

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 53

Issued by the Minister for Citizenship and Multicultural Affairs

Australian Citizenship Act 1948

Australian Citizenship Amendment Regulations 2005 (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 to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions may apply:

- paragraph 53(b) of the Act, which provides for the registration of anything required or authorized under this Act to be registered;
- subparagraph 53(f)(i) of the Act, which provides for the imposition and recovery of fees in respect of any application under this Act;
- subparagraph 53(f)(ii) of the Act, which provides for the imposition and recovery of fees in respect of any registration, or the grant of any certificate authorized to be made or granted under this Act; and
- paragraph 53(fa) of the Act, which provides for the remission, refund or waiver of fees of a kind referred to in paragraphs 53(f)(i) and (ii) of the Act, or the exemption of persons from the payment of such fees.

The purpose of the Regulations is to amend the *Australian Citizenship Regulations 1960* (the Principal Regulations) to:

- provide for the electronic registration of persons who acquire Australian citizenship by descent;
- extend the classes of persons eligible for a citizenship fee concession; and
- enable Maltese former child migrants to be eligible for a citizenship fee exemption.

The Principal Regulations set out a number of matters that enable the effective administration of the Act. Among other matters, the Principal Regulations prescribe the manner in which registration is to occur for various purposes, including the registration of people as Australian citizens by descent, as well as prescribing the relevant fees to be paid in respect of an application under the Act.

The Principal Regulations prescribe a detailed process by which a person is registered as a citizen by descent under the Act. This process previously required that a person's name be entered in a bound 'register', being a physical volume of forms kept at an Australian consulate, and was inconsistent with a move towards electronic registration of citizenship by descent. The Regulations facilitate electronic registration.

The Principal Regulations prescribe a fee of \$120 to apply for grant of a certificate of Australian citizenship under the Act. However, recipients of specified benefits issued by Centrelink or the Department of Veterans' Affairs are only required to pay a fee of \$20. The Regulations expand the list of benefits whose recipients are entitled to a fee concession to ensure that this concession is available to all people recognised by the Australian Government as suffering permanent financial disadvantage.

The Principal Regulations provide that those children who migrated to Australia as unaccompanied British children between 22 September 1947 and 31 December 1967 are exempted from paying a fee to apply for grant of a certificate of Australian citizenship. The Regulations extend this fee exemption to Maltese former child migrants to ensure that they are treated the same as British former child migrants.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Office of Regulation Review in the Productivity Commission has been consulted and advises that the regulations are not likely to have a direct, or substantial indirect effect on business, and are not likely to restrict competition.

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence as follows:

- provision for the electronic registration of persons who acquire Australian citizenship by descent – on 2 April 2005; and
- extending the classes of persons eligible for a citizenship fee concession and enabling Maltese former child migrants to be eligible for a citizenship fee exemption – on 1 July 2005.

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Details of the Australian Citizenship Amendment Regulations 2005 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that these Regulations are the *Australian Citizenship Amendment Regulations 2005 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commence as follows:

- Regulations 1 to 3 and Schedule 1 commence on 2 April 2005; and
- Schedule 2 commences on 1 July 2005.

Regulation 3 – Amendment of the Australian Citizenship Regulations 1960

This regulation provides that Schedules 1 and 2 amend the *Australian Citizenship Regulations 1960* (the Principal Regulations).

Schedule 1 – Amendments commencing on 2 April 2005

Item [1] – Subregulation 3 (1), definition of authorised officer

This item substitutes the definition of *authorised officer* in subregulation 3(1) of the Principal Regulations with a new definition that replaces ‘an officer of the Department of Immigration and Multicultural and Indigenous Affairs’ with ‘an APS employee performing duties in the Department of Immigration and Multicultural and Indigenous Affairs’. This change is a technical amendment reflecting the new language used in the *Public Service Act 1999*.

Item [2] – Subregulation 3(1), definition of register

This item omits the definition of ‘register’ from subregulation 3(1) of the Principal Regulations.

Previously, ‘register’ was defined in the Principal Regulations as the Register of Citizenship by Descent, or the former Register of Births Abroad. The Register of Citizenship by Descent is a bound volume which is used in Australian consulates overseas to record the names of persons who have acquired Australian citizenship by descent. The use of this register will be phased out, and registration of Australian citizenship by descent will be done directly into an electronic database.

