

1986

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of  
Senator the Honourable Don Grimes,  
Minister representing the  
Minister for Immigration and Ethnic Affairs)



## AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1986

### OUTLINE

The Australian Citizenship Amendment Bill 1986 which amends the Australian Citizenship Act 1948 (the Act) has four purposes:

- (1) to exclude children born in Australia to visitors, temporary entrants and prohibited non-citizens from automatically acquiring Australian citizenship by birth;
- (2) to amend the oath and affirmation of allegiance to remove the following requirements for persons taking such oath or affirmation:
  - . the requirement to announce one's name,
  - . the requirement to renounce all other allegiances;
- (3) to allow resumption of citizenship for persons who lost it under section 17 at any time subject to a continuing commitment to Australia;
- (4) to effect other minor and formal amendments to the Act, to remove sexist language and anomalies and to make the legislation more specific.

There are no financial implications arising from this Bill apart from an estimated cost of \$80,000 to publicise the amendments effected by this Bill which will be taken up in the budgetary context.

## NOTES ON CLAUSES

### Clauses 1 and 2

The first two clauses of the Bill provide for the short title and for the commencement of the legislation to be on a day to be fixed by Proclamation.

### Clause 3. Interpretation

This clause effects a technical amendment to paragraph 5(3)(aa) of the Act which broadly has the effect of conferring citizenship on abandoned children by deeming such children to have been born in Australia and by exempting them from certain requirements under section 10. The provision, which will be re-numbered paragraph 5(3)(b), will take into account various amendments to section 10 made since the coming into operation of the Act.

### Clause 4. Citizenship by birth

Section 10 of the Act presently provides that persons born in Australia (other than children of diplomats, consular officials and enemy aliens) automatically become Australian citizens. This clause amends section 10 so that a person born in Australia after the amendment comes into effect will be an Australian citizen only if at the time of birth, at least one of the parents of the person is either an Australian citizen or a permanent resident. The effect of this is that children of visitors, temporary entrants and prohibited non-citizens will no longer automatically acquire Australian citizenship simply by reason of their birth in Australia. Clause 4 also provides for acquisition of citizenship by such persons born in Australia where they have been ordinarily resident in Australia for a period of 10 years from date of birth.

### Clauses 5 and 6

Section 13 of the Act lays down various requirements to be satisfied before a certificate of Australian citizenship can be granted and provides for certain exemptions to those requirements. Section 14 allows for the deferral of applications for citizenship to give applicants time to satisfy the requirements of section 13.

At present, there is no bar to a person being granted citizenship while he or she is overseas. As a result of an amendment effected by this clause, a person cannot be granted citizenship if he or she is not present in Australia unless he or she is a permanent resident who is engaged in activities outside Australia that are beneficial to the interests of Australia.

Among the requirements for the grant of citizenship in section 13 of the Act, a person must be present in Australia as a permanent resident for a period of 2 years during the 5 years immediately preceeding the date of application for the grant of citizenship, including a period of 1 year in the 2 year period immediately preceeding the date of the application. This evidences an intention that applications should not be lodged before these residential requirements are met. Section 14 will be amended by Clause 6 so that it will not be possible to defer applications for citizenship lodged by persons who have not satisfied the residential requirements.

A permanent resident, according to the Act, is a person whose continued presence in Australia is not subject to any limitation as to time imposed by law and who is not a prohibited non-citizen. It can happen that a person who enters Australia for permanent residence is not granted an entry permit because of an administrative error. Such a person becomes a prohibited non-citizen and, through no fault of his own, cannot build up any period of residence to satisfy the residence requirements until his status is regularised.

Clause 5 will also amend section 13 so that a person who is not a permanent resident by reason of an administrative error can be treated as a permanent resident during the period that he was present in Australia.

Former Australian citizens need only be present in Australia as a permanent resident for 1 year in the 2 years immediately prior to furnishing the application. The intention behind this requirement is that persons who lose Australian citizenship by acquiring citizenship of another country should have to wait 1 year before they re-acquire Australian citizenship by grant. However, a person who was present in Australia for 1 year in the 2 years prior to being losing citizenship is able to avoid waiting for 1 year before re-acquiring it. Section 13 will be amended to prevent former Australian citizens from re-acquiring citizenship within 12 months of having lost it.

Section 13 will also be amended to correct a typographical error in sub-section 13(17).

#### Clause 7 - Resumption of citizenship

Section 17 provides that a person loses Australian citizenship upon acquisition of foreign citizenship. Under sub-section 23(1), a child of a responsible parent who loses citizenship under section 17, will also lose citizenship. Section 23AA allows resumption of Australian citizenship if the person can show that he or she would have suffered significant hardship if he or she did not

acquire foreign citizenship or did not know that he or she would lose Australian citizenship on acquisition of foreign citizenship. At present, the section only applies to acts or things done after 22 November 1984.

This clause will repeal the existing section 23AA and substitute a new section 23AA to effect the following changes:

- (i) the operation of section 23AA will extend to all persons who have lost citizenship under section 17 at any time.
- (ii) persons applying for resumption must have been lawfully resident in Australia for at least 2 years and must show that they intend to continue to live in Australia or to return to Australia to live within 3 years and that they have maintained a close and continuing relationship with Australia.
- (iii) a child who has lost citizenship under sub-section 23(1) will resume citizenship upon registration of a declaration lodged by the parents under section 23AA in which the child is included provided the child is under 18 years of age.

#### Clause 8 - Statelessness

Section 23D meets Australia's international obligations in relation to the prevention of statelessness. In view of amendments to section 10, section 23D will be amended so that a person born in Australia, neither of whose parents is an Australian citizen or a permanent resident, will be registered an Australian citizen only if the person is not, and has never been, a citizen of any country and is not, and has never been, entitled to acquire the citizenship of a foreign country.

#### Clause 9 Review of decisions

Clause 9 of the Bill amends section 52A of the Act by providing for review by the Administrative Appeals Tribunal of decisions of the Minister that the Minister is satisfied that a person had reasonable prospects of acquiring the citizenship of a foreign country so that such a person is not entitled to be registered an Australian citizen.

Clause 9 will also effect a technical amendment to the Act to take into account the repeal of section 23AA and its substitution by a new section 23AA.

#### Clause 10 - Regulations

Paragraph 53(f) of the Act provides for the making of regulations in relation to the imposition and recovery of fees for services provided under the Act.

Clause 10 of the Bill amends the Act to provide for the making of regulations in relation to the remission, refund and waiver of, and exemption from, fees imposed under paragraph 53(f) of the Act.

#### Clause 11 - Schedule 2

Schedule 2 of the Act provides the form for the Oath of Allegiance or Affirmation of Allegiance taken by persons granted Australian citizenship.

Clause 11 of the Bill amends Schedule 2 of the Act to remove the requirements for a person taking the Oath or the Affirmation to announce his or her name and to renounce all other allegiances.

#### Clause 12 - Formal Amendments

Clause 12 of the Bill provides for a schedule which amends the Principal Act by removing sex-specific language from the Act.

