



Australian Citizenship Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 08 December 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

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Part 1—Preliminary

1 Name

This is the *Australian Citizenship Regulation 2016*.

2 Commencement

- (1) Each provision of this 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2017.	1 January 2017

Note: This table relates only to the provisions of this instrument as originally made.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.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Australian Citizenship Act 2007*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

In this instrument:

Act means the *Australian Citizenship Act 2007*.

Australian mission overseas means a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia.

credit card surcharge: see subsection 16(1).

Hague Convention on Intercountry Adoption means the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, done at The Hague on 29 May 1993.

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Note: The Convention is in Australian Treaty Series 1998 No. 21 ([1998] ATS 21) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Human Services Department means the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

PayPal surcharge: see subsection 16(1).

Schedule 3 amount: see subsection 16(1).

Veterans' Affairs Department means the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*.

Part 2—Australian citizenship

6 Registration under section 18 of the Act

For the purposes of section 18 of the Act, a person is registered by the Minister:

- (a) making a record of the fact that the person is an Australian citizen by descent; and
- (b) including the record on a data storage system kept by the Department.

7 Registration under section 19E of the Act

For the purposes of section 19E of the Act, a person is registered by the Minister:

- (a) making a record of the fact that the person is an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption or a bilateral arrangement; and
- (b) including the record on a data storage system kept by the Department.

8 Defence service requirement—prescribed visas

For the purposes of paragraphs 23(2)(a) and (3)(a) of the Act, the following visas are prescribed:

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

9 Prescribed reasons for failing to make pledge of commitment

- (1) For the purposes of subsection 25(3) of the Act, this section prescribes reasons for failing to make a pledge of commitment.
- (2) A person has a prescribed reason for failing to make a pledge of commitment if:
 - (a) the person was prevented from making a pledge because the Minister has determined under subsection 26(3) of the Act that the person cannot make the pledge until the end of a specified period; and
 - (b) either:
 - (i) the determination is in force, and the specified period has not yet ended; or
 - (ii) the determination has ceased to be in force or the specified period has ended, but the person has not yet had a reasonable period in which to make a pledge.
- (3) Subject to subsection (5), a person has a prescribed reason for failing to make a pledge of commitment if:
 - (a) the person could not make a pledge, either in Australia or at an Australian mission overseas, because during the period referred to in paragraph 25(3)(a) of the Act the person was overseas:
 - (i) for medical treatment that was not available in Australia; or

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- (ii) for any purpose, and was unexpectedly hospitalised; or
 - (iii) to care for a person who was critically ill; or
 - (iv) for a funeral and other associated arrangements; and
 - (b) either:
 - (i) the person still cannot make a pledge for the reason mentioned in paragraph (a); or
 - (ii) the person is now able to make a pledge, but the person has not yet had a reasonable period in which to do so.
- (4) Subject to subsection (5), a person has a prescribed reason for failing to make a pledge of commitment if:
- (a) the person could not make a pledge because of an administrative error or omission made by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) an authority of the Commonwealth, a State or a Territory; or
 - (iii) a local government authority; and
 - (b) either:
 - (i) the person still cannot make a pledge for the reason mentioned in paragraph (a); or
 - (ii) the person is now able to make a pledge, but the person has not yet had a reasonable period in which to do so.
- (5) For the purposes of subsection (3) or (4), a person has a prescribed reason only if the person gives the Minister:
- (a) a signed statement to support the claim, including a description of any effort that the person made to make a pledge of commitment within the relevant period; and
 - (b) written evidence that supports the statement.

10 Arrangements for making pledge of commitment

For the purposes of subsection 27(2) of the Act, the arrangements are:

- (a) the pledge of commitment must be made in public if it is reasonably practicable to do so; and
- (b) the person before whom the pledge is made must read aloud the address specified in Schedule 1 to the person making the pledge.

Note: In addition to the arrangements that are required for the purposes of subsection 27(2) of the Act, the Department may notify 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.

