



# Australian Citizenship Amendment Act 1984

No. 129 of 1984

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# Australian Citizenship Amendment Act 1984

No. 129 of 1984

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## An Act to amend the *Australian Citizenship Act 1948*, and for related purposes

[Assented to 25 October 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### Short title, &c.

1. (1) This Act may be cited as the *Australian Citizenship Amendment Act 1984*.

(2) The *Australian Citizenship Act 1948*<sup>1</sup> is in this Act referred to as the Principal Act.

### Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(2) Section 3, sub-section 4 (2), sections 7, 22, 33 and 34 and section 37 shall come into operation on a day to be fixed by Proclamation.

### Title

3. The title of the Principal Act is amended by omitting all the words after "Citizenship".

## **Interpretation**

### **4. (1) Section 5 of the Principal Act is amended—**

- (a) by omitting from sub-section (1) the definition of “Australia” and substituting the following definitions:

“‘approved form’ means a form approved by the Minister by instrument in writing;

“‘Australia’, when used in a geographical sense, includes the external Territories;”;

- (b) by omitting from paragraph (a) of the definition of “Australian consulate” in sub-section (1) “at which a register of births is kept”;

- (c) by omitting from paragraph (b) of the definition of “Australian consulate” in sub-section (1) “in New Guinea or”;

- (d) by omitting from sub-section (1) the definitions of “New Guinea”, “responsible parent”, “service under an Australian government”, “the approved form”, “the permanent forces of the Commonwealth” and “the Secretary” and substituting the following definitions:

“‘entry permit’ means an entry permit within the meaning of the *Migration Act 1958*;

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

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

“‘prescribed date’ means the day on which the *Migration Amendment Act 1983* comes into operation;

“‘prescribed Territory’ means Norfolk Island or the Territory of Cocos (Keeling) Islands;

“‘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 him by reason of that conviction;

“‘prohibited immigrant’ means a prohibited immigrant within the meaning of the *Migration Act 1958* as in force from time to time before the prescribed date;

“‘prohibited non-citizen’ means a prohibited non-citizen within the meaning of the *Migration Act 1958* as in force from time to time on or after the prescribed date;

“‘psychiatric institution’ includes a psychiatric section of a hospital;

“‘relevant defence service’ means—

- (a) service in the permanent forces of the Commonwealth;  
or

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(b) service by virtue of a notice under section 26 of the *National Service Act 1951* as in force at any time before 26 November 1964;

“ ‘responsible parent’, in relation to a child, means a person, whether or not a parent of the child, who, under a law in force in a foreign country or a law of the Commonwealth, a State or a Territory, whether by reason of adoption, operation of law, an order of a court or otherwise, has guardianship or custody of the child whether jointly or otherwise;

“ ‘return endorsement’ means a return endorsement within the meaning of the *Migration Act 1958* and includes a document or notation referred to in sub-section 9 (3) of the *Migration Amendment Act 1979*;

“ ‘Secretary’ means the Secretary to the Department.”.

(e) by omitting paragraph (3) (b); and

(f) by adding at the end thereof the following sub-sections:

“(5) For the purposes of this Act—

(a) a reference to a period during which a person is or has been confined in a prison includes a reference to a period—

(i) during which the person is or has been an escapee from a prison; or

(ii) during which the person is or has been undergoing a sentence of periodic detention in a prison; and

(b) a reference to a period during which a person is or has been confined in a psychiatric institution by order of a court includes a reference to a period during which the person is or has been an escapee from the institution.

“(6) A child born to a woman as a result of the carrying out, during the period in which the woman was married to a man, of a medical procedure in relation to that woman, being a child who is not biologically the child of that man, shall, for the purposes of this Act, be deemed to be a child of that man and of no other man if the medical procedure was carried out with the consent of that man.

“(7) Sub-section (6) applies in relation to a purported marriage that is void as if the purported marriage were a marriage and as if the parties to the purported marriage were husband and wife unless, at the time of the carrying out of the medical procedure referred to in sub-section (6), neither party to the purported marriage believed on reasonable grounds that the purported marriage was valid.

“(8) In sub-section (6), ‘medical procedure’ means artificial insemination or the implantation of an embryo in the body of a woman.”.

(2) Section 5 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definitions of “alien” and “the United Kingdom and Colonies”;
- (b) by omitting sub-section (2);
- (c) by adding at the end of paragraph (3) (c) “and”;
- (d) by omitting paragraph (3) (d);
- (e) by omitting sub-section (3A); and
- (f) by omitting from sub-section (4) “, and sub-sections 25 (1) and (3)”.

