

2016-2017-2018

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT
(STRENGTHENING THE COMMITMENT FOR AUSTRALIAN CITIZENSHIP AND
OTHER MEASURES) BILL 2018**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Hanson)

AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT (STRENGTHENING THE COMMITMENT FOR AUSTRALIAN CITIZENSHIP AND OTHER MEASURES) BILL 2018

OUTLINE

The Australian Citizenship Legislation Amendment (Strengthening the Commitment for Australian Citizenship and Other Measures) Bill 2018 (the Bill) amends the *Australian Citizenship Act 2007* (the Act) and the *Migration Act 1958* (the Migration Act) to strengthen the requirements to become an Australian citizen and other key provisions.

To strengthen the requirements to become an Australian citizen, the Bill amends the Act to:

- increase the general residence requirement to require citizenship by conferral applicants to have been a permanent resident for at least eight years before they are eligible to apply for citizenship;
- require most applicants to provide evidence of competent English language proficiency before they can make a valid application for citizenship;
- require applicants to sign an Australian Values Statement in order to make a valid application for citizenship;
- require applicants to demonstrate their integration into the Australian community, including by behaving in a manner consistent with the Australian values that applicants commit to when they sign the Australian Values Statement;
- amend the Preamble to recognise that people who are conferred Australian citizenship undertake to accept the obligation to pledge their allegiance to Australia and its people, and to share Australian values;
- allow for the *Australian Citizenship Regulation 2016* (the Regulation) or an instrument made under the Act to determine the information or documents that must be provided with an application in order for it to be a valid application;
- allow for the Minister to determine eligibility criteria for sitting the citizenship test that may relate to the fact that a person has previously failed the test, did not comply with one or more rules of conduct relating to the test, or was found to have cheated during the test;
- rename the ‘pledge of commitment’ the ‘pledge of allegiance’ and amend the pledge to require a person to pledge their allegiance to Australia and its people;
- extend the requirement to make the pledge of allegiance to all persons aged 16 and over intending to acquire citizenship by descent, persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral agreement, persons intending to acquire citizenship by resumption, and persons intending to acquire citizenship by conferral who have satisfied the criteria for a person born to a former Australian citizen, a person born in Papua or a person who has satisfied the criteria relating to statelessness; and

- allow for the Regulation or an instrument made under the Act to introduce a two year bar on a person making an application for citizenship where the Minister has refused to approve the person becoming an Australian citizen on grounds other than failure to meet the residence requirement.

To strengthen other key provisions of the Act, the Bill amends the Act to:

- insert a definition of “spouse” and amend the definition of “de facto partner” to mirror the definitions of those terms in the Migration Act;
- clarify that for the purposes of citizenship by adoption (where a person is adopted under a law of an Australian State or Territory), the adoption process must have commenced before the person turned 18;
- clarify that for the purposes of automatic acquisition of Australian citizenship, a person is not taken to be ordinarily resident in Australia throughout the period of 10 years beginning on the day the person was born if at any time during the 10-year period:
 - the person’s parent had privileges or immunities under relevant legislation;
 - the person was present in Australia as an unlawful non-citizen; and
 - unless the person was a New Zealand citizen, the person was outside Australia and, at that time, the person did not hold a visa permitting the person to travel to, enter and remain in Australia;
- clarify that for the purposes of automatic acquisition of Australian citizenship, a person is not taken to be ordinarily resident in Australia if a parent of the person did not hold a substantive visa at the time of the person’s birth, and that parent entered Australia before the person’s birth, and at any time during the period beginning on the parent’s last entry into Australia and ending on the day of the person’s birth, the parent was present in Australia as an unlawful non-citizen;
- clarify, for the purposes of automatic acquisition of Australian citizenship, the circumstances in which a person is found abandoned as a child in Australia;
- allow an applicant for citizenship by conferral who is aged under 18, who holds a permanent visa of a kind prescribed in a legislative instrument and who is of good character to be eligible for citizenship without first entering Australia;
- provide that an applicant who is aged under 18 and who made an application for citizenship by conferral that was not approved cannot apply for merits review of that decision unless they are a permanent resident, or hold a permanent visa of a kind prescribed in an instrument;
- enable the Minister to make a legislative instrument which sets out the kind of permanent visa that can be held by a person who is aged under 18 in order to be eligible to be approved as an Australian citizen by conferral without having to

have entered Australia on that visa, and in order to be eligible to seek merits review of a decision to refuse to approve them becoming an Australian citizen;

- amend key provisions concerning the residence requirements for Australian citizenship, to clarify when it commences;
- allow for the Minister to waive the general residence requirement where, due to an administrative error by or on behalf of the Commonwealth, the applicant believed they were an Australian citizen, or where it is in the public interest to do so;
- enable the Minister to make a legislative instrument which sets out the circumstances in which the Minister may treat a period as one in which a person was not present in Australia as an unlawful non-citizen for the purposes of meeting the residence requirements for citizenship;
- clarify the scope of the Minister's discretion for residence requirements for spouses and de facto partners of Australian citizens, and spouses or de facto partners of deceased Australian citizens;
- require all citizenship applicants to be of good character in order to be eligible for Australian citizenship, including applicants under 18 years of age;
- extend the bar on approval to all applicants for citizenship where there are related criminal offences;
- extend the offence provisions in the Act to capture more modern sentencing practices, including circumstances where a person is subject to an order of a court for home detention, an order of a court requiring the person to participate in a residential scheme or program, or circumstances in which the person has not been sentenced to a term of imprisonment but is nevertheless under an obligation to a court;
- provide for the mandatory cancellation of approval of Australian citizenship where the applicant is required to make the pledge of allegiance before becoming a citizen and the Minister is satisfied that the person would not now be approved as an Australian citizen because they would be subject to prohibitions on approval related to identity, national security or criminal offences;
- provide for the discretionary cancellation of approval of Australian citizenship where the applicant is required to make the pledge of allegiance before becoming a citizen and the Minister is satisfied that the person would not now be approved as an Australian citizen because they would not meet the relevant requirements for being approved as an Australian citizen. For conferral applicants required to demonstrate integration, this includes where the Minister is no longer satisfied that the applicant has displayed behaviour consistent with Australian values. Where they have not yet made the pledge of allegiance to become a citizen, the Minister may cancel the approval to become a citizen;

