

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Australian Citizenship Act 2007

Australian Citizenship Amendment (Refund of Fees) Regulations 2023

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 other related matters.

Section 54 of 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. Paragraph 46(1)(d) of the Citizenship Act provides that an application made under that Act must be accompanied by the fee prescribed by the regulations.

The *Australian Citizenship Amendment (Refund of Fees) Regulations 2023* (the Regulations) amends subsections 17(4) – 17(7) of the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) to include provision for the relevant refund amount to be calculated with reference to relevant items in Schedule 3 to the Regulation.

Where payment of a citizenship application fee included a credit card surcharge or Paypal surcharge, the Regulations also provide that the proportion of the refund of the surcharge is equal to the proportion that the refund amount is of the relevant fee specified in Schedule 3 to the Regulation.

The Regulations address consequential amendments that were not covered by the *Australian Citizenship Amendment (Indexation of Citizenship Application Fees) Regulations 2023*, which applied two years' indexation for 2021-22 and 2022-23 to certain Australian citizenship application fees from 1 July 2023 to more accurately reflect the cost of delivering the citizenship program. While increases to citizenship fees on 1 July 2023 were effected by way of amendments to Schedule 3 to the Citizenship Regulation, amendments were not made to section 17 to reflect a consequential change to provide, where applicable, for a refund of the proportion of the fee that represents the component of the fee that relates to the sitting of a citizenship test.

The Regulations provide for the calculation of refunds by determining the difference between relevant amounts set out in Schedule 3 to the Citizenship Regulation, instead of applying dollar figure amounts this ensures amendments to section 17 of the Citizenship Regulation are not required in the event of any future citizenship application fee increases.

The Regulations apply retrospectively in relation to a refund for a citizenship application made on or after 1 July 2023 to address an inadvertent oversight regarding consequential amendments that were not covered by the *Australian Citizenship Amendment (Indexation of Citizenship Application Fees) Regulations 2023*. This provision is entirely beneficial to citizenship applicants who are eligible for a refund of application fees in relation to an application made on or after 1 July 2023. This accords with section 12 of the Legislation

Act, which provides that if a legislative instrument commences retrospectively, it must not adversely affect the rights, or impose liabilities on a person

The amendments to the Citizenship Regulation relate to matters of detail and are therefore appropriate for inclusion in regulations.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations do not raise any human rights issues.
A copy of the Statement is at Attachment A.

The Office Impact Analysis (the OIA) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OIA consultation reference number is OIA23-04789.

No consultation was undertaken as the amendment does not substantially alter existing arrangements. This accords with section 17 of the *Legislation Act 2003*.

The amendments commence on the day after registration on the Federal Register of Legislation.

Further details of the Regulations are set out in Attachment B.

The Department of Home Affairs follows standard practices to notify clients about the Regulation, including updating its website and notifying peak bodies.

The Citizenship 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.

Statement of Compatibility with Human Rights

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

Australian Citizenship Amendment (Refund of Fees) Regulations 2023

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

Section 54 of 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. Paragraph 46(1)(d) of the Citizenship Act provides that an application made under that Act must be accompanied by the fee prescribed by the regulations.

The *Australian Citizenship Amendment (Refund of Fees) Regulations 2023* amends the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) to provide for the relevant refund amounts under section 17 of the Citizenship Regulation to be calculated with reference to relevant items in Schedule 3 to the Citizenship Regulation rather than express dollar amounts.

This amendment addresses consequential amendments that were not covered by *Australian Citizenship Amendment (Indexation of Citizenship Application Fees) Regulations 2023* (the Amendment Regulations). While the Amendment Regulations effected increases to citizenship fees on 1 July 2023 by way of amendments to Schedule 3 to the Citizenship Regulation, amendments were not similarly made to section 17 to reflect a consequential change to provide, where applicable, for a refund of the proportion of the fee that represents the component of the fee that relates to the sitting of a citizenship test.