5. After section 5 of the Principal Act the following section is inserted:

**Certain non-citizens to be permanent residents for the purposes of Act**

“5A. (1) A person who is not an Australian citizen shall be taken to be, or to have been, a permanent resident for the purposes of this Act—

- (a) in relation to a period before the prescribed date during which the person was present in Australia (other than a prescribed Territory), if—
  - (i) his continued presence in Australia (other than a prescribed Territory) was not, during that period, subject to any limitation as to time imposed by law;
  - (ii) he was not, during that period, a prohibited immigrant; and
  - (iii) he was not, during that period, a person who, if an event of the kind referred to in paragraph 8 (3) (a), (b), (c) or (d) of the *Migration Act 1958* as in force from time to time during that period had occurred, would have become a prohibited immigrant by virtue of sub-section 8 (3) of that Act as so in force, or, in a case where he was such a person, he was, during that period, a person to whom a declaration in force under sub-section (2) applies;
- (b) in relation to a period on or after the prescribed date during which the person was present in Australia (other than a prescribed Territory), if—
  - (i) his continued presence in Australia (other than a prescribed Territory) was not, during that period, subject to any limitation as to time imposed by law;
  - (ii) he was not, during that period, a prohibited non-citizen; and
  - (iii) he was not, during that period, a person who, if an event of the kind referred to in paragraph 8 (3) (a), (b), (c) or (d) of the *Migration Act 1958* as in force from time to time during that period had occurred, would have become a prohibited non-citizen by virtue of sub-section 8 (3) of that Act as so in force or, in a case where he was such a person, he was, during that period, a person to whom a declaration in force under sub-section (2) applies;

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- (c) in relation to a period during which the person was present in a prescribed Territory, if—
  - (i) his continued presence in that Territory was not, during that period, subject to any limitation as to time imposed by law, or, in a case where his continued presence in that Territory was subject to such a limitation, he would have been a permanent resident for the purposes of this Act if he had been present in Australia (other than a prescribed Territory), or if he had been present in the other prescribed Territory, during that period; and
  - (ii) his presence in that Territory during that period was not in contravention of a law of that Territory; or
- (d) in relation to a period during which the person was not present in Australia, if he was, during that period—
  - (i) the holder of, or deemed to be included in—
    - (A) a return endorsement that was in force; or
    - (B) a document or endorsement in force under a law of a prescribed Territory, being a document or endorsement that, under the regulations, is to be treated as, or having been during a specified period, the equivalent of a return endorsement during that period; or
  - (ii) a person included in a class of persons declared by the regulations to be, or to have been during a specified period, permanent residents for the purposes of this Act, being persons who have, or have had, an association with a prescribed Territory.

“(2) The Minister may, by instrument in writing, declare that persons included in a specified class of persons, being persons (other than Australian citizens) who—

- (a) if an event of the kind referred to in paragraph 8 (3) (d) of the *Migration Act 1958*, as in force from time to time before the prescribed date, had occurred, would have become prohibited immigrants by virtue of sub-section 8 (3) of that Act as so in force; or
- (b) if an event of the kind referred to in paragraph 8 (3) (d) of the *Migration Act 1958*, as in force from time to time on or after the prescribed date, had occurred, would have become prohibited non-citizens by virtue of sub-section 8 (3) of that Act as so in force,

shall be taken to be, or to have been during a specified period, persons to whom this sub-section applies.

“(3) Regulations made by virtue of sub-section (1) or a declaration under sub-section (2) may be expressed to relate to a period commencing on a date earlier than the date on which those regulations were made or that declaration was made.

“(4) A copy of an instrument under sub-section (2) shall be published in the *Gazette*.”.

**Application of this Act to certain citizens of Pakistan and Republic of South Africa**

6. Section 8A of the Principal Act is repealed.

**Repeal of Part II**

7. Part II of the Principal Act is repealed.

**Heading to Division 1 of Part III**

8. The heading to Division 1 of Part III of the Principal Act is amended by inserting “, *Adoption*” after “*Birth*”.

**Citizenship by birth**

9. Section 10 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “by birth”;
- (b) by omitting from sub-section (2) “A person shall” and substituting “Subject to sub-section (4), a person shall”;
- (c) by omitting from sub-sections (2) and (3) “his father” and substituting “a parent of the person”;
- (d) by omitting from paragraph (2) (b) “ordinarily resident in Australia” and substituting “a permanent resident”;
- (e) by omitting from sub-section (3) “A person shall” and substituting “Subject to sub-section (5), a person shall”; and
- (f) by adding at the end thereof the following sub-sections:

“(4) Sub-section (2) does not apply in relation to a person if, at the time of his birth, a parent of the person was an Australian citizen or a permanent resident.

“(5) Sub-section (3) does not apply in relation to a person if, at the time of his birth, a parent of the person—

- (a) was an Australian citizen or a permanent resident; and
- (b) was not an enemy alien.”.

10. Section 11 of the Principal Act is repealed and the following sections are substituted:

**Citizenship by adoption**

“10A. A person, not being an Australian citizen, who—

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

shall be an Australian citizen.



**Citizenship by descent**

“10B. (1) A person born outside Australia (in this sub-section referred to as the ‘relevant person’) is an Australian citizen if—

- (a) the name of the relevant person is registered for the purposes of this section at an Australian consulate within 18 years after his birth; and
- (b) a person, being a parent of the relevant person at the time of the birth of the relevant person—
  - (i) was at that time an Australian citizen who had acquired Australian citizenship otherwise than in the manner referred to in sub-sub-paragraph (ii) (A); or
  - (ii) was—
    - (A) at that time an Australian citizen who had acquired Australian citizenship under this section, or under section 11 of this Act as in force at any time before the commencement of this section; and
    - (B) at any time before the registration of the name of the relevant person (including a time before the birth of the relevant person), present in Australia, otherwise than as a prohibited immigrant, as a prohibited non-citizen, or in contravention of a law of a prescribed Territory, for a period of, or for periods amounting in the aggregate to, not less than 2 years.