- provide for the discretionary cancellation of approval of Australian citizenship where the applicant is required to make the pledge of allegiance before becoming a citizen and the applicant fails to make the pledge within 12 months after being approved to become an Australian citizen and the reason for the failure is not one prescribed by the Regulation;
- provide the Minister with the discretion to delay a person making the pledge of allegiance to become an Australian citizen if the Minister is considering cancelling the person's approval as an Australian citizen on the basis that the person would not now be approved as an Australian citizen because of identity, having been assessed as a risk to security or being subject to the bar on approval related to criminal offences;
- provide the Minister with the discretion to delay a person making the pledge of allegiance to become an Australian citizen if the Minister is considering cancelling the person's approval as an Australian citizen on the basis that the person would not now be approved as an Australian citizen because they would not meet the relevant requirements for being approved as an Australian citizen;
- increase the maximum period of deferral for making the pledge of allegiance to become an Australian citizen from 12 months to 2 years;
- replace the current automatic provision in the Act which deems a citizen by descent never to have been a citizen, in spite of being approved by the Minister, if they did not have an Australian citizen parent at time of birth (section 19A), with a discretion for the Minister to revoke a person's Australian citizenship if the person has been approved as an Australian citizen by descent and the Minister is satisfied that the approval should not have been given (except in circumstances where the revocation decision would result in the person becoming stateless);
- provide the Minister with the discretion to revoke a person's Australian citizenship where acquired by descent, conferral or under intercountry adoption arrangements if the Minister is satisfied that the person obtained Australian citizenship as a result of fraud or misrepresentation in certain circumstances regardless of whether the person was convicted of an offence in relation to the fraud or misrepresentation (and regardless of whether the fraud or misrepresentation was perpetrated by the Australian citizen themselves, or some other person);
- provide that the Regulation may confer on the Minister the power to make legislative instruments;
- clarify that the Minister, the Secretary or an APS employee in the Department of Immigration and Border Protection (the Department) may use personal information obtained under the Migration Act or the *Migration Regulations 1994* (the Migration Regulations) for the purposes of the Act or the Regulation;
- clarify that the Minister, the Secretary or an APS employee in the Department may disclose personal information obtained under the Act or the Regulation to

the Minister, the Secretary or an officer (within the meaning of the Migration Act) for the purposes of the Migration Act or the Migration Regulations; and

- make certain consequential amendments.

The Bill also amends the Migration Act to:

- allow the Minister, the Secretary or an officer to use personal information obtained under the Act or the Regulation for the purposes of the Migration Act or the Migration Regulations; and
- allow the Minister, the Secretary or an officer to disclose personal information obtained under the Migration Act or the Migration Regulations to the Minister, the Secretary or an APS employee in the Department for the purposes of the Act and the Citizenship Regulation, subject to a specified exception.

FINANCIAL IMPACT STATEMENT

The financial impact of these amendments is low.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A statement of compatibility with human rights has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and is at Attachment A.

AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT (STRENGTHENING THE COMMITMENTS FOR AUSTRALIAN CITIZENSHIP AND OTHER MEASURES) BILL 2018

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

1. Clause 1 provides that the short title by which the Act may be cited is the *Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Act 2018*.

Clause 2 Commencement

2. Clause 2 of the Bill sets out the times at which the various provisions of the Act commence.
3. Subclause 2(1) of the Bill provides that each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
4. Table item 1 provides that sections 1 to 3 of the Act and anything in the Act not elsewhere covered by the table will commence on the day on which this Act receives the Royal Assent.
5. Table item 2 provides that Schedule 1 will commence on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.
6. The note in subclause 2(1) makes it clear that the table relates only to the provisions of the Act as originally enacted. The table will not be amended to deal with any later amendments to this Act.
7. Subclause 2(2) of the Bill provides that any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of the Act. There is currently no information in column 3 of the table.

Clause 3 Schedules

8. Clause 3 of the Bill provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
9. The purpose of this clause is to clarify that Schedule 1 to the Bill sets out the amendments to the Act, and that the particular provisions mentioned in that Schedule are amended in accordance with the particular items in that Schedule.

Schedule 1-Amendments

Part 1-Amendments

Australian Citizenship Act 2007

Item 1 Paragraph (a) of the Preamble

10. This item removes the word “loyalty” and replaces it with “allegiance” in paragraph (a) of the Preamble. The Preamble describes the reciprocal rights and obligations that Australian citizenship bestows upon citizens, with those obligations listed in paragraphs (a) to (d). Paragraph (a) is amended to make it clear that part of the common bond of Australian citizenship is allegiance to Australia and its people.

Item 2 Paragraph (b) of the Preamble

11. This item inserts a reference to “values” in paragraph (b), making it clear that one of the obligations incumbent upon persons who are conferred Australian citizenship is to share the values and democratic beliefs of the Australian people.

Item 3 Section 2A

12. This item amends the simplified outline of the Act to highlight the pledge of allegiance. The Bill extends the requirement to make the pledge of allegiance to persons seeking to acquire citizenship by application aged 16 or over. Accordingly, the reference to making the pledge of allegiance in the simplified outline of the Act is now placed under the heading ‘Acquiring citizenship by application’ to explain the role of the pledge of allegiance in all citizenship application types.
13. The item also changes the reference to the ‘pledge of commitment’ to its new name, the ‘pledge of allegiance’. For this amendment, see item 76B.

Item 4 Section 2A

14. This item amends the simplified outline of the Act to remove the reference to making a pledge of allegiance in relation to the third way a person can apply to the Minister to become an Australian citizen. This amendment is consequential to the amendment in item 3.

Item 5 Section 2A

15. This item amends the simplified outline to add examples of circumstances that enliven the Minister’s power to revoke citizenship where the citizenship was acquired by application. The examples are circumstances of fraud or misrepresentation or where certain offences have been committed. This amendment provides further utility to the simplified outline by alerting the reader to revocation provisions contained elsewhere in the Act.

Item 6 Section 3

16. This item places the current section 3 into new subsection 3(1). This allows for the insertion of new subsection 3(2), described in item 14.

Item 7 Section 3 (definition of *artificial conception procedure*)

17. This item repeals the definition of “artificial conception procedure” in current section 3 of the Act. The term “artificial conception procedure” no longer appears in any operative provisions in the Act. Therefore, the definition is redundant.

Item 8 Section 3

18. This item inserts a definition of “competent English” into amended subsection 3(1) of the Act. A person has competent English in the circumstances determined under new paragraph 21(9)(a), which is inserted by item 53.