The definition of register has therefore been omitted as a consequential amendment to a more open scheme of registration, allowing for both electronic and paper registration, inserted into the Principal Regulations, by these Regulations.

Item [3] – Regulation 7

This item substitutes regulation 7 of the Principal Regulations with a new provision which states that a person's name is registered for the purposes of section 10B of the Act by:

- the Minister, or an authorised officer, making a record of the fact that the person is an Australian citizen by descent; and
- the record being included in a data storage system kept by the Department.

Previous regulation 7 required that each Australian consulate keep a bound 'register', to be known as the Register of Citizenship by Descent. The use of the Register of Citizenship by Descent will be phased out, and registration of Australian citizenship by descent, for the purposes of section 10B, will be done directly into an electronic database. The purpose of the amendment is to remove the prescriptive requirement to keep a bound 'register', and to provide for a more open scheme of registration which allows for electronic registration, as well as still permitting registration in the Register of Citizenship by Descent.

Item [4] – Regulations 7B, 7C and 7D

This item substitutes regulations 7B, 7C and 7D of the Principal Regulations with new regulations 7B and 7C.

New regulation 7B provides that if an authorised officer is satisfied that there is an error or omission in the record of the fact that a person is an Australian citizen by descent, the authorised officer must correct that error or omission.

New regulation 7C provides that the Minister may cancel the registration of a person's name. However the Minister must not cancel a registration unless:

- the Minister is satisfied on reasonable grounds that the registration has been made on the basis of false information; or
- the registration is in relation to a registration of birth made under the Principal Regulations before 30 November 1984; and

the Minister considers that the purposes of the cancellation would not be achieved by a correction of the relevant information.

These amendments are consequential to the more open scheme of registration inserted into the Principal Regulations, by these Regulations.

This amendment also contains some technical changes simplifying the process of cancelling a registration from a two-step to a one-step process of cancellation by the Minister.

Regulation 7D, which is omitted, sets out requirements relating to the giving of an extract of the 'bound' register to a person at the time that person was registered. The purpose of this amendment is to remove this obligation.

The electronic verification of registration of citizenship is used by the Passports Office as evidence of Australian citizenship for passport applications, which is a more

secure way of verifying Australian citizenship than the presentation of a paper extract from the 'bound' register.

A person will still be able to apply for a certificate evidencing Australian citizenship under regulation 8 of the Principal Regulations. These certificates are available to all citizens regardless of the manner in which they acquired Australian citizenship.

Item [5] – Regulations 7F and 7G

This item substitutes regulations 7F and 7G of the Principal Regulations with new regulation 7F.

New regulation 7F provides that a person is registered as an Australian citizen for the purposes of subsection 10C(4) of the Act by:

- the Minister making a record of the fact that the person is an Australian citizen by descent; and
- the record being included on a data storage system kept by the Department.

The purpose of this amendment is to replace the requirement to enter a person's name in a bound 'register', with an open registration scheme.

Regulation 7G, which is omitted, sets out a requirement for a certificate of evidence to be given to a person at the time that person was registered. The purpose of this amendment is to remove this obligation.

The electronic verification of registration of citizenship is used by the Passports Office as evidence of Australian citizenship for passport applications; which is a more secure way of verifying Australian citizenship. A person will still be able to apply for a certificate evidencing Australian citizenship under regulation 8 of the Principal Regulations. These certificates are available to all citizens regardless of the manner in which they acquired Australian citizenship.

Item [6] – Regulations 8A, 8B and 8C

This item omits regulations 8A, 8B and 8C of the Principal Regulations. These regulations relate to citizenship by descent through a person's mother under section 11 of the Act. Section 11 of the Act no longer has any practical application, as applications under this section could only be made within 5 years of the commencement of the section in 1991. Regulations 8A, 8B and 8C are therefore omitted as they are redundant.

Item [7] – Subregulation 22(1)

This item amends subregulation 22(1) of the Principal Regulations to replace references to 'the register' with 'registration'.

This amendment is consequential to amendments made to regulations 3 and 7 of the Principal Regulations by these Regulations, which remove the requirement to keep a bound 'register' containing forms and replace it with a new, open registration scheme.

