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OVERVIEW

Part 2, Division 3 of the *Australian Citizenship Act 2007* (the Act) outlines the circumstances in which a person can cease to be an Australian citizen.

A person may cease to be an Australian citizen by renouncing their citizenship; as a result of the Minister revoking their citizenship; or by serving in the forces of a country at war with Australia.

Cessation of a child's citizenship, where a responsible parent ceases Australian citizenship, is discretionary. This is consistent with Australia's international obligations in regard to the Universal Declaration of Human Rights and the Convention on Rights of the Child in relation to arbitrary deprivation.

A person who is in Australia when they cease to be an Australian citizen will automatically (by operation of law) hold an ex-citizen visa. The ex-citizen visa is a permanent visa giving permission to remain in Australia but does not include permission to return to Australia for which a Resident Return Visa (RRV) is required.

A person who is outside Australia when they cease to be an Australian citizen does not hold a visa. They would need to successfully apply for a visa if they intend to travel to Australia.

The circumstances in which a person can resume their Australian citizenship are set out in chapter 7 - Resuming Citizenship.

Under the transitional arrangements for the new Act, only people who were citizens by descent under the old Act became citizens by descent under the new Act. If a person never met the criteria in the old Act because they did not have a parent who was an Australian citizen at the time of their birth, the person was never an Australian citizen and would not have become a citizen under the new Act. There is, therefore, no need to consider cessation of citizenship because the person was never a citizen and departmental records can be amended to reflect the legal reality.

DIVISION 3 OF THE ACT

Cessation of Australian Citizenship

ELIGIBILITY

Renunciation of Australian citizenship Section 33

“(1) A person may make an application to the Minister to renounce the person’s Australian citizenship.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

APPLICATION REQUIREMENTS

Application requirements Section 46

“(1) An application under a provision of this Act must:

- (a) be on the relevant form approved by the Minister for the purposes of that provision; and*
- (b) contain the information required by the form; and*
- (c) be accompanied by any other information or documents prescribed by the regulations; and*
- (d) be accompanied by the fee (if any) prescribed by the regulations.*

Approval of forms

(2) The Minister may, by writing, approve one or more forms for the purposes of a provision of this Act under which an application may be made.

Note: For example, there are 2 ways to become an Australian citizen by descent under section 16. The Minister may approve 1 form for the purposes of that section or may approve 2 different forms.

Children aged under 16

(2A) An application under a provision of this Act by a child aged under 16 must be set out:

- (a) on a form that contains no other application; or*
- (b) on a form that also contains an application by 1 responsible parent of the child.*

Remission, refund or waiver of fees

(3) The regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph (1)(d)”.

The approved form for applications for renunciation of Australian citizenship is Form 128 “*Application for renunciation of Australian citizenship*”. The form allows for details to be provided of any children of the applicant who the applicant would like to cease to be citizens if the applicant ceases to be a citizen. Separate application is not required because cessation of a child’s citizenship when a responsible parent ceases to be a citizen is by revocation and is discretionary. See below for details of the provisions for revocation of the citizenship of children of parents who cease to be citizens.

The following documents should support the application:

- full birth certificate;
- passport held, if any;
- official evidence of any name change;
- evidence that the applicant is a national or citizen of a foreign country at the time of application; or
- evidence that the applicant was born or is ordinarily resident in a foreign country and will be entitled under the law of that country to acquire the nationality or citizenship of that country after they cease to be an Australian citizen.

**Information, documents and fees to accompany applications
Regulation 12**

- “(1) For paragraph 46(1)(c) of the Act, if an application for citizenship is accompanied by information or a document or documents that are not originally in English, the information and documents must be accompanied by certified English translations.*
- (2) For paragraph 46(1)(d) of the Act, an application of the kind mentioned in an item in Schedule 3 must be accompanied by the fee mentioned in the item.”*

Documents not in English must be accompanied by an official translation. In Australia, translations should be done by National Accreditation Authority of Translators and Interpreters (NAATI) accredited translators.