Item 9 Section 3 (definition of *de facto partner*)

19. This item omits “meaning given by the *Acts Interpretation Act 1901*” from the definition of “de facto partner” in section 3 of the Act, and substitutes it with “same meaning as in the *Migration Act 1958*”.
20. The purpose of this amendment is to ensure that “de facto partner” in the Act has the meaning given by the Migration Act, rather than the meaning given by the *Acts Interpretation Act 1901*. This amendment ensures consistency with the definition of “spouse” inserted by item 13, which provides that “spouse” has the same meaning as in the Migration Act.
21. The definition in the Migration Act makes explicit reference, amongst other things, to the need for a de facto couple to be in a relationship “to the exclusion of all others”, for their relationship to be “genuine and continuing” and for them to be living together or not living separately and apart on a permanent basis.
22. The definition of “de facto partner” is relevant to the discretion in subsection 22(9) of the Act.
23. Section 22 sets out the general residence requirement for Australian citizenship by conferral. Subsection 22(9) of the Act sets out the circumstances in which the Minister may treat a period as one in which a person who is the spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen as one in which the person was present in Australia as a permanent resident.

Item 10 Section 3

24. This item inserts a definition of “mental health care facility” to include a mental health care section of a hospital. This item is a consequence of item 12 which repeals the definition of “psychiatric institution”. The term “mental health care facility” replaces the term “psychiatric institution” throughout the Act to reflect contemporary language. See also items 16 and 17.

Item 11 Section 3 (at the end of the definition of *permanent visa*)

25. This item inserts a note to the definition of “permanent visa” which prompts the reader to refer to subsection 3(2). Subsection 3(2) is inserted by item 14.

Item 12 Section 3 (definition of *psychiatric institution*)

26. This item repeals the definition of “psychiatric institution”. To reflect contemporary language, the Bill, replaces the term “psychiatric institution” with “mental health care facility” throughout the Act. See items 10, 16 and 17.

Item 13 Section 3

27. This item inserts the new defined terms “residency period”, “spouse” and “substantive visa” in subsection 3(1) of the Act.

Residency period

28. This defined term provides that residency period has the meaning given by subsection 22(1A).

Spouse

29. The purpose of the insertion of this definition is to clarify that “spouse” has the same meaning as in the Migration Act. As with the definition of “de facto partner” described in item 9, the definition of “spouse” is relevant to the discretion in subsection 22(9) of the Act.

30. The new definition of “spouse” reflects the policy position that in order to be eligible for the exercise of the discretion in subsection 22(9) of the Act, the relationship between the applicant and their Australian citizen spouse must be, amongst other requirements of the definition of “spouse” in the Migration Act, to the exclusion of all others, genuine and continuing and for the persons to be living together or not living separately and apart on a permanent basis.

Substantive visa

31. The purpose of the insertion of this definition is to provide that “substantive visa” has the same meaning as in the Migration Act. The term has a precise meaning in the Migration Act and there is therefore practical utility in referring to the definition in that Act.

32. This amendment is consequential to the insertion into the Act of new paragraph 12(7)(a), by item 20.

Item 14 At the end of section 3

33. This item inserts new subsection 3(2) into the Act.
34. This amendment is consequential to items 51 and 123, which are about the circumstances in which a person under the age of 18 will be eligible to be approved as an Australian citizen, and the circumstances in which such a person will be eligible to seek review of the Minister’s decision not to approve them becoming an Australian citizen under section 24.

Item 15 Subsection 6A(1)

35. This item makes a technical amendment, consequential to items 6 and 14.

Item 16 Section 9 (heading)

36. This item amends the heading of section 9 to refer to a “mental health care facility” rather than a “psychiatric institution”. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 17 Subsection 9(3)

37. This item amends current subsection 9(3) to refer to a “mental health care facility” rather than a “psychiatric institution”. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 18 Section 11A

38. This item omits the reference to citizenship for abandoned children from the simplified outline to Division 1 of Part 2 of the Act. This amendment is consequential to item 22, which repeals section 14, and to item 20, which makes amendments in relation to citizenship for abandoned children.

Item 19 Subsection 12(2) (heading)

39. This item repeals the current heading to subsection 12(2) of the Act, and substitutes a new heading.

40. The new heading clarifies that a person will not become an Australian citizen under subsection 12(1) of the Act if subsection 12(2) applies to them.

Item 20 At the end of section 12

41. This item adds new subsections (3) to (9) at the end of section 12 of the Act.

Exception—parent entitled to privileges or immunities

42. The purpose of new subsection 12(3) is to clarify that a child born in Australia to a parent who had diplomatic privileges and immunities under the *Diplomatic Privileges and Immunities Act 1967*, the *Consular Privileges and Immunities Act 1972*, the *International Organisations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities) Act 1995* at any time during the 10 year period referred to in paragraph 12(1)(b) does not acquire Australian citizenship on their tenth birthday (assuming a parent of the person is not an Australian citizen or a permanent resident within the meaning of paragraph 12(1)(a)).

43. This amendment reflects the policy position that a child of a diplomat is not considered to be “ordinarily resident” in Australia for the purposes of paragraph 12(1)(b) of the Act, but rather, is considered to be in Australia for a special or temporary purpose only.

44. Further, new subsection 12(3) promotes consistency and transparency in decision making by codifying in legislation policy factors that are currently taken into account by departmental decision makers when making a finding of fact as to whether a person has been ordinarily resident in Australia throughout the first 10 years of their life.
45. To avoid doubt, this provision will not affect the position of children born in Australia where one parent is an Australian citizen or permanent resident and the other parent is a foreign diplomat. Any child born in Australia to an Australian citizen or permanent resident parent automatically acquires Australian citizenship under paragraph 12(1)(a).

Exception—unlawful non-citizen

46. The purpose of new subsection 12(4) is to provide that a child born in Australia does not acquire Australian citizenship on their tenth birthday if at any time during the 10-year period referred to in paragraph 12(1)(b) the person was present in Australia as an unlawful non-citizen.

Exception—no visa

47. The purpose of new subsection 12(5) is to provide that a child born in Australia does not acquire Australian citizenship on their tenth birthday if at any time during the 10-year period referred to in paragraph 12(1)(b) the person was outside Australia and, at that time, the person did not hold a visa permitting the person to travel to, enter and remain in Australia.
48. New subsection 12(6) provides that new subsection 12(5) does not apply in relation to a person if the person was a New Zealand citizen when the person left Australia and the person was a New Zealand citizen throughout the period of the person's absence from Australia. This reflects the treatment given to New Zealand citizens under the Trans - Tasman Travel Arrangement, which includes access to a special category visa, the subclass 444 visa. This visa is granted on arrival in Australia and ceases on departure from Australia. There is no facility to retain a subclass 444 visa for the duration of any absence from Australia.