“(2) Where, at the time of the birth of a child (in this sub-section referred to as the ‘relevant child’), one of the parents of the relevant child was not an Australian citizen, the name of the relevant child shall not be registered for the purposes of this section at an Australian consulate unless the person applying to register the name declares in writing to the person to whom the application is made, or otherwise satisfies that person, that—

- (a) at least one person who is, at the time of the application, a responsible parent of the relevant child, was, at the time of the birth of the relevant child—
  - (i) a parent of the relevant child; and
  - (ii) an Australian citizen; or
- (b) a person who was, at the time of the birth of the relevant child—
  - (i) a parent of the relevant child; and
  - (ii) an Australian citizen,is dead.

“(3) The validity of the registration at an Australian consulate of the name of a person is not affected by a failure to comply with sub-section (2) in relation to that registration.”.

**11.** Sections 13 and 14 of the Principal Act are repealed and the following sections are substituted:

**Grant of certificate of Australian citizenship**

“13. (1) Subject to this section, the Minister may, in his discretion, upon application in accordance with the approved form, grant a certificate of Australian citizenship to a person who satisfies the Minister that—

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

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

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

- (a) a person who has completed not less than 3 months' relevant defence service; or
- (b) a person who has been discharged from relevant defence service, before completing 3 months of that service, as medically unfit for service or further service and who became medically unfit by reason of his relevant defence service.

“(4) For the purposes of the application of sub-section (1) in relation to an applicant for the grant of a certificate of Australian citizenship—

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

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- (b) subject to paragraph (a), the Minister may, in his discretion—
- (i) treat a period during which the applicant—
    - (A) was a permanent resident;
    - (B) was not present in Australia; and
    - (C) was engaged in activities that the Minister considers beneficial to the interests of Australia,as a period during which the applicant was present in Australia as a permanent resident;
  - (ii) treat a period ending before the period of 5 years referred to in paragraph (1) (e), being a period during which the applicant was present in Australia as a permanent resident, as a period within that period of 5 years;
  - (iii) if the applicant was, immediately before 16 September 1975, the holder of, or deemed to be included in, an entry permit (not being a temporary entry permit) and has continued to be the holder of, or to be deemed to be included in, such an entry permit, treat—
    - (A) a period ending before 16 September 1975 during which the applicant was ordinarily resident in Papua or New Guinea; or
    - (B) a period commencing on or after 16 September 1975 and ending before 16 September 1978 during which the applicant was ordinarily resident in the Independent State of Papua New Guinea,as a period—
    - (C) within the period of 5 years referred to in paragraph (1) (e); and
    - (D) during which the applicant was present in Australia as a permanent resident; or
  - (iv) if the Minister considers that the applicant would suffer significant hardship or disadvantage if a certificate of Australian citizenship were not granted to the applicant—treat a period during which the applicant was present in Australia otherwise than as a prohibited immigrant, as a prohibited non-citizen, or in contravention of a law of a prescribed Territory, as a period during which the applicant was present in Australia as a permanent resident.

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

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

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

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

“(9) Subject to sub-section (11), the Minister may, in his discretion, upon application in accordance with the approved form, grant a certificate of Australian citizenship to a person—

- (a) who has not attained the age of 18 years;
- (b) who—
  - (i) has attained the age of 18 years; and
  - (ii) has made the application before attaining that age;
- (c) who is the spouse, widow or widower of an Australian citizen; or
- (d) who—
  - (i) has attained the age of 16 years; and
  - (ii) is the spouse of a person who has been granted a certificate of Australian citizenship but has not yet acquired Australian citizenship by virtue of the operation of section 15.

“(10) Subject to sub-section (11), the Minister may, in his discretion, upon application in accordance with the approved form, include in a certificate of Australian citizenship, either at the time of granting the certificate or by later amending the certificate under this section, the name of a child who has not attained the age of 16 years and of whom the grantee is a responsible parent.

“(11) The Minister shall not grant a certificate of Australian citizenship to a person under sub-section (1) or (9) or include the name of a person in a certificate of Australian citizenship under sub-section (10)—

- (a) during any period during which proceedings for an offence against a law of the Commonwealth, a State or a Territory (including proceedings by way of appeal or review) are pending in relation to the person;
- (b) during any period during which the person is confined to a prison in Australia;
- (c) during the period of 2 years after the expiration of any period during which the person has been confined in a prison in Australia by reason of the imposition on him of—
  - (i) a sentence of death that has been commuted to a sentence of imprisonment; or
  - (ii) a sentence of imprisonment for life or for a period of not less than 12 months;
- (d) if the person has been released from serving a part of a sentence of imprisonment on parole or upon licence to be at large—during any period during which action can be taken in respect of the person under a law of the Commonwealth, a State or a Territory by way of requiring

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the person to serve the whole or a part of the remainder of that sentence;

- (e) if the person has been released by a court from serving a part of a sentence of imprisonment upon his giving a relevant security—during any period during which action can be taken in respect of the person under a law of the Commonwealth, a State or a Territory by reason of a breach of a condition of that security;
- (f) during any period during which the person is confined in a psychiatric institution by order of a court made in connection with proceedings of the kind referred to in paragraph (a) in relation to the person; or
- (g) if the person ceased to be an Australian citizen by virtue of the registration of a declaration under section 18—during the period of 12 months after the date of registration of the declaration.