11 Registration under section 31 of the Act

For the purposes of section 31 of the Act, a person is registered by the Minister:

- (a) making a record of the fact that the person is an Australian citizen by resumption of citizenship; and
- (b) including the record on a data storage system kept by the Department.

12 Form of notice under subsection 37(3) of the Act

- (1) For the purposes of subsection 37(3) of the Act, a notice must be in accordance with the form in Schedule 2.
- (2) The signature of the Minister on the notice may be a facsimile that is printed or stamped.
- (3) A presiding officer may sign the notice if the person to whom the notice is given acquired citizenship by conferral after making the pledge of commitment in accordance with section 27 of the Act before that presiding officer.
- (4) The following information in relation to the person to whom the notice is given may be set out on the back of the notice:
 - (a) the person's name at the time of acquisition of Australian citizenship, if different from the person's current name;
 - (b) the date of any notice of evidence of Australian citizenship previously given to the person;
 - (c) any other name in which a notice of evidence of Australian citizenship has previously been given to the person;
 - (d) any other date of birth in a notice of evidence of Australian citizenship previously given to the person.

Note: A notice given under section 37 of the Act is prima facie evidence of the matters in the notice (see subsection 37(5) of the Act).

- (5) If the back of the notice sets out any of the information referred to in subsection (4), the signature of the Minister (which may be a facsimile that is printed or stamped) must also be included on the back of the notice.

13 Personal identifiers

For the purposes of subsection 40(2) of the Act, a request must inform the person of the following matters:

- (a) why a personal identifier must be provided;
- (b) how a personal identifier may be collected;
- (c) how a personal identifier may be used;
- (d) the circumstances in which a personal identifier may be disclosed to a third party;
- (e) that a personal identifier may be produced in evidence in a court or tribunal in relation to the person who provided the personal identifier;
- (f) that the *Privacy Act 1988* applies to a personal identifier, and that the person has a right to make a complaint to the Australian Information Commissioner about the handling of personal information;
- (g) that the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and of its agencies, and that the person has a right under that Act to seek access to that information or those documents, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading.

Part 3—Other matters

14 Information and documents to accompany applications

For the purposes of paragraph 46(1)(c) of the Act, 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.

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

- (1) This section applies to an application under section 37 of the Act for evidence of Australian citizenship if:
 - (a) the application relates to the replacement of evidence of Australian citizenship that was lost, destroyed or damaged due to a natural disaster that is included on a list of natural disasters published by the Department on its website; and
 - (b) the application is made within 18 months of the date specified for the natural disaster on the list.
- (2) For the purposes of paragraph 46(1)(c) of the Act, the application must be accompanied by the following:
 - (a) a statutory declaration stating that the evidence of Australian citizenship has been lost, destroyed or damaged due to the natural disaster;
 - (b) if the evidence of Australian citizenship is damaged—the damaged evidence of Australian citizenship.

Note: No fee is payable for an application to which this section applies (see Schedule 3).

16 Fees to accompany applications

- (1) For the purposes of paragraph 46(1)(d) of the Act, the fee to accompany an application under a provision of the Act is the sum of:
 - (a) the amount (the **Schedule 3 amount**) set out in Schedule 3 for the application; and
 - (b) if the Schedule 3 amount, or part of the Schedule 3 amount, is paid by credit card (other than a payment made in New Zealand currency or Singaporean currency)—the following amount (the **credit card surcharge**):
 - (i) for payment by Visa or MasterCard credit card—0.98% of the Schedule 3 amount paid by credit card;
 - (ii) for payment by American Express or Japan Credit Bureau (JCB) credit card—1.4% of the Schedule 3 amount paid by credit card;
 - (iii) for payment by Diners Club International credit card—1.99% of the Schedule 3 amount paid by credit card; and
 - (c) if the Schedule 3 amount, or part of the Schedule 3 amount, is paid by the PayPal system (other than a payment made in New Zealand currency or Singaporean currency)—the amount (the **PayPal surcharge**) of 1% of so much of the Schedule 3 amount as is paid by the PayPal system.