Exception—status of parent

49. The purpose of new subsection 12(7) is to provide that a child born in Australia does not acquire Australian citizenship on their tenth birthday if a parent of the child did not hold a substantive visa at the time of the child's birth, the parent entered Australia on one or more occasions before the person's birth and, at any time during the period beginning on the day the parent last entered Australia and ending on the day of the person's birth, that parent was present in Australia as an unlawful non-citizen.
50. Collectively, the amendments made by this item seek to encourage the use of lawful pathways to migration and citizenship by making citizenship under the '10 year rule' available only to those who had a right to lawfully enter, re-enter and reside in Australia throughout the 10 years. People who do not meet the proposed requirements will no longer have an incentive to delay their departure from Australia until a child born to them in Australia has turned 10 years of age, in the expectation that the child will obtain citizenship and provide an anchor for family migration or justification for a ministerial intervention request under the Migration Act.

51. The proposed amendments are reasonable and proportionate within the context of Australia's border security, visa and citizenship framework, which:

- requires that non-citizens hold a visa to enter and remain in Australia;
- provides citizenship by birth in Australia to children of Australian citizens and permanent residents; and
- with the exception of stateless applicants, requires that an applicant for citizenship by conferral not be an unlawful non-citizen.

Abandoned children

52. The purpose of new subsections 12(8) and 12(9) is to clarify the status of a child found abandoned in Australia.

53. Citizenship for abandoned children is currently provided for in section 14 of the Act, which provides that a person is an Australian citizen if the person is found abandoned in Australia as a child, unless and until the contrary is proved.

54. Since the introduction of the Act in 2007, section 14 has not accurately reflected the historical policy intention behind the introduction of the provision on abandoned children. Current section 14 is the successor to a provision introduced into the *Australian Citizenship Act 1948* (the 1948 Act) to meet Australia's obligations under Article 2 of the Convention on the Reduction of Statelessness (CRS). Article 2 of the CRS provides that *a foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.*

55. Article 2 of the CRS generally requires that a child found abandoned be dealt with as a citizen by birth unless and until it is determined they are not a citizen by birth. Originally the 1948 Act reflected this intention.

56. New subsection 12(8) of the Act clarifies the intention of the abandoned child provision and ensures the language more closely reflects the original intention. New subsection 12(8) provides that a child found abandoned in Australia is presumed to be a citizen by birth as provided in current paragraph 12(1)(a) of the Act. That is, the child is presumed to be born in Australia with a parent who is an Australian citizen, or a permanent resident at the time the child is born.

57. New subsection 12(9) of the Act sets out the exceptions to the presumption in new subsection 12(8). New paragraph 12(9)(a) provides that the presumption of citizenship by birth, in new subsection 12(8), does not apply if the child is known to be physically outside Australia at any time before the child was found abandoned in Australia. If the child is known to have been outside Australia, then the child has either arrived in Australia lawfully and its identity and nationality will be known, or it will have arrived as an unlawful non-citizen. New paragraph 12(9)(b) provides that the presumption of citizenship by birth does not apply if the child does not meet the requirements of citizenship by birth in paragraph 12(1)(a) of the Act – that is, if it has become clear that the child was not born in Australia, or if the child was born in Australia a parent of the

child was not an Australian citizen or a permanent resident at the time of the child's birth.

Item 21 Paragraph 13(a)

58. The purpose of this amendment is to clarify that, in order to be an Australian citizen under section 13 of the Act, the adoption process referred to in paragraph 13(a) must have commenced before the person turned 18.
59. This amendment seeks to prevent people from becoming Australian citizens under section 13 of the Act by being adopted in Australia as adults. The amendment is particularly concerned with the potential for adults to seek to be adopted in Australia in order to circumvent the provisions of the Migration Act (for example, to avoid being removed from Australia after their visa has been cancelled).

Item 22 Section 14

60. This item repeals section 14 of the Act. This amendment is consequential to the insertion of new subsections 12(8) and 12(9) by item 20.
61. Current section 14 of the Act provides for citizenship for abandoned children. New subsections 12(8) and 12(9) inserted by item 20 provides for citizenship for abandoned children. As such, current section 14 is redundant and can be repealed.

Item 23 Section 15A

62. This item is a consequential amendment to item 27 which inserts new subsection 17(4C) into the Act.

Item 24 Section 15A

63. This item omits the last two paragraphs in the simplified outline to Subdivision A of Division 2 of Part 2 of the Act in section 15A. The paragraphs are replaced with a sentence providing that a person may be required to make a pledge of allegiance before they become an Australian citizen. This reflects the extension of the pledge of allegiance to applicants for citizenship by descent and the repeal of sections 18, 19 and 19A.
64. The item also changes the reference to the 'pledge of commitment' to its new name, the 'pledge of allegiance'. For this change, see item 76B.

Item 25 After section 15A

65. This item inserts new section 15B. New section 15B sets out the requirements for a person to become an Australian citizen under Subdivision A of Division 2 of Part 2 of the Act, and establishes that a person becomes an Australian citizen by descent where the Minister approves the person's application and, if the person is required to make the pledge of allegiance, the person makes that pledge. This reflects the amendments made by the Bill that bring applications for citizenship by descent into the operation of new Subdivision D of Division 2 of Part 2 of the Act, thereby requiring approved applicants for citizenship by descent to make the pledge of allegiance in order to acquire citizenship.

Item 26 Paragraph 16(2)(c)

66. This amendment reflects the policy position that the Minister must be satisfied that an applicant for Australian citizenship under section 16 of the Act (relating to citizenship by descent) must be of good character at the time of the Minister's decision on the application in order to be eligible to become an Australian citizen, regardless of the applicant's age at the time the application was made.
67. The amendment recognises the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen under section 17 of the Act.
68. The Department is aware of children aged under 18 with serious character concerns. The amendment would not have a significant impact on children overall, but will capture those young people who are of character concern and that the Australian community reasonably expects should not be extended the privilege of Australian citizenship at that time.

