

Australian Citizenship Bill 1973: Legislative Documents

This file contains the following documents relating to the

Australian Citizenship Bill 1973:

- **Explanatory Memorandum (22 pages; 11 April 1973)**
- **Schedule of the amendment made by the Senate (1 page; amendment made on 5 June 1973 and transmitted to the House of Representatives on 21 August 1973)**
- **Consideration in Committee [of the House of Representatives] of amendment made by the Senate to clause 19 of the Bill (1 page; Motions to be moved by the Minister for Immigration, debated in the House of Representatives on 23 August 1973)**
- **Schedule of the amendment made by the Senate disagreed to by the House of Representatives, but Bill amended in place thereof, and Schedule of the amendment made by the House of Representatives to Clause 5 (2 pages; transmitted to the Senate on 28 August 1973; on 12 September 1973, the House of Representatives agreed to the Senate's original 5 June amendment; the amendment to clause 5 made by the House of Representatives on 23 August was accepted by the Senate on 11 September 1973)**

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1973
 AUSTRALIA
 HOUSE OF REPRESENTATIVES

AUSTRALIAN CITIZENSHIP BILL 1973

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Immigration,
the Hon. A.J. Grassby, M.P.)

Clause 1

(Short title and citation) This clause provides for the Act to be cited in future as the "Australian Citizenship Act."

Clause 2

(Commencement) By reason of sub-clause 1, three Sections of a formal nature will come into force upon Royal Assent to the Bill. Most of the other Clauses are to come into effect upon a date to be proclaimed - see sub-clause (3). The objective of this is to enable the necessary Statutory Rules to be prepared, new forms to be printed, and other necessary administrative preparations to be made.

The effect of sub-clause (2) is to postpone for a further six months the repeal of existing provisions (Division 1 A of Part III of the Principal Act) which enable Commonwealth Citizens, after five years in Australia, to become Australian citizens by simple notification of their wish to do so. The purpose of this postponement is to enable maximum efforts to be made to correct the

mistaken belief of many British migrants that they have already become Australian citizens automatically through long residence. These efforts will begin as soon as the Bill is passed and will continue until six months after the new Act comes into force by proclamation. It is considered just that such people on learning the true position should be able to use the simple notification procedure to become citizens during the period of six months after the new Act's commencement.

Clause 3

(Parts)

The concept of a single set of requirements for the grant of citizenship enables the substitution of a single Division in place of three Divisions at present relating to this subject. As mentioned in the note on sub-clause 2 (2) it is proposed that the repeal of one of these three (Division 1 A) be postponed for a period of six months.

Clause 4

(Change in definitions)

The terms "Foreign country" and "trust territory" do not now appear in the substantive

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provisions of the Act and therefore the definitions are being repealed as unnecessary.

It is now regarded as unnecessary from a legal standpoint to define "the Australian Government".

In conformity with recent amendments to Electoral Acts full age for the purposes of this Act has been reduced from 21 to 18 years and the definition is amended accordingly.

Clause 5

(Persons Having
Status of
British
Subject)

This clause brings up to date the list of countries of the Commonwealth of Nations, whose citizens have the status of British subject and therefore have rights and duties under other legislation, (such as the Electoral Act and Public Service Act), of the Commonwealth and the States.

While there has long been in Section 7 of the Principal Act, the power to make regulations adding countries to this list, the dropping of countries from the list has required amendment of the Act itself; and it is not proposed to change this position. Although newly independent countries of the Commonwealth have already been the subject of Regulations made under Section 7 of the Act (so that their citizens already have

the status of British subject) it is appropriate that those countries should be listed in the Act itself at the first opportunity.

The following countries are listed in the principal Act as it stands at present (including changes made by the Citizenship Act 1969, the relevant Section of which came into force by Proclamation on 20 February, 1973).

Barbados

Republic of Botswana

Canada

Ceylon

Republic of Cyprus

The Gambia

Republic of Ghana

Guyana

Republic of India

Jamaica

Republic of Kenya

Kingdom of Lesotho

Republic of Malawi

Malaysia

Mauritius

Republic of Nauru

New Zealand

Federal Republic of Nigeria

Pakistan
 Sierra Leone
 Republic of Singapore
 Republic of South Africa
 United Republic of Tanzania
 Trinidad and Tobago
 Uganda
 United Kingdom and Colonies
 Republic of Zambia.

