



Australian Citizenship Amendment (Citizenship Cessation) Act 2020

No. 88, 2020

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 88, 2020

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

[Assented to 17 September 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	18 September 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Australian Citizenship Act 2007

1 Subsection 29(2) (note 2)

Omit “, 34A or 35”, substitute “or 34A”.

2 Section 32A (heading)

Repeal the heading, substitute:

Subdivision A—Simplified outline of this Division

32A Simplified outline of this Division

3 Section 32A

Omit:

- you engage in various kinds of conduct inconsistent with allegiance to Australia: see sections 33AA, 35 and 35A; or

4 Section 32A

Omit “section 36.”, substitute “section 36; or”.

5 At the end of section 32A

Add:

- for certain conduct or convictions, the Minister can make a determination ceasing your citizenship if the Minister is satisfied you have repudiated your allegiance to Australia and that it would be contrary to the public interest for you to remain an Australia citizen: see Subdivision C (citizenship cessation determinations).

6 After section 32A

Insert:

Subdivision B—Citizenship renunciation and revocation

7 Section 33AA

Repeal the section.

8 Sections 35 to 35B

Repeal the sections.

9 Section 36A

Repeal the section, substitute:

Subdivision C—Citizenship cessation determinations

36A Purpose of this Subdivision

This Subdivision is enacted because the Parliament recognises that Australian citizenship is a common bond, involving reciprocal rights and obligations, and that citizens may, through certain conduct incompatible with the shared values of the Australian community, demonstrate that they have severed that bond and repudiated their allegiance to Australia.

36B Citizenship cessation determination for certain conduct

Cessation of citizenship on determination by Minister

- (1) The Minister may determine in writing that a person aged 14 or older ceases to be an Australian citizen if the Minister is satisfied that:
 - (a) the person:
 - (i) engaged in conduct specified in subsection (5) while outside Australia; or
 - (ii) engaged in conduct specified in any of paragraphs (5)(a) to (h) while in Australia, has since left Australia and has not been tried for an offence in relation to the conduct; and
 - (b) the conduct demonstrates that the person has repudiated their allegiance to Australia; and
 - (c) it would be contrary to the public interest for the person to remain an Australian citizen (see section 36E).

Note: A person may seek review of a determination made under this subsection in the High Court of Australia under section 75 of the Constitution, or in the Federal Court of Australia under section 39B of the *Judiciary Act 1903*. See also section 36H of this Act (revocation of citizenship cessation determination on application to Minister).

- (2) However, the Minister must not make a determination if the Minister is satisfied that the person would, if the Minister were to make the determination, become a person who is not a national or citizen of any country.
- (3) The person ceases to be an Australian citizen at the time the determination is made.
- (4) Subsection (1) applies to a person who is an Australian citizen regardless of how the person became an Australian citizen (including a person who became an Australian citizen upon the person's birth).
- (5) For the purposes of paragraph (1)(a), the conduct is any of the following:
 - (a) engaging in international terrorist activities using explosive or lethal devices;
 - (b) engaging in a terrorist act;
 - (c) providing or receiving training connected with preparation for, engagement in, or assistance in a terrorist act;
 - (d) directing the activities of a terrorist organisation;
 - (e) recruiting for a terrorist organisation;
 - (f) financing terrorism;
 - (g) financing a terrorist;
 - (h) engaging in foreign incursions and recruitment;
 - (i) fighting for, or being in the service of, a declared terrorist organisation (see section 36C);
 - (j) serving in the armed forces of a country at war with Australia.

Note 1: A determination may be made in relation to conduct specified in subsection (5) that was engaged in before the subsection commenced (see item 18 of Schedule 1 to the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020*).

Note 2: This section does not apply to conduct of Australian law enforcement or intelligence bodies, or to conduct in the course of certain duties to the Commonwealth (see subsection (8)).