- (2) Payment of the fee to accompany the application must be made in a place, being Australia or a foreign country, that is specified in the places and currencies instrument.

Note: **Foreign country** is defined in section 2B of the *Acts Interpretation Act 1901* as any country (whether or not an independent sovereign state) outside Australia and the external Territories.

- (3) The payment must also be made in a currency that is specified in the places and currencies instrument as a currency in which a fee may be paid in that place.
- (4) If the currency in which the payment is to be made is specified in the conversion instrument, the amount of the payment is to be worked out using the exchange rate for the currency specified in the instrument.
- (5) If the currency in which the payment is to be made is not specified in the conversion instrument, the amount of the payment is to be worked out using the formula:

$$\text{AUD} \times \text{CER} \times 1.05$$

where:

AUD means the amount of the fee in Australian dollars.

CER means the highest exchange rate that is lawfully obtainable on a commercial basis for the purchase in the foreign country of Australian currency with the currency of the foreign country in a period that:

- (a) begins:
- (i) on the day when this subsection commences; or
 - (ii) on the first subsequent day on which the rate has increased or decreased by at least 5% since the beginning of the period; and
- (b) ends at the end of each day before another period begins.
- (6) If the amount worked out by the formula cannot be paid wholly in banknotes of the country, the corresponding amount is the amount rounded up to the nearest larger amount that is payable wholly in banknotes of the country.
- (7) In this section:

conversion instrument means the *Payment of Visa Application Charges and Fees in Foreign Currencies* (IMMI 17/001) made for the purposes of paragraph 5.36(1A)(a) of the *Migration Regulations 1994* and as in force on 1 January 2017.

places and currencies instrument means the *Places and Currencies for Paying of Fees* (IMMI 17/002) made for the purposes of paragraphs 5.36(1)(a) and (b) of the *Migration Regulations 1994* and as in force on 1 January 2017.

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

- (1) The Minister may refund the whole or part of a fee that has been paid under section 46 of the Act in relation to an application made under section 16, 19C, 21 or 29 of the Act in any of the following circumstances:

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- (a) a person has previously made an application under the same section and a decision on that application has not been made;
 - (b) a person has made an application as a result of incorrect advice given by the Department;
 - (c) a person is an Australian citizen;
 - (d) a person has paid an incorrect fee.
- (2) The Minister may refund the whole or part of a fee that has been paid under section 46 of the Act in relation to an application made under section 33 of the Act in either of the following circumstances:
- (a) a person has previously made an application under the same section and a decision on that application has not been made;
 - (b) a person has made an application as a result of incorrect advice given by the Department.
- (3) The Minister may refund the whole or part of a fee that has been paid under section 46 of the Act in relation to an application made under section 37 of the Act in any of the following circumstances:
- (a) a person has previously made an application under the same section and a decision on that application has not been made;
 - (b) a person has made an application as a result of incorrect advice given by the Department;
 - (c) a 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.
- (4) If a person:
- (a) made an application under section 21 of the Act; and
 - (b) claimed eligibility in that application on the basis of the criteria in subsection 21(2) of the Act; and
 - (c) paid the amount specified in item 13 of Schedule 3; and
 - (d) does not satisfy the criteria in subsection 21(2) of the Act because he or she did not sit a test as described in paragraph 21(2A)(a) of the Act;
- the Minister may refund \$20 of the fee payable under section 46 of the Act in relation to the application (which is the component of the fee that relates to the sitting of a test of that kind).
- (5) If the Minister refunds \$20 in relation to a fee under subsection (4), and the fee included a credit card surcharge or PayPal surcharge, the Minister must also refund the proportion of the surcharge that is equal to the proportion that \$20 is of the Schedule 3 amount included in the fee.
- (6) If a person:
- (a) made an application under section 21 of the Act; and
 - (b) claimed eligibility in that application on the basis of the criteria in subsection 21(2) of the Act; and
 - (c) paid the amount specified in item 14 of Schedule 3; and
 - (d) does not satisfy the criteria in subsection 21(2) of the Act because he or she did not sit a test as described in paragraph 21(2A)(a) of the Act;

the Minister may refund \$105 of the fee payable under section 46 of the Act in relation to the application (which is the component of the fee that relates to the sitting of a test of that kind).