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

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

“(14) Nothing in sub-section (10) shall be taken, by implication, to limit the generality of sub-section 47 (1).

“(15) A certificate that has been amended in pursuance of this section has effect as so amended.

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

“(17) In paragraph (11) (3) (e), ‘relevant security’ means a security given by a person, with or without sureties, by recognizance or otherwise, that the person will comply with conditions relating to his behaviour.

**Deferral of consideration of application under section 13**

“14. (1) Subject to sub-section (2), where—

- (a) an application is made to the Minister under section 13; and
- (b) it appears to the Minister at a particular time that—
  - (i) if he were to complete consideration of the application at that time, he would be likely to refuse the application; and
  - (ii) having regard to the effluxion of time, or to the likelihood of a change in circumstances, he would be likely to grant the application if consideration of the application were deferred for such period as he determines,

the Minister may, in his discretion, defer consideration of the application until the expiration of that period.

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“(2) The Minister shall not defer consideration of an application made under section 13 for a period that exceeds, or for periods that, in the aggregate, exceed, 12 months.

“(3) Where, in accordance with sub-section (1), the Minister decides to defer consideration of an application until the expiration of a period—

- (a) if the applicant is present in Australia, the Minister shall cause to be served on the applicant, either personally or by post, a notice in writing setting out that decision; and
- (b) section 13 and sub-section (1) of this section apply in relation to the application as if it had been furnished immediately before the expiration of that period.

“(4) Nothing in this section prevents—

- (a) an applicant under section 13 from withdrawing his application; or
- (b) a person whose application under section 13 has been refused from making a further application or applications under that section.”.

**Effect of grant of certificate of Australian citizenship**

**12.** Section 15 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “sub-section (2) of section 14” and substituting “sub-section 13 (2)”;
- (b) by omitting from sub-section (3) “sub-section (8) of section 14” and substituting “sub-section 13 (9)”;
- (c) by omitting from sub-section (3) “paragraph (d) of that sub-section” and substituting “sub-paragraph 13 (9) (d) (ii)”;
- (d) by omitting from sub-section (4) “sub-section (9) of section 14” and substituting “sub-section 13 (10)”.

**13.** Section 17 of the Principal Act is repealed and the following section is substituted:

**Loss of citizenship on acquisition of another nationality**

“17. (1) A person, being an Australian citizen who has attained the age of 18 years, who does any act or thing—

- (a) the sole or dominant purpose of which; and
- (b) the effect of which,

is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.

“(2) Sub-section (1) does not apply in relation to an act of marriage.”.

**Renunciation of citizenship**

**14.** Section 18 of the Principal Act is amended—

- (a) by omitting sub-sections (1), (1A), (2), (3) and (3A) and substituting the following sub-section:

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“(1) Where a person is an Australian citizen and—

- (a) has attained the age of 18 years and is a national or citizen of a foreign country; or
- (b) 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 by reason that the person is an Australian citizen,

the person may lodge with the Minister a declaration in the prescribed form renouncing his Australian citizenship.”;

- (b) by omitting from sub-section (4) “the next two succeeding sub-sections” and substituting “sub-sections (5), (5A) and (6)”;
- (c) by inserting after sub-section (5) the following sub-section:

“(5A) The Minister shall not register a declaration made under this section if he considers that it would not be in the interests of Australia to do so.”; and

- (d) by omitting from sub-section (6) “sub-section (2)” and substituting “this section”.

**Deprivation of citizenship**

**15. Section 21 of the Principal Act is amended—**

- (a) by omitting paragraph (a) and substituting the following paragraph:

“(a) a person who is an Australian citizen by virtue of a certificate of Australian citizenship—

- (i) has been convicted of an offence against section 50 in relation to the application for his certificate of Australian citizenship; or
- (ii) has, at any time after furnishing the application for his certificate of Australian citizenship (including a time after the grant of the certificate), been convicted of an offence against a law in force in a foreign country or against a law of the Commonwealth, a State or Territory for which he has been sentenced to death or to imprisonment for life or for a period of not less than 12 months, being an offence committed at any time before the grant of the certificate (including a time before the furnishing of the application); and”;

- (b) by inserting “in his discretion,” after “the Minister may,”; and
- (c) by adding at the end thereof the following sub-sections:

“(2) A reference in sub-section (1) to a conviction of an offence includes a reference to the making of an order under sub-section 19B (1) of the *Crimes Act 1914* or the corresponding provision of a law in force in a foreign country or of a law of a State or Territory in relation to the offence.

“(3) Where the Minister makes an order under sub-section (1) depriving a person of his Australian citizenship, the Minister shall, if the person is present in Australia, cause to be served on the person, either personally or by post, a copy of that order.”.