Item 27 After subsection 17(4B)

69. This item inserts new subsection 17(4C) after subsection 17(4B) in the Act.
70. Section 17 of the Act is concerned with the Minister's decision on an application to become an Australian citizen under section 16 (citizenship by descent). New subsection 17(4C) provides that the Minister must not approve a person becoming an Australian citizen under section 17 if the person has committed an offence in certain circumstances. New subsection 17(4C) replicates paragraphs 24(6)(a) to 24(6)(h) of the current Act (as amended by item 86) and inserts some additional provisions.
71. The purpose of this amendment, along with amendments in items 35 and 103, is to bring consistency to the citizenship programme by applying the bar on approval for criminal offences to all application streams. The amendments relating to the offences provisions encompass more modern sentencing options that are not currently provided for in the Act.
72. Under new subsection 17(4C) of the Act the Minister must not approve the person becoming an Australian citizen at a time when any of paragraphs 17(4C)(a) to 17(4C)(j) apply to the person.
73. The purpose of new paragraph 17(4C)(a) is to prevent the Minister from approving a person becoming an Australian citizen under section 17 of the Act at a time when the person is before the court in relation to proceedings for an offence, and those proceedings have not yet been finalised. This amendment mirrors paragraph 24(6)(a) of the current Act.
74. The purpose of new paragraph 17(4C)(b) is to prevent the Minister from approving a person becoming an Australian citizen under section 17 of the Act while the person is in prison. This amendment mirrors paragraph 24(6)(b) of the current Act.
75. The purpose of new paragraph 17(4C)(c) is to prevent the Minister from approving a person becoming an Australian citizen under section 17 of the Act for 2 years after the

end of the time the person has been in prison because they have been given a sentence of imprisonment of at least 12 months. The term “serious prison sentence” is a defined in section 3. This amendment mirrors paragraph 24(6)(c) of the current Act.

76. The purpose of new paragraph 17(4C)(d) is to prevent a person who has a serious prison sentence, was released from prison and was then returned to prison because they were given another serious prison sentence from being approved as an Australian citizen under section 17 of the Act for a period of 10 years after serving that second serious prison sentence. This paragraph deals with persons who are a “serious repeat offender” which is a defined in section 3. This amendment mirrors paragraph 24(6)(d) of the current Act.
77. The purpose of new paragraph 17(4C)(e) is to prevent a person who has been released by a court from serving some or all of a sentence of imprisonment on parole or licence from being approved as an Australian citizen under section 17 of the Act at a time when the person could still be ordered to serve some or all of that term of imprisonment. This would include a situation in which the person breached their parole conditions and was ordered to serve the remainder of their prison sentence. This amendment mirrors paragraph 24(6)(e) of the current Act.
78. The purpose of new paragraph 17(4C)(f) is to prevent a person who has been released from prison on conditions relating to their behaviour from being approved as an Australian citizen under section 17 of the Act at a time when action could be taken for a breach of those conditions. New paragraph 17(4C)(f) differs from current paragraph 24(6)(f) in that current paragraph 24(6)(f) refers to a person who was released from prison because they gave a security for compliance with conditions relating to their behaviour. It is not necessary for the person to have given a security in order for new paragraph 17(4C)(f) to apply. This amendment reflects amendments to paragraph 24(6)(f) in item 86.
79. The purpose of new paragraph 17(4C)(g) is to prevent a person who has been released by a court subject to conditions relating to the person’s behaviour in respect of proceedings for an offence against an Australian law from being approved as an Australian citizen under section 17 of the Act while action could be taken against them for breaching any of those conditions. This amendment reflects amendments to paragraph 24(6)(g) in item 44.
80. The purpose of new paragraph 17(4C)(h) is to prevent a person who has been ordered by a court to be confined in a mental health care facility in connection with proceedings for an offence from being approved as an Australian citizen under section 17 of the Act while they remain in that facility. This amendment mirrors paragraph 24(6)(h) of the current Act.
81. There is no equivalent provision to paragraph 17(4C)(i) in the current Act. This is a new provision which recognises modern sentencing practices. That is, it is increasingly common for courts to impose orders for home detention against offenders as opposed to sentences of imprisonment. The amendment reflects the policy position that a person must not be approved to become an Australian citizen under section 17 of the Act if they have been convicted of an offence against an Australian law and while they are subject to an order for home detention in connection with proceedings for that offence. This amendment reflects amendments to subsection 24(6) in item 88.

82. New paragraph 17(4C)(j) of the Act reflects the policy position that a person must not be approved to become an Australian citizen under section 17 of the Act at a time when they have been ordered by a court to participate in a residential scheme or program in connection with the commission of a criminal offence, whether it be a drug rehabilitation program or a residential program for a person with a mental illness. The provision also applies to people who have been ordered to participate in “any other residential scheme or program” in connection with the commission of an offence, in recognition of the variety of residential schemes a court could order a person to participate in.
83. There is no equivalent provision to paragraph 17(4C)(j) in the current Act. This is a new provision which recognises modern sentencing practices. That is, it is increasingly common for courts to impose orders on offenders that require them to participate in residential programs instead of imposing sentences of imprisonment. The amendment reflects the policy position that a person must not be approved to become an Australian citizen under section 17 of the Act if they have been convicted of an offence against an Australian law and they are subject to a residential scheme or program in connection with proceedings for that offence. This amendment reflects amendments to subsection 24(6) in item 88.

Item 28 After section 17

84. This item inserts new section 17A to provide for the cancellation of a person’s approval under section 17 to become a citizen by descent.
85. New subsection 17A(1) provides that the Minister must, by writing, cancel an approval where, assuming that a decision on the application had not yet been made, the Minister is satisfied that the person would not be approved under section 17 because the Minister is not satisfied of the person’s identity (subsection 17(3)), because the person is a risk to national security (subsection 17(4)), or because the person has been convicted of a national security offence (subsection 17(4A)).
86. In effect, subsection 17A(1) requires the Minister to cancel an approval where no longer satisfied that the person meets the requirements of those provisions. This may occur where, for example, there is a change in the person’s circumstances or where new information about the person comes to light. The mandatory nature of this new power reflects the mandatory bar on approval in subsections 17(3), 17(4) and 17(4A), such that a person whose identity is in doubt, or who is of national security concern, is not entitled to become an Australian citizen. This mandatory cancellation power only exists if the person has not yet become a citizen under new section 32AD.
87. New subsection 17A(2) provides the Minister with a discretionary power to cancel an approval given to a person under section 17 where, assuming that a decision on the application had not yet been made, the Minister is satisfied that the person would not be given an approval under section 17 (for reasons other than the identity and national security reasons covered by new subsection 17A(1)). The Minister may choose to exercise this power where, for example, new information about the person comes to light and causes the Minister to be no longer satisfied that the person meets the eligibility criteria in subsections 16(2) or (3). This discretionary cancellation power only exists if the person has not yet become a citizen under new section 32AD.

88. New subsection 17A(3) provides the Minister with a discretionary power to cancel an approval given to a person under section 17 where the person has been approved to become an Australian citizen but, within 12 months after the day on which the person received the notice of the approval, the person has failed to make a pledge of allegiance and the person's reason for the failure is not one that is prescribed by the Regulation. This reflects the policy position that, for persons required to make the pledge of allegiance in order to become an Australian citizen, the pledge should be made within a reasonable time after being approved to become a citizen. This discretionary cancellation power only exists if the person has not yet become a citizen under new section 32AD.

