

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs and Minister for Immigration and Border Protection

Australian Citizenship Act 2007

Australian Citizenship Amendment (Concessional Application Fees) Regulations 2018

The *Australian Citizenship Act 2007* (the Citizenship Act) provides for the process of becoming an Australian citizen, the circumstances in which citizenship may cease, 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, 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.

The *Australian Citizenship Amendment (Concessional Application Fees) Regulations 2018* (the Regulations) amend the *Australian Citizenship Regulation 2016* to remove concessional fees for citizenship applications made under section 21 of the Citizenship Act for persons with prescribed health care cards and pensioner cards. The effect of the amendments is that these persons are no longer eligible for a concessional application fee of either \$20 or \$40. These applicants will instead pay the full application fee of \$285.

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 22012.

The following agencies were consulted: the Department of the Prime Minister and Cabinet; the Department of the Treasury; the Department of Finance; the Attorney-General's Department; the Department of Education and Training; the Department of Jobs and Small Business; the Department of Foreign Affairs and Trade; the Department of Human Services; the Department of Social Services. These agencies were supportive of the removal of the concessional arrangements for citizenship application fees.

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 A](#).

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

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

The Regulations are a legislative instrument for the purpose of the *Legislation Act 2003*.

The Regulations commence on 1 July 2018. Where relevant, the Regulations apply only to new applications. They do not apply to applications that have already been made, but not yet decided, at the time the Regulations commence.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Australian Citizenship Amendment (Concessional Application Fees) Regulations 2018

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

The *Australian Citizenship Regulation 2016* (the Citizenship Regulation) is amended to remove concessional fees for citizenship applications made under section 21 of the *Australian Citizenship Act 2007* (the Citizenship Act) for persons with prescribed health care cards and pensioner cards from 1 July 2018. Citizenship fee application exemptions will remain for those applicants applying under the defence, former British or Maltese child migrants, or statelessness provisions in the Citizenship Act.

Previously, Schedule 3 to the Citizenship Regulation allowed an applicant for Australian citizenship who held a relevant concession card to pay a concessional application fee of either \$20 or \$40. Concession cards are issued by other Commonwealth agencies such as the Department of Human Services and the Department of Veteran's Affairs. The purpose of these amendments is to remove the previous concessional arrangements to be consistent with the Government's cost-recovery agenda. It also further advances the Department of Home Affairs' ability to meet the Government's digital transformation agenda, as the citizenship program moves towards online lodgement of applications.

The effect of these amendments is that applicants for Australian citizenship, made under section 21 of the Citizenship Act by concessional cardholders, are no longer eligible for concessional application fees.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms. The proposed change will remove a special measure that has been in place for some applicants, to require all applicants seeking citizenship status to pay the same fee.

Conclusion

The extraordinary privilege bestowed by Australian citizenship should be commensurate with a fee that is equal for all applicants. This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Peter Dutton MP
Minister for Home Affairs
Minister for Immigration and Border Protection

ATTACHMENT B**Details of the *Australian Citizenship Amendment (Concessional Application Fees) Regulations 2018*****Section 1 – Name**

This section provides that the title of the Regulations is the *Australian Citizenship Amendment (Concessional Application Fees) Regulations 2018* (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 the whole of this instrument commences on 1 July 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.

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

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 the Schedule to the Regulations.

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

Schedule 1 – Amendments
Australian Citizenship Regulation 2016

Item 1 – Subsections 17(4) and (5)

This item repeals subsection 17(4) as a consequential amendment to reflect the repeal of table item 13 in Schedule 3 to the Citizenship Regulation, made by item 3 below. The subsection allowed the Minister to refund \$20 of the fee payable in relation to a citizenship application where a person paid the amount specified in item 13. The repeal of item 13 of Schedule 3 in relation to applications made on or after 1 July 2018 makes this provision redundant.

This item also repeals subsection 17(5) as a consequential amendment to reflect the repeal of subsection 17(4). The subsection provided that, where the Minister had to refund \$20 in relation to a fee under subsection 17(4), and the fee included a credit card surcharge or PayPal surcharge, it was mandatory for the Minister also to refund a proportionate amount of the surcharge. The repeal of subsection 17(4) makes subsection 17(5) redundant.

Item 2 – In the appropriate position in Part 4

This item amends Part 4 of the Citizenship Regulation to insert section 22 entitled ‘Application of amendments made by the *Australian Citizenship Amendment (Concessional Application Fees) Regulations 2018*’.

Section 22 of Part 4 provides that the amendments of the Citizenship Regulation apply to an application made under the Citizenship Act on or after 1 July 2018.

The effect and purpose of the item is to clarify to whom and when the amendments to the Citizenship Regulation apply.

Items 3 and 6 – Schedule 3 (table items 10, 11, 12, 13, and 17)

Previously, Schedule 3 to the Citizenship Regulation allowed an applicant for Australian citizenship who held a relevant concession card to pay a concessional application fee of either \$20 or \$40. These cards are issued by other agencies such as the Department of Human Services and the Department of Veteran’s Affairs.

Items 3 and 6 of the Regulations repeal the abovementioned table items in Schedule 3 to the Citizenship Regulation. The purpose of these amendments is to remove the previous concessional arrangements for consistency with the Government’s cost-recovery agenda. The amendments also further advance the Department’s ability to meet the Government’s digital transformation agenda, as the citizenship programme moves toward 100% online lodgement of applications.

The effect of these amendments is that applications for Australian citizenship, made under section 21 of the Citizenship Act by concessional cardholders, are no longer eligible for concessional application fees.

Items 4, 5, and 7 – Schedule 3 (column 1 of table items 14, 16, and 18)

These items omit references to items 10, 11, 12, 13, and 17 in column 1 of the abovementioned table items. These amendments are consequential to the amendments made by items 3 and 6 above.

The effect of these amendments is that following fees for applications for Australian citizenship apply:

- Item 14: \$285 for an application made under subsection 21 of the Citizenship Act, other than an application mentioned in item 5, 6, 7, 8, 9, 15, 16, or 18, if the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act.
- Item 16: \$180 for an application made under section 21 of the Citizenship Act, other than an application mentioned in item 5, 6, 7, 8, 9, 14, 15, or 18.
- Item 18: \$180 for an application made under section 21 of the Citizenship Act, other than an application mentioned in item 5, 6, or 8, if the applicant:
 - claims eligibility on the basis of the criteria in subsection 21(2) of the Citizenship Act;
 - previously made an application on or after 1 October 2007; and
 - in relation to the citizenship application mentioned above, sat an approved citizenship test.