



# **Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009**

**No. 90, 2009**

**An Act to amend the *Australian Citizenship Act  
2007*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009**

**No. 90, 2009**

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## **An Act to amend the *Australian Citizenship Act 2007*, and for related purposes**

[Assented to 21 September 2009]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009*.

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*Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009*

*No. 90, 2009 1*

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## 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.

<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 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 September 2009
2. Schedule 1	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.	9 November 2009 (see F2009L04034)
3. Schedule 2	The day this Act receives the Royal Assent.	21 September 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to citizenship test review etc.**

### ***Australian Citizenship Act 2007***

#### **1 Section 19G**

Omit “permanent”, substitute “permanent or enduring”.

#### **2 Subsection 21(2A)**

Repeal the subsection, substitute:

- (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.

#### **3 Paragraph 21(3)(d)**

Repeal the paragraph, substitute:

- (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

Note: The heading to subsection 21(3) is altered by omitting “*Permanent*” and substituting “*Permanent or enduring*” [physical and mental incapacity].

## **5 Subsection 21(5)**

Repeal the subsection, substitute:

*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.

## **6 After subsection 23A(5)**

Insert:

*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.

## **7 Paragraph 26(1)(b)**

Repeal the paragraph, substitute:

- (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

## **8 Subsection 46(1A)**

Repeal the subsection, substitute:

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- (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.

## **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—Amendments relating to special residence requirement

### *Australian Citizenship Act 2007*

#### 1 Paragraph 21(2)(c)

Omit “residence requirement (see section 22)”, substitute “general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)”.

#### 2 Paragraph 21(3)(c)

Omit “residence requirement (see section 22)”, substitute “general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)”.

#### 3 Paragraph 21(4)(d)

Omit “residence requirement (see section 22)”, substitute “general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)”.

#### 4 Subsection 22(1)

Omit “*residence requirement*”, substitute “*general residence requirement*”.

Note: The heading to section 22 is replaced by the heading “**General residence requirement**”.

#### 5 After section 22

Insert:

#### **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:
- (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
  - (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).

**6 After paragraph 24(5)(a)**

Insert:

- (aa) the Minister is satisfied that the person did not satisfy the special residence requirement referred to in section 22A or 22B; and

***Australian Citizenship (Transitionals and Consequentials)  
Act 2007***

**7 Item 5B of Schedule 3**

Omit “*residence requirement*”, substitute “*general residence requirement*”.

**8 Application**

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

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[*Minister’s second reading speech made in—  
Senate on 25 June 2009  
House of Representatives on 16 September 2009*]

(132/09)

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

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