**Children of persons who lose or are deprived of citizenship**

**16.** Section 23 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Where” and substituting “Subject to sub-section (3), where”;
- (b) by omitting from paragraph (1) (a) “the responsible parent or the guardian” and substituting “a responsible parent”;
- (c) by omitting from paragraph (1) (b) “his responsible parent or his guardian” and substituting “that responsible parent”;
- (d) by omitting from sub-section (2) “Where” and substituting “Subject to sub-section (3), where”;
- (e) by inserting in sub-section (2) “in his discretion,” after “the Minister may,”;
- (f) by omitting from sub-section (2) “the responsible parent or the guardian” and substituting “a responsible parent”; and
- (g) by adding at the end thereof the following sub-sections:

“(3) Where, but for this sub-section—

- (a) a child would cease to be an Australian citizen under sub-section (1) as a consequence of a responsible parent of the child ceasing to be an Australian citizen; or
- (b) the Minister would be empowered under sub-section (2) to direct that a child should cease to be an Australian citizen as a consequence of a responsible parent of the child being deprived of his Australian citizenship,

and at the time the child would cease to be an Australian citizen or the Minister would become so empowered, as the case may be, another responsible parent of the child is an Australian citizen, sub-section (1) or (2), as the case may be, does not apply in relation to the child—

- (c) until there ceases to be a responsible parent of the child (whether or not that other responsible parent), being a responsible parent who is an Australian citizen; or
- (d) if the cessation referred to in paragraph (c) is by reason of the death of the responsible parent—at any time after that death.

“(4) Where the Minister makes an order under sub-section (2) directing that all or any of the children of a person shall cease to be Australian citizens, the Minister shall, if the person is present in Australia, cause to be served on the person, either personally or by post, a copy of that order.”.

**17.** After section 23 of the Principal Act the following section is inserted:



**Persons may resume citizenship lost under section 17 in certain circumstances**

“23AA. (1) Where a person does an act or thing that, under section 17, results in the person ceasing to be an Australian citizen and—

- (a) if he did not do the act or thing, he would have suffered significant hardship or detriment; or
- (b) at the time he did the act or thing he did not know that he would, as a consequence of his doing the act or thing, cease to be an Australian citizen,

the person may make and furnish to the Minister a statement to that effect and a declaration in accordance with the prescribed form that he wishes to resume Australian citizenship.

“(2) The Minister may, in his discretion, if he is satisfied as to the truth of the statement made by a person for the purposes of sub-section (1), and, in a case where the person has claimed that, if he had not done the act or thing that resulted in his ceasing to be an Australian citizen, he would have suffered hardship or detriment of an economic nature, that the person’s circumstances were such as to compel him to do that act or thing, register the declaration in the prescribed manner and, upon the registration of the declaration, the person making the declaration again becomes an Australian citizen.”

**Persons may resume citizenship lost under section 20**

**18.** Section 23A of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or to a person authorized by the Secretary by instrument in writing for the purposes of this section” after “Secretary”; and
- (b) by omitting from sub-section (2) “The Secretary” and substituting “A person to whom a declaration is furnished under sub-section (1)”.

**Persons may resume citizenship lost under section 23**

**19.** Section 23B of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or to a person authorized by the Secretary by instrument in writing for the purposes of this section” after “Secretary”; and
- (b) by omitting from sub-section (2) “The Secretary” and substituting “A person to whom a declaration is furnished under sub-section (1)”.

**Special provisions to prevent persons being stateless**

**20.** Section 23D of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) Where the Minister makes a decision under sub-section (1) refusing an application and the applicant is present in Australia, the Minister shall cause to be served on the applicant, either personally or by post, a notice in writing setting out that decision.

“(3) Where—

- (a) but for this sub-section, section 10B would prevent the acquisition of Australian citizenship by a person by reason only of all or any of the following matters:
  - (i) that more than 18 years have elapsed since the birth of the person;
  - (ii) that the requirement set out in sub-sub-paragraph 10B (1) (b) (ii) (B) is not fulfilled by either of the persons who were the parents of the first-mentioned person at the time of his birth;
  - (iii) the operation of sub-section 10B (2); and
- (b) the first-mentioned person is not, and has never been, a citizen of any country,

then—

- (c) the name of the first-mentioned person may be registered for the purposes of section 10B; and
- (d) the matter or matters referred to in paragraph (a) does not or do not prevent the acquisition of Australian citizenship by the person under section 10B.

“(3A) Where, but for this sub-section, a person to whom sub-paragraph 21 (1) (a) (ii) applies would, if the Minister were to make an order under sub-section 21 (1) in relation to that person, become a person who is not a citizen of any country, sub-section 21 (1) does not apply in relation to that person.”.

#### **Transitional provisions**

**21.** Section 25 of the Principal Act is amended by omitting from sub-section (4A) “paragraph (c) of sub-section (8) of section 14 or”.

#### **Repeal of Part IV**

**22.** Part IV of the Principal Act is repealed.

#### **Certificate of registration or naturalization in case of doubt**

**23.** Section 32 of the Principal Act is amended by inserting in sub-section (1) “in his discretion,” after “the Minister may,”.

**24.** Sections 34 and 35 of the Principal Act are repealed and the following section is substituted:

#### **Posthumous children**

“34. (1) A reference in this Act to the status or description of a parent of a person at the time of the person’s birth shall, in the case of a parent who died before the birth of the person, be read as a reference to the status or description of the parent at the time of the parent’s death.

