

76

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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE SENATE
AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1983-84
EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister representing
the Minister for Immigration and Ethnic Affairs, the
Honourable Stewart J West M.P.)

EXPLANATORY MEMORANDUM

AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1983

Purpose of the Bill

The Australian Citizenship Amendment Bill 1983 is designed to remove all discriminations from the Australian Citizenship Act 1948, to revise the oath of allegiance and to effect certain other changes to the Act.

The proposed legislation will also make consequential and technical amendments.

Clause 1: Short title, etc.

Clause 1 fixes the citation of the Amendment Act and identifies the Australian Citizenship Act 1948 as the Principal Act (the Act).

Clause 2: Commencement

Clause 2 provides for the Bill to come into operation on the twenty-eighth day after the day on which it receives the Royal Assent, save for certain specified clauses (relating to the status of British subject) which will come into operation on a date to be fixed by Proclamation in order to allow consequential amendments to other legislation where the status of British subject is employed.

Clause 3: Title

Clause 3 amends the title of the Act to remove reference to the status of British subject.

Clause 4: Interpretation

Paragraph 4(1)(a) amends section 5 of the Act by inserting a new definition of Australia and an "approved form" into the Act.

Paragraph 4(1)(b) amends section 5 of the Act by omitting from the definition of "Australian consulate" reference to a register of births.

Paragraph 4(1)(c) amends section 5 of the Act by omitting from the definition of "Australian consulate" reference to "New Guinea".

Paragraph 4(1)(d) amends section 5 of the Act by omitting the definitions of "New Guinea", "responsible parent", "service under an Australian government" "the approved form", "the permanent forces of the Commonwealth" and "the Secretary" and substitutes and inserts new definitions.

Paragraph 4(1)(e) amends section 5 of the Act by omitting paragraph 3(b) relating to the interpretation of "full age" as this becomes unnecessary.

Paragraph 4(1)(f) inserts into the Act the following new sub-sections:

New sub-section 5 (5) to provide that a reference to a period during which a person is or has been confined in:-

- (a) a prison includes a reference to a period during which the person is or has been -
 - . an escapee from a prison; or
 - . undergoing a sentence of periodic detention in a prison, and
- (b) a psychiatric institution by order of a court includes a reference to a period during which the person is or has been an escapee from the institution.

New sub-section 5 (6) to provide that a child born to a woman as a result of the carrying out, during the period in which the woman was married to a man, of a medical procedure in relation to that woman, being a child who is not biologically the child of that man, shall, for the purposes of the Act, be deemed to be a child of that man and of no other man, if the medical procedure was carried out with the consent of that man.

New sub-section 5 (7) to provide that sub-section (6) applies in relation to a purported marriage that is void as if the purported marriage were a marriage and as if the parties to the purported marriage were husband and wife.

New sub-section 5 (8) to provide that in sub-section (6) 'medical procedure' means artificial insemination or the implantation of an embryo in the body of a woman.

Paragraph 4(2)(a) amends section 5 of the Act by omitting the definitions of "alien" and "the United Kingdom and Colonies".

Paragraph 4(2)(b) amends section 5 of the Act by omitting sub-section 5(2).

Paragraph 4(2)(c) amends section 5 of the Act to effect a technical amendment.

Paragraph 4(2)(d) amends section 5 of the Act by omitting paragraph (3)(d) which provides that the United Kingdom and Colonies shall be deemed to constitute one country.

Paragraph 4(2)(e) amends section 5 of the Act by omitting sub-section (3A) which provides for the declaration by regulation of persons to be protected persons for the purposes of the Act.

Paragraph 4(2)(f) amends section 5 of the Act to effect a consequential amendment.

Clause 5

Clause 5 inserts new section 5A into the Act to provide that certain non-citizens shall be taken to be, or to have been, permanent residents for the purposes of the Act. A person will be taken to be or to have been a permanent resident in relation to a period before or after the commencement of the Migration Amendment Act 1983 during which the person was present in Australia if -

- (i) . his continued presence in Australia (other than Norfolk Island or Cocos (Keeling) Islands) was not, during that period, subject to any limitation as to time imposed by law,
 - . he was not, during that period, a prohibited immigrant or a prohibited non-citizen, and
 - . he was not, during that period, an exempt person under sub-section 8(1) of the Migration Act 1958;
- (ii) . his continued presence in Norfolk Island or Cocos (Keeling) Islands was not during that period, subject to any limitation as to time imposed by law;
- (iii) . he was the holder of (or deemed to be included in) a return endorsement, or a similar document applicable in Norfolk Island or Cocos (Keeling) Islands (treated under regulations as the equivalent of a return endorsement), or he was declared by regulations to have had an association with Norfolk Island or Cocos (Keeling) Islands.

