

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Border Protection

Australian Citizenship Act 2007

Australian Citizenship Regulation 2016

The *Australian Citizenship Act 2007* (the Citizenship Act) sets out how to become an Australian citizen, the circumstances in which a person may cease to be a citizen and other matters related to citizenship.

Section 54 of the Citizenship Act in effect provides that the Governor-General may make regulations prescribing matters required or permitted by the Citizenship Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Citizenship Act.

In addition, regulations may be made pursuant to the provisions of the Citizenship Act listed in Attachment A.

The purpose of the *Australian Citizenship Regulation 2016* (the Regulation) is to remake the *Australian Citizenship Regulations 2007* (the former Regulations). The *Legislation Act 2003* (LA) provides that all legislative instruments, other than exempt instruments, progressively 'sunset' according to the timetable set out in the LA. Subsection 50(1) of the LA repeals a legislative instrument on the first occurrence of 1 April or 1 October on or after the tenth anniversary of the registration of the instrument. The former Regulations were registered 25 June 2007 and commenced on 1 July 2007. The former Regulations are therefore due to sunset on 1 October 2017. When a legislative instrument sunsets, it is automatically repealed under section 50 of the LA.

The Regulation remakes the former Regulations in substantially the same form and also makes amendments to:

- amend paragraph 13(3)(b) to provide that the Minister may refund the whole or part of a fee payable for an application for a notice of evidence of citizenship if a person has made the application as a result of incorrect advice given by the Department;
- amend certain fee concession requirements. Former items 7 and 7A of Schedule 3 provided that the fee for a subsequent citizenship application is nil where the previous application was refused only because the residence requirement was not met. This amendment adds an additional requirement that the subsequent application must be lodged within one year after the first application was refused. This would ensure that the nil fee remains available to those applicants who appear to have made a genuine error in calculating whether they met the residence requirement, while removing the concession for those who could reasonably be expected to have known they did not meet the residence requirement;

- make two routine changes to:
 - update references to certain instruments to allow fees to continue to be paid in foreign countries and in foreign currencies; and
 - update the concession card and social security payment code combinations used to determine an applicant's eligibility for a concessional citizenship application fee, in accordance with updates from the Department of Human Services to allow reduced application fees for specified holders of a pensioner concession card or health care card; and
- make minor stylistic improvements and renumber provisions where necessary.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulation is compatible with human rights. A copy of the Statement is at [Attachment B](#).

The Citizenship Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

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

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulation commences on 1 January 2017.

The Office of Best Practice Regulation (the OBPR) has been consulted regarding the Regulation. The OBPR considers that the Regulation will not have a significant regulatory impact on business and no further analysis (in the form of a Regulation Impact Statement) is required. The OBPR consultation reference is 20898. This relates to the remaking of the former Regulations in preparation for sunseting which occurs on 1 October 2017. It also relates to updating of references to the foreign currencies and places for paying fees instruments under the *Migration Act 1958* which are incorporated by reference and other minor changes to update policy settings.

Further consultation was undertaken prior to the making of this instrument. A review of the former Regulations was carried out as required and in consultation with the Department's Regulatory Reform Unit. The instrument was found to be operating effectively and efficiently. The review determined that the former Regulations were fit for purpose and recommended remaking the former Regulations in substantially the same form. The Department of Social Services was consulted in relation to updates to the fee concession eligibility.

AUTHORISING PROVISIONS

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) relevantly provides that the Governor-General may make regulations prescribing matters required or permitted by the Citizenship Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Citizenship Act.

In addition, the following provisions of the Citizenship Act may apply:

- section 18, which provides that if the Minister approves a person becoming an Australian citizen (by descent), the Minister must register the person in the manner prescribed by the regulations;
- section 19E, which provides that if the Minister approves a person becoming an Australian citizen (by adoption in accordance with the Hague Convention on Intercountry Adoption), the Minister must register the person in the manner prescribed by the regulations;
- paragraphs 23(2)(a) and 23(3)(a), which provide for certain visas to be prescribed for the purposes of satisfying the defence service requirement;
- subsection 25(3), which provides that the Minister may cancel approval given to a person under section 24 of the Act if a person has failed to make a pledge of commitment within 12 months after the day on which the person received notice of the approval, and the person's reason for failure to make a pledge of commitment is not one prescribed by the regulations for the purposes of this section;
- subsection 27(2), which provides that a pledge of commitment must be made in accordance with arrangements prescribed by the regulations;
- section 31, which provides that if the Minister approves a person becoming an Australian citizen again (by resumption), the Minister must register the person in the manner prescribed by the regulations;
- subsection 37(3), which provides that a notice stating that a person is an Australian citizen at a particular time must be in a form prescribed by the regulations, and contain any other matter prescribed by the regulations;
- subsection 40(2), which provides that a request for personal identifiers in relation to an application made under the Act must inform the person of the matters prescribed by the regulations;
- paragraph 46(1)(c), which provides that an application under a provision of the Act must be accompanied by any other information or documents prescribed by the regulations;
- paragraph 46(1)(d), which provides that an application under a provision of the Citizenship Act must be accompanied by the fee (if any) prescribed by the regulations;
- subsection 46(3), which provides that the regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph 46(1)(d); and
- subsection 47(4), which provides the Minister must give a notice of a decision under the Act in the manner prescribed by the regulations (which includes electronic form).