**“Fees to accompany applications Schedule 3
(subregulation 12(2))**

| Item | Application | Fee |
|-------------|---------------------------------|------------|
| 18 | An application under section 33 | \$260” |

A fee of \$260 must accompany the application”.

Refund of fees (Act subs 46 (3)) Regulation 13

- “(2) The Minister may refund the whole or part of a fee payable under sections 33 and 37 of the Act:*
- (a) if a person has previously lodged an application under the same section and a decision on that application has not been made; or*
- (b) if a person has lodged the application as a result of incorrect advice given by the Department.”*

DECISION MAKING

Minister's decision Section 33

“(2) The Minister must, by writing, approve or refuse to approve the person renouncing his or her Australian citizenship.

(3) Subject to this section, the Minister must approve the person renouncing his or her Australian citizenship if the Minister is satisfied that:

(a) the person is aged 18 or over, and is a national or citizen of a foreign country, at the time the person made the application; or

(b) the person 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 because the person is an Australian citizen.

(4) The Minister must not approve the person renouncing his or her Australian citizenship unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

(5) The Minister may refuse to approve the person renouncing his or her Australian citizenship if the person:

(a) is a national or citizen of a foreign country at the time the person made the application; and

(b) made the application during a war in which Australia is engaged.

(6) The Minister must not approve the person renouncing his or her Australian citizenship if the Minister considers that it would not be in the interests of Australia to do so.

(7) The Minister must not approve the person renouncing his or her Australian citizenship unless the Minister is satisfied that the person:

(a) is a national or citizen of a foreign country immediately before the Minister's decision on the application; or

(b) will, if the Minister approves the application, become a national or citizen of a foreign country immediately after the approval.”

An application must be approved or refused.

If an applicant meets the requirements in subsection 33 (3), and there is no prohibition on approval under subsections 33 (4), (6) and (7), the application must be approved unless subsection (5) applies).

Policy is that evidence the applicant is a citizen of another country should include a statement from a relevant government representative that the person is a citizen of that country or, if the person was born or is ordinarily resident in a foreign country, that the person will acquire the citizenship of that country on renunciation of Australian citizenship.

The term “immediately after” should not be interpreted literally. It is sufficient that the person would acquire another nationality or citizenship within a reasonable period after ceasing to be an Australian citizen. A “reasonable period” would be that which is reasonable in all the circumstances of the case allowing for processes required by the country of acquisition such as processing of an application or attendance at a ceremony.

Time citizenship ceases - Subsection 33 (8)

“(8) If the Minister approves a person renouncing his or her Australian citizenship, the person ceases to be an Australian citizen at the time of the approval.

Note: A child of the person may also cease to be an Australian citizen: see section 36. “

Notification of Decision - Section 47

“(1) If the Minister makes a decision under this Act in relation to a person, the Minister must give the person notice of the decision.

Child

(2) If the person is a child, the Minister satisfies the requirement in subsection (1) if the Minister gives a parent of the child notice of the decision.

Reasons for adverse decision

- (3) *If the decision is an adverse decision, the notice must include the reasons for the decision.*

Form of notice

- (4) *The Minister must give the notice in the manner prescribed by the regulations (which includes electronic form).*

Procedural defect does not affect validity of decision

- (5) *A failure to comply with subsection (3) or (4) does not affect the validity of the decision.”*

A person must be given notice of the decision on their application. If the decision is a refusal, the notice must include the reasons for the decision. Policy is that notification include information on any review right.