“(2) Where the death of a parent of a person occurred prior to, and the birth of the person occurred after, the commencement of this section, the status

or description that would have been applicable to the parent by virtue of sub-section (1) if the parent had died after the commencement of the section shall be deemed to be the status or description applicable to the parent at the time of the death of the parent.”

**Statement in support of application for certificate of Australian citizenship**

25. Section 36 of the Principal Act is amended by omitting from sub-section (1) “in writing, signed by him,” and substituting “in accordance with the approved form”.

26. (1) Sections 37 to 40A (inclusive) of the Principal Act are repealed and the following section is substituted:

**Delegation**

“37. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person (including the Secretary) all or any of his powers under this Act or the regulations, other than this power of delegation.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Minister.

“(3) A delegation under this section does not prevent the exercise of a power by the Minister.”

(2) Notwithstanding the repeal of section 40A of the Principal Act by sub-section (1), a delegation in force under that section immediately before the commencement of this section continues in force as if it had been made under section 37 of the Principal Act as amended by this Act.

**Cancellation of certificates, returns of certificates, &c.**

27. Section 42 of the Principal Act is amended—

- (a) by adding at the end of paragraph (b) “and”;
- (b) by omitting from paragraph (d) all the words after “entering Australia”; and
- (c) by omitting paragraph (e).

**Definition of certificate of naturalization for certain purposes**

28. Section 45 of the Principal Act is amended by inserting “47A,” after “47,”.

**Issue and proof of certificates of Australian citizenship**

29. Section 46 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “by the Minister (including a delegate of the Minister) may be issued” and substituting “under this Act may be issued by the Minister or”; and
- (b) by omitting from sub-section (2) “a person by authority of the Minister shall, unless it is proved not to have been issued by authority

of the Minister (including a delegate of the Minister)” and substituting “the Minister or a person by authority of the Minister, shall, unless the contrary is proved”.

### **Evidentiary certificates**

**30.** Section 46A of the Principal Act is amended—

- (a) by inserting in sub-section (1) “, subject to sub-section (1A),” after “the Secretary shall”;
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) An applicant under sub-section (1) is not entitled to be issued with an evidentiary certificate in relation to a certificate of Australian citizenship granted to a person specified in the application unless—

- (a) the applicant is, or is acting on behalf of—
  - (i) the person so specified; or
  - (ii) a person whose name was included in the certificate of Australian citizenship;
- (b) the evidentiary certificate is required by the applicant for purposes in connection with the operation of a law in force in a foreign country or a law of the Commonwealth, a State or a Territory, including, but without limiting the generality of the foregoing, purposes in connection with an action or proceeding before a court, tribunal or authority; or
- (c) the authorized officer is satisfied that the applicant has some other legitimate reason for requiring the evidentiary certificate.”; and

- (c) by inserting in sub-section (8) “, in writing,” after “authorized”.

**31.** Sections 48, 48A and 49 of the Principal Act are repealed and the following sections are substituted:

### **Replacement certificates**

“47A. Where the Minister proposes to amend a certificate of Australian citizenship (in this section referred to as the ‘original certificate’) under section 47, not being an amendment including the name of a person in, or omitting the name of a person from, the original certificate, the Minister may, in his discretion, in lieu of so amending the original certificate, upon surrender of the original certificate to him, grant and issue a further certificate of Australian citizenship (in this section referred to as the ‘replacement certificate’) in which that amendment has been incorporated and thereupon the replacement certificate has effect for all purposes of this Act as if it had been granted and issued at the same time as the original certificate and the original certificate had not been granted.

**Surrender of certificates**

“48. (1) Where an order is made under this Act depriving a person of his Australian citizenship—

- (a) if that person is an Australian citizen by virtue of a certificate of Australian citizenship granted to him—that person shall, upon demand in writing by the Minister, surrender that certificate to the Minister for cancellation; and
- (b) if that person is an Australian citizen by reason of the inclusion of his name in a certificate of Australian citizenship granted to another person—that other person shall, upon demand in writing by the Minister, surrender that certificate to the Minister to enable the Minister to amend that certificate under section 47.

“(2) Where an order is made under sub-section 44A (4) revoking an evidentiary certificate issued to a person under section 44A, the person shall, upon demand in writing by the Secretary, surrender the certificate to the Secretary for cancellation.

“(3) A person who, without reasonable excuse, contravenes sub-section (1) or (2) is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

**Offence to alter certificate**

“49. A person shall not, without lawful authority, alter, or cause or permit to be altered, a certificate of Australian citizenship.

Penalty: \$2,000 or imprisonment for 12 months, or both.”.

**False representations, &c.**

32. Section 50 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) make, or cause or permit to be made, a representation or statement that is, to his knowledge, false or misleading in a material particular; or”;

- (b) by omitting the penalty set out at the foot of sub-section (1) and substituting the following penalty:

“Penalty: \$1,000 or imprisonment for 6 months, or both.”.

