



# **Australian Citizenship Amendment (Special Residence Requirements) Act 2013**

**No. 57, 2013**

**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 (Special Residence Requirements) Act 2013**

**No. 57, 2013**

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

*[Assented to 21 June 2013]*

The Parliament of Australia enacts:

**1 Short title**

This Act may be cited as the *Australian Citizenship Amendment (Special Residence Requirements) Act 2013*.

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*Australian Citizenship Amendment (Special Residence Requirements) Act 2013*    No. 57, 2013

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## **2 Commencement**

This Act commences on the day after this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Australian Citizenship Act 2007*

#### **1 After subsection 22A(1)**

Insert:

*Ministerial discretion—alternative residence requirements*

- (1A) The Minister may, by writing, determine that paragraphs (1)(d) to (g) do not apply in relation to the applicant if:
- (a) the Minister is satisfied that paragraphs (1)(a), (b) and (c) apply in relation to the applicant; and
  - (b) the Minister is satisfied that the applicant satisfies:
    - (i) paragraphs 21(2)(a), (b), (d), (e), (f), (g) and (h); or
    - (ii) paragraphs 21(3)(a), (b), (d), (e) and (f); or
    - (iii) paragraphs 21(4)(a), (b), (c), (e) and (f); and
  - (c) the applicant was a permanent resident throughout the period of 90 days immediately before the day the applicant made the application; and
  - (d) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 180 days immediately before the day the applicant made the application; and
  - (e) the applicant has given the Minister an undertaking, in a form approved by the Minister under subsection (8), that, if the applicant becomes an Australian citizen in circumstances where the Minister exercises the power under this subsection:
    - (i) the applicant will be ordinarily resident in Australia throughout the period of 2 years beginning on the day the applicant becomes an Australian citizen; and
    - (ii) the applicant will be present in Australia for a total of at least 180 days during that 2-year period; and
  - (f) the applicant has declared, in the undertaking, that the applicant understands the effect of section 34A.

Note: See also subsections (6) to (11).

- (1B) If the Minister exercises the power under subsection (1A) in relation to the applicant, then, for the purposes of section 21, the applicant is taken to satisfy the *special residence requirement*.

**2 Subsection 22A(4)**

After “paragraph (1)(f)”, insert “or (1A)(c)”.

**3 Subsection 22A(5)**

After “paragraph (1)(g)”, insert “or (1A)(d)”.

**4 At the end of section 22A**

Add:

*Rules relating to power under subsection (1A)*

- (6) The power under subsection (1A) may only be exercised by the Minister personally.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1A), whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.
- (8) The Minister may, by writing, approve a form for the purposes of paragraph (1A)(e).
- (9) If the applicant becomes an Australian citizen in circumstances where the Minister exercised the power under subsection (1A), the Minister must cause to be tabled in each House of the Parliament, within 15 sitting days of that House after the day the applicant becomes an Australian citizen, a statement that:
- (a) states that the Minister has exercised the power under subsection (1A); and
  - (b) states the activity covered by paragraph (1)(a); and
  - (c) sets out the reasons for the Minister’s exercise of that power, including why the Minister considers that engagement in that activity would be of benefit to Australia.
- (10) However, a statement under subsection (9) is not to include the name of the applicant.



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

## **5 After subsection 22B(1)**

Insert:

### *Ministerial discretion—alternative residence requirements*

- (1A) The Minister may, by writing, determine that paragraphs (1)(c) to (g) do not apply in relation to the person if:
- (a) the Minister is satisfied that paragraphs (1)(a) and (b) apply in relation to the person; and
  - (b) the Minister is satisfied that the person's engagement in the kind of work concerned is of benefit to Australia; and
  - (c) the Minister is satisfied that the person satisfies:
    - (i) paragraphs 21(2)(a), (b), (d), (e), (f), (g) and (h); or
    - (ii) paragraphs 21(3)(a), (b), (d), (e) and (f); or
    - (iii) paragraphs 21(4)(a), (b), (c), (e) and (f); and
  - (d) the person was present in Australia for a total of at least 180 days during the period of 2 years immediately before the day the person made the application; and
  - (e) the person was a permanent resident throughout the period of 90 days immediately before the day the person made the application; and
  - (f) the person was not present in Australia as an unlawful non-citizen at any time during the period of 180 days immediately before the day the person made the application; and
  - (g) the person has given the Minister an undertaking, in a form approved by the Minister under subsection (8), that, if the person becomes an Australian citizen in circumstances where the Minister exercises the power under this subsection:
    - (i) the person will be ordinarily resident in Australia throughout the period of 2 years beginning on the day the person becomes an Australian citizen; and
    - (ii) the person will be present in Australia for a total of at least 180 days during that 2-year period; and
  - (h) the person has declared, in the undertaking, that the person understands the effect of section 34A.

