

## **MANAGEMENT MANUAL**

### **CITIZENSHIP POLICY OVERVIEW**

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#### **INTRODUCTION**

This policy is to provide guidance in relation to the ACCC's treatment of non-Australian citizens with regard to appointment, and transfer or promotion from another agency, on an ongoing or non-ongoing basis.

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#### **LEGISLATION**

Section 22 (8) of the *Public Service Act 1999* states that:

'An Agency Head must not engage, as an APS employee, a person who is not an Australian citizen, unless the Agency Head considers it appropriate to do so.'

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#### **DEFINITION – AUSTRALIAN CITIZEN**

The most common way to become a citizen is by being born in Australia with at least one parent who is either an Australian citizen or a permanent resident of Australia.

The second most common way is by grant; this is the way most migrants become citizens.

Other ways to acquire citizenship include by descent, for children born overseas who have at least one parent who is an Australian citizen, or by being legally adopted in Australia by an Australian citizen.

If you are a permanent resident, and you have lived in Australia for two or more years you may be eligible to apply for citizenship by grant.

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#### **NEW ZEALAND CITIZENS**

Eligible New Zealand citizens automatically receive a Special Category temporary residence visa (SCV) (stamp in their passport) when entering Australia. Prior to 26 February 2001, a person holding an SCV was considered to be a permanent resident for the purposes of the *Australian Citizenship Act 1948*. New arrangements between Australia and New Zealand state that SCV holders are not automatically granted permanent residency unless they are New Zealand citizens who:

- were in Australia on 26 February 2001 as an SCV holder
- were outside Australia on 26 February 2001, but were in Australia as an SCV holder for at least one year in the two years prior to that date, and have subsequently returned to Australia
- have a certificate, issued under the Social Security Act 1991, stating that they were residing in Australia on a particular date.

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New Zealand citizens still need to apply for Australian Citizenship similar to other migrants.

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# **POLICY**

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## **INTRODUCTION**

This section of the document outlines the ACCC policy on engaging non-Australian citizens.

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## **ACCC POLICY**

The ACCC engages persons who are Australian Citizens. 'Engage' includes appoint, transfer and promote from outside the ACCC.

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## **EXCEPTION TO THE POLICY**

The Chairperson may waive the requirement for citizenship where it is considered appropriate to do so. The exercise of this discretion will be on a case-by-case basis taking account of the following

- the person must be eligible for and actively seeking Australian citizenship, and would obtain it within a reasonable period. The Chairperson must be satisfied that it would, in all the circumstances, be appropriate to appoint the person; or
  - it would be in the ACCC's interests to engage the person, having regard to their skills, qualifications and experience and the availability of similarly skilled persons who are already Australian citizens.
  - the person must have a visa allowing them to work in Australia.
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## **ENGAGEMENT POLICY FOR NON-CITIZENS**

Where the Chairperson waives the citizenship requirement the person will be engaged on a non-ongoing basis pending granting of citizenship or for such period as the Chairperson considers appropriate.

If the person fails to obtain citizenship by an agreed deadline (the end of their term as a non-ongoing employee) their employment will be terminated unless the Chairperson determines otherwise.

If the person is on transfer or transfer pending promotion, they will return to their original agency if they fail to obtain citizenship by an agreed deadline, unless the Chairperson determines otherwise.

Engagement cannot occur or cannot be extended if the person does not have a valid work visa for the term of the engagement.

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## **EXEMPTION**

If an employee is on a staff exchange or secondment program from a like Australian or overseas agency they are exempt from this policy.

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# PROCESS

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## INTRODUCTION

The following are actions to:

- advise an applicant of the citizenship requirement
  - seek an exception to the citizenship requirement
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## PERSONNEL POLICY

The ACCC job advertisements state that “applicants are required to be Australian citizens.”

When requested, Personnel and convenors of selection committees will advise non-Australian citizens that they may apply for vacant positions in the organisation, but that they should be aware of the possible restrictions on their engagement.

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## STEPS TO OBTAIN WAIVER

Managers who seek to have the citizenship requirement waived by the Chairperson should follow these steps:

| Step | Action  |
|------|---|
| 1    | Justify in writing to the Chairman (through the General Manager, Corporate Management Branch) the request for the citizenship requirement to be waived.   |
| 2    | If granted, the Chairperson signs an instrument raised under section 22(8) of the <i>Public Service Act 1999</i> approving engagement of the non citizen  |
| 3    | On advice from the Chairperson, Personnel will engage the person on a non-ongoing basis or organise a voluntary move between agencies for a specified period pending the granting of citizenship.   |
| 4    | The offer of employment or transfer will impose an additional condition of engagement as follows:<br><br>“Should you fail to pursue or fail to be granted Australian Citizenship within a specified period (or by a specified date), then the Chairman may terminate the engagement.” |

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## PROFORMA

Proforma approval instrument is located on the ACCC intranet at [Intranet home](#) → [Corporate resources](#) → [Recruitment, selection, workforce planning, graduate program & new employees](#) → [Recruitment guidelines](#) → Australian Citizenship.