

## **EXPLANATORY STATEMENT**

Issued by the Minister for Immigration and Border Protection

*Migration Act 1958*

*Australian Citizenship Amendment Regulations 2017*

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

Section 54 of 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, regulations may be made pursuant to the provisions of the Citizenship Act listed in [Attachment A](#).

The *Australian Citizenship Amendment Regulations 2017* (the Regulations) amend the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) to:

- allow citizenship application fees, and refund of citizenship application fees where appropriate, to be paid in foreign currencies and in foreign countries; and
- ensure that the definitions of “conversion instrument” and “places and currencies instrument” in subsection 16(7) of the Citizenship Regulation accurately refer to the correct legislative instruments made under the *Migration Regulations 1994* (the Migration Regulations); and

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 Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference is 22987.

No other consultation was considered appropriate, as the amendment involved an update in the referencing of two legislative instruments and did not alter existing administrative arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which envisages consultations where appropriate and reasonably practicable.

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

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations commence on 1 January 2018.

**AUTHORISING PROVISIONS**

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) 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 *Australian Citizenship Amendment Regulations 2017* (the Regulations) may be made pursuant to the following provisions:

- paragraph 46(1)(d) of the Citizenship Act, which provides that an application under a provision of that Act must be accompanied by the fee (if any) prescribed by the regulations; and
- subsection 46(3) of the Citizenship Act, 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) of the Citizenship Act.

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

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

***Australian Citizenship Amendment Regulations 2017***

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**

Section 16 of the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) sets out, amongst other things, in which foreign currencies and countries a citizenship application fee may be paid and how the exchange rate is to be calculated.

The acceptable foreign currencies and countries are set out in legislative instruments made under regulations 5.36(1) and (1A) of the *Migration Regulations 1994* (the Migration Regulations). In order to facilitate the lawful collection (and refund where appropriate) of citizenship application fees in foreign currencies, subsection 16(7) of the Citizenship Regulation incorporates by reference instruments made under the Migration Regulations in relation to foreign currencies and countries.

The relevant instruments, *Places and Currencies for Paying of Fees and Payment of Visa Application Charges and Fees in Foreign Currencies*, are updated in January and July each year and are given a new instrument number each time.

Consequently, to ensure that citizenship application fees can continue to be paid in foreign currencies and countries, subsection 16(7) of the Citizenship Regulation must be amended to specify the updated instrument numbers.

The only changes to the Citizenship Regulation are the updating of the instrument numbers in subsection 16(7). These changes are technical in nature and there are no changes to the substantive content of the instrument.

**Human rights implications**

This Legislative Instrument has been assessed against the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

**Conclusion**

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

**The Hon. Peter Dutton MP**

**Minister for Immigration and Border Protection**

**ATTACHMENT C****Details of the *Australian Citizenship Amendment Regulations 2017*****Section 1 – Name**

This section provides that the title of the regulations is the *Australian Citizenship Amendment Regulations 2017* (the Regulations).

**Section 2 – Commencement**

Subsection 2(1) provides that each provision of the Regulations 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 states that Schedule 1 commences on 1 January 2018. 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 Regulations. 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.

The purpose of this section is to provide for when the amendments made by the Regulations commence, which is 1 January 2018.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Australian Citizenship Act 2007* (the Citizenship Act).

The purpose of this section is to set out the Act under which the Regulations are made.

**Section 4 – Schedule(s)**

This section provides that 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.

The effect of this section is that the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) is amended as set out in the applicable items in Schedule 1 to the Regulations.

The purpose of this section is to provide for how the amendments in these Regulations operate.

## **Schedule 1 – Amendments**

### **Item 1 – Subsection 16(7)**

This item repeals and substitutes the previous definitions of “conversion instrument” and “places and currencies instrument” in subsection 16(7) of the Citizenship Regulation.

#### *New definition of “conversion instrument”*

This item provides that the “conversion instrument” means the instrument titled *Migration (IMMI 17/118: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2017* made under paragraph 5.36(1A)(a) of the *Migration Regulations 1994* (the Migration Regulations).

The “conversion instrument” commences on 1 January 2018 and sets out the exchange rates to be used for prescribed foreign currencies in relation to the payment of fees. The conversion instrument allows a person who makes an application under the Citizenship Act to pay an application fee in a foreign currency at an exchange rate specified in the conversion instrument.

#### *New definition of “places and currencies instrument”*

This item provides that the “places and currencies instrument” means the instrument titled *Migration (IMMI 17/119: Places and Currencies for Paying of Fees) Instrument 2017* made under paragraphs 5.36(1)(a) and (b) of the Migration Regulations.

The “places and currencies instrument” commences on 1 January 2018 and sets out the places and foreign country currencies in which application fees may be paid.

#### *Purpose for amendment*

The “conversion instrument” and “places and currencies instrument” are periodically updated in January and July of each year to reflect changes in exchange rates, specified foreign currencies, and the places where application fees may be paid.

The amendment ensures that persons may make the payment of an application fee in a specified foreign country and in a foreign currency at a defined and updated exchange rate.

The Citizenship Act does not allow for the making of an instrument to specify matters in relation to the collection of application fees in foreign countries and foreign currencies. Instead, the Citizenship Regulation incorporates by reference relevant instruments made under the Migration Regulations to specify the foreign countries where a fee may be paid, the currency that can be accepted in each listed country, and the currency exchange rate that must be applied.

Due to the operation of section 14 of the *Legislation Act 2003*, it is not possible to incorporate by reference the instrument made under regulation 5.36 of the Migration Regulations as in force from time to time. Rather, those instruments will be incorporated by reference at time of commencement of the Regulations.