The Minister is empowered under new sub-section 5A(2) to declare certain classes of persons who are exempt from the requirement of an entry permit under paragraph 8(1)(e), e.g. citizens of New Zealand, to be permanent residents for the purposes of the Act.

Such a declaration or regulations may take effect from a date prior to the date on which the declaration was made or the regulations were made.

Clause 6: Application of this Act to certain
citizens of Pakistan and Republic of
South Africa

Clause 6 repeals section 8A of the Act.

Clause 7: Repeal of Part II

Clause 7 repeals part II of the Act.

Clause 8: Heading to Division 1 of Part III

Clause 8 amends the heading to Division 1 of Part III of the Act by inserting "Adoption" after "Birth".

Clause 9: Citizenship by birth

Clause 9 amends section 10 of the Act to effect formal amendments and to provide that sub-section 10(2) and (3) does not apply in relation to a person if, at the time of his birth, a parent of the person was an Australian citizen or a permanent resident. Likewise, sub-section 10(3) does not apply if at the time of a person's birth, a parent of the person was an Australian citizen or a permanent resident and was not an enemy alien. The clause also substitutes the phrase "a parent of the person" for "his father" in sub-sections 10(2) and (3).

Clause 10: Citizenship by adoption

Clause 10 repeals section 11 of the Act and substitutes new section 10A to provide that a person, not being an Australian citizen, who, under a law of the Commonwealth or of a State or Territory, is adopted by an Australian citizen or jointly by 2 persons at least one of whom is an Australian citizen and at the time of his adoption is present in Australia as a permanent resident shall be an Australian citizen.

Clause 10: Citizenship by descent

Clause 10 also substitutes in place of repealed section 11 of the Act new sub-section 10B(1) to provide that a person born to an Australian citizen outside Australia is an Australian citizen, if his name is registered at an Australian consulate within 18 years after his birth, and, where a parent of his at the time of his birth was an Australian citizen by descent under this section or under section 11 of the Act before its repeal, that parent was, at any time before the registration of his or her child, present in Australia, (otherwise than as a prohibited

immigrant or as a prohibited non-citizen, or in contravention of a law of Norfolk Island or Cocos (Keeling) Islands), for a period of or periods amounting, in the aggregate to, not less than 2 years.

Clause 10 also provides in new sub-section 10B(2) that where, at the time of the birth of a child, one of his parents was not an Australian citizen, his name shall not be registered at an Australian consulate unless the person applying to register the name declares in writing to the person to whom the application is made, or otherwise satisfies that person, that -

- . at least one person who is, at the time of the application, a responsible parent of the child, was at the time of the birth of the child -
 - . (i) a parent of the child, and
 - . (ii) an Australian citizen, or
- . the person who was a parent of the child at the time of his birth and an Australian citizen, is dead.

Clause 10 also provides in new sub-section 10B(3) that the validity of the registration at an Australian consulate of the name of a person is not affected by a failure to comply with new sub-section 10B(2) in relation to that registration.

Clause 11: Grant of certificate of Australian
 Citizenship

Clause 11 repeals sections 13 and 14 of the Act and substitutes new sections 13 and 14.

New sub-section 13(1) provides that the Minister may, in his discretion, upon application in accordance with the approved form, grant a certificate of Australian citizenship to a person who satisfies the Minister that -

- (a) he is a permanent resident;
- (b) he has attained the age of 18 years;
- (c) he understands the nature of the application;

- (d) he has been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than one year during the period of 2 years immediately preceding the date of the furnishing of the application;
- (e) he has been present in Australia as a permanent resident for a period of, or for periods amounting in the aggregate to, not less than 2 years during the period of 5 years immediately preceding the date of the furnishing of the application;
- (f) he is of good character;
- (g) he possesses a basic knowledge of the English language;
- (h) he has an adequate knowledge of the responsibilities and privileges of Australian citizenship; and
- (j) if granted a certificate of Australian citizenship, he is likely to reside, or continue to reside, in Australia, or to maintain a close and continuing association with Australia.