In addition Regulations have been made
 to cater for:

Bangladesh
 Fiji
 Swaziland
 Tonga
 Western Samoa.

The list contained in Clause 5 of this
 Bill lists all of the above except:

Ceylon - now shown as "Sri Lanka"
 Pakistan - no longer in the Commonwealth
 South Africa - no longer in the Commonwealth

This Clause aims to prevent hardship to
 those citizens of Pakistan and South
 Africa who are ordinarily resident in

Clause 6
 (Transitional
 provision for
 Pakistanis

and South
Africans

Australia and whose possession of the status of British subject depends solely on their citizenship of Pakistan or South Africa (i.e. who are not also Australian citizens or citizens of some other Commonwealth country). The effect of dropping Pakistan and South Africa from the list of countries in Section 7 of the principal Act (see under Clause 5 above) will be that these persons will cease to have the status of British subject - and thereby cease to have such rights as the vote, eligibility for election to Parliament or for permanent appointment to public services, etc.

Clause 6 will however provide that the provisions of Section 7 of the Principal Act will continue to apply, during the two years after the Bill comes into force, to these persons if ordinarily resident in Australia.

The provisions extend to include the person's children under 16.

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This is desirable in the interests of the individual particularly in relation to continuance of his voting rights and retention of other rights where he is employed in a position e.g. in Public Service for which the status of British subject is a pre-requisite.

The abovementioned transitional provisions allowing people to retain the status of British subject do not represent any view that the people in question should refrain from seeking Australian citizenship. On the contrary it is fully intended that all residents who are not Australian citizens should be encouraged to become citizens.

Clause 7

(Repeal of
Division 1 A)

This Clause provides for the repeal of Division 1 A (Citizenship by Notification) of Part III of the Principal Act. It is made separate from the next clause repealing Divisions 2 and 3, because repeal of Division 1 A is to take effect six months later than the rest of the Bill's provisions, for the reasons explained in the notes on Clause 2 concerning commencement.

Clause 8

(Uniform
Conditions for
Grant of
Australian
Citizenship)

This Clause repeals the existing variety of conditions for the grant of Australian citizenship and substitutes a new, uniform set of conditions. The following notes seek to describe first the existing requirements and then the new proposals.

EXISTING REQUIREMENTS

The existing law enables citizenship to be acquired (apart from acquisition at birth) by three means -

1. "Notification" (see notes on Clause 2 (2) above). Migrants who have the status of British subject, have been resident in Australia or New Guinea for over five years, and are not liable to deportation for crimes committed within five years after entry have been able to become Australian citizens by merely notifying the Department of their wish to do so. There is no discretionary grant or refusal of citizenship in these circumstances.

2. "Registration" A migrant who has the status of British subject or an Irish citizen, has been eligible to be granted a certificate of citizenship (which becomes effective when issued without any Oath of Allegiance or appearance at a citizenship ceremony) if the applicant satisfies the Minister:

"(a) that he is of full age;

"(aa) that he is capable of understanding the nature of the application;

- "(b) that he has resided in Australia or New Guinea, or partly in Australia and partly in New Guinea, for not less than five years during the eight years immediately preceding the date of the grant of the certificate or, in such specified cases as the Minister, upon application in the prescribed manner, approves, for such shorter period (not being less than twelve months) as the Minister allows;
- "(c) that he is of good character;
- "(d) that he has an adequate knowledge of the English language or, if he has not such a knowledge, that he has resided in Australia or New Guinea, or partly in Australia and partly in New Guinea, for a continuous period of not less than twenty years;
- "(e) that he has an adequate knowledge of the responsibilities and privileges of Australian citizenship; and
- "(f) that he intends, if registered, to reside or to continue to reside in Australia or New Guinea or to enter

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or continue in the service under an Australian government, in the service of an international organization of which the Australian Government is a member, or service in the employment of a person, society, company or body of persons resident or established in Australia or New Guinea."