- (6) Words and expressions used in paragraphs (5)(a) to (h) have the same meanings as in Subdivision A of Division 72, sections 101.1, 101.2, 102.2, 102.4, 103.1 and 103.2 and Division 119 of the *Criminal Code*, respectively. However (to avoid doubt) this does not include the fault elements that apply under the *Criminal Code* in relation to those provisions of the *Criminal Code*.
- (7) For the purposes of paragraph (5)(i) and without limitation, a person is not in the service of a declared terrorist organisation to the extent that:
 - (a) the person's actions are unintentional; or
 - (b) the person is acting under duress or force; or
 - (c) the person is providing neutral and independent humanitarian assistance.
- (8) This section does not apply to conduct engaged in by:
 - (a) a person in the proper performance of a function of a body, agency or organisation of the Commonwealth, or of a State or Territory, that is responsible for, or deals with, law enforcement, criminal intelligence, criminal investigation, fraud, security intelligence, foreign intelligence or financial intelligence; or
 - (b) a person acting in the course of the person's duty to the Commonwealth in relation to the defence, security or international relations of Australia.

General provisions relating to Minister's powers

- (9) The powers of the Minister under this section may only be exercised by the Minister personally.
- (10) Section 47 (notification of decisions) does not apply to a decision of the Minister under this section (see section 36F instead).
- (11) The rules of natural justice do not apply in relation to making a decision or exercising a power under this section.
- (12) A determination made under subsection (1) is not a legislative instrument.

36C Declared terrorist organisation

Declaration of declared terrorist organisation

- (1) A **declared terrorist organisation** is any terrorist organisation, within the meaning of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*, that the Minister, by legislative instrument, declares is a declared terrorist organisation for the purposes of this section.
- (2) Before declaring that an organisation is a declared terrorist organisation, the Minister must be satisfied on reasonable grounds that the organisation:
 - (a) either:
 - (i) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
 - (ii) advocates the doing of a terrorist act; and
 - (b) is opposed to Australia, or to Australia's interests, values, democratic beliefs, rights or liberties, so that if a person were to fight for or be in the service of such an organisation the person would be repudiating their allegiance to Australia.
- (3) The making of a declaration under subsection (1) is taken not to be prescribed administrative action for the purposes of Part IV of the *Australian Security Intelligence Organisation Act 1979*.

Review of declaration by Parliamentary Joint Committee on Intelligence and Security

- (4) The Parliamentary Joint Committee on Intelligence and Security may:
 - (a) review a declaration made under subsection (1) as soon as possible after the declaration is made; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the period during which the House may disallow the declaration.

36D Citizenship cessation determination for certain convictions

Cessation of citizenship on determination by Minister

- (1) The Minister may determine in writing that a person ceases to be an Australian citizen if:
- (a) the person has been convicted of an offence, or offences, against one or more of the provisions specified in subsection (5); and
 - (b) the person has, in respect of the conviction or convictions, been sentenced to a period of imprisonment of at least 3 years, or to periods of imprisonment that total at least 3 years; and
 - (c) the Minister is satisfied that the conduct of the person to which the conviction or convictions relate demonstrates that the person has repudiated their allegiance to Australia; and
 - (d) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen (see section 36E).

Note: A person may seek review of a determination made under this subsection in the High Court of Australia under section 75 of the Constitution, or in the Federal Court of Australia under section 39B of the *Judiciary Act 1903*. See also section 36H of this Act (revocation of citizenship cessation determination on application to Minister).

- (2) However, the Minister must not make a determination if the Minister is satisfied that the person would, if the Minister were to make the determination, become a person who is not a national or citizen of any country.
- (3) The person ceases to be an Australian citizen at the time the determination is made.
- (4) Subsection (1) applies to a person who is an Australian citizen regardless of how the person became an Australian citizen (including a person who became an Australian citizen upon the person's birth).
- (5) For the purposes of paragraph (1)(a), the provisions are the following:
- (a) a provision of Subdivision A of Division 72 of the *Criminal Code* (explosives and lethal devices);

- (b) a provision of Subdivision B of Division 80 of the *Criminal Code* (treason);
- (c) a provision of Division 82 of the *Criminal Code* (sabotage), other than section 82.9;
- (d) a provision of Division 91 of the *Criminal Code* (espionage);
- (e) a provision of Division 92 of the *Criminal Code* (foreign interference);
- (f) a provision of Part 5.3 of the *Criminal Code* (terrorism), other than section 102.8 or Division 104 or 105;
- (g) a provision of Part 5.5 of the *Criminal Code* (foreign incursions and recruitment);
- (h) section 6 or 7 of the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978*.

Note: A determination may be made in relation to a conviction for an offence against a provision specified in subsection (5) that occurred before the subsection commenced (see item 19 of Schedule 1 to the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020*).

