



Australian Citizenship Amendment Act 1986

No. 70 of 1986

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Australian Citizenship Amendment Act 1986

No. 70 of 1986

An Act to make provision in relation to Australian citizenship

[Assented to 24 June 1986]

BE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Australian Citizenship Amendment Act 1986*.

(2) The *Australian Citizenship Act 1948*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. Section 5 of the Principal Act is amended by omitting paragraph (3) (aa) and substituting the following paragraph:

- “(b) a person who, when a child, was found abandoned in Australia shall, unless and until the contrary is proved, be deemed—
- (i) to have been born in Australia;
 - (ii) if born on or after 26 January 1949 and before 6 May 1966—to have been, at the time of birth, a person to whom sub-section 10 (2) of this Act, as in force at that time, did not apply;
 - (iii) if born on or after 6 May 1966 and before the day on which the *Australian Citizenship Amendment Act 1986* comes into operation—to have been, at the time of birth, a person to whom sub-sections 10 (2) and (3) of this Act, as in force at that time, did not apply; and
 - (iv) if born on or after the day on which the *Australian Citizenship Amendment Act 1986* comes into operation—to be, at the time of birth, a person to whom paragraph 10 (2) (a) of this Act applies and to whom sub-section 10 (3) of this Act does not apply.”.

Citizenship by birth

4. Section 10 of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:

“(2) Subject to sub-section (3), a person born in Australia after the commencement of the *Australian Citizenship Amendment Act 1986* shall be an Australian citizen by virtue of that birth if and only if—

- (a) a parent of the person was, at the time of the person's birth, an Australian citizen or a permanent resident; or
- (b) the person has, throughout the period of 10 years commencing on the day on which the person was born, been ordinarily resident in Australia.”;

- (b) by omitting sub-section (4); and

- (c) by adding at the end the following sub-section:

“(6) A reference in this section to a permanent resident does not include a reference to a person to whom, by virtue of section 8 of the *Migration Act 1958*, Division 1 of Part II of that Act does not apply.”.

Grant of certificate of Australian citizenship

5. Section 13 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

“(1A) The Minister shall not grant a certificate of Australian citizenship to a person under sub-section (1) at a time when the person is not present in Australia unless—

(a) the person is a permanent resident; and

(b) the Minister considers that the person is engaged in activities outside Australia that are beneficial to the interests of Australia.”;

(b) by omitting from sub-sub-paragraph (4) (b) (iii) (D) “or”;

(c) by adding at the end of paragraph (4) (b) the following word and sub-paragraph:

“; or (v) if the Minister considers that an applicant who is a permanent resident was, by reason of an administrative error, not a permanent resident during a period during which the person was present in Australia—treat the period as a period during which the applicant was present in Australia as a permanent resident.”;

(d) by omitting paragraph (11) (g) and substituting the following paragraph:

“(g) if the person has ceased to be an Australian citizen—during the period of 12 months commencing on the day on which the person ceased, or last ceased, to be an Australian citizen.”; and

(e) by omitting from sub-section (17) “(3)”.

Deferral of consideration of application under section 13

6. Section 14 of the Principal Act is amended by inserting in sub-paragraph (1) (b) (i) “(otherwise than by reason of the operation of paragraph 13 (1) (d) or (e))” after “application” (last occurring).

7. (1) Section 23AA of the Principal Act is repealed and the following section is substituted:

Persons may resume citizenship lost in certain circumstances

“23AA. (1) Where—

(a) a person—

(i) has done a voluntary and formal act, other than marriage, by virtue of which the person acquired the nationality or citizenship of a country other than Australia; or

(ii) has done any act or thing—

(A) the sole or dominant purpose of which; and

(B) the effect of which,

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was or is to acquire the nationality or citizenship of a foreign country,

being an act or thing that resulted in the person ceasing to be an Australian citizen;

(b) the person furnishes to the Minister a statement, in writing, to the effect that—