NOTE: To avoid constant repetition in these notes, the words "or New Guinea" are not used here again; but no change is proposed by this Bill in existing provision for acceptance of residence in New Guinea as equivalent to residence in Australia.

Exceptions to the above can be made as follows:

- All requirements can be waived for persons not of full age; the spouses widows and widowers of Australians; and former Australians;

- Adult sons and daughters of Australians need not understand the nature of their applications, or have a knowledge of English or of the responsibilities and privileges of citizenship; that is,

they are not debarred by mental deficiency;

- The residence requirement is waived for persons who have served in the permanent forces for three months (or who have been discharged for service - caused medical reasons before completing three months service;)
- People who are over sixty years of age, or whose hearing, speech or sight is impaired, do not need a knowledge of English or of the responsibilities and privileges of citizenship.
- Children under sixteen years of age may be included in certificates granted to their responsible parents or guardians.

3. "Naturalization"

This relates to the grant of certificates of citizenship to aliens or protected persons. The requirements differ from those for registration in the following ways -

- a "declaration of intention to apply for citizenship" can be made one year after entry; but is not a

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necessary prerequisite to eventual application;

- the normal residence requirement consists of one year immediately before application, plus four years during the eight years preceding the application for persons who have an adequate knowledge of spoken English;
- the four years period just mentioned is reduced to two years for persons who can read and write English proficiently; that is, the total residence requirement for such applicants is three years;
- for the purpose of calculating the four or two years residence required within the eight years preceding the application, the Minister may accept, as equivalent to residence in Australia, residence in another Commonwealth country, or Government service for such a country, or service in any armed forces under a British commander appointed by allied powers. The Minister may also accept residence in Australia more than eight years before the application;

- for the purpose of calculating any part of the residence requirement, each four weeks full-time service in the armed forces of any Commonwealth country can be counted as eight weeks residence; and each four weeks part-time service in the Citizen Forces can be counted as five weeks residence;
- the spouse of a person who has been granted a certificate of citizenship may also be granted a certificate without meeting any of the requirements described above, with the result that husband and wife may become citizens at the same citizenship ceremony (see below) although one of them has not fulfilled normal requirements;
- a certificate of "citizenship by naturalization" granted to a person over sixteen years of age does not confer citizenship until the grantee has sworn or affirmed allegiance at a citizenship ceremony designed to impress upon applicants the responsibilities and privileges of citizenship. An exception is that a mentally deficient son or daughter of an Australian citizen is not required to swear or affirm allegiance.

NEW PROPOSALS

Clause 8 proposes to abolish the three different processes described above and provide instead for the grant of Australian citizenship on conditions applicable to all, irrespective of the citizenship held at time of application. Changes from previous requirements are:-

- all intending applicants (not only aliens as previously) will be able to declare their intention to apply after one years residence, if they so desire (new Section 13 (1) proposed in Clause 8 of Bill);
- certificates of citizenship may be granted as a general rule to applicants who have lived in Australia for three years - consisting of one year immediately before the application and another two years within the eight years preceding application (or earlier if the Minister thinks fit in particular cases) (new Section 14 (1) (c) and (d) and 14 (4) in Clause 8 of Bill). Residence in other Commonwealth countries will eventually not be acceptable as equivalent to residence in Australia.

- in order not to break faith with people who have just come to Australia, or who come shortly after the Bill comes into force, believing they could become Australian citizens under existing residence requirements, a transitional period of two years is provided during which citizens of Commonwealth countries, Irish citizens, and citizens of Pakistan and South Africa to whom Clause 6 applies, will be able to become Australian citizens after one years residence (proposed new Section 14 (5) and (6) in Clause 8 of Bill);
- during a similar transitional period aliens who have lived in Commonwealth countries or served under those countries' Governments may have such residence or service accepted as part of the qualifying period of residence for the grant of citizenship (proposed Clause 21 (3), (4) and (5) of Bill);
- "full age" for the purpose of applications for citizenship is proposed as 18 years instead of 21 years; that is, citizenship will be granted to persons over 18 years of age in their own right if they comply with normal requirements rather than

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that their parents should apply on their behalf but the Minister will still have power to waive normal requirements for persons under 21 (proposed new Section 14(8) in Clause 8 of Bill);

certificates of citizenship granted to all persons over 16 years of age (other than mentally deficient sons or daughters of Australian citizens) will not confer citizenship until the grantees have sworn an Oath, or made an affirmation (new Section 15 (1) proposed by Clause 8 of Bill) - for the new form of Oath or affirmation see notes on Clause 13;

The remaining parts of the new Sections 14 and 15, proposed by Clause 8 of the Bill, reproduce requirements of the existing Act.

