



# **Australian Citizenship Amendment (Citizenship Repudiation) Act 2023**

**No. 109, 2023**

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

[Assented to 7 December 2023]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Australian Citizenship Amendment (Citizenship Repudiation) Act 2023*.

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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>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	8 December 2023

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 Section 3**

Insert:

*Foreign Affairs Minister* means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

*serious offence* has the meaning given by subsection 36C(3).

##### **2 Section 32A**

Omit:

- 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).

substitute:

- if you are convicted of certain offences and an order is made by a court that you cease to be an Australian citizen: see Subdivision C (citizenship cessation).

##### **3 Subdivision C of Division 3 of Part 2 (heading)**

Omit “**determinations**”.

##### **4 Sections 36B to 36K**

Repeal the sections, substitute:

**36B Cessation of citizenship if citizenship cessation order made by court etc.**

- (1) Subject to this section, if an order is made under subsection 36C(1) in relation to a person, the person ceases to be an Australian citizen at the time the order is made.

*Order overturned or quashed*

- (2) If a decision of a court overturns or quashes the order made under subsection 36C(1), the person's citizenship is taken never to have ceased under subsection (1) of this section.
- (3) The validity of anything done in reliance on the order made under subsection 36C(1) before the order was overturned or quashed is not affected.

*Appeal decision*

- (4) If:
- (a) a decision (the **first decision**) of a court overturning or quashing the order made under subsection 36C(1) in relation to the person is appealed; and
  - (b) the decision (the **second decision**) on appeal overturns or quashes the first decision;
- the person ceases to be an Australian citizen at the time the second decision is made.

**36C Citizenship cessation order if person is convicted of serious offence**

- (1) If:
- (a) a person is convicted of one or more serious offences; and
  - (b) the court has decided to impose on the person, in respect of the conviction or convictions, a period of imprisonment that is at least 3 years or periods of imprisonment that total at least 3 years; and
  - (c) before the court imposes the sentence or sentences on the person in respect of the conviction or convictions, the Minister makes an application under subsection 36D(1) for



an order to be made under this subsection in relation to the person; and

- (d) the court is satisfied of the matters specified in subsection (4) of this section;

the court may, when imposing such a period or periods of imprisonment on the person in respect of the conviction or convictions, also order at that time as part of the sentence or sentences that the person ceases to be an Australian citizen.

Note: Subsections (5) and (6) set out, without limitation, matters the court must have regard to in deciding whether to make an order under this subsection.

- (2) However, the court must not make an order under subsection (1) in relation to the person if the court is satisfied that the person would, if the court were to make the order, become a person who is not a national or citizen of any country.

*Serious offence*

- (3) A **serious offence** is an offence against any of the following provisions:
- (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) section 83.1 of the *Criminal Code* (advocating mutiny);
  - (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 the following provisions:
    - (i) section 102.8;
    - (ii) Division 104;
    - (iii) Division 105;
    - (iv) section 105A.7D;
    - (v) section 105A.18B;
  - (g) a provision of Part 5.5 of the *Criminal Code* (foreign incursions and recruitment).

*Court to be satisfied of certain matters etc.*

- (4) For the purposes of paragraph (1)(d), the matters are the following:
- (a) the person is aged 14 or over;
  - (b) the person is an Australian citizen;
  - (c) the person's conduct to which the conviction or convictions relate is so serious and significant that it demonstrates that the person has repudiated their allegiance to Australia.
- (5) In deciding whether the court is satisfied of the matter referred to in paragraph (4)(c) in relation to the person's conduct, the court must have regard to the following matters:
- (a) whether the conduct to which the conviction or convictions relate demonstrates a repudiation of the values, democratic beliefs, rights and liberties that underpin Australian society;
  - (b) the degree, duration or scale of the person's commitment to, or involvement in, the conduct to which the conviction or convictions relate;
  - (c) the intended scale of the conduct to which the conviction or convictions relate;
  - (d) the actual impact of the conduct to which the conviction or convictions relate;
  - (e) whether the conduct to which the conviction or convictions relate caused, or was intended to cause, harm to human life or a loss of human life.
- (6) In deciding whether to make an order under subsection (1) in relation to the person, the court must have regard to the following matters:
- (a) if the person is a child aged under 18—the best interests of the child;
  - (b) if the person has any dependent children in Australia—the best interests of those children;
  - (c) 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.
- (7) Subsection (6) does not limit the matters to which the court may have regard in deciding whether to make an order under subsection (1) in relation to the person.

*Concurrent sentences*

- (8) If:
- (a) a person has been convicted of 2 or more serious offences;  
and
  - (b) a court has decided to impose on the person, in respect of the conviction or convictions, 2 or more periods of imprisonment to be served concurrently (whether in whole or in part);
- then, for the purposes of subsection (1), the whole of each period is to be counted in working out the total of those periods.