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

Australian Citizenship Regulation 2016

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 Australian Citizenship Regulation 2016 (the Legislative Instrument) is made under the *Australian Citizenship Act 2007* (the Act) and replaces the existing Australian Citizenship Regulations 2007 which will sunset on 1 October 2017. The Legislative Instrument:

- prescribes how a person is registered as a citizen for the purposes of sections 18, 19E, 31 of the Act;
- prescribes visas for the purposes of paragraphs 23(2)(a) and (3)(a) of the Act;
- for the purposes of subsection 25(3) of the Act, prescribes reasons for failing to make a pledge of commitment that means approval of the person's citizenship is not subject to cancellation;
- for the purposes of subsection 27(2) of the Act, prescribes arrangements for making the pledge of commitment;
- provides that certain information may be included on a notice of evidence of Australian citizenship issued under subsection 37(3) of the Act;
- for the purposes of subsection 40(2) of the Act, prescribes the matters that a person must be informed of when a personal identifier is requested;
- for the purposes of paragraph 46(1)(c) of the Act, requires that if information or a document accompanying an application for citizenship is not originally in English, the information or document must be accompanied by an official English translation;
- for the purposes of paragraph 46(1)(c) of the Act, prescribes the information that must accompany an application for a notice of evidence of citizenship when the application relates to the replacement of evidence of Australian citizenship that was lost, destroyed or damaged due to a specified natural disaster;
- for the purposes of paragraph 46(1)(d) of the Act, prescribes the places and currencies in which the fee to accompany an application may be paid, how to determine the foreign currency equivalent of the fees set out in Schedule 3 to the Regulation, and how to determine surcharges applicable to particular methods of payment;
- for the purposes of paragraph 46(3) of the Act, prescribes the circumstances in which an application fee may be refunded or partially refunded;
- for the purposes of subsection 47(4) of the Act, prescribes the means by which notice of a decision must be given;
- sets out, in Schedule 1, the address to be given at a citizenship ceremony;
- sets out, in Schedule 2, the form that a notice of evidence of Australian citizenship must take;
- sets out, in Schedule 3, the amounts that are to accompany applications made under particular provisions of the Act.

These provisions have largely been carried over unamended from the Australian Citizenship Regulations 2007. The differences between the provisions in the Legislative Instrument and those in the Australian Citizenship Regulations 2007 are discussed below.

Section 12 of the Legislative Instrument incorporates the Notes in Schedule 2 of the Australian Citizenship Regulations 2007, which set out the information that may be included on the back of a notice of evidence of Australian citizenship issued under subsection 37(3) of the Act.

The refund provision in subregulation 13(3) of the Australian Citizenship Regulations 2007 was limited to where a person has made more than one application and one of those applications was made as a result of incorrect advice given by the Department. Section 17(3) of the Legislative Instrument expands the circumstances in which the Minister may refund the whole or part of a fee paid in relation to an application for a notice of evidence of Australian citizenship by providing that a refund may be paid where an application was made as a result of incorrect advice given by the Department.

Schedule 3 to the Legislative Instrument outlines the fees that must accompany applications that are made under the Act and differs to Schedule 3 of the Australian Citizenship Regulations 2007 as follows:

- Items 7 and 8 limit the fee free application to circumstances in which the applicant made a prior application that was refused on residence grounds and made the new application within 3 months after first becoming able to meet the residence requirement and within 12 months of the first application being refused. The equivalent items in Schedule 3 of the Australian Citizenship Regulations 2007 did not include the requirement that the application be lodged within 12 months of the previous application being refused.
- Item 10 (the equivalent of Item 9 in Schedule 3 of the Australian Citizenship Regulations 2007) does not provide for a concessional application fee to be paid by the holder of a health care card in receipt of special benefit or sickness benefit. This is because the qualifying criteria to obtain special benefit while holding a health care card are such that the holder would not meet the residential requirements for citizenship, and health care card holders in receipt of sickness benefit are considered to be out of the workforce or education only temporarily.

Human rights implications

The Legislative Instrument has been assessed against the seven core international human rights treaties.

Privacy – article 17 of the International Covenant on Civil and Political Rights (ICCPR)

Section 37 of the Act provides that a person may make an application for evidence of the person's Australian citizenship. When given, that evidence must be in a form prescribed by regulations and contain any other matter prescribed by the regulations.

Since 1 July 2011, Schedule 2 to the Australian Citizenship Regulations 2007 has provided that the following information, among other matters, may be included on the back of a notice of evidence of citizenship:

- the applicant's legal name at time of acquisition of Australian citizenship, if different to the applicant's current legal name;
- any other name in which a notice of evidence has previously been given;
- any other date of birth in which a notice of evidence has previously been given.

Depending on a person's individual circumstances, it may be inferred from the information included on the back of a notice of evidence of citizenship that the person has undergone sex or gender reassignment.

Since 1 July 2014, the date of any notice of evidence of Australian citizenship previously given to the person may also be included on the back of a notice of evidence. The effect of these provisions has been carried over into section 12 of the Legislative Instrument.

Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with, among other matters, an individual's privacy. Section 12 of the Legislative Instrument engages the right in article 17 of the ICCPR in that it allows for the inclusion on the back of a notice of evidence of citizenship, information about when and in what identity a person previously has been issued with such a notice.

The right to non-interference with a person's privacy is not an absolute right. This means that it does not apply in an unlimited or absolute manner and can be limited, so long as the limitation is reasonable, necessary and proportionate in achieving a legitimate objective.

