

EXPLANATORY STATEMENT

Australian Citizenship Act 2007

SPECIAL RESIDENCE REQUIREMENT

(SECTION 22C)

1. This Instrument is made under section 22C of the *Australian Citizenship Act 2007* ('the Act').
2. Subsection 22C(1) provides that the Minister may, by legislative instrument, specify activities for the purposes of subparagraph 22A(1)(a)(i).
3. Subsection 22C(2) provides that the Minister may, by legislative instrument, specify organisations for the purposes of paragraph 22A(1)(b).
4. Subsection 22C(3) provides that the Minister may, by legislative instrument, specify kinds of work for the purposes of paragraph 22B(1)(a).
5. The purpose of the Instrument is to:
 - (a) specify activities and organisations in relation to the special residence requirement under subsection 22A(1) for certain persons seeking to engage in an activity that would be of benefit to Australia; and
 - (b) specify kinds of work in relation to the special residence requirement under subsection 22B(1) for certain persons engaged in particular kinds of work requiring regular travel outside Australia because of that work.
6. The Instrument operates to specify activities for the purposes of subparagraph 22A(1)(a)(i), organisations for the purposes of paragraph 22A(1)(b) and kinds of work for the purposes of paragraph 22B(1)(a).
7. The instrument also operates to allow for the special residence requirement to be available in cases where an applicant for citizenship by conferral cannot otherwise meet the general residence requirement. The instrument is therefore beneficial in its effect and has no detrimental impact.
8. Pursuant to section 17 of the *Legislative Instruments Act 2003* consultations took place with Cricket Australia.
9. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 2013/14997).
10. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided (attached).
11. The Instrument, IMMI 13/056, commences on the day after registration on the Federal Register of Legislative Instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

SPECIAL RESIDENCE REQUIREMENT-LEGISLATIVE INSTRUMENT (SECTION 22C OF THE AUSTRALIAN CITIZENSHIP ACT 2007)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The legislative instrument under section 22C of the *Australian Citizenship Act 2007* (the Act) supports sections 22A and 22B of the Act, which set out special residence requirements for the purpose of an application for citizenship by conferral. These requirements enable certain applicants to be eligible for citizenship if they are not otherwise able to meet the general residence requirement set out in section 22 of the Act.

This instrument revokes the previous instrument (F2009L03608, 22 September 2009, IMMI 09/095). It repeats the existing schedules and adds competing in the Ashes series and Cricket Australia to Schedules A and B. It also clarifies the level of security clearance required under Schedule A. Finally, it adds the professions set out in schedule C, paragraphs 1 (d)-(g) below.

Section 22A sets out a special residence requirement for persons engaging in activities that are of benefit to Australia and where the person needs to be an Australian citizen to engage in those activities. **Schedule A** of the Instrument specifies the following activities for the purposes of subparagraph 22A(1)(a)(i) of the Act:

1. Employment in a position which requires a Negative Vetting 2 or higher security clearance in a Department, an Executive Agency, or a Statutory Agency of the Commonwealth.
2. Participation in an Australian team in the following competitions:
 - (a) the Olympic Winter Games, including qualifying events for the Games;
 - (b) the Paralympic Winter Games, including qualifying events for the Games;
 - (c) the Olympic Summer Games; including qualifying events for the Games;
 - (d) the Paralympic Summer Games; including qualifying events for the Games;
 - (e) the Davis Cup Competition, including qualifying events for the Competition;
 - (f) the Fed Cup Competition, including qualifying events for the Competition; and
 - (g) any men's or women's International Cricket Match, being any:

- (i) International Test Match;
- (ii) International One Day Match;
- (iii) Twenty20 International Match;
- (iv) Match played as part of an International Cricket Council (ICC) Event, or
- (v) Other matches organised or sanctioned by the ICC from time to time to which the ICC deems it appropriate that the ICC Regulations should apply.

Schedule B of the Instrument specifies the following organisations which may support the application for citizenship under subparagraph 22A(1)(b) of the Act:

- 1. A Department, an Executive Agency, or a Statutory Agency of the Commonwealth;
- 2. Australian Olympic Committee (AOC);
- 3. Australian Paralympic Committee (APC);
- 4. Tennis Australia; and
- 5. Cricket Australia.

Section 22B sets out a special residence requirement for persons engaged in particular kinds of work requiring regular travel outside Australia. **Schedule C** of the Instrument specifies the following kinds of work covered by the section.

- 3. The kinds of work are those undertaken as part of their duties in which a person is:
 - (a) a member of the crew of a ship; or
 - (b) a member of the crew of an aircraft; or
 - (c) engaged in work on a resources installation or a sea installation; or
 - (d) a Chief Executive Officer of an S&P/ASX All Australian 200 listed company; or
 - (e) an Executive Manager of an S&P/ASX All Australian 200 listed company; or
 - (f) a Scientist employed by:
 - (i) an Australian university who has attained a PhD in their Field of speciality and is undertaking research and development of benefit to Australia; or
 - (ii) Commonwealth Scientific and Industrial Research Organisation; or
 - (iii) a medical research institute which is a member of the Association of Australian Medical Research Institutes (AAMRI).
 - (g) a medical specialist, internationally renowned in their field, who is a fellow of an organisation listed in Schedule 4 – Part 1 of the Health Insurance Regulations 1975 (Cth) and holds a relevant qualification in relation to the organisation;

- (h) a person who is a writer or is engaged in the visual or performing arts and who is the holder of, or has held, a Distinguished Talent Visa.

NOTE: Schedule 4 – Part 1 of the Health Insurance Regulations 1975 (Cth) is available on line at http://www.austlii.edu.au/au/legis/cth/consol_reg/hir1975273/sch4.html.

Human rights implications

This legislative instrument has been assessed against the seven core international human rights treaties and does not engage any of the rights or freedoms articulated therein.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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