- (6) For the purposes of paragraph (1)(b):
 - (a) the reference to being sentenced to a period of imprisonment does not include a suspended sentence; and
 - (b) if a single sentence of imprisonment is imposed in respect of both an offence against a provision specified in subsection (5) and in respect of one or more other offences, then:
 - (i) if it is clear that only a particular part of the total period of imprisonment relates to the offence against the provision specified in subsection (5)—the person is taken to have been sentenced to imprisonment in respect of that offence for that part of the total period of imprisonment; and
 - (ii) if subparagraph (i) does not apply—the person is taken to have been sentenced to imprisonment in respect of the offence against the provision specified in subsection (5) for the whole of the total period of imprisonment.

General provisions relating to Minister's powers

- (7) The powers of the Minister under this section may only be exercised by the Minister personally.

- (8) Section 47 (notification of decisions) does not apply to a decision of the Minister under this section (see section 36F instead).
- (9) The rules of natural justice do not apply in relation to making a decision or exercising a power under this section.
- (10) A determination made under subsection (1) is not a legislative instrument.

36E Public interest in making or revoking citizenship cessation determinations

- (1) This section applies when the Minister is considering the public interest for the purposes of deciding whether to make a determination under subsection 36B(1) or 36D(1), or whether to revoke such a determination.

Note: See paragraphs 36B(1)(c), 36D(1)(d) and 36H(3)(b) and subsection 36J(1).

- (2) The Minister must have regard to the following matters:
 - (a) in deciding whether to make a determination under subsection 36B(1) or revoke such a determination—the severity of the conduct to which the determination relates;
 - (b) in deciding whether to make a determination under subsection 36D(1) or revoke such a determination—the severity of the conduct that was the basis of the conviction or convictions, and the sentence or sentences, to which the determination relates;
 - (c) the degree of threat posed by the person to the Australian community;
 - (d) the age of the person;
 - (e) if the person is aged under 18—the best interests of the child as a primary consideration;
 - (f) in deciding whether to make a determination under subsection 36B(1) or revoke such a determination—whether the person is being or is likely to be prosecuted in relation to conduct to which the determination relates;
 - (g) the person’s connection to the other country of which the person is a national or citizen and the availability of the rights of citizenship of that country to the person;
 - (h) Australia’s international relations;

- (i) any other matters of public interest.

36F Notice of citizenship cessation

Requirement to give notice

- (1) If the Minister makes a determination under subsection 36B(1) or 36D(1) because of which a person ceases to be an Australian citizen, the Minister:
 - (a) must give written notice of the determination to the person:
 - (i) as soon as practicable after the determination is made; or
 - (ii) if the Minister makes a determination under subsection 36G(1) (that notice should not be given to the person)—as soon as practicable after the determination under that subsection is revoked; and
 - (b) may give notice of the determination to such other persons and at such time as the Minister considers appropriate.

Method for giving notice

- (2) A notice under paragraph (1)(a) must be given to the person by sending it by pre-paid post to the address of the place of residence of the person last known to the Department.
- (3) The Minister may, after giving the notice in accordance with subsection (2), give the notice again by sending it to an electronic address for the person if:
 - (a) the Minister is satisfied the person did not receive the notice given in accordance with that subsection; and
 - (b) the Minister has become aware of the electronic address for the person.
- (4) Despite subsection (2), the Minister may give the notice by sending it to an electronic address for the person without sending it in accordance with that subsection if:
 - (a) the Minister becomes aware of the electronic address for the person while a determination is in force under subsection 36G(1) (that notice should not be given to the person); and
 - (b) that determination is revoked.

Content of notice

- (5) A notice under paragraph (1)(a) must:
- (a) state that the Minister has determined under subsection 36B(1) or 36D(1) (as applicable) that the person has ceased to be an Australian citizen; and
 - (b) for a determination under subsection 36B(1)—contain a basic description of the conduct to which the determination relates; and
 - (c) for a determination under subsection 36D(1)—specify the conviction or convictions, and sentence or sentences, to which the determination relates; and
 - (d) specify the date of the notice; and
 - (e) set out the person's rights of review.
- (6) However, the notice must not contain information, or content of a document, if:
- (a) the information or content includes any operationally sensitive information (within the meaning of the *Independent National Security Legislation Monitor Act 2010*); or
 - (b) the disclosure of the information or content could prejudice:
 - (i) the security, defence or international relations of Australia; or
 - (ii) the performance by a law enforcement or security agency (within the meaning of the *Independent National Security Legislation Monitor Act 2010*) of its functions; or
 - (c) the disclosure of the information or content could endanger a person's safety; or
 - (d) the disclosure of the information or content would be likely to be contrary to the public interest for any other reason.