(i) if the person had not done the act or thing, the person would have suffered significant hardship or detriment; or

(ii) at the time when the person did the act or thing the person did not know that he or she would, as a consequence of doing the act or thing, cease to be an Australian citizen,

and also stating that the person—

(iii) has been present in Australia (otherwise than as a prohibited immigrant, as a prohibited non-citizen or in contravention of a law of a prescribed territory) for a period of, or for periods amounting in the aggregate to, not less than 2 years;

(iv) intends that—

(A) if the person again becomes an Australian citizen and is residing in Australia at the time when the person so becomes an Australian citizen, the person will continue to reside in Australia after so becoming an Australian citizen; or

(B) if the person again becomes an Australian citizen and is not residing in Australia at the time when the person so becomes an Australian citizen, the person will commence to reside in Australia after so becoming an Australian citizen and before the expiration of the period of 3 years commencing on the day on which the statement is made; and

(v) has maintained a close and continuing association with Australia; and

(c) the person furnishes to the Minister together with the statement a declaration in the prescribed form that the person wishes to resume Australian citizenship,

the Minister may, in the Minister's discretion, if the Minister is satisfied—

(d) as to the truth of the matters contained in the statement; and

(e) in a case where the person has claimed that, if the person had not done the act or thing that resulted in the person ceasing to be an Australian citizen, the person would have suffered hardship or detriment of an economic nature—that the person's circumstances were such as to compel the person to do that act or thing,

register the declaration in the prescribed manner and, upon the registration of the declaration, the person making the declaration again becomes an Australian citizen.

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“(2) The Minister may, in the Minister’s discretion, upon application in accordance with the approved form, include in a declaration registered under sub-section (1), either at the time of registering the declaration or by later amending the declaration, the name of a child—

- (a) who has not attained the age of 18 years;
- (b) of whom the person who made the declaration is a responsible parent; and
- (c) who ceased to be an Australian citizen by reason of the person who made the declaration ceasing to be an Australian citizen,

and, upon the inclusion of the name of the child in the declaration, the child again becomes an Australian citizen.”.

(2) Notwithstanding the repeal of section 23AA of the Principal Act effected by sub-section (1) of this section—

- (a) regulations made under section 23AA of the Principal Act prescribing the form of a declaration under sub-section 23AA (1) of the Principal Act and in force immediately before the commencement of this section continue in force, after the commencement of this section, as if they had been made for the purpose of prescribing the form of a declaration under sub-section 23AA (1) of the Principal Act as amended by this Act;
- (b) regulations made under sub-section 23AA (2) of the Principal Act prescribing the manner of registering a declaration and in force immediately before the commencement of this section continue in force, after the commencement of this section, as if they had been made for the purpose of prescribing the manner of registering a declaration under section 23AA of the Principal Act as amended by this Act; and
- (c) section 23AA of the Principal Act continues to apply to and in relation to statements and declarations made or furnished before the commencement of this section.

Special provisions to prevent persons being stateless

8. (1) Section 23D of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “and”;
- (b) by inserting after paragraph (1) (b) the following word and paragraph:

“; and (c) is not, and has never been, entitled to acquire the citizenship of a foreign country,”; and

- (c) by inserting after sub-section (1) the following sub-section:

“(1A) Where the Minister is satisfied that a person has or had reasonable prospects, at a particular time, of acquiring the citizenship of a foreign country if the person were to apply, or to have applied, at that time for the grant of such citizenship, the person shall be taken, for the purposes of sub-section (1), to be or to have been entitled to acquire the citizenship of that country at that time.”.

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(2) The amendments made by sub-section (1) do not apply in relation to applications made under sub-section 23D (1) of the *Australian Citizenship Act 1948* before the commencement of this section.