Example: A person is convicted of 2 serious offences and a court has decided to impose on the person in respect of the convictions 2 periods of 2 years imprisonment to be served concurrently. For the purposes of subsection (1), the total period of imprisonment is 4 years.

*References to period of imprisonment*

- (9) For the purposes of subsection (1):
- (a) a reference to a period of imprisonment in that subsection does not include a period of imprisonment that is suspended;  
and
  - (b) a reference to a period of imprisonment in that subsection includes a reference to a single sentence of imprisonment that a court has decided to impose in respect of both one or more serious offences and one or more other offences.

*Other matters*

- (10) This section applies in relation 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).
- (11) Part IB of the *Crimes Act 1914* (which deals with sentencing, imprisonment and release of federal offenders) does not apply in relation to an order under this section.

**36D Application by the Minister for a citizenship cessation order**

- (1) The Minister may make an application for an order to be made by a court under subsection 36C(1) in relation to a person.

- (2) The application may be made before or after the person is convicted of one or more serious offences but must be made before the person is sentenced.

*Consultation with the Foreign Affairs Minister*

- (3) Before the Minister makes the application, the Minister must consult the Foreign Affairs Minister.

*Matters relating to the application*

- (4) The application must include the following matters:
- (a) information about the person's age;
  - (b) information about the person's Australian citizenship;
  - (c) information about the person's nationality or citizenship of other countries.
- (5) The application:
- (a) must be made in the jury's absence; and
  - (b) must not be referred to in the presence of the jury; and
  - (c) must only be heard after the person is convicted of one or more serious offences.

*Notice of application*

- (6) The Minister must give the person written notice of the application as soon as practicable after the application is made. The Minister may also give written notice of the application to such other persons as the Minister considers appropriate.
- (7) Section 47 (notification of decisions) does not apply to a decision of the Minister to make the application.

*Australian citizens to which this section applies*

- (8) This section applies in relation 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 Section 36L (note)**

Repeal the note, substitute:

Note: See section 36B for when a person ceases to be an Australian citizen.

## **6 Subsection 48(5A)**

Omit “determinations”.

## **7 Subsection 51B(1)**

Repeal the subsection, substitute:

- (1) As soon as practicable after a reporting period ends, the Minister must table a report in each House of the Parliament that sets out the number of applications made under section 36D to which both of the following apply:
  - (a) the applications were made during the reporting period to which the report relates or during an earlier reporting period;
  - (b) the applications relate to persons who, during the reporting period to which the report relates, were convicted and sentenced for one or more serious offences.

## **8 Subsection 51B(3)**

Repeal the subsection, substitute:

- (3) In this section:

*reporting period* means:

- (a) the period of 12 months beginning on the day the *Australian Citizenship Amendment (Citizenship Repudiation) Act 2023* commences; or
- (b) each subsequent 12-month period.

## **9 Section 51C**

Repeal the section.

## **10 At the end of subsection 53(2)**

Add “or the power under section 36D (about application for citizenship cessation order)”.

## ***Independent National Security Legislation Monitor Act 2010***

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

Omit “determinations”.

### **12 Paragraph 6(1)(bb)**

Omit “and (1C)”, substitute “, (1C) and (1F)”.

### **13 Paragraph 6(1)(f)**

Repeal the paragraph, substitute:

(f) the functions conferred by subsections (1E) and (1F).

### **14 After subsection 6(1E)**

Insert:

(1F) The Independent National Security Legislation Monitor must:

(a) review the operation, effectiveness and implications of:

(i) Subdivision C of Division 3 of Part 2 of the *Australian Citizenship Act 2007* (which deals with citizenship cessation), as amended by Schedule 1 to the *Australian Citizenship Amendment (Citizenship Repudiation) Act 2023*; and

(ii) any other provision of the *Australian Citizenship Act 2007* so far as it relates to that Subdivision; and

(b) complete the review as soon as practicable after the end of the 3-year period beginning on the day the amendments of that Subdivision commence.

### **15 Subsection 29B(1)**

Omit “or (1C)”, substitute “, (1C) or (1F)”.

## ***Intelligence Services Act 2001***

### **16 After paragraph 29(1)(ca)**

Insert:

(cb) if the Committee resolves to do so—to commence a review, after the Independent National Security Legislation Monitor

completes the review under subsection 6(1F) of the *Independent National Security Legislation Monitor Act 2010*, into the operation, effectiveness and implications of:

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

### ***Surveillance Devices Act 2004***

#### **17 At the end of paragraph 45(5)(ia)**

Add:

or (iii) section 36C of the *Australian Citizenship Act 2007*;

## Part 2—Application provision

### 18 Application provision

Section 36C of the *Australian Citizenship Act 2007*, as inserted by this Schedule, applies in relation to a conviction of a person if:

- (a) the conviction occurs after the commencement of this item;  
and
- (b) the person engaged in the conduct to which the conviction relates on or after 12 December 2015.

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[*Minister's second reading speech made in—  
House of Representatives on 29 November 2023  
Senate on 30 November 2023*]

(163/23)

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