Clauses 9,
10 and 11

The changes made by these Clauses are simply consequential upon the reduction of full age from 21 to 18 years.

Clause 12

To enable Australia to accede to the U.N. Convention on Reduction of Statelessness it is necessary to make provision to ensure that the operation of Australia's law does not have the effect of rendering certain persons stateless. Clause 12 of the Bill provides for this.

Clause 13

The changes made by this clause are simply consequential upon earlier changes.

Clause 14

This deletes a sub-Section reading:

"A person who has the status of a British subject without citizenship shall for the purposes of Division 1 A or Division 2 of Part III be deemed to be a citizen of a country to which section seven of this Act applies".

Divisions 1 A and 2 relating to "Notification" and "Registration" respectively are to be repealed.

As explained in the notes on Clauses 2 and 3, repeal of Division 1 A will not become effective until six months after the rest of this Bill is proclaimed to commence. Therefore Clause 2 (2) provides that Clause 14 also is not to come into force until then in order that a person with the status of British subject without citizenship will still have the benefit of the transitional period of six months.

The transitional provisions for people

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affected by repeal of Division 2 include a specific provision for persons having the status of British subject without citizenship (see new Section 14 (5) (a) (iv) proposed by Clause 8 of Bill.)

Clause 15

Section 26A of the existing Act was enacted in 1966 solely to enable Australia to accede to a Convention on the Nationality of Married Women, which required each country to provide special means for an alien wife of a national to acquire her husband's status. Australia had already provided such means for wives of Australian citizens; but had to enact Section 26 A to cater for the possibility that the alien wife of a person having the status of a "British subject without citizenship" might wish to acquire the latter status without wanting to be an Australian citizen as well. The 1966 amending Act provided a special form of Oath of Allegiance to be taken by such a woman, omitting normal reference to observance of Australian laws and fulfilment of an Australian citizen's duties. It is now considered

that such a woman should take an Oath or make an affirmation in accordance with the form contained in Schedule 3.

Clause 16

The change made by this clause is simply consequential upon the reduction of "full age" from 21 to 18 years.

Clause 17

A good deal has already been said in the notes above concerning repeal of the provisions of Division 1 A of Part III of the existing Act concerning acquisition of citizenship by "Notification". That Division provides for the issue of evidentiary certificates of citizenship to people who have lodged notifications. Clause 17 of the Bill will enable such evidentiary certificates to be issued in the future to those who lodge notifications before repeal of Division 1 A takes effect. Like other provisions concerning repeal of Division 1 A, Clause 2 (2) will not come into force until six months after the commencement of the remainder of the Bill.

Clause 18

This is simply consequential upon Clause 17 in that sub-section (5) of section 11 C (of Division 1 A) to be repealed is to

reappear as sub-section (4) of the new Section 44 A proposed by Clause 17.

Clause 19

The new form of Oath or Affirmation has two main features as compared with the present form -

- it omits words concerning renunciation of other allegiance;
- it omits specific reference to allegiance to Her Majesty the Queen and her successors, and substitutes
"I will faithfully uphold the Constitution of Australia".

Clause 20

Provides for a number of self explanatory formal amendments as set out in the Schedule.

Clause 21

These provisions are designed to ensure -

- (1) that the provisions of the Bill do not deprive any person of Australian citizenship;
- (2) that people who have lodged applications or declarations before the Bill becomes law are not put to trouble of completing new forms.
- (3), (4) and (5)
that as a transitional measure

aliens who have lived in Commonwealth countries or served under those countries' Governments may have such residence or service accepted as part of the qualifying period of residence for the grant of citizenship as previously explained on page 16.