The provision of details of a previous notice of evidence of citizenship on the back of a notice of evidence of citizenship assists in maintaining the integrity of Australia's identity framework. Identity integrity is essential in maintaining Australia's national security, law enforcement and economic interests. It is essential that the identities of persons accessing government or commercial services, benefits, official documents and positions of trust can be verified. False or multiple identities can and do undermine the integrity of border controls and the citizenship programme; underpin terrorist activities; finance crimes; and facilitate fraud.

The Attorney-General's National Identity Security Strategy 2012 states that 'if identity security risk is negligible to all parties, an individual should be able to remain anonymous or use a pseudonym if they choose. However, if risks to one of the parties are unacceptable, the identity of the other party must be confirmed. For government agencies, unacceptable risks include those that may lead to identity crime'. Identity crimes such as fraud have a significant impact on Australia's people and economy. According to the *Australian Bureau of Statistics Personal Fraud Survey 2014-15*, "(i)n the 12 months prior to interview in 2014-15, an estimated 1.6 million Australians experienced personal fraud, or 8.5% of the population aged 15 and over. This is an increase from the proportion of persons who experienced personal fraud in 2010-11 (6.7%)."

Notices of evidence of citizenship are treated as a foundation identity document by many Australians and recording the particulars of previous notices of evidence on the back of a notice of evidence helps prevent misuse of identity. For example, where a person has multiple identities and only one is recorded on the evidence of citizenship, the following risks may present where the evidence of citizenship is presented as a primary form of identification:

- National police checks (including working with vulnerable people checks) may not include all identities, resulting in criminal charges not being detected and increasing risk to the Australian public, government, business and care facilities – for example, a person with child sex convictions under one identity may gain a position in a child care centre under another identity.
- Security vetting for government positions of trust may not include all identities, increasing risk to national security – for example, a person who would be considered a national security risk under one identity receives a clearance under another identity and gains access to sensitive information, restricted areas or high risk jobs, such as at an Australian port of entry.
- A person may fraudulently collect social security benefits under multiple identities from state and federal government – for example, a person could collect Centrelink benefits under multiple identities.
- Credit checks may be incomplete, presenting a risk to financial institutions and business – for example, a person with a bad credit history under one identity may present a clear credit check and procure finance under another identity.

Section 12 of the Legislative Instrument will aid in the mitigation of these risks, preventing and deterring identity crime and misuse (objective one of the National Identity Security Strategy) and offering increased confidence in the verification of identity of Australians, for government, business and the Australian public.

The Legislative Instrument is consistent with the 2013 Australian Government Guidelines on Recognition of Sex and Gender. The Guidelines recognise the importance of departments ensuring the continuity of the record of an individual's identity. The Guidelines state that "only one record should be made or maintained for an individual, regardless of a change in gender or other change of personal identity" (paragraph 33 "Privacy and Retaining Records of Previous Sex and/or Gender"). Printing the previous names and dates of birth of applicants on the back of an evidence of Australian citizenship complies with this requirement to ensure the continuity of record and to maintain one record for each client.

The Guidelines refer to the importance of the Information Privacy Principles in managing the use and disclosure of personal information possessed or controlled by the Department, stating that these principles should also apply to information relating to a person's sex and/or gender. Those principles have now been replaced by the Australian Privacy Principles. The proposed regulation complies with APP 6, concerning use and disclosure of personal information, and APP 11 concerning security of personal information.

The legitimate objective of the recording of details of previous notices of evidence on the back of a notice of evidence is to enhance the integrity of the identity framework. The potential limitations on the right to privacy are:

- reasonable, as they seek to reduce the opportunity for identity crime and the consequent impact on the community;

- necessary, as there is no other practical way to associate the details of previous notices of evidence with a current notice of evidence of citizenship; and
- proportionate, as they do not make the person's current or previous identity details available to the general public. Rather, notices of evidence are generally used when individuals are dealing with government or other bodies that have a need to establish the person's identity and citizenship status, therefore the extent of the limitation on privacy and need to disclose this information is limited. Persons holding a notice of evidence maintain control over who or what organisation they disclose the notice to and for what purpose. In addition, under policy, officers have the discretion not to include previous names and/or dates of birth if they are satisfied that the inclusion of a particular name will endanger the client or another person connected to them. There may also be other situations in which an officer chooses to exercise their discretion not to include a person's previous names and/or dates of birth in the notice of evidence of citizenship.

Equality and non-discrimination – articles 2 and 26 of the ICCPR

The Legislative Instrument updates the social security payments and associated codes that qualify an applicant for concessional application fees when applying for citizenship by conferral, as set out in Schedule 3, Item 10. The updates are based on consultations with the Department of Social Services. Eligibility for concession fees are determined, among other requirements, on the basis of the type of concession card held by the applicant and the code endorsed on that card. The reason behind updating the payments and codes is to ensure that the eligibility requirements for concessional application fees for citizenship by conferral reflect the current pensions and benefits payable to people suffering permanent or long-term financial disadvantage.

While the amendments to Schedule 3 relate specifically to people who are subject to financial disadvantage and to holders of a pensioner and health care concession cards, they do not raise any issues with those people's right to equality and non-discrimination. Instead, the amendments set out arrangements for determining eligibility for fee concessions, with the aim of reducing the financial barrier to acquiring citizenship that may be experienced by applicants who suffer from permanent or long-term financial disadvantage. That disadvantage is evidenced by the endorsement of particular social security payment codes on a pensioner concession card or health care card that indicate the person is aged, has a disability or has some other permanent or long-term impediment to entering the workforce.