- (7) If the Minister refunds \$105 in relation to a fee under subsection (6), and the fee included a credit card surcharge or PayPal surcharge, the Minister must also refund the proportion of the surcharge that is equal to the proportion that \$105 is of the Schedule 3 amount included in the fee.
- (8) A refund under this section may be paid:
 - (a) in Australian currency; or
 - (b) if the amount in respect of which the refund is being paid was paid in another currency—in that other currency.

18 Form of notice under section 47 of the Act

For the purposes of subsection 47(4) of the Act, the Minister must give notice of a decision under the Act by:

- (a) personal delivery; or
- (b) prepaid post to the last address given to the Department; or
- (c) electronic means.

Part 4—Transitional arrangements

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

- (1) This section applies in relation to an application made under the Act and in accordance with the *Australian Citizenship Regulations 2007* (the *old regulations*) before 1 January 2017.
- (2) The application is taken, on and after 1 January 2017, to have been made in accordance with this instrument.
- (3) However, the following amounts are to be worked out in accordance with the old regulations as in force immediately before the start of 1 January 2017 (subject to any provisions of a transitional nature in those regulations):
 - (a) the amount of any fee payable in accordance with the old regulations in relation to the application;
 - (b) the amount of any refund of such a fee.

Schedule 1—Preamble for citizenship ceremony

Note: See section 10.

Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity.

Persons on whom Australian citizenship is conferred enjoy these rights and undertake to accept these obligations:

- (a) by pledging loyalty to Australia and its people;
- (b) by sharing their democratic beliefs;
- (c) by respecting their rights and liberties; and
- (d) by upholding and obeying the laws of Australia.

Schedule 2—Form of notice

Note: See section 12.

COMMONWEALTH OF AUSTRALIA

Australian Citizenship Act 2007

Australian Citizenship

(full name of citizen)

born on *(date of citizen's birth)*

I, the Minister administering the *Australian Citizenship Act 2007*, give notice that the abovenamed is an Australian citizen and that citizenship was acquired on *(date of acquisition or birth)*.

(Signature or printed or stamped signature of the Minister)

MINISTER FOR IMMIGRATION AND BORDER PROTECTION

(Signature of presiding officer)

Dated:

Evidence No:

Schedule 3—Amounts to accompany applications

Note: See subsection 16(1).

Amounts to accompany applications		
Item	Column 1 Application	Column 2 Amount
1	Applications made at the same time under section 16 of the Act by 2 or more siblings	\$230 for the application by the first sibling, and \$95 for the applications made by the second and subsequent siblings
2	An application under section 16 of the Act, other than an application mentioned in item 1	\$230
3	Applications made at the same time under section 19C of the Act by 2 or more siblings	\$230 for the application by the first sibling, and \$95 for the applications made by the second and subsequent siblings
4	An application under section 19C of the Act, other than an application mentioned in item 3	\$230
5	An application under section 21 of the Act if the applicant has completed at least 90 days service in the permanent forces of the Commonwealth or 90 days National Service under section 26 of the <i>National Service Act 1951</i> as in force at any time before 26 November 1964	Nil
6	An application under section 21 of the Act if 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 <i>Immigration (Guardianship of Children) Act 1946</i>	Nil
7	An application (the new application) under section 21 of the Act if: <ul style="list-style-type: none"> (a) the applicant claims eligibility on the basis of the criteria in subsection 21(3) or (4) of the Act; and (b) the applicant previously made an application (the old application) under section 21 of the Act; and (c) 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: <ul style="list-style-type: none"> (i) subsection 22(1) of the Act; or (ii) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (iii) paragraph 22B(1)(c), (d), (f) or (g) of the Act; and (d) the applicant made the new application during the period beginning on the day of the refusal and ending at the earlier of: <ul style="list-style-type: none"> (i) the end of 3 months after the applicant first became able to meet the residence requirement; and 	Nil