**References in Commonwealth and Territory laws to British subjects**

33. Section 51 of the Principal Act is repealed.

**Provisions of this Act to be exclusive of State laws**

34. Section 52 of the Principal Act is amended by omitting “British nationality or”.

35. After section 52 of the Principal Act the following sections are inserted:

**Review of decisions**

“52A. (1) Applications may be made to the Administrative Appeals Tribunal for review of—

- (a) decisions of the Minister under section 13 or sub-section 23D (1) refusing an application;
- (b) decisions of the Minister under section 18 other than decisions under sub-section 18 (5);
- (c) decisions of the Minister under sub-section 21 (1) or 23 (2) or section 47;
- (d) decisions of the Minister, the Secretary, or a person authorized by the Secretary for the purposes of section 23A or 23B, under that section; and
- (e) decisions of the Minister under sub-section 23AA (2) refusing to register a declaration.

“(2) A person is not entitled to make an application under sub-section (1) for review of a decision under section 13 (other than sub-section 13 (9)) unless the person is a permanent resident.

“(3) In this section, ‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**Statement to accompany notification of decisions**

“52B. (1) Where the Minister or a delegate of a Minister makes a decision of the kind referred to in section 52A and gives, or causes to be given, to a person or persons whose interests are affected by the decision notice in writing of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975* and to sub-section 52A (2) of this Act, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person or persons whose interests are affected by the decision.

“(2) Any failure to comply with the requirements of sub-section (1) in relation to a decision does not affect the validity of the decision.”

**Regulations**

36. Section 53 of the Principal Act is amended—

- (a) by omitting paragraph (e); and
- (b) by omitting from paragraph (j) “One hundred dollars, or imprisonment for a period not exceeding six months,” and substituting “\$1,000”.

**Schedule 3**

37. Schedule 3 to the Principal Act is repealed.

**Formal amendments**

38. The Principal Act is amended as set out in the Schedule.

**Application**

**39. (1)** In this section—

“amended Act” means the Principal Act as amended by this Act;

“commencing day” means the twenty-eighth day after the day on which this Act receives the Royal Assent.

(2) The amendments made by section 9 apply to a person born after the commencing day.

(3) Section 10A of the amended Act applies to a person adopted after the commencing day.

(4) Section 10B of the amended Act applies to a person born either before or after the commencing day.

(5) Where the name of a person who was born outside Australia on or after 26 January 1949 is registered at an Australian consulate for the purposes of section 10B of the amended Act within 2 years after the commencing day—

(a) paragraph 10B (1) (a) of the amended Act has effect as if “within 18 years of his birth” were omitted; and

(b) sub-sub-paragraph 10B (1) (b) (ii) (B) of the amended Act does not apply in relation to the acquisition of Australian citizenship by the person.

(6) Sections 13 and 14 of the amended Act apply to persons who made application under section 13 or 14 of the Principal Act, being persons whose applications had not been granted or refused before the commencing day, as if those applications had been made under the corresponding provision of section 13 of the amended Act.

(7) Sub-section 13 (3) of the amended Act applies to relevant defence service, and to discharge from such service, either before or after the commencing day.

(8) Paragraph 13 (11) (a) of the amended Act, in so far as it relates to an offence with which a person has been charged, applies to an offence with which a person has been charged either before or after the commencing day.

(9) Sub-section 13 (11) of the amended Act, in so far as it relates to a period during which a person has been confined in a prison or psychiatric institution, applies to a person so confined either before or after the commencing day.

(10) Sub-section 15 (3) of the amended Act has effect, on and after the commencing day, in relation to a person granted a certificate of Australian citizenship before that day under sub-section 14 (8) of the Principal Act by virtue of being the wife or husband of a person referred to in paragraph 14 (8) (d) of that Act, but who is not, on the commencing day, an Australian citizen by virtue of section 15 of the Principal Act, as if the reference in that first-mentioned sub-section to sub-section 13 (9) of the amended Act included a reference to sub-section 14 (8) of the Principal Act and as if the reference in

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that first-mentioned sub-section to sub-paragraph 13 (9) (d) (ii) of the amended Act included a reference to paragraph 14 (8) (d) of the Principal Act.

(11) Sub-section 15 (4) of the amended Act has effect, on and after the commencing day, in relation to a person whose name was, under sub-section 14 (9) of the Principal Act, included in a certificate of Australian citizenship before that day but who is not, on the commencing day, an Australian citizen by virtue of section 15 of the Principal Act, as if the reference in the first-mentioned sub-section to sub-section 13 (10) of the amended Act included a reference to sub-section 14 (9) of the Principal Act.

(12) Sections 17 and 23AA of the amended Act do not apply to an act or thing done before the commencing day.

(13) Sub-section 18 (1) of the amended Act, in so far as it relates to a person born in a foreign country, applies to a person born either before or after the commencing day.

(14) Sub-paragraph 21 (1) (a) (i) of the amended Act applies to convictions that occurred either before or after the commencing day.

(15) Sub-paragraph 21 (1) (a) (ii) of the amended Act applies to applications furnished after the commencing day.

(16) Sub-section 23 (1) of the amended Act does not apply in relation to a person who ceased to be an Australian citizen under section 17, 18 or 19 of the Principal Act before the commencing day.

(17) Sub-section 36 (1) of the amended Act does not apply in relation to a statement furnished before the commencing day.

(18) Section 47A of the amended Act applies to a certificate of Australian citizenship granted either before or after the commencing day.