General provisions relating to Minister's powers

- (7) The rules of natural justice do not apply in relation to making a decision or exercising a power under this section.

36G Determination that notice of citizenship cessation should not be given

- (1) The Minister may determine in writing that a notice under paragraph 36F(1)(a) should not be given to a person if the Minister is satisfied that giving the notice could prejudice the security, defence or international relations of Australia, or Australian law enforcement operations.
- (2) The Minister must consider whether to revoke the determination at least every 90 days after making it.
- (3) If the Minister does not revoke the determination within 5 years of making it, the determination is taken to be revoked at the end of the 5 years unless the Minister extends the determination under subsection (4).
- (4) If, before the determination is taken to be revoked under subsection (3), the Minister remains satisfied that giving the notice could prejudice the security, defence or international relations of Australia, or Australian law enforcement operations, the Minister may extend the determination for 1 year by making a determination in writing to that effect.
- (5) If the Minister extends the determination for 1 year under subsection (4):
 - (a) the Minister must consider whether to revoke the determination at least every 90 days after extending it; and
 - (b) the determination is taken to be revoked at the end of that year.
- (6) The powers of the Minister under this section may only be exercised by the Minister personally.
- (7) Section 47 (notification of decisions) does not apply to a decision of the Minister under this section.
- (8) The rules of natural justice do not apply in relation to making a decision or exercising a power under this section.
- (9) A determination made under subsection (1) or (4) is not a legislative instrument.

36H Revocation of citizenship cessation determination on application to Minister

- (1) A person who has ceased to be an Australian citizen because of a determination made under subsection 36B(1) or 36D(1) may apply in writing to the Minister to have the determination revoked. Section 46 (application requirements) does not apply to the application.
 - (2) The application must be made no later than the later of the following:
 - (a) 90 days after the date of the notice given under paragraph 36F(1)(a) in relation to the determination;
 - (b) if the notice was given to the person again by sending it to an electronic address in accordance with subsection 36F(3)—30 days after the day the notice was sent to the electronic address.
 - (3) The Minister must consider the application and either revoke the determination or refuse the application. The Minister:
 - (a) must revoke the determination if:
 - (i) the Minister is satisfied that, at the time the determination was made, the person was not a national or citizen of any other country; or
 - (ii) for a determination made under subsection 36B(1)—the Minister is satisfied that the person did not engage in the conduct to which the determination relates; and
 - (b) may revoke the determination if paragraph (a) of this subsection does not apply, but only if satisfied that revoking the determination would be in the public interest (see section 36E).
- Note: The Minister must observe the rules of natural justice in making the decision.
- (4) The Minister must give the person written notice of the Minister's decision under subsection (3). The notice must:
 - (a) set out the decision; and
 - (b) if the Minister refused the application:
 - (i) include the reasons for the decision; and
 - (ii) set out the person's rights of review.

Section 47 (notification of decisions) does not apply in relation to a decision under this section.

Note: A person may seek review of a decision made under subsection (3) in the High Court of Australia under section 75 of the Constitution, or in the Federal Court of Australia under section 39B of the *Judiciary Act 1903*.

- (5) However, the notice must not contain information, or content of a document, if:
- (a) the information or content includes any operationally sensitive information (within the meaning of the *Independent National Security Legislation Monitor Act 2010*); or
 - (b) the disclosure of the information or content could prejudice:
 - (i) the security, defence or international relations of Australia; or
 - (ii) the performance by a law enforcement or security agency (within the meaning of the *Independent National Security Legislation Monitor Act 2010*) of its functions; or
 - (c) the disclosure of the information or content could endanger a person's safety; or
 - (d) the disclosure of the information or content would be likely to be contrary to the public interest for any other reason.
- (6) If the Minister revokes the determination under subsection (3), the person's citizenship is taken never to have ceased under section 36B or 36D (as applicable) because of the determination. However, the validity of anything done in reliance on the determination before the revocation is not affected.
- (7) The person may only apply once to the Minister under subsection (1) in relation to the determination.
- (8) The powers of the Minister under this section may only be exercised by the Minister personally.