Revocation by Minister Section 34

“Citizenship by descent or for persons adopted in accordance with the Hague Convention on Intercountry Adoption

- (1) *The Minister may, by writing, revoke a person’s Australian citizenship if:*
- (a) *the person is an Australian citizen under Subdivision A or AA of Division 2 (including because of the operation of section 32); and*
 - (b) *either of the following apply:*
 - (i) *the person has been convicted of an offence against section 50 of this Act, or section 137.1 or 137.2 of the Criminal Code, in relation to the person’s application to become an Australian citizen;*
 - (ii) *the person obtained the Minister’s approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and*
 - (c) *the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.*

Citizenship by conferral

- (2) *The Minister may, by writing, revoke a person's Australian citizenship if:*
- (a) *the person is an Australian citizen under Subdivision B of Division 2 (including because of the operation of section 32); and*
 - (b) *any of the following apply:*
 - (i) *the person has been convicted of an offence against section 50 of this Act, or section 137.1 or 137.2 of the Criminal Code, in relation to the person's application to become an Australian citizen;*
 - (ii) *the person has, at any time after making the application to become an Australian citizen, been convicted of a serious offence within the meaning of subsection (5);*
 - (iii) *the person obtained the Minister's approval to become an Australian citizen as a result of migration-related fraud within the meaning of subsection (6);*
 - (iv) *the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and*
 - (c) *the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen.*
- (3) *However, the Minister must not decide under subsection (2) to revoke a person's Australian citizenship if:*
- (a) *the person has, at any time after making the application to become an Australian citizen, been convicted of a serious offence within the meaning of subsection (5); and*
 - (b) *the Minister is satisfied that the person would, if the Minister were to revoke the person's Australian citizenship, become a person who is not a national or citizen of any country.*

Time citizenship ceases

- (4) *If the Minister revokes a person's Australian citizenship, the person ceases to be an Australian citizen at the time of the revocation.*
- Note: A child of the person may also cease to be an Australian citizen: see section 36."*

Serious offence

- (5) For the purposes of this section, a person has been **convicted of a serious offence** if:
- (a) the person has been convicted of an offence against an Australian law or a foreign law, for which the person has been sentenced to death or to a serious prison sentence; and
 - (b) the person committed the offence at any time before the person became an Australian citizen.

Migration-related fraud

- (6) For the purposes of this section, a person obtained the Minister's approval to become an Australian citizen as a result of **migration-related fraud** if and only if:
- (a) at any time, the person was convicted of an offence against:
 - (i) section 234, 236, 243 or 244 of the Migration Act 1958; or
 - (ii) section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the Criminal Code;that the person committed at any time before the Minister gave the approval; and
 - (b) the act or omission that constituted the offence was connected with the person's entry into Australia or the grant to the person of a visa or of a permission to enter and remain in Australia.
- (7) Subsection (6) does not apply to a person in respect of an offence if the Minister is satisfied that the act or omission that constituted that offence was not in any way (whether directly or indirectly) material to the person becoming a permanent resident.

Third-party fraud

- (8) For the purposes of this section, a person (the **applicant**) obtained the Minister's approval to become an Australian citizen as a result of **third-party fraud** if and only if:
- (a) at any time, another person was convicted of an offence against section 50 of this Act, or section 134.1, 135.2, 135.4, 136.1, 137.1, 137.2, 139.1, 141.1, 142.1, 142.2, 144.1, 145.1, 145.2, 145.4, 145.5 or 149.1 of the Criminal Code, that the other person committed at any

- time before the Minister gave the approval; and*
- (b) the act or omission that constituted the offence was connected with the Minister approving the applicant becoming an Australian citizen.*

Charge proved but no conviction

- (9) *A reference in this section to a conviction of an offence:*
- (a) in relation to a law of the Commonwealth—includes a reference to the making of an order under section 19B of the Crimes Act 1914 in relation to the offence; and*
 - (b) in relation to a law of a State or Territory or a foreign country—includes a reference to the making of an order under the corresponding provision of a law of the State or Territory or foreign country in relation to the offence.*

The **power to revoke** a person's citizenship **under section 34** has not been delegated. **Decisions can only be made by the Minister.**

The citizenship of people who applied for citizenship under the *Australian Citizenship Act 1948* between 10 April 1997 and 30 June 2007 can be revoked for migration related fraud only within the meaning of subsections 21(1A) and (1B) of the old Act.