New sub-section 13(2) provides that where, by reason of a physical or mental incapacity, not being a temporary incapacity, an applicant under sub-section 13(1) is not capable of understanding the nature of that application, paragraphs (1) (c), (g) and (h) do not apply in relation to that person.

New sub-section 13(3) provides that the residence requirements in paragraphs (1)(d) and (e) do not apply in relation to -

- . a person who has completed not less than 3 months' relevant defence service; or
- . a person who has been discharged from relevant defence service before completing 3 months' of that service, as medically unfit for service or further service and who became medically unfit by reason of his relevant defence service.

New sub-section 13(4) provides that, in certain circumstances, the Minister may or may not, in relation to an applicant for the grant of a certificate of Australian citizenship, take into account certain periods of residence in Australia as permanent residence.

Periods of confinement in a prison (except where the applicant's conviction was subsequently quashed) or psychiatric institution by order of a court made in connection with criminal proceedings cannot be taken into account by the Minister.

A discretion to treat a period during which the applicant -

- . was a permanent resident,
- . was not present in Australia, and
- . was engaged in activities that the Minister considers beneficial to the interests of Australia,

as a period during which the applicant was present in Australia as a permanent resident is conferred on the Minister. The Minister may also, in his discretion, treat a period ending before the period of 5 years referred to in paragraph(1)(e), being a period during which the applicant was present in Australia or ordinarily resident in Papua or New Guinea before 16 September 1975 or in the Independent State of Papua New Guinea during the period 16 September 1975 to 16 September 1978. In case of hardship or disadvantage to an applicant if his application is rejected, the Minister may treat a period of his lawful residence in Australia including Norfolk Island and Cocos (Keeling) Islands (e.g. as a temporary resident) as a period during which he was present as a permanent resident in Australia.

New sub-section 13(5) provides that paragraph 13(1)(e) does not apply in relation to a person who was formerly an Australian citizen or who was born in Australia.

New sub-section 13(6) provides that paragraphs (1)(g) and (h) do not apply in relation to a person who satisfies the Minister that he is suffering (otherwise than temporarily) from a loss, or from a substantial impairment, of hearing, speech or sight.

New sub-section 13(7) provides that paragraph (1)(g) does not apply to a person who has attained the age of 50 years.

New sub-section 13(8) provides that paragraph (1)(h) does not apply to a person who has attained the age of 60 years.

New sub-section 13(9) provides that, subject to new sub-section (11), the Minister may, in his discretion, on application, grant Australian citizenship to a person -

- (a) who has not attained the age of 18 years;
- (b) who -
 - . has attained the age of 18 years; and
 - . has made the application before attaining that age;
- (c) who is the spouse, widow or widower of an Australian citizen; or
- (d) who -
 - . has attained the age of 16 years; and
 - . is the spouse of a person who has been granted a certificate of Australian citizenship but has not yet acquired Australian citizenship by virtue of the operation of section 15.

New sub-section 13(10) provides that, subject to new sub-section (11), the Minister may, in his discretion, on application, include in a certificate of Australian citizenship, either at the time of granting the certificate or by later amending the certificate, the name of a child who has not attained the age of 16 years and of whom the grantee is a responsible parent.

New sub-section 13(11) provides that the Minister shall not grant a certificate of Australian citizenship to a person under sub-section (1) or (9) or include the name of a person in a certificate of Australian citizenship under sub-section (10) -

- . during any period in which criminal proceedings for an offence against a law of the Commonwealth, a State or a Territory are pending in relation to the person,
- . during any period in which the person is confined to a prison in Australia,
- . during the period of 2 years after the expiration of any period during which the person has been confined in a prison in Australia by reason of the imposition on him

of a sentence of death that has been commuted to a sentence of imprisonment or a sentence of imprisonment for life or for a period of not less than 12 months,

- . if the person has been released from serving a part of a sentence of imprisonment on parole or upon licence to be at large - during any period during which action can be taken in respect of the person under a law of the Commonwealth, a State or a Territory by way of requiring the person to serve the whole or a part of the remainder of that sentence,
- . if the person has been released by a court from serving a part of a sentence of imprisonment upon his giving a relevant security - during any period during which action can be taken in respect of the person under a law of the Commonwealth, a State or a Territory by reason of a breach of a condition of that security,
- . during any period in which the person is confined in a psychiatric institution by order of a court made in connection with criminal proceedings of the type mentioned above in relation to the person, or
- . if the person ceased to be an Australian citizen by virtue of the registration of a declaration under section 18 - during the period of 12 months after the date of registration of the declaration.