36J Revocation of citizenship cessation determination on Minister's initiative

- (1) The Minister may, on the Minister's own initiative, revoke a determination made under subsection 36B(1) or 36D(1) if the

Minister is satisfied that revoking the determination would be in the public interest (see section 36E).

(2) If the Minister revokes the determination under subsection (1), the person's citizenship is taken never to have ceased under section 36B or 36D (as applicable) because of the determination. However, the validity of anything done in reliance on the determination before the revocation is not affected.

(3) If the Minister decides under subsection (1) to revoke the determination, the Minister:

(a) must give the person written notice of the decision if the person was given notice under paragraph 35C(1)(a) of the determination; and

(b) must not otherwise give the person notice of the decision.

Section 47 (notification of decisions) does not apply in relation to a decision under subsection (1).

(4) However, the notice must not contain information, or content of a document, if:

(a) the information or content includes any operationally sensitive information (within the meaning of the *Independent National Security Legislation Monitor Act 2010*); or

(b) the disclosure of the information or content could prejudice:

(i) the security, defence or international relations of Australia; or

(ii) the performance by a law enforcement or security agency (within the meaning of the *Independent National Security Legislation Monitor Act 2010*) of its functions; or

(c) the disclosure of the information or content could endanger a person's safety; or

(d) the disclosure of the information or content would be likely to be contrary to the public interest for any other reason.

(5) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any person, whether the Minister is requested to do so by the person whose citizenship ceased because of the determination, or by any other person, or in any other circumstances.

- (6) To avoid doubt, in deciding whether to consider exercising the power under subsection (1), the Minister is not required to have regard to any of the matters referred to in section 36E.
- (7) The rules of natural justice do not apply in relation to making a decision or exercising a power under this section.
- (8) The powers of the Minister under this section may only be exercised by the Minister personally.

36K Automatic revocation of citizenship cessation determination

- (1) A determination made under subsection 36B(1) or 36D(1) because of which a person has ceased to be an Australian citizen is taken to be revoked (without any decision or exercise of power by the Minister) if any of the following events occurs:
 - (a) for a determination under subsection 36B(1)—in proceedings under section 75 of the Constitution, or under this Act or another Commonwealth Act, a court finds that the person did not engage in the conduct to which the determination relates;
 - (b) for a determination under subsection 36D(1)—both:
 - (i) a decision of a court has overturned or quashed the conviction, or each conviction, to which the determination relates, or has reduced the sentence, or each sentence, to which the determination relates below the period specified in paragraph 36D(1)(b); and
 - (ii) the time for appealing, or applying for leave to appeal, the decision has expired without an appeal or application being lodged, or the decision is not appellable;
 - (c) in proceedings under section 75 of the Constitution, or under this Act or another Commonwealth Act, a court finds that the person was not a national or citizen of a country other than Australia at the time the determination was made;
 - (d) a declaration under section 36C (declared terrorist organisation) is disallowed by either House of the Parliament and the determination would not have been made if that declaration had not been made.
 - (2) If an event mentioned in subsection (1) occurs in relation to a determination, the person's citizenship is taken never to have ceased under section 36B or 36D (as applicable) because of the
-

determination. However, the validity of anything done in reliance on the determination before the event occurred is not affected.

36L No resumption of citizenship if citizenship ceases under this Subdivision

If a person ceases to be an Australian citizen under this Subdivision, Divisions 1 and 2 of this Part do not apply in relation to the person after that cessation.

Note: The effect of this section is that, unless a determination under section 36B or 36D is revoked (see sections 36H, 36J and 36K), the person can never become an Australian citizen again.

10 After subsection 48(5)

Insert:

Exceptions

- (5A) This section does not apply in relation to anything done under Subdivision C of Division 3 of Part 2 (citizenship cessation determinations).