As previously noted, it is also submitted that the amendment is consistent with the Australian Government Guidelines on Recognition of Sex and Gender. Although an individual's sex or gender reassignment may be inferred from information on the back of a notice of evidence of Australian citizenship, an individual may choose to whom this notice is disclosed. The fact of the inclusion of this inferred information is not inconsistent with Articles 2 or 26 of the ICCPR; individuals who have undergone sex or gender reassignment are not being treated differently than other individuals. These international obligations are taken seriously, as is the *Sex Discrimination Act 1984 (Cth)* (SDA), which includes protection against unlawful discrimination on the grounds of sexual orientation, gender identity and intersex status. If an entity to whom an individual provides notice of evidence of their Australian citizenship unlawfully discriminates against that individual on the basis of gender identity (for example), the positive protection provided by the SDA exists to eliminate such conduct.

Conclusion

This Instrument is compatible with Australia's international human rights obligations, as any limitation on a right is reasonable, necessary and proportionate to the legitimate objective sought to be achieved by the Government.

The Hon. Peter Dutton MP, Minister for Immigration and Border Protection

Details of the *Australian Citizenship Regulation 2016*Part 1 - PreliminarySection 1 – Name

This section provides that the title of the Regulation is the *Australian Citizenship Regulation 2016*.

Section 2 – Commencement

Subsection 2(1) provides that each provision of the instrument 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.

The table provides that the whole instrument commences on 1 January 2017.

A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

Section 3 – Authority

This section provides that the instrument is made under the *Australia Citizenship Act 2007*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

The purpose of this section is to provide for how the repeal provision in the Regulation is to operate.

Section 5 – Definitions

This section defines the following terms and phrases which apply to the Regulation as a whole: Act; Australian mission overseas; credit card surcharge; Hague Convention on Intercountry Adoption; Human Services Department; PayPal surcharge; Schedule 3 amount; Veterans' Affairs Department.

Most of these terms and phrases are consistent with those which appeared in regulation 5 of the former Regulations. "Centrelink" has been removed as the agency was abolished on 1

July 2011. “Veterans’ Affairs Department” has been added for clarity with reference to Schedule 3.

Part 2 – Australian Citizenship

Section 6 – Registration under section 18 of the Act

This section prescribes the manner by which the Minister must register a person under section 18 of the Act if the Minister approves the person becoming an Australian citizen by descent.

Section 18 of the Act relates to an application by a person under section 16 of the Act to become an Australian citizen by descent where the person was born outside Australia (or New Guinea in certain circumstances) and had a parent who was an Australian citizen at the time of his or her birth.

This section provides that a person is registered by making a record of the fact that the person is an Australian citizen by descent and including the record on a data storage system kept by the Department.

This is consistent with regulation 6 of the former Regulations.

Section 7 – Registration under section 19E of the Act

This section prescribes the manner by which the Minister must register a person under section 19E of the Act if the Minister approves the person becoming an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption.

Section 19E relates to an application by a person under section 19C of the Act to become an Australian citizen where the applicant is adopted in a Convention country by a person who is an Australian citizen at the time of adoption and has complied with the requirements specified under the Act.

Section 7 of the Regulation provides that a person is registered by making a record of the fact that the person is an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption and including the record on a data storage system kept by the Department.

This section is consistent with regulation 7 of the former Regulations.

Section 8 – Defence service requirement – prescribed visas

Section 8 prescribes the following visas for the purposes of paragraphs 23(2)(a) and 23(3)(a) of the Act:

- Employer Nomination (Permanent) (Class EN);
- Labour Agreement (Migrant) (Class AU);
- Labour Agreement (Residence) (Class BV);
- Regional Employer Nomination (Permanent) (Class RN).

Section 23 of the Act provides for the defence service requirement. The defence service requirement is one means by which an applicant for Australian citizenship may satisfy the criterion in paragraph 21(2)(c) of the Act and is an alternative to the residence requirement. Subsection 21(2) of the Act provides for how a person may become eligible to become an Australian citizen.

The purpose of section 8 of the Regulation is to prescribe the visas which must be held by a person seeking to meet the defence service requirement for eligibility for Australian citizenship.

Section 9 – Prescribed reasons for failing to make a pledge of commitment

This section prescribes the reasons for failure to make a pledge of commitment for which a person's approval to become an Australian citizen cannot be cancelled under subsection 25(1) of the Act.

Under subsection 25(1) of the Act, the Minister may cancel an approval given to a person under section 24 if the person has not made a pledge of commitment.

The purpose of section 9 of the Regulation is to set out the circumstances in which the Minister may not cancel a person's approval for Australian citizenship for failure to make a pledge of commitment.

Subsection 9(1) of this Regulation prescribes reasons for failing to make a pledge of commitment for the purposes of paragraph 25(3)(b) of the Act.

A person has a prescribed reason for failing to make a pledge of commitment if under:

- subsection 7(2), the person was prevented from making a pledge because the Minister determined under subsection 26(3) of the Act that the person cannot make the pledge until the end of a specified period, and either:
 - such determination is in force and that period has not ended; or
 - such determination has expired or the specified period has ended, but the person has not yet had a reasonable period in which to make a pledge;
- subsection 7(3), the person was unable to make a pledge within the relevant period in Australia or at an Australian mission overseas, because during that period the person was overseas:
 - for medical treatment that was not available in Australia; or
 - for any purpose, and was unexpectedly hospitalised; or
 - to care for a person who was critically ill; or
 - for a funeral and other associated arrangements

and either the person still cannot make a pledge for one of these reasons or the person is now able to make a pledge, but the person has not yet had a reasonable period in which to do so;

- subsection 7(4), the person was unable to make a pledge within the period because of an administrative error or omission made by the Commonwealth, a State or Territory,

or an authority or a local government authority, and either the error or omission has not been rectified or the person has not yet had a reasonable period in which to make a pledge.