New sub-section 13(12) provides that where the Minister makes a decision under the section refusing an application and the applicant is present in Australia, the Minister shall cause to be served on the applicant a notice in writing setting out that decision.

New sub-section 13(13) provides that nothing in paragraph (4)(a) or sub-section (11) shall be taken, by implication, to limit the generality of paragraph (1)(f).

New sub-section 13(14) provides that sub-section 13(10) does not limit the application of sub-section 47(1).
New sub-section 13(15) is a technical amendment.

New sub-section 13(16) provides, in effect, that a period of confinement in a prison is not to be taken against an applicant where his conviction was subsequently quashed.

New sub-section 13(17) defines "relevant security".

Clause 11: Deferral of consideration of application
 under section 13

Clause 11 substitutes new section 14.

New sub-section 14(1) provides that where an application is made to the Minister under section 13 and it appears to the Minister at a particular time that if he were to complete consideration of the application at that time, he would be likely to refuse the application and having regard to the effluxion of time, or to the likelihood of a change in circumstances, he would be likely to grant the application if consideration of the application were deferred for such period as he determines, the Minister may, in his discretion, defer consideration of the application until the expiration of that period.

New sub-section 14(2) provides that the Minister shall not defer consideration of an application under section 13 for a period that exceeds, or for periods that, in the aggregate, exceed, 12 months.

New sub-section 14(3) provides that where the Minister decides to defer consideration of an application until the expiration of a period -

- . if the applicant is present in Australia, the Minister shall cause a notice in writing to be served on the applicant setting out that decision, and
- . section 13 and sub-section (1) of this section apply in relation to the application as if it had been furnished immediately before the expiration of that period.

New sub-section 14(4) provides that nothing in the section prevents an applicant under section 13 from withdrawing his application or where such an application has been refused an applicant may make a further application or applications under that section.

Clause 12: Effect of grant of certificate of
 Australian Citizenship

Clause 12 amends section 15 of the Act by omitting paragraphs 15(1)(a) and (b) and substitutes new paragraphs 15(1)(a) and (b) to provide that a person to whom a certificate of Australian citizenship has been granted shall be an Australian citizen:

- (a) in the case of a person who is required to make a pledge of Australian citizenship, on and after the later date of the following two
 - (i) the date on which the certificate is granted, or
 - (ii) the date he made the pledge.
- (b) in the case of a person -
 - (i) who has not attained the age of 16 years; or
 - (ii) to whom sub-section 13(2) applies,
 on and after the date on which the certificate is granted.

Clause 12 also amends section 15 of the Act by omitting sub-section 15(2) and (3) and substituting new sub-section (2) to provide for the pledge of Australian citizenship to be made before any of a number of listed persons who are Australian citizens and if the Minister has made arrangements for it to be made in public - unless he otherwise permits, be made in accordance with these arrangements.

Clause 12 substitutes new sub-section (3) which provides that a person who has been granted a certificate of Australian citizenship under sub-section 13(9) by virtue of being the spouse of a person referred to in sub-paragraph 13(9) (d) (ii) shall not make a pledge of Australian citizenship before the last mentioned person has made such a pledge.

Clause 12 also amends section 15 of the Act to effect a technical amendment, and to include a saving provision.

Clause 13: Loss of citizenship on acquisition of another nationality

Clause 13 repeals section 17 of the Act and substitutes new section 17 to provide in sub-section 17(1) that a person, being an Australian citizen who has attained the age of 18 years, who does any act or thing the sole or dominant purpose of which and the effect of which is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.

New sub-section 17(2) provides that sub-section (1) does not apply in relation to marriage.

Clause 14: Renunciation of citizenship

Paragraph 14(a) amends section 18 of the Act by omitting sub-sections (1), (1A), (2), (3) and (3A) and substituting new sub-section (1) to provide that where a person is an Australian citizen and -

- . has attained the age of 18 years and is a national or citizen of a foreign country, or
- . was born, or is ordinarily resident, in a foreign country and is not entitled, under the law of that country, to acquire the nationality or citizenship of that country by reason that the person is an Australian citizen,

the person may lodge with the Minister a declaration in the prescribed form renouncing his Australian citizenship.

Paragraph 14(b) amends sub-section 18(4) of the Act to effect a technical amendment.