This item also amends subregulation 22(1) of the Principal Regulations to reflect the change from a two-step to a one-step cancellation process in new regulation 7C.

This amendment is consequential to amendments made to regulation 7C of the Principal Regulations by these Regulations.

Item [8] – Forms

This item omits Form 2 of Schedule 2 to the Principal Regulations.

This amendment is consequential to amendments made to regulation 7 of the Principal Regulations by these Regulations, which remove the requirement to keep a bound ‘register’ containing forms and replace it with an open registration scheme.

Schedule 2 – Amendments commencing on 1 July 2005

Item [1] – Subregulation 9(1)

This item inserts a reference to ‘(1AA)’ in subregulation 9(1) of the Principal Regulations.

This amendment is consequential to the insertion of new subregulation 9(1AA) in the Principal Regulations, by these Regulations.

Item [2] – Subregulation 9(1A)

This item substitutes subregulation 9(1A) of the Principal Regulations with new subregulations 9(1A) and 9(1AA), which expand the classes of person entitled to a fee concession in relation to an application for grant of a certificate of Australian citizenship under regulation 9.

New subregulation 9(1A) provides that the reduced fee of \$20 is payable by the following persons:

(a) applicants who produce evidence, issued by Centrelink, that identifies them as the recipient of at least one of the following under the *Social Security Act 1991* (the SSA):

- an age pension (Part 2.2 of the SSA);
- a disability support pension (Part 2.3 of the SSA);
- a carer payment (Part 2.5 of the SSA);
- a mature age allowance (Part 2.12A or Part 2.12B of the SSA); or
- a special benefit under Part 2.15 of the Act which the applicant received for not less than 46 weeks of the previous 52 weeks; or

(b) applicants who produce evidence, issued by Centrelink, that identifies them as a person who is over 60 years old at the time of application for grant of a certificate, and has been the recipient of at least one of the following under the SSA for at least 9 months immediately before the application:

- a widow allowance (Part 2.8A of the SSA);
- a parenting payment (Part 2.10 of the SSA);

- a newstart allowance (Part 2.12 of the SSA);
- a sickness allowance (Part 2.14 of the SSA);
- a special benefit (Part 2.15 of the SSA); or
- a partner allowance (Part 2.15A of the SSA); or

(c) applicants who produce evidence, issued by the Department of Veterans' Affairs, that identifies them as a person who is the recipient of at least one of the following under the *Veterans' Entitlements Act 1986* (the VEA):

- an age service pension (Div 3, Part III of the VEA);
- an invalidity service pension (Div 4, Part III of the VEA); or
- an income support supplement (Part IIIA of the VEA).

New subregulation 9(1AA) provides that the reduced fee of \$20 is also payable by an applicant who:

(a) is the partner of a recipient of a pension, allowance, payment, benefit or supplement mentioned in new subregulation (1A), other than a partner allowance under Part 2.15A of the SSA; and

(b) produces evidence, issued by Centrelink or the Department of Veterans' Affairs, that identifies the applicant as the recipient of a means-tested pension, allowance, payment, benefit or supplement; and

(c) is the recipient of that means-tested pension, allowance, payment, benefit or supplement because the applicant is the partner of the recipient of a pension, allowance, payment, benefit or supplement listed in new subregulation 9(1A), other than a partner allowance under Part 2.15A of the SSA.

The purpose of this amendment is to implement the Government's response to the Australian Citizenship Council's report – Australian Citizenship for a New Century, which recommended that the list of pensions that give rise to citizenship fee concessions be kept under review to ensure that it reflects current pensions and benefits for persons suffering permanent financial disadvantage.

Item [3] – Paragraph 9(1B)(a)

This item amends paragraph 9(1B)(a) of the Principal Regulations to provide that where an authorised officer is satisfied that an applicant:

- entered Australia from the United Kingdom or Malta between 22 September 1947 and 31 December 1967 (inclusive); and
- was a ward of the Minister under the *Immigration (Guardianship of Children) Act 1946*;

the applicant is exempt from paying a fee on lodgement of application for grant of a certificate of Australian citizenship under regulation 9.

The purpose of this amendment is to implement the Government's response to a Senate Community Affairs References Committee report – Lost Innocents: Righting the Record, which recommended that Maltese former child migrants be treated equally in accessing the services available to British former child migrants.