

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Australian Citizenship Act 2007

*Australian Citizenship Amendment (Concession Codes and Payment of Fees)
Regulations 2019*

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 (Concession Codes and Payment of Fees) Regulations 2019* (the Regulations) will 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, and to align the concession codes in Schedule 3 with the concession codes currently employed by the Department of Human Services (DHS).

In particular, the Regulations amend the Citizenship Regulation to:

- Incorporate, by reference, instruments made under the *Migration Regulations 1994* (the Migration Regulations) that relate to the payment of fees in foreign currencies and in foreign countries. The purpose of this amendment is to facilitate the lawful collection of citizenship application fees in specified foreign currencies and foreign countries at updated exchange rates.
- Update the codes listed in Schedule 3 so that they correspond with the codes appearing on relevant pensioner concession cards issued by DHS. This ensures that affected clients are charged the appropriate concessional citizenship application fee.

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 in relation to the amendments made by Part 1 of Schedule 1 to

the Regulations is 24615. The OBPR consultation reference in relation to the amendments made by Part 2 of Schedule 1 to the Regulations is 24021.

DHS has been consulted in relation to the amendments made by Part 1 of Schedule 1 to the Regulations.

No other consultation was considered appropriate as the amendments do not substantially change 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.

Part 1 of Schedule 1 to the Regulations, which relates to updating the concession codes listed in Schedule 3 to the Citizenship Regulation, will commence on 2 March 2019.

Part 2 of Schedule 1 to the Regulations, which relates to the payment of fees in foreign currencies and in foreign countries, will commence on 1 July 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:

- subsection 21(1) of the Act, which provides that a person may make an application to the Minister to become an Australian citizen; and
- 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.

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 (Concession Codes and Payment of Fees) Regulations 2019

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

The *Australian Citizenship Amendment (Concession Codes and Payment of Fees) Regulations 2019* (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, and to align the concession codes in Schedule 3 with the concession codes currently employed by the Department of Human Services (DHS).

In particular, the Regulations amend the Citizenship Regulation to:

- Update the codes listed in Schedule 3 so that they correspond with the codes appearing on relevant pensioner concession cards issued by DHS.
- Incorporate, by reference, instruments made under the *Migration Regulations 1994* (the Migration Regulations) that relate to the payment of fees in foreign currencies and in foreign countries. The purpose of this amendment is to facilitate the lawful collection of citizenship application fees in specified foreign currencies and foreign countries at updated exchange rates.

Part 1 – Concession Codes

Part 1 of the Regulations repeals and substitutes subparagraph (a)(ii) in column 1 of item 10 of the table in Schedule 3 to the Citizenship Regulation.

Schedule 3 to the Citizenship Regulation sets out the amounts to accompany applications for Australian citizenship. Subparagraph (a)(ii) in column 1 of item 10 of the table allows an applicant for Australian citizenship by conferral, who holds a pensioner concession card issued by DHS and endorsed by that Department with one of the codes listed in that subparagraph, to pay a concessional citizenship application fee of \$20 (as opposed to the full application fee of \$285).

Purpose of amendment

The Regulations update references to the DHS concession codes listed in Schedule 3 so that they correspond with the codes appearing on relevant pensioner concession cards issued by

DHS. This will ensure that affected clients are charged the appropriate concessional citizenship application fee.

Part 2 – Payment of Fees

Citizenship application fees are routinely collected at overseas posts. 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.

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. The “places and currencies instrument” and the “conversion instrument” (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.

Purpose of amendment

The acceptable foreign currencies and countries are set out in legislative instruments made under subregulations 5.36(1) and (1A) of the Migration Regulations.

The *Australian Citizenship Act 2007* 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, in order to facilitate the lawful collection of citizenship application fees in foreign currencies, subsection 16(7) of the Citizenship Regulation incorporates by reference 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.

As a result, the relevant instruments, *Places and Currencies for Paying of Fees and Payment of Visa Application Charges and Fees in Foreign Currencies*, are updated on 1 January and 1 July each year, and amendments to the Citizenship Regulation are made to incorporate those instruments from that date.