Paragraph 14(c) amends section 18 of the Act to insert new sub-section (5A) to provide that the Minister shall not register a declaration made under the section if he considers that it would not be in the interests of Australia to do so.

Paragraph 14(d) amends sub-section 18(6) of the Act to effect a technical amendment.

Clause 15: Deprivation of citizenship

Paragraph 15(a) amends section 21 of the Act by omitting paragraph 21(a) and substituting new paragraph 21(a) to permit the Minister to deprive a person of his Australian citizenship where a person who is an Australian citizen by virtue of a certificate of Australian citizenship -

- . has been convicted of an offence against section 50 in relation to the application for his certificate of Australian citizenship, or
- . has, at any time after furnishing the application for his certificate of Australian citizenship (including a time after the grant of the certificate), been convicted of an offence against a law in force in a foreign country or against a law of the Commonwealth, a State or Territory for which he has been sentenced to death or to imprisonment for life

or for a period of not less than 12 months, being an offence committed at any time before the grant of the certificate (including a time before the furnishing of the application),

and the requirements of existing paragraph 21(b) in the Act are satisfied (i.e. it would be contrary to the public interest for the person to continue to be an Australian citizen).

Paragraph 15(b) amends section 21 to effect a formal amendment.

Paragraph 15(c) amends section 21 of the Act by inserting new sub-section (2) which provides that a reference in sub-section (1) to a conviction includes a reference to the making of an order under sub-section 19 B(1) of the Crimes Act 1914 or the corresponding provision of a law in force in a foreign country or of a State or Territory in relation to the offence.

Paragraph 15(c) also amends section 21 of the Act to require the Minister, where he makes a deprivation order, to cause to be served a copy of the deprivation order on the person deprived of his Australian citizenship.

Clause 16: Children of persons who lose or are deprived of citizenship

Paragraphs 16(a) - (f) amend sub-sections 23 (1) and (2) of the Act to effect formal amendments and to remove discriminatory references.

Paragraph 16(g) amends section 23 of the Act to insert new sub-sections (3) and (4).

New sub-section (3) ensures that a child would not lose his Australian citizenship under sub-sections 23(1) or 23(2) where another responsible parent of the child is and continues to be an Australian citizen, or, if that other responsible parent dies while an Australian citizen, at any time after the death of that other responsible parent.

New sub-section (4) requires that, where the Minister makes an order directing that all or any of the children of a person shall cease to be Australian citizens, he shall, if the person is present in Australia, cause to be served on the person a copy of that order.

Clause 17: Persons may resume citizenship lost under section 17 in certain circumstances

Clause 17 amends the Act by inserting new section 23 AA. New sub-section 23AA(1) provides that where a person does an act or thing that, under section 17, results in the person ceasing to be an Australian citizen and -

- . if he did not do the act or thing he would have suffered significant hardship or detriment; or
- . at the time he did the act or thing he did not know that he would, as a consequence of his doing the act or thing, cease to be an Australian citizen,

the person may make and furnish to the Minister a statement to that effect and a declaration that he wishes to resume Australian citizenship.

New sub-section 23AA (2) provides that the Minister may, in his discretion, register the declaration if he is satisfied as to the truth of the statement and, in a case where the person has claimed that, if he had not done the act or thing that resulted in his ceasing to be an Australian citizen, he would have suffered hardship or detriment of an economic nature, that the person's circumstances were such as to compel him to do that act or thing. Upon registration of the declaration, the person making the declaration again becomes an Australian citizen.

Clause 18: Persons may resume citizenship lost under section 20

Clause 18 amends section 23A of the Act to effect formal and consequential amendments.

Clause 19: Persons may resume citizenship lost under section 23

Clause 19 amends section 23B of the Act to effect formal and consequential amendments.

Clause 20: Special provisions to prevent persons being stateless

Clause 20 amends section 23D of the Act by omitting sub-sections (2) and (3) and substituting new sub-sections (2), (3) and (3A).

New sub-section 23D(2) requires a notice in writing to be given to an applicant where the Minister refuses his application under sub-section 23D(1).

New sub-section 23D (3) operates to prevent persons being rendered stateless as a result of the new provisions in section 10B relating to citizenship by descent by registration.

New sub-section 23D (3A) operates to prevent persons being rendered stateless as a result of the new provisions in section 21 relating to deprivation of citizenship.

Clause 21: Transitional provisions

Clause 21 amends section 25 of the Act to effect a consequential amendment.