Item 29 Sections 18 and 19

89. This item repeals sections 18 and 19. This reflects the amendments made by the Bill that bring applications for citizenship by descent into the operation of new Subdivision D of Division 2 of Part 2 of the Act, thereby requiring approved applicants for citizenship by descent to make the pledge of allegiance before acquiring citizenship.

Item 30 Section 19A

90. This is a consequential amendment to item 111 which inserts a new power allowing the Minister to revoke a person's Australian citizenship in circumstances where the person is approved as an Australian citizen by descent and the Minister is satisfied that the approval should not have been given.

Item 31 Section 19B

91. This item contains an amendment to the simplified outline in section 19B (dealing with citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral agreement) so that it now refers to the offences provisions in new subsection 19DA(7B) inserted by item 35.

Item 32 Section 19B

92. This item contains an amendment to the simplified outline in section 19B (dealing with citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral agreement) so that it now refers to the pledge of allegiance. This amendment is consequential to the insertion of Subdivision D at the end of Division 2 of Part 2 of the Act by item 108.
93. The item also changes the reference to the 'pledge of commitment' to its new name, the 'pledge of allegiance'. For this change, see item 133.

Item 33 After section 19B

94. This item inserts new section 19BA. New section 19BA sets out the requirements for a person to become an Australian citizen under Subdivision A of Division 2 of Part 2 of the Act, and establishes that a person becomes an Australian citizen in accordance with the Hague Convention on Intercountry Adoption or a bilateral agreement where the Minister approves the person's application and, if the person is required to make the pledge of allegiance, the person makes that pledge. This reflects the amendments made by the Bill that bring applications for citizenship for persons adopted in accordance

with the Hague Convention on Intercountry Adoption or a bilateral agreement into the operation of new Subdivision D of Division 2 of Part 2 of the Act, thereby requiring approved applicants to make the pledge of allegiance before acquiring citizenship.

Item 34 Paragraph 19C(2)(g)

95. This item omits the reference to an applicant being aged 18 or over for the purposes of the good character requirement in paragraph 19C(2)(g). The consequence of this amendment is that the Minister must be satisfied that an applicant for Australian citizenship under section 19C of the Act must be of good character at the time of the decision on the application, regardless of their age at the time the application was made.
96. The amendment recognises the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen under section 19D of the Act.
97. The Department is aware of children aged under 18 with serious character concerns. The amendment would not have a significant impact on children overall, but will capture those young people who are of character concern and that the Australian community reasonably expects should not be extended the privilege of Australian citizenship at that time.

Item 35 After subsection 19D(7A)

98. This item inserts new subsection 19D(7B) in the Act. New subsection 19D(7B) prevents the Minister from approving a person becoming an Australian citizen under section 19D if the person has committed an offence in certain circumstances. New subsection 19D(7B) essentially replicates paragraphs 24(6)(a) to 24(6)(h) of the current Act (reflecting amendments to current paragraphs 24(6)(f) and 24(6)(g) in item 86) and inserts some additional provisions.
99. The purpose of this amendment, along with items 27 and 103, is to bring consistency to the citizenship programme by applying the bar on approval for criminal offences to all application streams. The amendments relating to the offences provisions encompass more modern sentencing options that are not currently provided for in the Act.
100. Under new subsection 19D(7B) of the Act the Minister must not approve the person becoming an Australian citizen at a time when any of paragraphs 19D(7B)(a) to 19D(7B)(j) apply to the person.
101. The purpose of new paragraph 19D(7B)(a) is to prevent the Minister from approving a person becoming an Australian citizen under section 19D of the Act at a time when the person is before the court in relation to proceedings for an offence, and those proceedings have not yet been finalised. This amendment mirrors paragraph 24(6)(a) of the current Act.

102. The purpose of new paragraph 19D(7B)(b) is to prevent the Minister from approving a person becoming an Australian citizen under section 19D of the Act while the person is in prison. This amendment mirrors paragraph 24(6)(b) of the current Act.
103. The purpose of new paragraph 19D(7B)(c) is to prevent the Minister from approving a person becoming an Australian citizen under section 19D of the Act for 2 years after the end of the time the person has been in prison because they have been given a sentence of imprisonment of at least 12 months. The term “serious prison sentence” is a defined in section 3. This amendment mirrors paragraph 24(6)(c) of the current Act.
104. The purpose of new paragraph 19D(7B)(d) is to prevent a person who has a serious prison sentence, was released from prison and was then returned to prison because they were given another serious prison sentence from being approved as an Australian citizen under section 19D of the Act for a period of 10 years after serving that second serious prison sentence. This paragraph deals with persons who are a “serious repeat offender” which is a defined in section 3. This amendment mirrors paragraph 24(6)(d) of the current Act.
105. The purpose of new paragraph 19D(7B)(e) is to prevent a person who has been released by a court from serving some or all of a sentence of imprisonment on parole or licence from being approved as an Australian citizen under section 19D of the Act at a time when the person could still be ordered to serve some or all of that term of imprisonment. This would include a situation in which the person breached their parole conditions and was ordered to serve the remainder of their prison sentence. This amendment mirrors paragraph 24(6)(e) of the current Act.
106. The purpose of new paragraph 19D(7B)(f) is to prevent a person who has been released from prison on conditions relating to their behaviour from being approved as an Australian citizen under section 19D of the Act at a time when action could be taken for a breach of those conditions. New paragraph 19D(7B)(f) differs from current paragraph 24(6)(f) in that current paragraph 24(6)(f) refers to a person who was released from prison because they gave a security for compliance with conditions relating to their behaviour. It is not necessary for the person to have given a security in order for new paragraph 19D(7B)(f) to apply. This amendment reflects amendments to paragraph 24(6)(f) in item 86.
107. The purpose of new paragraph 19D(7B)(g) is to prevent a person who has been released by a court subject to conditions relating to the person’s behaviour in respect of proceedings for an offence against an Australian law from being approved as an Australian citizen under section 19D of the Act while action could be taken against them for breaching any of those conditions. This amendment reflects amendments to paragraph 24(6)(g) in item 86.
108. The purpose of new paragraph 19D(7B)(h) is to prevent a person who has been ordered by a court to be confined in a mental health care facility in connection with proceedings for an offence from being approved as an Australian citizen under section 19D of the Act while they remain in that facility. This amendment mirrors paragraph 24(6)(h) of the current Act.
109. There is no equivalent provision to paragraph 19D(7B)(i) in the current Act. This is a new provision which recognises modern sentencing practices. That is, it is increasingly

common for courts to impose orders for home detention against offenders as opposed to sentences of imprisonment. The amendment reflects the policy position that a person must not be approved to become an Australian citizen under section 19D of the Act if they have been convicted of an offence against an Australian law and while they are subject to an order for home detention in connection with proceedings for that offence. This amendment reflects amendments to subsection 24(6) in item 45.