11 Subsection 51B(1)

Repeal the subsection, substitute:

- (1) As soon as practicable after each reporting period, the Minister must table a report in each House of the Parliament that sets out the following:
- (a) the number of notices given by the Minister under paragraph 36F(1)(a) (notice of citizenship cessation) during the reporting period;
 - (b) for each notice that was given under paragraph 36F(1)(a) during the reporting period—a brief statement of the matters that are the basis for the determination to which the notice relates;
 - (c) the number of notices given by the Minister under subsection 36H(4) during the reporting period (notice of decision on application to have citizenship cessation determination revoked).

12 Subsections 51C(1) and (2)

Repeal the subsections, substitute:

- (1) The Minister must, in writing, inform the Parliamentary Joint Committee on Intelligence and Security as soon as practicable if any of the following events occurs:
 - (a) the Minister gives a person a notice under paragraph 36F(1)(a) (notice of citizenship cessation);
 - (b) the Minister makes a determination under subsection 36G(1) (that notice of citizenship cessation should not be given);
 - (c) the Minister gives a person notice, under subsection 36H(4) or 36J(3), that the Minister has decided to revoke a determination made under subsection 36B(1) or 36D(1).

13 Subsection 51C(5)

Repeal the subsection, substitute:

- (5) The briefing must include details of the matters that are the basis for the notice, determination or revocation.

Independent National Security Legislation Monitor Act 2010

14 Section 4 (paragraph (aa) of the definition of counter-terrorism and national security legislation)

Repeal the paragraph, substitute:

- (aa) Subdivision C of Division 3 of Part 2 of the *Australian Citizenship Act 2007* (citizenship cessation determinations) and any other provision of that Act as far as it relates to that Subdivision;

Intelligence Services Act 2001

15 Paragraph 29(1)(ca)

Repeal the paragraph, substitute:

- (ca) to commence, by the third anniversary of the day the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020* commenced, a review of the operation, effectiveness and implications of Subdivision C of Division 3 of Part 2 of the *Australian Citizenship Act 2007* (citizenship

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cessation determinations) and any other provision of that Act as far as it relates to that Subdivision; and

Part 2—Application and transitional provisions

16 Definitions

In this Part:

Act means the *Australian Citizenship Act 2007*.

amended Act means the Act as in force after commencement.

cessation notice: see subparagraph (c)(i) of the definition of *designated non-citizen* in this item.

commencement means the time this item commences.

designated non-citizen: a person is a *designated non-citizen*, for conduct engaged in by the person, if:

- (a) immediately before commencement, the person is not an Australian citizen; and
- (b) the person ceased to be an Australian citizen under section 33AA or 35 of the Act as in force before commencement because of the conduct; and
- (c) either:
 - (i) before commencement, the Minister gave, or made reasonable attempts to give, the person a notice under paragraph 33AA(10)(a) or 35(5)(a) of the Act in relation to the conduct (a *cessation notice*); or
 - (ii) immediately before commencement, a determination was in force under subsection 33AA(12) or 35(7) of the Act in relation to the conduct (a *no-notice determination*).

Note: A person who, before commencement, ceased to be an Australian citizen under section 33AA or 35 of the Act because of conduct engaged in by the person might be an Australian citizen again by the time of commencement (see subsections 33AA(24) and 35(19) of the Act as in force immediately before commencement). This person is not a *designated non-citizen* because paragraph (a) of that definition does not apply to the person.

designated non-citizen determination: see subitem 17(1).

no-notice determination: see subparagraph (c)(ii) of the definition of *designated non-citizen* in this item.