Note: See also subsections (6) to (11).

- (1B) If the Minister exercises the power under subsection (1A) in relation to the person, then, for the purposes of section 21, the person is taken to satisfy the *special residence requirement*.

## 6 Subsection 22B(2)

Repeal the subsection, substitute:

*Confinement in prison or psychiatric institution*

- (2) Subject to subsection (3), the person is taken not to satisfy:
- (a) paragraph (1)(c) if, at any time during the 4-year period mentioned in that paragraph; or
  - (b) paragraph (1A)(d) if, at any time during the 2-year period mentioned in that paragraph;
- the person was:
- (c) confined in a prison; or
  - (d) 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.

## 7 Subsection 22B(4)

After “paragraph (1)(f)”, insert “or (1A)(e)”.

## 8 Subsection 22B(5)

After “paragraph (1)(g)”, insert “or (1A)(f)”.

## 9 At the end of section 22B

Add:

*Rules relating to power under subsection (1A)*

- (6) The power under subsection (1A) may only be exercised by the Minister personally.
- (7) The Minister does not have a duty to consider whether to exercise the power under subsection (1A), whether he or she is requested to do so by the person or by any other person, or in any other circumstances.

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- (8) The Minister may, by writing, approve a form for the purposes of paragraph (1A)(g).
- (9) If the person becomes an Australian citizen in circumstances where the Minister exercised the power under subsection (1A), the Minister must cause to be tabled in each House of the Parliament, within 15 sitting days of that House after the day the person becomes an Australian citizen, a statement that:
- (a) states that the Minister has exercised the power under subsection (1A); and
  - (b) states the kind of work covered by paragraph (1)(a); and
  - (c) sets out the reasons for the Minister's exercise of that power, including why the Minister considers that engagement in that kind of work is of benefit to Australia.
- (10) However, a statement under subsection (9) is not to include the name of the person.
- (11) A determination under subsection (1A) is not a legislative instrument.

**10 After subsection 24(2)**

Insert:

- (2A) If the Minister exercised the power under subsection 22A(1A) or 22B(1A) in relation to the person, the decision under subsection (1) of this section must be made by the Minister personally.

**11 Subsection 29(2) (note 2)**

After "34", insert ", 34A".

**12 Section 32A**

Omit "4 ways", substitute "5 ways".

**13 Section 32A**

Omit:

- |   |
|---|
| <ul style="list-style-type: none"><li>• if you did not automatically become an Australian citizen, the Minister can revoke your citizenship: see section 34; or</li></ul> |
|---|

substitute:

- if you did not automatically become an Australian citizen, the Minister can revoke your citizenship in circumstances involving offences or fraud: see section 34; or
- if you did not automatically become an Australian citizen and the Minister exercised the power under subsection 22A(1A) or 22B(1A), the Minister can revoke your citizenship in circumstances involving a failure to comply with special residence requirements: see section 34A; or

#### **14 Section 34 (heading)**

Repeal the heading, substitute:

#### **34 Revocation by Minister—offences or fraud**

#### **15 After section 34**

Insert:

#### **34A Revocation by Minister—special residence requirements**

- (1) 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; and
  - (b) the person became an Australian citizen in circumstances where the Minister exercised the power under subsection 22A(1A) or 22B(1A); and
  - (c) the Minister is satisfied that:
    - (i) the person will not be, or was not, ordinarily resident in Australia throughout the period of 2 years beginning on the day the person became an Australian citizen; or
    - (ii) the person will not be, or was not, present in Australia for a total of at least 180 days during that 2-year period.
- (2) However, the Minister must not decide under subsection (1) to revoke a person's Australian citizenship if 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.

- (3) The power under subsection (1) may only be exercised by the Minister personally.

*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.

**16 Paragraph 36(1)(a)**

After "34", insert ", 34A".

**17 Paragraph 38(1)(a)**

After "34", insert "or 34A".

**18 At the end of section 52**

Add:

- (3) For the purposes of the Administrative Appeals Tribunal reviewing a decision of a kind referred to in paragraph (1)(b):
- (a) the Tribunal must not exercise the power under subsection 22A(1A) or 22B(1A); and
  - (b) the Tribunal must not review any exercise of the power or any failure to exercise the power.

**19 Application provision**

The amendments made by items 1 to 10 apply in relation to:

- (a) applications made under section 21 of the *Australian Citizenship Act 2007* on or after the commencement of those items; and
- (b) applications made under that section before that commencement and not decided by the Minister before that commencement.

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*[Minister's second reading speech made in—  
House of Representatives on 30 May 2013  
Senate on 17 June 2013]*

*(131/13)*

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*10 Australian Citizenship Amendment (Special Residence Requirements) Act 2013 No.  
57, 2013*