110. New paragraph 19D(7B)(j) of the Act reflects the policy position that a person must not be approved to become an Australian citizen under section 19D of the Act at a time when they have been ordered by a court to participate in a residential scheme or program in connection with the commission of a criminal offence, whether it be a drug rehabilitation program or a residential program for a person with a mental illness. The provision also applies to people who have been ordered to participate in “any other residential scheme or program” in connection with the commission of an offence, in recognition of the variety of residential schemes in which a court could order a person to participate.

Item 36 After section 19D

111. This item inserts new section 19DA, which provides the Minister with the power to cancel a person’s approval under section 19D to become a citizen in accordance with the Hague Convention on Intercountry adoption or a bilateral agreement. This item mirrors cancellation provisions also inserted by the Bill for persons approved to become citizens by descent (see item 28) and by resumption (see item 104).
112. New subsection 19DA(1) provides that the Minister must, by writing, cancel an approval where, assuming that a decision on the application had not yet been made, the Minister is satisfied that the person would not be approved under section 19D because the Minister is not satisfied of the person’s identity (subsection 19D(4)), because the person is a risk to national security (subsection 19D(5)), or because the person has been convicted of a national security offence (subsection 19D(6)). In effect, subsection 19DA(1) requires the Minister to cancel an approval where no longer satisfied that the person meets the requirements of those provisions. This may occur where, for example, where there is a change in the person’s circumstances or where new information about the person comes to light. The mandatory nature of this new power reflects the mandatory bar on approval in subsections 19D(4), 19D(5) and 19D(6), such that a person whose identity is in doubt, or who is of national security concern, is not entitled to become an Australian citizen. This mandatory cancellation power only exists if the person has not yet become a citizen under new section 32AD.
113. New subsection 19DA(2) provides the Minister with a discretionary power to cancel an approval given to a person under section 19D where, assuming that a decision on the application had not yet been made, the Minister is satisfied that the person would not be given an approval under section 19D (for reasons other than the identity and national security reasons covered by new subsection 19DA(1)). The Minister may choose to exercise this power where, for example, new information about the person comes to light and causes the Minister to be no longer satisfied that the person meets the eligibility criteria in subsection 19C(2). This discretionary cancellation power only exists if the person has not yet become a citizen under new section 32AD.

114. New subsection 19DA(3) provides the Minister with a discretionary power to cancel an approval given to a person under section 19D where the person has been approved to become an Australian citizen but, within 12 months after the day on which the person received the notice of the approval, the person has failed to make a pledge of allegiance and the person's reason for the failure is not one that is prescribed by the Regulation. This reflects the policy position that, for persons required to make the pledge of allegiance in order to become an Australian citizen, the pledge should be made within a reasonable time after being approved to become a citizen. This discretionary cancellation power only exists if the person has not yet become a citizen under new section 32AD.

Item 37 Sections 19E and 19F

115. This item repeals sections 19E and 19F. This reflects the amendments made by the Bill that bring applications for citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption or a bilateral agreement into the operation of new Subdivision D of Division 2 of Part 2 of the Act, thereby requiring approved applicants to make the pledge of allegiance before acquiring citizenship.

Item 38 Section 19G

116. The item changes the reference to the 'pledge of commitment' in the simplified outline in section 19G to its new name, the 'pledge of allegiance'. For this change, see item 133.

Item 39 Paragraph 20(b)

117. The item changes the reference to the 'pledge of commitment' in paragraph 20(b) to its new name, the 'pledge of allegiance'. For this change, see item 133.

Item 40 Section 20 (note)

118. Section 20 deals with the requirements for becoming a citizen by conferral. This item repeals the note at the end of section 20 and substitutes a new note. The new note is consequential to the insertion of Subdivision D at the end of Division 2 of Part 2 of the Act by item 108 of the Bill.

Item 41 Paragraph 21(2)(e)

119. This item repeals and substitutes paragraph 21(2)(e) of the Act. New paragraph 21(2)(e) requires applicants seeking to satisfy the general eligibility criteria for citizenship by conferral to have competent English. This amendment reflects the fact that English language proficiency is essential for economic participation and promotes integration into the Australian community. It is an important creator of social cohesion and is essential to experiencing economic and social success in Australia.

120. A definition of "competent English" is provided by item 8 of the Bill. The definition provides that the circumstances in which a person has competent English are to be determined by the Minister by legislative instrument. The power to make this instrument is provided in new paragraph 21(9)(a) (see item 53).

Item 42 Paragraph 21(2)(f)

121. This item amends paragraph 21(2)(f) to insert a reference to “Australian values”. In accordance with subsection 21(2A), paragraph 21(2)(f) is taken to be satisfied by an applicant only where the applicant successfully completes the citizenship test determined by the Minister under subsection 23A(1). As a result, the inclusion of “Australian values” in paragraph 21(2)(f) clarifies that Australian values (which include the shared values of respect, equality and freedom) is a subject area that must be tested in the citizenship test and only successful completion of the citizenship test enables the Minister to be satisfied that a person has an adequate knowledge of Australia, Australian values and of the responsibilities and privileges of Australian citizenship for the purposes of paragraph 21(2)(f).

Item 43 After paragraph 21(2)(f)

122. This item inserts new paragraph (fa) into subsection 21(2) of the Act, which sets out the general eligibility criteria for Australian citizenship by conferral. New paragraph 21(2)(fa) sets out an additional eligibility criterion, requiring the Minister to be satisfied that the person has integrated into the Australian community. In determining whether a person has integrated into the Australian community, a legislative instrument made under new subsection 21(9) will specify the matters to which the Minister may or must have regard (see item 53).

Item 44 At the end of subsection 21(2)

123. This item inserts a note to subsection 21(2), which states that a person may be taken to satisfy the general residence requirement under section 22AA. Section 22AA is inserted by item 68 of this Bill, and broadly provides that the Minister may waive the general residence requirements where an administrative error has caused an applicant to believe that he or she was an Australian citizen and the error contributed to the applicant not being able to satisfy the general residence requirement.