Subsection 9(5) provides that for subsection (3) or (4), a person has a prescribed reason only if the person gives the Minister a signed statement to support the claim that includes a description of any effort that the person made to make a pledge of commitment within the relevant period, and gives written evidence that supports the statement. This provision relies on the “necessary and convenient” power in the Act and can be justified as the most efficient way to administer the provisions of section 9. For a person to be exempted from the requirement to make a pledge of commitment it is reasonable to require the person to provide written evidence of their reason for being unable to make the pledge.

This section is consistent with regulation 7 of the former Regulations. Subparagraph 9(3)(a)(ii) has a small change to clarify that, while cosmetic or elective procedures are not included in the prescribed reasons, unexpected hospitalisation for medical complications arising from such procedures would be included. There are also minor changes in wording for some provisions to reflect the current drafting practices and do not change the way these provisions operate.

Section 10 – Arrangements for making a pledge of commitment

This section prescribes how a pledge of commitment is to be made to become an Australian citizen by conferral.

Section 10 provides that for subsection 27(2) of the Act, the pledge of commitment must be made in public if it is reasonably practicable, and the person before whom a pledge is made must read aloud the address specified in Schedule 1 to the Regulation to the person making the pledge. The address specified in Schedule 1 mirrors the preamble to the Act.

The note to this provision provides that the Department may notify additional arrangements for making a pledge of commitment, or conducting a ceremony, that are designed to impress upon applicants the responsibilities and privileges of Australian Citizenship.

This section is consistent with regulation 8 of the former Regulations. The note in this section relates to the arrangements to be followed for a public citizenship ceremony and they are currently contained in the Departmental publication “Australian Citizenship Ceremonies Code”.

Section 11 – Registration under section 31 of the Act

This section prescribes the manner by which the Minister must register a person under section 31 of the Act if the Minister approves the person becoming an Australian citizen again.

Section 31 of the Act relates to an application by a person under section 29 of the Act to resume Australian citizenship where the person ceased citizenship under the Act as outlined in section 29.

Section 11 of this Regulation provides that a person is registered by making a record of the fact that the person is an Australian citizen by resumption of citizenship and including that record on a data storage system kept by the Department.

This section is consistent with regulation 9 of the former Regulations.

Section 12 – Form of notice under section 37(3) of the Act

This section prescribes matters for subsection 37(3) of the Act that must be contained in a notice of evidence of a person’s Australian citizenship.

Subsection 12(1) of this Regulation provides that a notice must be given in accordance with the form in Schedule 2 to the Regulation. Subsection 12(2) provides that the signature of the Minister on the notice may be a facsimile that is printed or stamped. Subsection 12(4) provides that certain information including a person’s name at the time of acquisition of citizenship and date of an notice of evidence of Australian citizenship previously granted may be provided on the back of the notice. If this is the case, subsection 12(5) requires that the signature of the Minister also be provided on the back of the notice.

This section is substantially consistent with regulation 10 of the former Regulations. Subsections 12(3)-(5) are part of the notes in Schedule 2 to the former Regulations. They have been moved to form part of this Regulation to specify rules about the way the form is to be prepared.

Section 13 – Personal identifiers

Section 13 prescribes the matters of which a person must be informed for subsection 40(2) of the Act in relation to a request for personal identifiers made under subsection 40(1) of the Act. The matters to be informed include:

- that the person is made fully aware of the reason why one or more personal identifiers must be provided;
- how they will be collected, used and the circumstances in which they can be disclosed;
- that the personal identifiers may be produced in evidence in a court or tribunal in relation to the person; and
- the rights the person has under the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

This section supports the legislative framework for the collection, use and storage of personal identifiers under the Act and is intended to ensure that the person is fully aware of the use that will be made of their personal identifiers.

The meaning of ‘personal identifiers’ is given in section 10 of the Act.

This section is consistent with regulation 11 of the former Regulations. References to “the applicant” in the former Regulations have been amended to “persons” to include the class of people referred to in section 40 of the Act, for example, a person who is claimed to be a parent of an applicant for citizenship.

Part 3 – Other matters

Section 14 – Information and documents to accompany applications

This section prescribes information and documents that must accompany an application under a provision of the Act.

Section 14 provides that, for paragraph 46(1)(c) of the Act, if an application for citizenship is accompanied by information or a document in a language other than English, it must also be accompanied by an official English translation. Paragraph 46(1)(c) of the Act, provides that an application must be accompanied by any other information or documents prescribed in the regulations.

A reference to “application” in subsection 46(1) of the Act and section 14 is a reference to an ongoing act of applying, and is not to be restricted to one event, for example, the lodgement of an approved form. Under section 14, where information or a document in a language other than English accompanies an application, official translated documents must be given when an application is made and throughout the application process, up until the time the Minister makes a decision. The purpose of this provision is to create an obligation to provide official English translation of documents. This obligation continues after the original lodgement of the relevant approved form for citizenship.

This section is consistent with regulation 12 of the former Regulations.

Section 15 – Application for replacement of evidence of Australian citizenship lost, destroyed or damaged due to a natural disaster

This section applies to an application under section 37 of the Act for replacement of evidence of Australian citizenship where such evidence had been lost, destroyed or damaged due to natural disasters. For applications made within 18 months of the date specified for the natural disaster, the application must be accompanied by a statutory declaration stating that evidence of Australian citizenship had been lost and, if evidence is damaged, the damaged evidence of Australian citizenship.

