

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Australian Citizenship Act 2007

Australian Citizenship Amendment (Payment of Fees) Regulations 2018

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

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

The *Australian Citizenship Amendment (Payment of Fees) Regulations 2018* (the Regulations) amend the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) to allow citizenship application fees, and refunds of citizenship application fees where appropriate, to be paid in foreign currencies and in foreign countries. The purpose of these amendments is to facilitate the lawful collection of citizenship application fees in specified foreign currencies and foreign countries at updated exchange rates.

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 24021.

No further consultation was considered appropriate because the Regulations, which update references to two legislative instruments, are technical in nature and do not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which envisages consultations where appropriate and reasonably practicable.

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

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

The Regulations commence on 1 January 2019.

AUTHORISING PROVISIONS

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

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

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

Statement of Compatibility with Human Rights

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

Australian Citizenship Amendment (Payment of Fees) Regulations 2018

This Disallowable 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 Disallowable Legislative Instrument

This Disallowable Legislative Instrument amends the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) to allow citizenship application fees, and refunds of citizenship application fees where appropriate, to be paid in foreign currencies and in foreign countries. These amendments facilitate the lawful collection and refund of citizenship application fees in specified foreign currencies and foreign countries at updated exchange rates.

Section 16 of 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, countries and exchange rates are set out in legislative instruments made under paragraphs 5.36(1)(a), 5.36(1)(b) and 5.36(1A)(a) 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, countries and exchange rates.

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 references.

In effect, the only changes to the Citizenship Regulation are the updating of the instrument references. These changes are technical in nature and do not substantially alter existing arrangements.

Human rights implications

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

The Hon David Coleman MP
Minister for Immigration, Citizenship and Multicultural Affairs

Details of the *Australian Citizenship Amendment (Payment of Fees) Regulations 2018*

Section 1 – Name

This section provides that the name of the legislative instrument is the *Australian Citizenship Amendment (Payment of Fees) Regulations 2018* (the Regulations).

Section 2 – Commencement

The purpose of this section is to provide for when the Regulations commence, that is, on 1 January 2019.

Section 3 – Authority

This section provides that the Regulations are made under the *Australian Citizenship Act 2007* (the Act). The purpose of this section is to set out the Act under which the Regulations are made.

Section 4 – Schedules

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 to the Regulations operate.

Schedule 1 – Amendments

Australian Citizenship Regulation 2016

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.

Updated definition of “conversion instrument”

This item provides that the “conversion instrument” means the instrument titled *Migration (LIN 19/001: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2019* made under paragraph 5.36(1A)(a) of the *Migration Regulations 1994* (the Migration Regulations).

The “conversion instrument” commences on 1 January 2019 and sets out the exchange rates to be used for specified foreign currencies in relation to the payment of fees. The conversion

instrument allows a person who makes an application under the Act to pay an application fee in a foreign currency at an exchange rate specified in the conversion instrument.

Updated definition of “places and currencies instrument”

This item provides that the “places and currencies instrument” means the instrument titled *Migration (LIN 19/002: Places and Currencies for Paying of Fees) Instrument 2019* made under paragraphs 5.36(1)(a) and (b) of the Migration Regulations.

The “places and currencies instrument” commences on 1 January 2019 and sets out the places and foreign currencies in which fees may be paid.

Purpose of amendment

Citizenship application fees are routinely collected at overseas posts. Section 16 of the Citizenship Regulation relates to the payment of fees in relation to applications under the Act.

Subsections 16(2) and (3) of the Citizenship Regulation provide that the application must be made in a place, and in the currency, specified in the “places and currencies instrument”.

Subsection 16(4) of the Citizenship Regulation provides that, 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.

Section 17 of the Citizenship Regulation makes provision for the refund of certain citizenship application fees. Subsection 17(8) allows refunds to be paid in the foreign currency in which the fee was paid.

The “places and currencies instrument” and the “conversion instrument” (which are defined in subsection 16(7) of the Citizenship Regulation) are remade every six months under the Migration Regulations, so that the content of the instruments can be updated to reflect changes in exchange rates, specified foreign currencies and the places where application fees may be paid. As a consequence, subsection 16(7) of the Citizenship Regulation must also be amended so that it refers to the remade instruments.

Due to the operation of section 14 of the *Legislation Act 2003*, the Citizenship Regulation may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force from time to time. The legislative instruments made under paragraphs 5.36(1A)(a), 5.36(1)(a) and 5.36(1)(b) of the Migration Regulations can only be incorporated by reference at the time the Regulations commence.

The amendments made by the Regulations ensure 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 Act does not allow for the making of a legislative instrument under the Citizenship Regulation 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.

Item 2 – In the appropriate position in Part 4

This item inserts section 22 entitled ‘Application of amendment made by Schedule 1 to the *Australian Citizenship Amendment (Payment of Fees) Regulations 2018*’.

Section 22 of Part 4 provides that these amendments apply to an application made under the Act on or after 1 January 2019.