17 Citizenship that ceased under section 33AA or 35 of Act as in force before commencement

- (1) At commencement, the Minister is taken to have made a determination (a *designated non-citizen determination*) under subsection 36B(1) of the amended Act in relation to a designated non-citizen. The designated non-citizen determination relates to the conduct for which the person is a designated non-citizen.
 - (2) After commencement, the amended Act applies as if the designated non-citizen determination had been made under subsection 36B(1) of the amended Act.
 - (3) If the Minister gave, or made reasonable attempts to give, the person a cessation notice in relation to the conduct to which the designated non-citizen determination relates:
 - (a) the cessation notice:
 - (i) is taken to have been given under section 36F of the amended Act; and
 - (ii) is taken to have been given at the time the Minister gave, or first reasonably attempted to give, the notice to the person under the Act as in force before commencement; and
 - (b) the person cannot apply under section 36H of the amended Act to have the designated non-citizen determination revoked.
 - (4) A no-notice determination continues in force after commencement despite the amendments made by this Schedule, as if the no-notice determination had been made under subsection 36G(1) of the amended Act at the time it was made under the Act as in force before commencement.
- Note: Among other things, this means that the 5 year period in which the Minister must consider whether to revoke the determination at least every 90 days continues until the end of the 5 years rather than re-starting at commencement. The Minister may also decide to extend the determination under subsection 36G(4) of the amended Act.
- (5) For a person who is a designated non-citizen:
 - (a) the designated non-citizen determination in relation to the person does not alter the time the person's citizenship ceased under section 33AA or 35 of the Act as in force before commencement; and
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- (b) the person remains at all times a person who is not an Australian citizen, unless the designated non-citizen determination is revoked under section 36H, 36J or 36K of the amended Act.
- (6) To avoid doubt, at commencement, the Act as in force immediately before commencement ceases to apply in relation to anything to which the amended Act applies in accordance with subitems (1) to (5).
- (7) The operation of section 33AA of the Act before commencement in relation to conduct engaged in by a person is to be disregarded for all purposes if, before commencement, the Minister:
 - (a) did not give or make reasonable attempts to give the person a notice under paragraph 33AA(10)(a) of the Act in relation to the conduct; and
 - (b) did not make a determination under subsection 33AA(12) of the Act in relation to the conduct.
- (8) If, before commencement, the Minister exempted a person from the operation of section 33AA of the Act in relation to conduct engaged in by the person, the Minister must not make a determination under section 36B of the amended Act in relation to the conduct.
- (9) The operation of section 35 of the Act before commencement in relation to conduct engaged in by a person is to be disregarded for all purposes if, before commencement, the Minister:
 - (a) did not give or make reasonable attempts to give the person a notice under paragraph 35(5)(a) of the Act in relation to the conduct; and
 - (b) did not make a determination under subsection 35(7) of the Act in relation to the conduct.
- (10) If, before commencement, the Minister exempted a person from the operation of section 35 of the Act in relation to conduct engaged in by the person, the Minister must not make a determination under section 36B of the amended Act in relation to the conduct.

18 Application of section 36B of amended Act

- (1) Section 36B of the amended Act applies in relation to conduct specified in any of paragraphs (5)(a) to (h) of that section, if:

- (a) the conduct was engaged in on or after 29 May 2003 (whether the conduct commenced before, on or after that date); and
 - (b) the conduct is not conduct to which a designated non-citizen determination relates.
- (2) Section 36B of the amended Act applies in relation to conduct specified in paragraph (5)(i) of that section, if:
 - (a) the conduct was engaged in on or after 12 December 2015 (whether the conduct commenced before, on or after that date); and
 - (b) the conduct is not conduct to which a designated non-citizen determination relates.
- (3) Section 36B of the amended Act applies in relation to conduct specified in paragraph (5)(j) of that section whether the conduct was engaged in before or after commencement, unless a designated non-citizen determination relates to the conduct.

19 Application of section 36D of amended Act

Section 36D of the amended Act applies in relation to a conviction of a person:

- (a) that occurs after commencement; or
- (b) that occurred before commencement, if:
 - (i) the conviction occurred on or after 29 May 2003; and
 - (ii) the person was sentenced to a period of imprisonment of at least 3 years, or to periods of imprisonment that total at least 3 years, in respect of the conviction.

20 Declared terrorist organisations

Despite the repeal of section 35AA of the Act by this Schedule, a declaration in force under that section immediately before commencement continues in force, after commencement, as if it had been made under section 36C of the amended Act.

21 Section 51B report

A report prepared for the purposes of section 51B of the amended Act in relation to the reporting period in which commencement occurs must set out:

- (a) for the part of the reporting period that occurs before commencement—the matters required by subsection 51B(1) of the Act as in force immediately before commencement; and
- (b) for the part of the reporting period that occurs after commencement—the matters required by subsection 51B(1) of the amended Act.

22 Australian citizenship

The amendments of the Act made by this Schedule apply in relation to a person, in accordance with this Part, regardless of:

- (a) whether the person became an Australian citizen before or after commencement; or
- (b) whether the person ceased to be an Australian citizen before commencement.

*[Minister's second reading speech made in—
House of Representatives on 19 September 2019
Senate on 3 September 2020]*

(175/19)