Review of decisions

9. Section 52A of the Principal Act is amended—

- (a) by omitting from paragraph (1) (d) “and”;
- (b) by omitting from paragraph (1) (e) “(2) refusing to register a declaration” and substituting “(1) refusing to register a declaration or (2) refusing to include the name of a child in a declaration”; and
- (c) by adding at the end of sub-section (1) the following word and paragraph:
 - “; and (f) decisions of the Minister that the Minister is satisfied as to the matters referred to in sub-section 23D (1A).”.

Regulations

10. Section 53 of the Principal Act is amended by inserting after paragraph (f) the following paragraph:

- “(fa) the remission, refund or waiver of fees of a kind referred to in paragraph (f) or the exemption of persons from the payment of such fees;”.

Schedule 2

11. Schedule 2 to the Principal Act is amended—

- (a) by omitting from the form of the oath of allegiance “, A.B., renouncing all other allegiance,”; and
- (b) by omitting from the form of the affirmation of allegiance “, A.B., renouncing all other allegiance,”.

Formal amendments

12. The Principal Act is amended as set out in the Schedule to this Act.

SCHEDULE

FORMAL AMENDMENTS

Sub-section 5 (1) (definition of "prison")—

Omit "him", substitute "the person".

Paragraph 5 (3) (c)—

Omit "his", substitute "the person's".

Sub-paragraph 5 (3) (e) (i)—

Omit "he has his", substitute "the person has his or her".

Sub-paragraph 5 (3) (e) (ii)—

(a) Insert "or her" after "his".

(b) Insert "or she" after "he".

Paragraph 5 (3) (e)—

Omit "he" (third and fourth occurring), substitute "the person".

Sub-paragraph 5A (1) (a) (i)—

Omit "his", substitute "the person's".

Sub-paragraph 5A (1) (a) (ii)—

Omit "he", substitute "the person".

Sub-paragraph 5A (1) (a) (iii)—

(a) Omit "he" (first occurring), substitute "the person".

(b) Insert "or she" after "he" (second and third occurring).

Sub-paragraph 5A (1) (b) (i)—

Omit "his", substitute "the person's".

Sub-paragraph 5A (1) (b) (ii)—

Omit "he", substitute "the person".

Sub-paragraph 5A (1) (b) (iii)—

(a) Omit "he" (first occurring), substitute "the person".

(b) Insert "or she" after "he" (second and third occurring).

Sub-paragraph 5A (1) (c) (i)—

(a) Omit "his" (wherever occurring), substitute "the person's".

(b) Insert "or she" after "he" (wherever occurring).

Sub-paragraph 5A (1) (c) (ii)—

Omit "his", substitute "the person's".

Paragraph 5A (1) (d)—

Omit "he", substitute "the person".

SCHEDULE—continued

Sub-section 10 (3)—

Omit “his”, substitute “the person’s”.

Sub-section 10 (5)—

Omit “his”, substitute “the person’s”.

Paragraph 10A (b)—

Omit “his”, substitute “the person’s”.

Paragraph 10B (1) (a)—

Omit “his”, substitute “the person’s”.

Sub-section 13 (1)—

Omit “his”, substitute “the Minister’s”.

Paragraph 13 (1) (a)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (b)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (c)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (d)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (e)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (f)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (g)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (h)—

Omit “he”, substitute “the person”.

Paragraph 13 (1) (j)—

Omit “he”, substitute “the person”.

Paragraph 13 (3) (b)—

Omit “his”, substitute “the person’s”.

Paragraph 13 (4) (b)—

Omit “his”, substitute “the Minister’s”.

Sub-section 13 (6)—

Omit “he”, substitute “the person”.

SCHEDULE—continued

Sub-section 13 (9)—

Omit “his”, substitute “the Minister’s”.

Sub-section 13 (10)—

Omit “his”, substitute “the Minister’s”.

Paragraph 13 (11) (c)—

Omit “him”, substitute “the person”.

Paragraph 13 (11) (e)—

Omit “his”, substitute “the person’s”.

Sub-section 13 (16)—

Omit “his”, substitute “the person’s”.