The amendments made by this Disallowable Legislative Instrument are machinery 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

ATTACHMENT C**Details of the *Australian Citizenship Amendment (Concession Codes and Payment of Fees) Regulations 2019*****Section 1 – Name**

This section provides that the title of the Regulations is the *Australian Citizenship Amendment (Concession Codes and Payment of Fees) Regulations 2019* (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 Part 1 of Schedule 1 commences on 2 March 2019, and Part 2 of Schedule 2 commences on 1 July 2019.

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 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 Schedules to the Regulation.

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

Schedule 1 – Amendments

Part 1 – Concession Codes

Australian Citizenship Regulation 2016

Item 1 – In the appropriate position in Part 4

This item inserts section 23 entitled ‘Application of amendment made by Part 1 of Schedule 1 to the *Australian Citizenship Amendment (Concession Codes and Payment of Fees) Regulations 2019*’.

Section 23 of Part 4 provides that the amendment of Schedule 3 made by item 2 of Schedule 1 to the Regulations applies in relation to an application made under the Act on or after 2 March 2019.

Item 2 – Schedule 3 (table item 10, column 1, subparagraph (a)(ii))

This item repeals and substitutes subparagraph (a)(ii) in column 1 in table item 10 in the table in Schedule 3 to the Citizenship Regulation.

Subparagraph (a)(ii) of Schedule 3 to the Citizenship Regulation allows an applicant for Australian citizenship by conferral, who holds a pensioner concession card issued by the Department of Human Services (DHS) and endorsed by that Department with one of the codes listed in that subparagraph, to pay a concessional citizenship application fee.

Purpose of amendment

This item updates references to the DHS concession codes listed in Schedule 3 so that they correspond with the codes appearing on relevant pensioner concession cards issued by DHS. This will ensure that affected pensioner concession card holders are charged the appropriate fee when making an application for Australian citizenship by conferral.

This item amends subparagraph (a)(ii) to update the following DHS codes listed in relation to pensioner concession cards:

- replaces NSA with NS (meaning Newstart Allowance – for long term income support recipients aged over 60, or single principal carers of dependent children, or those assessed as having a partial capacity to work);
- replaces PTA with PA (meaning Partner Allowance – for long term income support recipients aged over 60);
- replaces SAL with SA (meaning Sickness Allowance – for long term income support recipients aged over 60);
- replaces SPL with SL (meaning Special Benefit – for long term income support recipients aged over 60); and
- replaces WDA with WA (meaning Widow Allowance – for long term income support

recipients aged over 60).

This item also inserts a reference to the DHS concession code ‘DSP BLIND’ in subparagraph (a)(ii). This code has the same meaning as DSP, referring to the Disability Support Pension.

New subparagraph (a)(ii) retains the references to the following codes which continue to match the codes on pensioner cards issued by DHS: AGE, AGE BLIND, CAR, DSP, PPP, WFA, WFD, WID and YAL.

In addition, this item removes the following DHS concession codes from subparagraph(a)(ii) to reflect the fact that the benefits they refer to are no longer available:

- WAL; and
- WFW (related to a Wife Pension – Disability Wage Supplement).

Part 2 – Payment of Fees

Australian Citizenship Regulation 2016

Item 3 – Subsection 16(7)

This item repeals and substitutes the previous definition 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 19/041: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2019* made for the purposes of paragraph 5.36(1A)(a) of the *Migration Regulations 1994* (the Migration Regulations) and as in force on 1 July 2019.

The “conversion instrument” commences on 1 July 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 19/042: Places and Currencies for Paying of Fees) Instrument 2019* made for the purposes of paragraphs 5.36(1)(a) and (b) of the Migration Regulations and as in force on 1 July 2019.

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

Purpose of amendment

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.

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.

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.

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.

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 of incorporation.

Item 4 – In the appropriate position in Part 4

This item inserts section 24 entitled ‘Application of amendment made by Part 2 of Schedule 1 to the *Australian Citizenship Amendment (Concession Codes and Payment of Fees) Regulations 2019*’.

Section 24 of Part 4 provides that the amendment of section 16 made by item 3 of Schedule 1 to the Regulations applies in relation to an application made under the Act on or after 1 July 2019.