The purpose of this section is to prescribe, for paragraph 46(1)(c) of the Act, the documents which must accompany an application for a replacement certificate.

This section is consistent with regulation 12AA of the former Regulations.

Section 16 – Fees to accompany applications

Section 16 provides for fees to accompany applications.

Section 16(1) provides that for paragraph 46(1)(d) of the Act (which provides that an application must be accompanied by the prescribed fee), the prescribed fees are as set out in Schedule 3 to the Regulation and with the applicable credit card or PayPal surcharges.

Subsections 16(2)-(7) set out the countries in which application fees may be paid, the currencies that may be paid in those countries and the relevant conversion rates.

Subsection 16(2) provides that application fees may be paid in Australia, or a foreign country if that country is mentioned in the places and currency instrument. Subsection 16(7)

provides a definition of “places and currency instrument”. This is the instrument made under paragraphs 5.36(1)(a) and (b) of the Migration Regulations.

Subsection 16(3) provides that payment must be made in the relevant currency that corresponds to the country set out in the “places and currency instrument”. For example, if the application fee is made in Argentina, then the corresponding currency is the Argentine Peso, as specified in the instrument.

Subsection 16(4) sets out by reference to the conversion instrument, the amount that is to be paid where it is possible to pay the application fee in a foreign currency. Subsection 16(7) provides a definition of “conversion instrument”. It is the instrument made under subregulation 5.36(1A) of the Migration Regulations. It provides amounts in foreign currencies which correspond to amounts payable in Australian dollars. If the amount of the application fee is mentioned in the conversion instrument, then payment can be made in the corresponding amount in the foreign currency.

Subsection 16(5) sets out a formula for the amount that is to be paid in a foreign currency for a citizenship fee where the amount in Australian dollars is not mentioned in the conversion instrument. Broadly, the formula, which is the same as the formula used in subregulation 5.36(2) of the Migration Regulations, is the amount of the fee in Australian dollars, multiplied by the highest exchange rate that is lawfully obtainable on a commercial basis for purchase in the foreign currency, multiplied by 1.05. The period for calculating the highest exchange rate obtainable on a commercial basis starts on either the day on which this subregulation commences (1 January 2017), or if the rate increases or decreases by at least 5% in relation to the last time the floating rate was calculated subsequent to the commencement date, the day on which that increase/decrease occurs. The period for calculating the highest exchange rate ends at the end of the day before the next day on which the highest exchange rate commercially obtainable increases or decreases again by at least 5%.

Subsection 16(6) provides that if the amount worked out by the formula cannot be paid wholly in banknotes of that country, then the amount is rounded up so that it can be paid wholly in banknotes of that country.

Subsection 16(7) provides definitions of “conversion instrument” and “places and currencies instrument” for the purpose of section 16. The conversion instrument is the current instrument made under subregulation 5.36(1A) of the Migration Regulations which sets out the payment of visa application charges and fees in foreign currencies. The places and currencies instrument is the current instrument made under subregulation 5.36(1) of the Migration Regulations which sets out the places and currencies for paying fees.

Section 17 – Refund of fees under subsection 46(3) of the Act

This section provides for the refund of the whole or part of a fee for the purposes of subsection 46(3) of the Act.

For a fee payable under section 46 of the Act in relation to an application made under sections 16, 19C, 21 and 29 of the Act (which relate to making an application to become an Australian citizen), subsection 17(1) provides that the Minister may refund the whole or part of a fee in any of the following circumstances:

- a person has previously made an application under the same section and a decision on that application has not been made;
- a person has made the application as a result of incorrect advice given by the Department;
- a person is an Australian Citizen;
- a person has paid an incorrect fee with the original application.

For a fee payable under section 46 of the Act, in relation to an application made under section 33 (which relates to renunciation of Australian citizenship), subsection 17(2) provides that the Minister may refund the whole or part of a fee if either a person has previously made an application under the same section and a decision on that application has not been made or a person has lodged the application as a result of incorrect advice given by the Department.

For a fee payable under section 46 of the Act, in relation to an application made under section 37 (which relates to evidence of Australian citizenship), subsection 17(3) provides that the Minister may refund the whole or part of a fee in any of the following circumstances:

- a person has previously made an application under the same section and a decision on that application has not been made;
- the person has previously made an application under the same section as a result of incorrect advice and a decision on that application has not been made;
- the person has already been given evidence of his or her Australian citizenship, but a departmental error was made which resulted in an error in the information provided in the evidence.

Subsections 17(4)-(8) provide the basis for calculation of refunds in relation to credit card surcharges for applications made under section 21 of the Act.

While the decisions to refund an amount are discretionary on the part of the Minister, the Regulation does not specify a merit review mechanism in relation to decisions made under section 17 on requests for refunds. This is because of the existing administrative arrangements that provide effective governance and review mechanisms.

In particular, applicants seeking a refund are asked to complete Form 1424 Refund Request which is publically accessible online. This form provides information on the process and what should be provided in support of the refund request. While the power to refund an amount is a discretionary decision, it is Departmental practice that a refund be approved if the requirements set out in the relevant sub-regulation are met. The relevant procedural instructions are currently being revised and will articulate this practice. Further, the refund decision is subject to the procedural fairness guidelines set out in Chapter 17 of the Citizenship Policy which is also publically available online. If a person is not satisfied with a decision on their refund request they may access a complaints process online, by telephone and by mail. In addition, the person may be able to pursue a claim under the Scheme for Compensation for Detriment caused by Defective Administration. The person may also lodge a complaint with the Commonwealth Ombudsman.

