

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

Circulated by authority of the
Minister for Immigration, Local Government
and Ethnic Affairs
The Hon Gerry Hand MP



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OUTLINE

This Bill amends the Australian Citizenship Act 1948 (the Act) to allow children born outside Australia and New Guinea prior to 26 January 1949 to acquire citizenship by descent through their mother in certain circumstances. The mother must have been:

- (a) born in Australia, or
- (b) born in New Guinea; or
- (c) naturalised in Australia before 26 January 1949

2 These requirements reflect the transitional provisions which were provided, at the inception of the Act, for children born outside Australia to Australian fathers before 26 January 1949. The new provisions thus redress a discriminatory effect of the Act. Application for citizenship under the new provisions must be made within five years of the commencement of the provisions and the applicant must be of good character and have been present in Australia at some time before 1 May 1987 (the date at which the original transitional provisions were repealed). Provision also exists for the children of applicants to be included in applications.

3 The Bill also makes some other minor amendments to the Act which:

- . enable persons to apply for registration of citizenship by descent prior to their eighteenth birthday and ensure the validity of registration of persons whose applications were lodged prior to their eighteenth birthday but who were not registered until after that date; and
- . enable a parent's certificate of Australian citizenship to be amended to include the name of a child if the child was under sixteen at the time the parent applied for citizenship or at the time the parent applied to include the child in his or her certificate; and
- . align the provisions of the Act with the Migration Act 1958 which provides that a formal application shall not be taken to have been made unless the application is in writing in accordance with the relevant form approved by the Minister and accompanied by the prescribed fee.

FINANCIAL IMPACT STATEMENT

4 The amendments made by the Bill will have no financial impact.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short Title etc

1 This clause provides that the Act may be cited as the Australian Citizenship Amendment Act 1990. The clause also identifies the Principal Act as the Australian Citizenship Act 1948 (referred to hereafter as 'the Act').

Clause 2 - Commencement

2 This clause provides that the Act commences on proclamation subject to automatic commencement if no proclamation has been made within six months of the Bill receiving Royal Assent.

3 The delay in commencement of the Act will allow necessary amendments to the Australian Citizenship Regulations concerning fees and forms to be in place prior to the commencement of the Act.

Clause 3 - Citizenship by descent

4 This clause amends paragraph 10B(1)(a) of the Act to provide that, in order for a person born outside Australia to be eligible for Australian citizenship by descent, application must be made for registration of the name of the relevant person at an Australian Consulate within 18 years after the person's birth. Prior to this amendment paragraph 10B(1)(a) required that the relevant person's name be registered (as opposed to merely requiring lodgement of the application for registration) within the eighteen year period.

5 The clause also adds a new subsection 10B(4) which ensures the validity of registrations, prior to the commencement of the Bill, of persons as Australian citizens despite non-compliance with paragraph 10B(1)(a) as it existed prior to amendment by this Bill, that is, despite registration not occurring until after the applicant's eighteenth birthday. The application must, however, have been lodged before the applicant's eighteenth birthday.

Clause 4 - Citizenship by descent through mother

6 This clause inserts a new section 11 into the Act which provides that certain persons not previously eligible for Australian citizenship may, within five years of the

commencement of this clause, apply to be registered as Australian citizens.

7 Subsection 11(1) provides that the persons eligible to apply for citizenship under that section must have been born outside Australia or New Guinea before 26 January 1949 to a mother who was born in Australia or New Guinea or who was naturalised in Australia before 26 January 1949 and who became an Australian citizen on 26 January 1949. The subsection also provides that applications must be made within five years of the commencement of this section.

8 Subsection 11(2) permits all natural children (ie biological children, including children born out of wedlock, but not adopted children or step-children) to be included in applications for citizenship by descent. The provision also permits children to be included in applications even if the children are, at the time of application, over the age of eighteen (which would otherwise, by virtue of paragraph 10B(1)(a), prevent registration).

9 Subsection 11(3) provides that the Minister is not obliged to register a person as an Australian citizen under this section unless he is satisfied that the applicant is of good character and had been present in Australia at some time before 1 May 1987.

10 Subsection 11(4) provides that registration as an Australian citizen under this section is effective from the date on which the registration takes place.

11 Subsection 11(5) provides that, if the Minister makes a decision not to register the applicant or any of the applicant's children included in the application, the Minister must provide, either personally or by post, written notice of the decision to the applicant.

Clause 5 - Grant of Australian Citizenship

12 This clause makes amendments to section 13 of the Act to provide that a parent's certificate of Australian citizenship can be amended to include the name of a child where, at the time the parent applied for citizenship, or at the time the parent applied to include a child in his or her certificate, the child was under sixteen years of age and the applicant was a responsible parent of the child. Section 13 formerly required that the child had to be under sixteen years of age at the time that the certificate of citizenship was amended.

Clause 6 - Application to be dealt with only if on approved form and fee paid

13 This clause provides that a formal application shall not be taken to have been made unless the application is in writing in accordance with the relevant form approved by the Minister and accompanied by the prescribed fee.

Clause 7 - Review of Decisions

14 This clause amends section 52A of the Act to provide for review by the Administrative Appeals Tribunal of decisions of the Minister that he is not satisfied in relation to any of the matters specified in section 11 as being relevant to an application for citizenship under that section, namely:

- . that the applicant was present in Australia for any time before 1 May 1987; or
- . that the applicant is of good character.