The amendments of this instrument to subsections 17(4), (5), (6) and (7) of the Citizenship Regulation remove the express dollar figure and instead ensure that the correct amount is refundable in line with the 1 July 2023 fee changes of the Amendment Regulations.

Where payment of a citizenship application fee included a credit card surcharge or Paypal surcharge, the Amendment Regulations also provide that the proportion of the refund of the surcharge is equal to the proportion that the refund amount is of the relevant fee specified in Schedule 3 to the Regulation.

Calculating refunds by determining the difference between relevant amounts set out in Schedule 3 to the Citizenship Regulation, instead of applying dollar figure amounts, also ensures amendments to section 17 of the Citizenship Regulation are not required in the event of any future citizenship application fee changes.

The amendments of this instrument apply retrospectively in relation to an application made on or after 1 July 2023. The amendments are beneficial to citizenship applicants who are eligible for a refund of application fees and paid the increased fee after 1 July 2023.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms as it proposes to make consequential changes that were not made in the Amendment Regulations and are technical in nature.

Conclusion

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

The Hon Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

Details of the Australian Citizenship Amendment (Refund of Fees) Regulations 2023

Section 1 - Name

This section provides that the name of the instrument is the *Australian Citizenship Amendment (Refund of Fees) Regulations 2023*.

Section 2 - Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the instrument is made under the *Australian Citizenship Act 2007*.

Section 4 - Schedules

This section provides for how the amendments made by the Regulations operate.

Schedule 1 – Amendments

Part 1 – Amendments

Australian Citizenship Regulation 2016 (the Citizenship Regulation).

Item [1] Subsection 17(4)

This item will omit an express dollar figure as a refund amount and insert new paragraphs (e) and (f) to provide that, for applicants for citizenship by conferral who are eligible for the concessional application fee, amended subsection 17(4) will prescribe the refund amount as the difference between the amount paid where a citizenship test must be taken (as set out in item 13 of the table in clause 1 of Schedule 3 to the Regulation), and where no test is taken (as set out in item 10, or item 17 of the table in clause 1 of Schedule 3 to the Regulation).

Item [2] Subsection 17(5)

This item will repeal and substitute current subsection 17(5). New subsection (5) prescribes that if the Minister refunds the amount in subsection 17(4), and the fee included a credit card surcharge or PayPal surcharge, then the Minister must also refund the proportion of the surcharge equal to the proportion that the refund amount prescribed in subsection 17(4) is of the amount specified in item 13 of the table in clause 1 of Schedule 3 to the Regulation.

Item [3] Subsection 17(6)

This item will omit an express dollar figure as a refund amount and insert new paragraphs (e) and (f) to provide that, for applicants for citizenship by conferral, amended subsection 17(6)

prescribes the refund amount as the difference between the amount paid where a citizenship test must be taken (as set out in item 14 of the table in clause 1 of Schedule 3 to the Regulation), and where no test is taken (as set out in item 16, or item 18 of the table in clause 1 of Schedule 3 to the Regulation).

Item [4] Subsection 17(7)

This item will repeal and substitute current subsection 17(7). New subsection (7) prescribes that if the Minister refunds the amount in subsection 17(6), and the fee included a credit card surcharge or PayPal surcharge, then the Minister must also refund the proportion of the surcharge equal to the proportion that the refund amount prescribed in subsection 17(6) is of the amount specified in item 14 of the table in clause 1 of Schedule 3 to the Regulation.

Part 2 – Application of amendments

Australian Citizenship Regulation 2016

Item [5] At the end of Part 4

This item will insert new section 34 into Part 4 of the Citizenship Regulation. Section 34 provides that amendments made by Part 1 of Schedule 1 to the Regulations will apply in relation to an application for Australian citizenship made on or after 1 July 2023.

Part 1 of Schedule 1 applies retrospectively in relation to a citizenship application made on or after 1 July 2023.

This provision is entirely beneficial to certain citizenship applicants who are eligible for a refund of application fees that increased from 1 July 2023.

Retrospective regulations are permissible in accordance with section 12 of the *Legislation Act 2003*.