

Australian Citizenship Amendment Regulations 2001 (No. 1)

2001 No. 237

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 237

Issued by the Authority of the Minister for Immigration and Multicultural Affairs

Australian Citizenship Act 1948

Australian Citizenship Amendment Regulations 2001 (No. 1)

Section 53 of the *Australian Citizenship Act 1948* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Additionally, regulations may be made pursuant to the following powers:

- subparagraph 53(f)(ii) of the Act provides for the imposition and. recovery of fees in respect of any registration. the making of any declaration, the grant of any certificate or the making of a pledge of commitment authorised to be made or granted under the Act;
- paragraph 53(fa) of the Act provides for the remission, refund or waiver of fees of a kind referred to in paragraph 53(f), or the exemption of persons from the payment of such fees.

The Regulations amend the Australian Citizenship Regulations providing for the imposition, refund and exemption of certain fees.

The Regulations provide for:

- an exemption from the payment of a fee for the lodgment of an application for the grant of a certificate of Australian citizenship under section 13 of the Act by a person who has completed not less than 3 months relevant defence service;
- the imposition of a fee in relation to the making of a declaration of renunciation of Australian citizenship by a person pursuant to section 18 of the Act;
- the refund of a fee paid by a person in relation to the making of a declaration of renunciation of Australian citizenship pursuant to section 18 of the Act because of incorrect advice given by the Department to that person.

Section 13 of the Act provides that the Minister may, upon application in accordance with the approved form, grant a certificate of Australian citizenship to a person who satisfies the Minister of certain matters. Regulation 9 of the Australian Citizenship Regulations provides that subject to subregulations 9(1A), (1B) and (2), a fee of \$120 is payable on the lodgment of an application under section 13 of the Act for the grant of such a certificate.

An exemption is created from the obligation to pay this fee in respect of a person who has completed not less than 3 months relevant defence service. 'Relevant defence service' is defined in subsection 5(1) of the Act.

Subsection 18(1) of the Act provides that an Australian citizen who satisfies certain criteria may lodge a declaration with the Minister in the prescribed form renouncing the person's Australian citizenship.

The Australian Citizenship Council in its report, *Australian Citizenship for a New Century, February 2000*, recommended that a fee be charged for people wishing to renounce their Australian citizenship.

An administrative fee of \$260 is imposed on the making of a declaration of renunciation. The fee is well below the full cost of processing declarations. If a declaration is not accompanied by the prescribed fee, it will be invalidly lodged.

A refund of the fee is also provided for if a person has lodged a declaration for registration and paid the fee on the basis of incorrect advice given by the Department of Immigration and Multicultural Affairs to that person.

Details of the Regulations are set out in the Attachment.

The Regulations will commence on 1 November 2001.

ATTACHMENT

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Australian Citizenship Amendment Regulations 2001 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that these Regulations commence on 1 November 2001.

Regulation 3 - Amendment of Australian Citizenship Regulations

This regulation provides that the Australian Citizenship Regulations are amended as set out in Schedule 1 to these Regulations.

Schedule 1 - Amendment

Item 1 - Regulation 1

This item renames the Australian Citizenship Regulations. The new name for these Regulations is now the *Australian Citizenship Regulations 1960*.

Item 2 - Subregulation 3(1), after definition of *authorised officer*

This item inserts a new definition into regulation 3, being the definition of Centrelink as the Commonwealth Service Delivery Agency established by the *Commonwealth Service Delivery Act 1997*.

The new definition is inserted to reflect a change in the name of the former Department of Social Security.

Item 3 - Subregulation 9(1)

This item is a consequential amendment replacing the reference to subregulation 9(1B) and (2) in subregulation 9(1), with a reference to subregulations 9(1B), (1 Q and (2), as a result of the insertion of new subregulation 9(1C) by item 6 below.

Item 4 - Paragraph 9(1A)(a)

This item omits a reference to 'the Department of Social Security' in paragraph 9(1A)(a), replacing it with a reference to 'Centrelink' as defined in regulation 3.

The new definition is inserted to reflect a change in the name of the former Department of Social Security.

Item 5 - Subparagraph 9(1A)(b)(ii)

This item omits a reference to 'the Department of Social Security' in paragraph 9(1A)(b)(ii), replacing it with a reference to 'Centrelink' as defined in regulation 3.

The new definition is inserted to reflect a change in the name of the former Department of Social Security.

Item 6 - After subregulation 9(1B)

This item inserts new subregulation 9(1C) into regulation 9.

Under subregulation 9(1) a fee of \$120 is payable on the lodgment of an application under section 13 of the Act for the grant of a certificate of Australian citizenship.

Subregulation 9(1A) provides for a reduction of the fee in certain circumstances, and subregulations 9(1B) and (2) set out the circumstances in which the fee is not payable.

New subregulation 9(1C) provides that a fee is not payable under subregulation 9(1) if an authorised officer is satisfied that the applicant has completed not less than 3 months relevant defence service.

Relevant defence service is defined in subsection 5(1) of the Act to mean (a) service in the permanent forces of the Commonwealth; or (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.

The purpose of the amendment is to waive the fee payable on the lodgment of an application under section 13 of the Act for the grant of a certificate of Australian citizenship for those non-citizens who have performed relevant defence service for a period of not less than 3 months.

Item 7 - Regulation 13

This item substitutes a new regulation 13, requiring in subregulation 13(1), that a declaration of renunciation of Australian citizenship under subsection 18(1) of the Act be in accordance with Form 9, and imposing in subregulation 13(2), a fee of \$260 payable on the lodgment of the declaration.

Item 8 - After subregulation 23GA)

This item inserts a new subregulation into regulation 23 dealing with the refund of fees.

New subregulation 23(1B) provides that a person who has lodged a declaration for registration under section 18 of the Act and paid the fee mentioned in new subregulation 13(2), is entitled to a refund of that fee if the declaration was lodged because of incorrect advice given by the Department to the person.

By way of example, the Department may incorrectly advise a person to lodge a declaration of renunciation of citizenship under subsection 18(1) of the Act based on incomplete information provided by the person. It may subsequently be discovered that the person had lost citizenship by operation of law under section 17 of the Act and would not meet the criteria for section 18 of the Act.

New subregulation 23(1B) will facilitate the refund of fees unnecessarily paid in this circumstance.

Item 9 - Schedule 2, Form 9

This item is a technical amendment omitting a reference to regulation 13 in Form 9 of Schedule 2, and replacing it with a reference to subregulation 13(1).