Additionally, the provision of merits review at the Administrative Appeals Tribunal would involve an unjustifiable cost to the applicant, unless the reviewable decision was included in section 22 of the *Administrative Appeals Tribunal Regulation 2015*. There would also be

costs associated with amending the *Administrative Appeals Tribunal Regulation 2015* and DIBP forms and systems. These costs may not be justifiable given in 2015-16 the number of refund requests represented less than 0.09% of the number of citizenship applications.

This section is consistent with regulation 13 of the former Regulations.

Section 18 – Form of notice under section 47 of the Act

This section prescribes the manner in which the Minister must give a notice of a decision for the purposes of subsection 47(4) of the Act. A notice of a decision under the Act must be given by either personal delivery, prepaid post to the last address given to the Department, or electronic means.

Deemed receipt provisions have not been included here as it is intended that section 29 of the *Acts Interpretation Act 1901* (AIA Act) and section 14 of the *Electronic Transactions Act 1999* (ET Act) will provide for the time of receipt of a notice of a decision.

Section 29 of the AIA Act provides that where an Act authorises or requires a document to be served by post, unless the contrary intention appears, service is presumed to have been effected “at the time at which the letter would be delivered in the ordinary course of post”. Section 29 does not apply to the personal delivery of a notice of a decision. Section 14 of the ET Act provides for the time of receipt of electronic communications.

This section is consistent with regulation 14 of the former Regulations.

Part 4 – Transitional arrangements

Section 19 – Transitional provisions relating to the commencement of this instrument— applications made before commencement

Section 19 provides in effect that an application made under the Citizenship Act and in accordance with the former Regulations before 1 January 2017, is taken, on and after 1 January 2017, to have been made in accordance with the new Regulation.

However, the amount of fees and refunds for applications made before 1 January 2017 are to be worked out in accordance with the regulations as in force immediately before the start of 1 January 2017 (subject to any provision of a transitional nature in those regulations).

Schedule 1 – Address for citizenship ceremony

Schedule 1 to the Regulation provides the address that must be read aloud to the person making a pledge of commitment under section 10 of the Regulation and in accordance with section 27 of the Act.

Schedule 2 – Form of notice

Schedule 2 to the Regulation provides a form for a notice of evidence of Australian citizenship for the purposes of subsection 37(3) of the Act and section 12 of the Regulation.

The form of notice is the same as the form of notice in Schedule 2 to the former Regulations. The only change is that the Note has been moved to form provisions in section 12. Refer to section 12 above.

The signature of the Minister on the notice may be a facsimile that is printed or stamped in accordance with subsection 12(2) of the Regulation.

Schedule 3 – Amounts to accompany applications

Schedule 3 to the Regulation prescribes the amounts to accompany applications under the Act for the purposes of subsection 16(1) of the Regulation and paragraph 46(1)(d) of the Act. These amounts are the same as the fee amounts set in Schedule 3 to the former Regulations. Consistent with the Australian Government's cost recovery policy, since 1 January 2016 the Australian Government has recovered the full costs associated with the processing of certain types of applications made under the Act. Items that provided for a concessional, reduced or nil fee were not amended at that time as the Government decided not to increase the amounts recovered against those items.

The purpose of the schedule is to prescribe that an application of the kind mentioned in an item of the Schedule must be accompanied by the amount mentioned in the item.

Item 1 provides that applications made at the same time under section 16 of the Act by two or more siblings must be accompanied by an amount of \$230 for the application by the first sibling, and \$95 for the applications made by the second and subsequent siblings.

Item 2 provides that an application under section 16 of the Act, other than an application mentioned in item 1, must be accompanied by an amount of \$230.

Item 3 provides that applications made at the same time under section 19C of the Act by two or more siblings must be accompanied by an amount of \$230 for the application by the first sibling, and \$95 for the applications made by the second and subsequent siblings.

Item 4 provides that an application under section 19C of the Act, other than an application mentioned in item 3, must be accompanied by an amount of \$230.

Item 5 provides that there is nil amount for an application under section 21 of the Act where the applicant has completed at least 90 days:

- service in the permanent forces of the Commonwealth; or
- National Service under section 26 of the *National Service Act 1951* as in force at any time before 26 November 1964.

Item 6 provides that there is nil amount for an application under section 21 of the Act where the 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*.

Item 7 provides that there is nil amount for an application (the new application) under section 21 of the Act if :

- the applicant claims eligibility on the basis of the criteria in subsection 21(3) or (4) of the Act; and
- the applicant previously made an application (the old application) under section 21 of the Act; and
- after considering the old application, the Minister refused to approve the person becoming an Australian citizen only because the Minister was not satisfied that the applicant met the residence requirement set out in:
 - subsection 22(1) of the Act; or
 - paragraph 22A(1)(c), (d), (f) or (g) of the Act;
 - paragraph 22B(1)(c), (d), (f) or (g) of the Act; and
- the applicant made the new application during the period beginning on the day of the refusal and ending at the earlier of:
 - the end of 3 months after the applicant first became able to meet the residence requirement; and
 - the end of 1 year after the day of refusal.