Clause 22: Repeal of Part IV

Clause 22 repeals Part IV of the Act.

Clause 23: Certificate of registration or naturalization in case of doubt

Clause 23 amends section 32 of the Act to effect a formal amendment.

Clause 24: Posthumous children

Clause 24 repeals sections 34 and 35 and substitutes new section 34 which replaces references to "the father" and "his father" with "a parent" or "the parent".

Clause 25: Statement in support of application for certificate of Australian citizenship

Clause 25 amends section 36 of the Act to effect a technical amendment.

Clause 26: Delegation

Clause 26 repeals sections 37 to 40A (inclusive) of the Act and substitutes new section 37 to enable the Minister to delegate his powers under the Act.

Clause 27: Formalities regarding pledge of citizenship

Clause 27 amends section 41 of the Act to effect a consequential amendment.

Clause 28: Cancellation of certificates, returns of certificates, etc

Clause 28 amends section 42 of the Act to effect formal and consequential amendments.

Clause 29: Definition of certificate of naturalization for certain purposes

Clause 29 amends section 45 of the Act to effect a formal amendment.

Clause 30: Issue and proof of certificates of Australian citizenship

Clause 30 amends section 46 of the Act to effect formal amendments.

Clause 31: Evidentiary certificates

Clause 31 amends section 46A to effect formal and consequential amendments and inserts new sub-section (1A) which sets out certain requirements which must be complied with before an applicant under sub-section (1) is entitled to be issued with an evidentiary certificate in relation to a certificate of Australian citizenship granted to a person specified in the application.

Clause 32: Replacement certificates, Surrender of certificates, Offence to alter certificate

Clause 32 repeals sections 48, 48A and 49 of the Act and substitutes new sections 47A, 48 and 49.

New section 47A permits the Minister to grant and issue a replacement certificate of Australian citizenship where the original certificate of Australian citizenship may be amended under section 47 to correct an error (other than to include the name of a person or to omit the name of a person therefrom) and that original certificate has been surrendered to him. The replacement certificate has effect for all purposes of the Act as if it had been granted and issued at the same time as the original certificate.

New section 48 provides that where an order is made under the Act depriving a person of his Australian citizenship or revoking an evidentiary certificate issued to him, the person shall, upon demand in writing by the Minister or the Secretary respectively, surrender his certificate of Australian citizenship to the Minister in the former case and to the Secretary in the latter case. A failure to surrender the certificate in either case, without reasonable excuse, is an offence punishable on conviction by a fine not exceeding \$1,000.

New section 49 makes it an offence for a person to alter, or cause or permit to be altered, without lawful authority, a certificate of Australian citizenship. A penalty of \$2,000 or imprisonment for 12 months, or both is provided.

Clause 33: False representations, etc

Clause 33 amends section 50 of the Act by omitting paragraph (1)(a) and substituting new paragraph (1)(a) to make it an offence to make, or cause or permit to be made, a representation or statement that is, to his knowledge, false or misleading in a material particular and to increase the penalty to \$1,000 or imprisonment for 6 months or both.

Clause 34: References in Commonwealth and Territory laws to British subjects

Clause 34 repeals section 51 of the Act.

Clause 35: Provisions of this Act to be exclusive of State laws

Clause 35 amends section 52 of the Act to effect a consequential amendment.

Clause 36: Review of decisions, Statement to accompany notification of decisions

Clause 36 amends the Act by inserting new sections 52A and 52B.

New sub-section 52A(1) provides for applications to be made to the Administrative Appeals Tribunal for review of decisions of the Minister under -

- . section 13, or sub-section 23D(1);
- . section 18 other than sub-section 18(5);
- . sub-sections 21(1), 23(2), or section 47;
- . sections 23A or 23B;
- . sub-section 23AA(2).

New sub-section 52A(2) provides that a person is not entitled to make an application under sub-section (1) for review of a decision under section 13 (other than sub-section 13(9)), unless he is a permanent resident.

New sub-section 52A(3) provides that in the section "decision" has the same meaning as in the Administrative Appeals Tribunal Act 1975.

Clause 37: Regulations

Clause 37 amends section 53 of the Act to effect formal and consequential amendments.

Clause 38: Schedule 2

Clause 38 repeals Schedule 2 to the Act and substitutes the Schedule set out in new Schedule 1.

Clause 39: Schedule 3

Clause 39 repeals Schedule 3 to the Act.

Clause 40: Formal amendments

Clause 40 amends the Act as set out in new Schedule 2.

