

## **EXPLANATORY STATEMENT**

*Australian Citizenship Act 2007*

### **Australian Citizenship (Class of Persons Who May Receive a Pledge of Commitment) Amendment Instrument (LIN 20/247) 2020**

*(subsection 27(5))*

1. The instrument, LIN 20/247, is made under subsection 27(5) of the *Australian Citizenship Act 2007* (the Act).
2. In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA), the instrument amends the *Australian Citizenship (LIN 20/084: Persons Who May Receive a Pledge of Commitment) Instrument 2019* (F2020LO1139), made under subsection 27(5) of the Act. Subsection 33(3) of the AIA states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument operates to authorise a class of persons who are able to receive the Pledge of Commitment for Australian citizenship (the Pledge). Section 27(5) of the Act empowers the Minister to authorise a class of persons to receive the pledge. Schedule 1 of the Act establishes the form in which a pledge must be undertaken. Subsection 26(1) of the Act requires a person to make the Pledge before they become an Australian citizen, unless they meet the requirements set out in paragraphs 26(1)(a) to (c) of the Act.
4. The purpose of the instrument is to amend LIN 20/084 to include Governors of a State in Australia in a class of persons, who are authorised to receive the Pledge. This category was omitted from LIN 20/084 because of a drafting error.
5. Consultation was not required as this instrument rectifies a drafting error to include Governors of States of Australia as a class of persons that was omitted from LIN 20/084 when the instrument was made. The change is considered to be minor in nature. This is noted in accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*.
6. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 43113).
7. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided in **Attachment A**.

8. The instrument commences on the day after it is registered on the Federal Register of Legislation.

## Statement of Compatibility with Human Rights

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

### **Australian Citizenship (Class of Persons Who May Receive a Pledge of Commitment) Amendment Instrument (LIN 20/247) 2020**

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 current instrument (LIN 20/084) operates to authorise the class of persons who are able to receive the pledge of commitment for Australian citizenship. Section 27(5) of the Act empowers the Minister to authorise a class of persons to receive the pledge. Subsection 26(1) of the *Australian Citizenship Act 2007* (the Act) requires a person to make a pledge of commitment to Australia before they become an Australian citizen, unless they meet the requirements set out in paragraphs 26(1)(a) to (c) of the Act.

The purpose of the amendment instrument (LIN 20/247) is to update the class of persons as listed in Schedule 1 to the instrument who are authorised to receive a pledge of commitment to include a class of persons consisting of a person who is a Governor of a State of the Commonwealth of Australia.

This amendment is being initiated as the category of Governor of a State was omitted from the main Instrument (LIN 20/084) in an administrative error.

These changes may have no impact on those persons previously authorised under Schedule 1 to the *Australian Citizenship (LIN 20/084: Class of Persons Who May Receive a Pledge of Commitment) Instrument 2020*.

#### **Human rights implications**

This Disallowable Legislative Instrument is technical in nature 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.

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