These subsections are:

- “(1A) a person is taken to have obtained a certificate of Australian citizenship as a result of migration related fraud if and only if:*
- (a) at any time (including a time after the grant of the certificate) the person was convicted of an offence against section 234, 236, 243 or 244 of the Migration Act 1948, or section 134.1, 134.2, 135.1, 135.2, 135.4 or 136.1 of the Criminal Code, that was committed at any time before the grant of the certificate (including a time before the making of the application); and*
 - (b) the act or omission that constituted the offence was connected with the persons entry into Australia or the grant to the person of a visa or of a permission to enter and remain in Australia.*

(1B) Subsection (1A) does not apply to a person in respect of an offence if the Minister is satisfied that the act of omission that constituted that offence was not in any way (whether directly or indirectly) material to the person becoming a permanent resident.”

The third-party fraud provisions apply only to people who applied on or after 1 July 2007, the commencement of this Act.

Service in armed forces of enemy country Section 35

“(1) A person ceases to be an Australian citizen if the person:

- (a) is a national or citizen of a foreign country; and*
- (b) serves in the armed forces of a country at war with Australia.*

(2) The person ceases to be an Australian citizen at the time the person commences to so serve.

Note: A child of the person may also cease to be an Australian citizen: see section 36. “

Children of responsible parents who cease to be citizens Section 36

“(1) If:

- (a) a person ceases to be an Australian citizen at a particular time (the **cessation time**) under section 33, 34 or 35; and*
- (b) at the cessation time, the person is a responsible parent of a child aged under 18; then:*
- (c) the Minister may, by writing, revoke the child’s Australian citizenship; and*
- (d) if the Minister does so—the child ceases to be an Australian citizen at the time of the revocation.*

Exception—another responsible parent

(2) If, at the cessation time, another responsible parent of the child is an Australian citizen, subsection (1) does not apply to the child:

- (a) while there is a responsible parent who is an Australian citizen; and*
- (b) if there ceases to be such a responsible parent because of the death of a responsible parent—at any time after that death.*

Exception—statelessness

- (3) The Minister must not revoke a child’s Australian citizenship under subsection (1) if the Minister is satisfied that the child would then become a person who is not a national or citizen of any country.”*

A child’s Australian citizenship may be revoked if the child has a responsible parent who ceases to be an Australian citizen by renunciation, revocation or service in the armed forces of an enemy country. A child’s citizenship cannot be revoked while the child has another responsible parent who is an Australian citizen; or if revocation would result in the child becoming stateless.

Citizenship ceases at the time the decision is made revoking the child’s citizenship.

Review of decisions Subsection 52(1)

“(1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions: ...

- (e) a decision under section 33 to refuse to approve a person renouncing his or her Australian citizenship, except a refusal because of the operation of subsection 33(5) (about war) ...”*
- (f) a decision under section 34 or subsection 36(1) to revoke a person’s Australian citizenship.”*

ATTACHMENT A

Historical Provisions - Cessation

A person may have ceased to be an Australian citizen under the old Act.

Section 17 – repealed on 4 April 2002

The provisions applied to people 21 years of age and over until 30 November and on and from 1 December 1973 to people aged 18 years and over.

Before 22 November 1984, an adult ceased to be an Australian citizen if they were outside Australia and acquired the citizenship of another country by some voluntary and formal act other than marriage with the sole or dominant purpose of acquiring that other citizenship.

Where a person acquired the citizenship of another country on or after 22 November 1984, an assessment needs to be made on whether the “sole or dominant purpose” of the person’s actions was to acquire the other citizenship. The key question is: “At the time they did the act or thing which resulted in the acquisition of the foreign citizenship, was their sole or dominant purpose to acquire that citizenship?”

Purpose is not to be equated with motive. The motive for acquiring the foreign citizenship eg to work, vote, claim unemployment benefits etc is irrelevant (*Gugerli* Federal Court case). Changes of intention subsequent to performing the relevant act or thing are irrelevant.

Those who voluntarily applied for, and subsequently acquired, the citizenship of another country will usually find it difficult to establish that the “sole or dominant purpose” of the act of applying was other than to acquire that citizenship. The fact that the reason behind the application was so that they would be eligible to obtain employment, hold a licence etc does not mean that the “sole or dominant purpose” was other than the acquisition of that citizenship.