Clause 41: Application

Sub-clause 41(1) defines "amended Act" to mean the Act as amended by this Act and "commencing day" to mean the twenty-eighth day after the day on which this Act receives the Royal Assent.

Sub-clause 41(2) provides that the amendments made by section 9 apply to a person born after the commencing day.

Sub-clause 41(3) provides that section 10A of the amended Act applies to a person adopted after the commencing day.

Sub-clause 41(4) provides that section 10B of the amended Act applies to a person born either before or after the commencing day.

Sub-clause 41(5) provides that where the name of a person who was born outside Australia on or after 26 January 1949 is registered at an Australian consulate for the purposes of section 10B of the amended Act within 2 years after the commencing day -

paragraph 10B(1)(a) of the amended Act has effect as if "within 18 years of his birth" were omitted, and

sub-sub-paragraph 10B(1)(b)(ii)(B) of the amended Act does not apply in relation to the acquisition of Australian citizenship by the person.

Sub-clause 41(6) provides that sections 13 and 14 of the amended Act apply to persons who made application under sections 13 and 14 of the Act, being persons whose applications had not been granted or refused before the commencing day, as if those applications had been made under the corresponding provision of section 13 of the amended Act.

Sub-clause 41(7) provides that sub-section 13(3) of the amended Act applies to relevant defence service, and to discharge from such service, either before or after the commencing day.

Sub-clause 41(8) provides that paragraph 13(11)(a) of the amended Act, in so far as it relates to an offence with which a person has been charged, applies to an offence with which a person has been charged either before or after the commencing day.

Sub-clause 41(9) provides that sub-section 13(11) of the amended Act, in so far as it relates to a period during which a person has been confined in a prison or psychiatric institution, applies to a person so confined either before or after the commencing day.

Sub-clause 41(10) provides that sub-section 15(3) of the amended Act has effect, on and after the commencing day, in relation to a person granted a certificate of Australian citizenship before that day under sub-section 14(8) of the Act by virtue of being the wife or husband of a person referred to in paragraph 14(8)(d) of that Act, but who is not, on the commencing day, an Australian citizen by virtue of section 15 of the Act, as if the reference in that first-mentioned sub-section to sub-section 13(9) of the amended Act included a reference to sub-section 14(8) of the Act and as if the reference in that first-mentioned sub-section to sub-paragraph 13(9)(d)(ii) of the amended Act included a reference to paragraph 14(8)(d) of the Act.

Sub-clause 41(11) provides that sub-section 15(4) of the amended Act has effect, on and after the commencing day, in relation to a person whose name was, under sub-section 14(9) of the Act, included in a certificate of Australian citizenship before that day but who is not, on the commencing day, an Australian citizen by virtue of section 15 of the Act, as if the reference in the first-mentioned sub-section to sub-section 13(10) of the amended Act included a reference to sub-section 14(9) of the Act.

Sub-clause 41(12) provides that sections 17 and 23AA do not apply to an act or thing done before the commencing day.

Sub-clause 41(13) provides that sub-section 18(1) of the amended Act, in so far as it relates to a person born in a foreign country, applies to a person born either before or after the commencing day.

Sub-clause 41(14) provides that sub-paragraph 21(1)(a)(i) of the amended Act applies to convictions that occurred either before or after the commencing day.

Sub-clause 41(15) provides that sub-paragraph 21(1)(a)(ii) of the amended Act applies to applications furnished after the commencing day.

Sub-clause 41(16) provides that sub-section 23(1) of the amended Act does not apply in relation to a person who ceased to be an Australian citizen under section 17, 18 or 19 of the Principal Act before the commencing day.

Sub-clause 41(17) provides that sub-section 36(10) of the amended Act does not apply in relation to a statement furnished before the commencing day.

Sub-clause 41(18) provides that section 47A of the amended Act applies to a certificate of Australian citizenship granted either before or after the commencing day.

Sub-clause 41(19) provides that section 52A of the amended Act applies to decisions made on or after the commencing day.

Sub-clause 41(20) provides that a person who, immediately before the commencing day or the day fixed for the purposes of sub-section 2(2), was, or had ceased to be, an Australian citizen by virtue of a provision of the Act repealed by this Act, does not cease to be, or again become, as the case may be, an Australian citizen by reason of the repeal of that provision but nothing in this sub-section affects the application of section 8 of the Acts Interpretation Act 1901.