(19) Section 52A of the amended Act applies to decisions made on or after the commencing day.

(20) A person who, immediately before the commencing day or the day fixed for the purposes of sub-section 2 (2), was, or had ceased to be, an Australian citizen by virtue of a provision of the Principal Act repealed by this Act, does not cease to be, or again become, as the case may be, an Australian citizen by reason of the repeal of that provision but nothing in this sub-section affects the application of section 8 of the *Acts Interpretation Act 1901*.



**THE SCHEDULE**

**FORMAL AMENDMENTS**

Provision amended	Omit—	Substitute—
Sub-section 5 (1) (paragraph (b) of the definition of "Australian consulate")	"the last preceding paragraph"	"paragraph (a)"
Paragraph 5 (3) (aa)	"26th January, 1949" "(2) and (3) of section 10"	"26 January 1949" "10 (2) and (3)"
Sub-section 5 (4)	"sub-section (1) of this section" "(1) and (3) of section 25"	"sub-section (1)" "25 (1) and (3)"
Sub-section 8 (1)	"26th January, 1949"	"26 January 1949"
Paragraph 8 (1) (a)	"(1) of section 8"	"8 (1)"
Section 9	"26th January, 1949"	"26 January 1949"
Paragraph 18 (6) (a)	"country other than Australia"	"foreign country"
Section 19	"country other than Australia"	"foreign country"
Paragraph 23 (1) (a)	"not of full age"	" , being a child who has not attained the age of 18 years,"
Paragraph 23 (1) (b)	"country outside Australia"	"foreign country"
Sub-section 23 (2)	"are not of full age"	"have not attained the age of 18 years"
Sub-section 23A (1)	"1948-1955" "eighteen"	"1948" "18"
Sub-section 23B (1)	"eighteen"	"18"
Sub-section 23D (4)	"(2) of section 23"	"23 (2)"
Section 24	"26th January, 1949"	"26 January 1949"
Paragraph 25 (1) (d)	"five"	"5"
Sub-section 25 (2)	"the last preceding sub-section"	"sub-section (1)"
Paragraph 24 (3) (c)	"paragraph (a), (b) or (c) of sub-section (1)"	"paragraph (1) (a), (b) or (c)"
Sub-section 25 (4A)	"paragraph (b) of sub-section (4) of this section"	"paragraph (4) (b)"
Paragraph 25 (6) (b)	"four"	"4"
Paragraph 26 (1) (a)	"26th January, 1949"	"26 January 1949"
Sub-section 26 (2)	"the next two succeeding sub-sections" "26th January, 1949"	"sub-sections (3) and (4)" "26 January 1949"
Sub-section 26 (5)	"the next succeeding sub-section" "26th January, 1949"	"sub-section (6)" "26 January 1949"
Sub-section 26A (1)	"the next succeeding sub-section"	"sub-section (2)"
Sub-section 26A (4)	"the next succeeding sub-section"	"sub-section (5)"
Sub-section 26A (6)	"(2) and (4) of section 26"	"26 (2) and (4)"
Sub-section 28 (1)	"(1) of section 6"	"6 (1)"
Sub-section 28 (2)	"the last preceding sub-section"	"sub-section (1)"
Section 29	"1st January, 1921"	"1 January 1921"
Paragraph 30 (1) (a)	"(1) of section 20"	"20 (1)"
Sub-section 30 (2)	"eighteen"	"18"
Sub-section 36 (2)	"the last preceding sub-section"	"sub-section (1)"
Paragraph 42 (d)	"the thirtieth day of" "that thirtieth day of"	"30" "that 30"
Sub-section 44A (1) (paragraph (a) of the definition of "prescribed evidentiary certificate")	"sub-section (2) of this section"	"sub-section (2)"

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**SCHEDULE—continued**

Provision amended	Omit—	Substitute—
Sub-section 44A (1) (paragraph (b) of the definition of "prescribed evidentiary certificate")	"(3) of section 11C" "1948-1969"	"11C (3)" "1948"
Sub-section 44A (2)	"1948-1969"	"1948"
Sub-section 44A (8)	"(8) of section 11C" "1948-1969"	"11C (8)" "1948"
Paragraph 46A (4) (a)	"(a) and (b) of sub-section (2)"	"(2) (a) and (b)"
Paragraph 46A (4) (b)	"(c) of sub-section (2)"	"(2) (c)"
Paragraph 46A (4) (c)	"(d) of sub-section (2)"	"(2) (d)"
Sub-section 46A (5)	"(c) of sub-section (2)"	"(2) (c)"
Sub-section 46A (7)	"the last preceding sub-section"	"sub-section (6)"
Sub-section 50 (2)	"the last preceding sub-section" "ten"	"sub-section (1)" "10"

**NOTE**

1. No. 83, 1948, as amended. For previous amendments, see No. 58, 1950; No. 70, 1952; No. 85, 1953; No. 1, 1955; No. 63, 1958; No. 79, 1959; No. 82, 1960; No. 11, 1966; No. 11, 1967; No. 22, 1969; Nos. 99 and 216, 1973; No. 91, 1976; No. 61, 1981; No. 80, 1982; and No. 84, 1983.