Schedule 3 Amounts to accompany applications

Amounts to accompany applications		
Item	Column 1 Application	Column 2 Amount
	(ii) the end of 1 year after the day of the refusal	
8	An application (the <i>new application</i>) under section 21 of the Act if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) the applicant previously made an application (the <i>old application</i>) under section 21 of the Act on or after 1 October 2007; and (c) under the old application, the applicant claimed eligibility on the basis of the criteria in subsection 21(2) of the Act; and (d) 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: (i) subsection 22(1) of the Act; or (ii) paragraph 22A(1)(c), (d), (f) or (g) of the Act; or (iii) paragraph 22B(1)(c), (d), (f) or (g) of the Act; and (e) the applicant made the new application during the period beginning on the day of the refusal and ending at the earlier of: (i) the end of 3 months after the applicant first became able to meet the residence requirement; and (ii) the end of 1 year after the day of the refusal	Nil
9	An application under section 21 of the Act if the applicant has applied under subsection 21(8) of the Act (statelessness)	Nil
10	An application under section 21 of the Act if the applicant: (a) holds: (i) a health care card issued by the Human Services Department and endorsed by that Department with one of the following codes: PA; WA; or (ii) 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 (b) does not claim eligibility on the basis of the criteria in subsection 21(2) of the Act	\$20
11	An application under section 21 of the Act if the applicant: (a) holds a pensioner concession card issued by the Human Services Department and endorsed by that Department with the code PPS; and	\$20

Amounts to accompany applications		
Item	Column 1 Application	Column 2 Amount
	(b) produces evidence that the applicant is over 60 years of age; and (c) has been in receipt of PPS for at least 9 months; and (d) does not claim eligibility on the basis of the criteria in subsection 21(2) of the Act	
12	An application under section 21 of the Act, if the applicant: (a) holds a pensioner concession card issued by the Veterans' Affairs Department and endorsed by that Department: (i) for an Age Service, Invalidity Service, or Partner Service pension; or (ii) for an Income Support Supplement; or (iii) with the code AGE; and (b) does not claim eligibility on the basis of the criteria in subsection 21(2) of the Act	\$20
13	An application under section 21 of the Act if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) either of the following provisions applies to the applicant: (i) paragraph (a) of item 10; (ii) paragraph (a) of item 12	\$40
14	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	\$285
15	An application under section 21 of the Act by a child, under the age of 16, who applies for citizenship at the same time, and on the same form, as a responsible parent	Nil
16	An application under section 21 of the Act, other than an application mentioned in items 5 to 15 or items 17 and 18	\$180
17	An application (the new application) under section 21 of the Act, other than an application mentioned in item 5, 6, 8, 13 or 18, if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) the applicant previously made an application (the old application) on or after 1 October 2007; and (c) under the old application, the applicant sat a test as described in paragraph 21(2A)(a) of the Act; and (d) either of the following provisions applies to the applicant: (i) paragraph (a) of item 10; (ii) paragraph (a) of item 12	\$20
18	An application (the new application) under section 21 of	\$180

Schedule 3 Amounts to accompany applications

Amounts to accompany applications		
Item	Column 1 Application	Column 2 Amount
	the Act, other than an application mentioned in item 5, 6, 8, 13 or 17, if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) the applicant previously made an application (the <i>old application</i>) on or after 1 October 2007; and (c) under the old application, the applicant sat a test as described in paragraph 21(2A)(a) of the Act	
19	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	Nil
20	An application under section 29 of the Act, other than an application mentioned in item 19	\$210
21	An application under section 33 of the Act	\$205
22	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	Nil
23	An application in accordance with section 37 of the Act to which section 15 of this regulation applies	Nil
24	An application under section 37 of the Act, other than an application mentioned in item 22 or 23	\$190

Schedule 4—Repeals

Australian Citizenship Regulations 2007

1 The whole of the Regulations

Repeal the Regulations.