This item amends the existing Item 7 of Schedule 3 to the former Regulations to include an additional requirement that the application is lodged within 1 year after the day of the refusal of the original application. This amendment ensures that the nil fee remains available to those applicants who made genuine errors when calculating if they met the residence requirement at the time of a previous application, while removing availability of the nil fee from applicants who previously made applications when they could reasonably be expected to have known they did not meet the residence requirement.

Item 8 provides that there is nil amount for the new application under section 21 of the Act if:

- the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and
- the applicant previously made the old application on or after 1 October 2007; and
- under the old application, the applicant claimed eligibility on the basis of the criteria in subsection 21(2) of the Act; and
- after considering the old application, the Minister refused to approve the person becoming an Australian citizen only because the Minister was not satisfied that the applicant met the residence requirement set out in:
 - subsection 22(1) of the Act; or
 - paragraph 22A(1)(c), (d), (f) or (g) of the Act; or
 - paragraph 22B(1)(c), (d), (f) or (g) of the Act; and
- the applicant made the new application during the period beginning on the day of the refusal and ending at the earlier of:
 - the end of 3 months after the applicant first became able to meet the residence requirement; and
 - the end of 1 year after the day of the refusal.

This item amends the existing Item 7A of Schedule 3 to the former Regulations to include an additional requirement that the application is lodged within 1 year after the day of the refusal of the original application. This amendment ensures that the nil fee remains available to those applicants who made genuine errors when calculating if they met the residence requirement at the time of a previous application, while removing availability of the nil fee from applicants who previously made applications when they could reasonably be expected to have known they did not meet the residence requirement.

Item 9 provides that there is nil amount for an application under section 21 of the Act where the applicant has applied under subsection 21(8) (which relates to stateless people born in Australia).

Item 10 provides that an application under section 21 of the Act where the applicant holds:

- a health card issued by the Human Services Department and endorsed by that Department with one of the following codes: PA; WA; or
 - a pensioner concession card issued by the Human Services Department and endorsed by that Department with one of the following codes: AGE; AGE BLIND; CAR; DSP; NSA; PPP; PTA; SAL; SPL; WAL; WDA; WFA; WFD; WFW; WID; YAL; and
 - does not claim eligibility on the basis of the criteria in subsection 21(2) of the Act.
- must be accompanied by an amount of \$20 with their application.

Item 11 provides that an application under section 21 of the Act where the applicant:

- holds a pensioner concession card issued by the Human Services Department and endorsed by that Department with the code PPS; and
 - produces evidence that the applicant is over 60 years of age; and
 - has been in receipt of PPS for at least 9 months; and
 - does not claim eligibility on the basis of the criteria in subsection 21(2) of the Act;
- must be accompanied by a fee of \$20 with their application.

Item 12 provides that an application under section 21 of the Act where the applicant:

- holds a pensioner concession card issued by the Department of Veterans' Affairs and endorsed by that Department:
 - for Age Service, Invalidation Service or Partner Service pension; or
 - for an Income Support Supplement, or
 - with the code AGE; and
 - does not claim eligibility on the basis of the criteria in subsection 21(2) of the Act
- must be accompanied by a fee of \$20.

Item 13 provides that an application under section 21 of the Act where the applicant:

- claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and
- either of the following provisions applies to the applicant:
 - paragraph (a) of item 10;
 - paragraph (a) of item 12.

must be accompanied by a fee of \$40.

Item 14 provides that an application under section 21 of the Act, other than an application mentioned in items 5 to 13 or items 15 to 18, if the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act, must be accompanied by an amount of \$285.

Item 15 provides that there is nil amount for an application under section 21 of the Act by a child, under the age of 16, who applies for citizenship at the same time, or on the same form, as a responsible parent.

Item 16 provides that an application under section 21 of the Act, other than an application mentioned in items 5 to 15 or items 17 and 18, must be accompanied by an amount of \$180.

Item 17 provides that for the new application under section 21 of the Act if, other than an application mentioned in item 5, 6, 8, 13 or 18 where:

- the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and
- the applicant previously made the old application on or after 1 October 2007; and
- under the old application, the applicant sat a test as described in paragraph 21(2A)(a) of the Act; and
- either of the following provisions applies to the applicant:
 - paragraph (a) of item 10;
 - paragraph (a) of item 12

must be accompanied by an amount of \$20.

Item 18 provides that for the new application under section 21 of the Act if, other than an application mentioned in item 5, 6, 8, 13 or 17 where:

- the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and
- the applicant previously made the old application on or after 1 October 2007; and
- under the old application, the applicant sat a test as described in paragraph 21(2A)(a) of the Act;

must be accompanied by an amount of \$180.

Item 19 provides that there is nil amount for an application under section 29 of the Act by a child, under the age of 16, who makes an application at the same time and on the same form as a responsible parent.

Item 20 provides that an application under section 29 of the Act, other than an application mentioned in item 19, must be accompanied by an amount of \$210.

Item 21 provides that an application under section 33 of the Act, must be accompanied by an amount of \$205.

Item 22 provides that there is nil amount for an application under section 37 of the Act that is made at the same time and on the same form as an application under section 21 or 29 of the Act.

Item 23 provides that there is nil amount for an application in accordance with section 37 of the Act to which section 15 of this Regulation applies.

Item 24 provides that an application under section 37 of the Act, other than an application mentioned in item 22 or 23, must be accompanied by an amount of \$190.

Schedule 4 – Repeals

Schedule 4 to the Regulation repeals the former Regulations which are otherwise due to sunset on 1 October 2017 in accordance with section 50 of the *Legislation Act 2003*.

The purpose of this Schedule is to repeal the former Regulations due to the making of the new Regulation.