedule 10 (item 76): 1 July 2009	Sch. 10 (items 8, 12)
<i>Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009</i>	90, 2009	21 Sept 2009	Schedule 1: 9 Nov 2009 (see F2009L04034) Schedule 2 (items 1–6, 8): Royal Assent	Sch. 1 (item 9) and Sch. 2 (item 8)
<i>Freedom of Information Amendment (Reform) Act 2010</i>	51, 2010	31 May 2010	Schedule 5 (item 2): [see (b) and Note 2] Schedule 7: (b)	Sch. 7 [see Note 1]

**Act Notes**

(a) Subsection 2(1) (item 8) of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8. Schedule 8, item 2	The later of: (a) the time that the provision(s) covered by table item 2 commence; and (b) immediately after section 6 of the <i>Australian Citizenship Act 2007</i> commences.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2007 (paragraph (b) applies)

(b) Subsection 2(1) (item 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> .  However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	[see Note 2]





**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
S. 2A .....	am. No. 142, 2007
S. 3 .....	am. Nos. 85 and 144, 2008
S. 6 .....	am. No. 46, 2006; No. 144, 2008
S. 8 .....	rs. No. 144, 2008
S. 10 .....	am. No. 142, 2007
<b>Part 2</b>	
<b>Division 2</b>	
<b>Subdivision A</b>	
S. 16 .....	am. No. 85, 2008
<b>Subdivision B</b>	
S. 19G .....	am. No. 142, 2007; No. 90, 2009
Subhead. to s. 21(3) .....	am. No. 90, 2009
S. 21 .....	am. No. 142, 2007; No. 85, 2008; No. 90, 2009
Heading to s. 22 .....	rs. No. 90, 2009
Subhead. to s. 22(9) .....	am. No. 144, 2008
S. 22 .....	am. Nos. 85 and 144, 2008; No. 90, 2009
Ss. 22A–22C .....	ad. No. 90, 2009
S. 23 .....	am. No. 85, 2008
S. 23A .....	ad. No. 142, 2007 am. No. 90, 2009
S. 24 .....	am. No. 85, 2008; No. 90, 2009
S. 26 .....	am. No. 90, 2009
<b>Division 3</b>	
S. 34 .....	am. Nos. 85 and 144, 2008
<b>Division 5</b>	
<b>Subdivision A</b>	
S. 40 .....	am. No. 142, 2007
<b>Part 3</b>	
S. 46 .....	am. No. 142, 2007; No. 90, 2009
S. 53 .....	am. No. 142, 2007

**Note 2**

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**Note 2**

*Freedom of Information Amendment (Reform) Act 2010* (No. 51, 2010)

The following amendment commences immediately after 1 November 2010:

**Schedule 5**

**2 Paragraph 43(2)(g)**

Omit “Privacy Commissioner”, substitute “Information Commissioner”.

As at 8 June 2010 the amendment is not incorporated in this compilation.

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Australian Citizenship Amendment (Citizenship Testing) Act 2007*  
(No. 142, 2007)

**Schedule 1**

**12 Application**

The amendment made by item 4 applies in relation to applications made on or after the commencement of that item.

**13 Transitional**

(1) If:

- (a) a request was made under subsection 40(1) of the *Australian Citizenship Act 2007* before the commencement of this item; and
- (b) the request had not been complied with before that commencement;

the request has effect after that commencement as if it were a request made under that subsection after that commencement.

(2) An authorisation in force under subsection 40(3) or (4) of the *Australian Citizenship Act 2007* immediately before the commencement of this item has effect after that commencement as if it were an authorisation made under that subsection immediately after that commencement.

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*Migration Legislation Amendment Act (No. 1) 2008* (No. 85, 2008)

**Schedule 5**

**14 Application**

The amendments made by items 1A to 13 of this Schedule apply in relation to applications to become an Australian citizen made after those items commence.

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**Table A**

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**16 Application**

The amendment made by item 15 of this Schedule applies in relation to a decision, in relation to a revocation of a person's citizenship, that is made after that item commences.

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*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (No. 144, 2008)

**Schedule 10**

**8 Application of amendments affecting sections 3, 6 and 8**

The amendments of the *Australian Citizenship Act 2007* made by this Part, except the amendments of section 22 of that Act, apply in relation to the acquisition or cessation of Australian citizenship on or after the commencement of this Part because of circumstances (including relationships) existing before, on or after that commencement.

**12 Application of amendments of section 22**

The amendments of section 22 of the *Australian Citizenship Act 2007* made by this Part apply in relation to applications to become an Australian citizen:

- (a) that are made on or after the commencement of this Part; or
  - (b) that:
    - (i) were made before the commencement of this Part; and
    - (ii) were applications in relation to which decisions were not made before that commencement to approve, or to refuse to approve, the applicants becoming Australian citizens.
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**Table A**

*Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009* (No. 90, 2009)

**Schedule 1**

**9 Application**

- (1) The amendments made by items 2, 3, 5, 7 and 8 apply in relation to applications made on or after the commencement of those items.
- (2) However, the amendment made by item 2 does not apply in relation to a person if:
  - (a) the person makes an application on or after that commencement; and
  - (b) the Minister is satisfied that the person had, before that commencement, sat a test approved in a determination under section 23A of the *Australian Citizenship Act 2007* and successfully completed that test (worked out in accordance with that determination).

**Schedule 2**

**8 Application**

The amendments made by this Schedule apply in relation to applications made on or after the commencement of this Schedule.