Clause 22

It will be necessary to make Regulations for the administration of the new Act before it is proclaimed to commence; but these will not commence before the Act itself.

Department of Immigration,
Canberra.

April, 1973.

1973

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

AUSTRALIAN CITIZENSHIP BILL 1973

SCHEDULE OF THE AMENDMENT MADE BY THE SENATE

Page 10, clause 19, leave out the clause, insert the following clause:

“ 19. The Second and Third Schedules to the Principal Act are repealed and the following Schedules substituted:—

Second and
Third
Schedules.

SCHEDULE 2

Section 15

OATH OF ALLEGIANCE

I, A. B., renouncing all other allegiance, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

AFFIRMATION OF ALLEGIANCE

I, A. B., renouncing all other allegiance, solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

SCHEDULE 3

Section 26A

OATH OF ALLEGIANCE

I, A. B., renouncing all other allegiance, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law.

AFFIRMATION OF ALLEGIANCE

I, A. B., renouncing all other allegiance, solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law.”

J. R. ODGERS,
Clerk of the Senate

The Senate,
Canberra, 5 June 1973

1973

AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CITIZENSHIP BILL 1973

CONSIDERATION IN COMMITTEE OF AMENDMENT MADE BY THE SENATE
TO CLAUSE 19 OF THE BILL*(Motions to be moved by the Minister for Immigration)*

- (1) That the Senate's amendment be disagreed to, but that, in place thereof, clause 19 of the Bill be omitted and the following clause substituted:—

“ 19. The Second and Third Schedules to the Principal Act are repealed and the following Schedules substituted:—

Second and
Third
Schedules,

SCHEDULE 2

Section 15

OATH OF ALLEGIANCE

I, A.B. swear by Almighty God that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

AFFIRMATION OF ALLEGIANCE

I, A.B. solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

SCHEDULE 3

Section 26A

OATH OF ALLEGIANCE

I, A.B. swear by Almighty God that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law.

AFFIRMATION OF ALLEGIANCE

I, A.B. solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law.”

- (2) That the Bill be further amended by inserting in clause 5 (page 2, line 26), before the words—

“ People's Republic of Bangladesh ”,
the words—
“ Commonwealth of the Bahamas ”.

AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN CITIZENSHIP BILL 1973

SCHEDULE OF THE AMENDMENT MADE BY THE SENATE
DISAGREED TO BY THE HOUSE OF REPRESENTATIVES,
BUT BILL AMENDED IN PLACE THEREOF

Page 10, clause 19, leave out the clause, insert the following clause:

“ 19. The Second and Third Schedules to the Principal Act are repealed and the following Schedules substituted:—

Second and
Third
Schedules.

SCHEDULE 2

Section 15

OATH OF ALLEGIANCE

I, A. B., renouncing all other allegiance, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

AFFIRMATION OF ALLEGIANCE

I, A. B., renouncing all other allegiance, solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

SCHEDULE 3

Section 26A

OATH OF ALLEGIANCE

I, A. B., renouncing all other allegiance, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law.

AFFIRMATION OF ALLEGIANCE

I, A. B., renouncing all other allegiance, solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law.”

amendment disagreed to, but, in place thereof,
Bill amended by omitting clause 19 and
substituting the following clause:—

“ 19. The Second and Third Schedules to the Principal Act are repealed and the following Schedules substituted:—

Second and
Third
Schedules.

SCHEDULE 2

Section 15

OATH OF ALLEGIANCE

I, A.B. swear by Almighty God that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen

AFFIRMATION OF ALLEGIANCE

I, A.B. solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

SCHEDULE 3

Section 26A

OATH OF ALLEGIANCE

I, A.B. swear by Almighty God that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law.

AFFIRMATION OF ALLEGIANCE

I, A.B. solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to the Queen of Australia, Her heirs and successors according to law."

SCHEDULE OF THE AMENDMENT MADE BY THE
HOUSE OF REPRESENTATIVES TO CLAUSE 5

Page 2, clause 5, line 26, before the words -

"People's Republic of Bangladesh",

insert the words -

"Commonwealth of the Bahamas".

(N.J. PARKES)

Clerk of the House of Representatives

Canberra, 23 August 1973