Sub-section 13 (17)—

Omit “his”, substitute “the person’s”.

Sub-paragraph 14 (1) (b) (i)—

Omit “he” (wherever occurring), substitute “the Minister”.

Sub-paragraph 14 (1) (b) (ii)—

Omit “he” (wherever occurring), substitute “the Minister”.

Sub-section 14 (1)—

Omit “his”, substitute “the Minister”.

Paragraph 14 (4) (a)—

Omit “his”, substitute “the”.

Sub-section 15 (4)—

Omit “his”, substitute “the person’s”.

Sub-section 18 (1)—

Omit “his”, substitute “the person’s”.

Sub-section 18 (5A)—

Omit “he”, substitute “the Minister”.

Sub-section 18 (6)—

Omit “he”, substitute “the Minister”.

Sub-paragraph 21 (1) (a) (i)—

Omit “his”, substitute “the”.

Sub-paragraph 21 (1) (a) (ii)—

(a) Omit “his”, substitute “the”.

(b) Omit “he”, substitute “the person”.

Sub-section 21 (1)—

Omit “his” (last occurring), substitute “the Minister’s”.

SCHEDULE—continued

Sub-section 21 (3)—

Omit “his”.

Sub-section 23 (2)—

(a) Omit “his” (first occurring).

(b) Omit “his” (last occurring), substitute “the Minister’s”.

Paragraph 23 (3) (b)—

Omit “his”.

Sub-section 23A (1)—

Omit “he” (wherever occurring), substitute “the person”.

Sub-section 23B (1)—

Omit “he”, substitute “the person”.

Section 23C—

(a) Insert “or her” after “his” (wherever occurring).

(b) Insert “or herself” after “himself”.

Sub-section 23D (1)—

Omit “he”, substitute “the Minister”.

Sub-paragraph 23D (3) (a) (ii)—

Insert “or her” after “his”.

Sub-section 23D (4)—

Omit “him”, substitute “the child”.

Sub-section 32 (1)—

Omit “his”, substitute “the Minister’s”.

Sub-section 32 (3)—

Omit “he”, substitute “the person”.

Sub-section 36 (1)—

Omit “his” (first occurring), substitute “the”.

Paragraph 36 (1) (a)—

Omit “his”, substitute “the applicant’s”.

Paragraph 36 (1) (b)—

Omit “his”, substitute “the applicant’s”.

Sub-section 36 (2)—

Omit “him”, substitute “the applicant”.

Sub-section 37 (1)—

(a) Omit “him”, substitute “the Minister”.

(b) Omit “his”, substitute “the Minister’s”.

SCHEDULE—continued

Sub-section 44A (4)—

Omit “under his hand”, substitute “signed by the Secretary”.

Sub-section 44A (8)—

Omit “he”, substitute “the person signing it”.

Sub-section 47 (1)—

Omit “he”, substitute “the Minister”.

Section 47A—

(a) Omit “his”, substitute “the Minister’s”.

(b) Omit “him”, substitute “the Minister”.

Sub-section 48 (1)—

Omit “his” (first occurring).

Paragraph 48 (1) (a)—

Omit “him”, substitute “that person”.

Paragraph 48 (1) (b)—

Insert “or her” after “his”.

Paragraph 50 (1) (a)—

Omit “his knowledge”, substitute “the knowledge of the person”.

NOTE

1. No. 83, 1948, as amended. For previous amendments, see No. 58, 1950; No. 70, 1952; No. 85, 1953; No. 1, 1955; No. 63, 1958; No. 79, 1959; No. 82, 1960; No. 11, 1966; No. 11, 1967; No. 22, 1969; Nos. 99 and 216, 1973; Nos. 37 and 91, 1976; No. 61, 1981; No. 80, 1982; No. 84, 1983; No. 129, 1984; and No. 65, 1985.

[*Minister's second reading speech made in—
House of Representatives on 19 February 1986
Senate on 9 April 1986*]