From 22 November 1984, section 17 contained an element of intention to acquire a foreign citizenship and established a link between the cause and effect of the act in question. For example, a person obtaining permanent residence in Israel (oleh status) who automatically acquired Israeli citizenship as a result of obtaining oleh status did not cease to be an Australian citizen.

The element of intention (purpose) also means that section 17 did not apply to a person who mistakenly thought they were applying for recognition of an existing citizenship (*Gugerli* Federal Court case).

People who did not cease their citizenship under section 17

Examples of circumstances in which an Australian citizen acquired another citizenship and did not lose their Australian citizenship:

- After 22 November 1984, the incidental acquisition of another citizenship or nationality as the result of doing an act or thing for another purpose (eg to obtain resident status).
- Automatic re-acquisition of Italian citizenship by Italian born Australians after one year of continuous uninterrupted residence in Italy with resident status.
- Acquisition of Rhodesian citizenship during the period of the Unilateral Declaration of Independence (11 November 1965 – 18 April 1980).
- Acquisition of Singaporean citizenship during the period of internal self-government (1 November 1957 – 2 June 1959) provided that citizenship of the United Kingdom and Colonies was not acquired at the same time.
- Acquisition of another nationality or citizenship automatically solely as a result of marriage. This does not include where the person was required to apply for that citizenship.
- Exercise of an entitlement to a travel document, identity card, or other evidence of a citizenship of a country other than Australia, by a person who is a dual national of both Australia and that country.

Where it is clear that a person has ceased Australian citizenship under section 17, the person should be advised that they may be eligible to apply to become an Australian citizen again.

Section 20 – repealed on 8 October 1958

Australian citizens by registration or naturalisation automatically ceased to be Australian citizens if they were outside of Australia and New Guinea for a continuous period of 7 years between 26 January 1949 and 8 October 1958, unless:

- they had given notice of intention to retain citizenship during the second and each subsequent year of their absence or at such other times, within the seven years, as specially approved by the Minister; and/or
- they were abroad in the service of an Australian government, an international organisation (of which Australia was a member) or an Australian employer; or
- they were a minor residing with their responsible parent or guardian who was an Australian citizen.

If a person holds a Certificate of Naturalisation or a Certificate of Registration, the length, and if necessary the purpose, of absences from Australia from 1949 to 1958 need to be considered. Where an absence was for less than a full period of 7 years before 8 October 1958, the person would not have ceased Australian citizenship under section 20. If an absence of 7 years or more occurred during this period, the ACT and Regions Office should be asked to check compliance with the section 20 requirement for an annual notice of intention to retain Australian citizenship.

Burma – 4 January 1948

Burmese citizens domiciled in the Commonwealth on 4 January 1948 who did not make a declaration electing to remain a British subject, or Australian citizen, may have lost their British subject status.

Papua New Guinea Independence

Australian citizens who automatically acquired Papua New Guinea citizenship on 16 September 1975 may have ceased their citizenship under section 17 – see Chapter 15 - PNG.

Children Whose Responsible Parent Ceased to be an Australian Citizen

A child may have ceased to be an Australian citizen under the old Act if a responsible parent ceased their Australian citizenship under section 17 between 26 November 1949 and 3 April 2002 (the date of repeal of s17) or under sections 18 (renunciation), 19 (service in armed forces of an enemy country) or 21 (deprivation); and

- the child did not have another responsible parent who was an Australian citizen (this requirement only applied in cases where section 18 operated on or after 22 November 1987); and
- prior to 22 November 1984, there was only one responsible parent who, in most cases, was the father; and
- the child was aged under 18 when the parent ceased to be an Australian citizen (or aged under 21 before 1 December 1973); and
- immediately after the parent ceased to be an Australian citizen, the child became a national or citizen of another country.

The child's other citizenship does not need to be the same as that of the relevant responsible parent.