Item 45 Subsection 21(2A)

124. This item omits the reference to paragraph 21(2)(e) from subsection 21(2A). The effect of this amendment is that a person’s English proficiency will no longer be tested through the citizenship test determined under subsection 23A(1). Instead, the Minister is empowered to determine, in a legislative instrument made under new subsection 21(9), the circumstances in which a person has competent English and the information or documentation relating to a person having competent English. The intention is that, pursuant to new paragraphs 21(9)(b), (c) and (d), the provision of information or documentation relating to a person having competent English must accompany an application at the time the application is made. The Minister’s power to determine these matters is inserted by item 53.

Item 46 Subparagraph 21(3)(d)(ii)

125. This item amends subparagraph 21(3)(d)(ii) to refer to a person having competent English instead of demonstrating a basic knowledge of the English language. This item is consequential to the amendment made by item 41. The effect of the amendment is that a person is capable of satisfying paragraph 21(3)(d) (which relates to whether a person has a permanent or enduring physical or mental incapacity) where the

incapacity means that the person is not capable of having competent English at the time the person made the application for citizenship by conferral.

Item 47 Subparagraph 21(3)(d)(iii)

126. This item amends subparagraph 21(3)(d)(iii) so that it now also refers to a person having an adequate knowledge of Australian values. This item is consequential to the amendment made by item 42. The effect of the amendment is that a person is capable of satisfying paragraph 21(3)(d) (which relates to whether a person has a permanent or enduring physical or mental incapacity) where the incapacity means that the person is not capable of demonstrating an adequate knowledge of Australia, Australian values and of the responsibilities and privileges of Australian citizenship.

Item 48 At the end of subsections 21(3) and (4)

127. This item inserts a note to subsections 21(3) and (4), which states that a person may be taken to satisfy the general residence requirement under section 22AA. Section 22AA is inserted by item 68 of this Bill, and broadly provides that the Minister may waive the general residence requirements where an administrative error has caused an applicant to believe that he or she was an Australian citizen and the error contributed to the applicant not being able to satisfy the general residence requirement or it is in the public interest to waive the requirement.

Item 49 Subsection 21(5)

128. This is a technical amendment, see item 51.

Item 50 Paragraph 21(5)(a)

129. This is a technical amendment, see item 51.

Item 51 Paragraph 21(5)(b)

130. This item repeals current paragraph 21(5)(b) of the Act and substitutes new paragraphs 21(5)(b), 21(5)(c) and 21(5)(d).

131. Amended subsection 21(5) of the Act provides that a person is eligible to become an Australian citizen if the Minister is satisfied that:

- the person is aged under 18 at the time the person made the application; and
- at the time the person made the application and at the time of the Minister's decision on the application:
 - the person is a permanent resident; or
 - the person holds a permanent visa of a kind determined in an instrument under subsection 3(2), the person has not entered Australia as the holder of that visa and a parent of the person is an Australian citizen;
- the person is of good character at the time of the Minister's decision on the application; and
- if the person is aged 16 or over at the time of application, the person has competent English.

132. For the purposes of new paragraph 21(5)(b)(ii), the visa to be determined in the instrument is the Adoption (subclass 102) visa. This amendment will enable children adopted overseas, who sometimes have difficulty obtaining a travel document, ease of travel to Australia.
133. Amended subsection 21(5) of the Act reflects the policy intention that an applicant must be of good character at the time of the Minister's decision on the application in order to be eligible to be approved as an Australian citizen under section 24 in accordance with that provision. The amendment recognises the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen.
134. The Department is aware of children aged under 18 with serious character concerns. The amendment would not have a significant impact on children overall, but will capture those young people who are of character concern and that the Australian community reasonably expects should not be extended the privilege of Australian citizenship at that time.

Item 52 Paragraph 21(6)(d)

135. The purpose of this amendment is to require all persons who make an application to become an Australian citizen by conferral on the basis of subsection 21(6) of the Act to be of good character at the time of the Minister's decision on the application. This represents a change from current paragraph 21(6)(d) which only requires persons who are aged 18 years or over at the time the application was made to be of good character at the time of the Minister's decision on the application. The amendment recognises the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen.
136. The Department is aware of children aged under 18 with serious character concerns. The amendment would not have a significant impact on children overall, but will capture those young people who are of character concern and that the Australian community reasonably expects should not be extended the privilege of Australian citizenship at that time.

Item 53 At the end of section 21

137. This item inserts new subsection 21(9) into the Act. New subsection 21(9) provides for the Minister to determine matters relating to whether a person has competent English.
138. Under new paragraph 21(9)(a), the Minister is empowered to determine the circumstances in which a person has competent English. This determination will enable the Minister to determine, for example, that a person has competent English where the person has sat an examination administered by a particular entity and the person achieved at least a particular score. The Minister could determine that the person must have completed this examination within, for example, three years ending on the day the person made an application for citizenship. The determination could specify other circumstances in which a person has competent English, for example, if

they are a passport holder of the United Kingdom, the Republic of Ireland, Canada, the United States of America or New Zealand or through specified English language studies at a recognised Australian education provider.

139. New paragraphs (21)(9)(b) and (c) deal with information and/or documents that must be provided by an applicant, relating to the applicant having competent English, that must accompany an application or kind of application. For example, new paragraphs (21)(9)(b) and (c) enable the Minister to determine that a certificate or letter that shows that the applicant has successfully completed a test of competent English, in accordance with the circumstances to be determined under new paragraph 21(9)(a) as described above, must be provided with the person's application for citizenship. New paragraphs (21)(9)(b) and (c) also enable the Minister to determine, for example, that a person who holds Canadian citizenship must provide a certified copy of their Canadian passport and that this document must be provided with the person's application for citizenship.
140. New paragraph 21(9)(d) empowers the Minister to determine that, where information or a document is determined in a legislative instrument pursuant to new paragraphs 21(9)(a), (b) and (c) as described above, and that information or document is not provided with a person's application, then the person's application is invalid under new subsection 46(1B).
141. The effect of new paragraphs 21(9)(a), (b), (c) and (d) is that the Minister can determine what a person needs to provide with their application in order to show that they have competent English. Where the person fails to provide that information with their application, the person's application is invalid under new subsection 46(1B). This amendment reflects the fact that English language proficiency is essential for economic participation and promotes integration into the Australian community. It is an important creator of social cohesion and is essential to experiencing economic and social success in Australia.
142. New paragraph 21(9)(e) empowers the Minister to determine matters that the Minister may or must have regard to when determining whether a person has integrated into the Australian community. This relates to the new integration criterion described above in relation to item 43. Under new paragraph 21(9)(e) and for the purposes of new paragraph 21(2)(fa), the Minister may determine that regard may be had to, for example, a person's employment status, study being undertaken by the person, the person's involvement with community groups, the school participation of the person's children, or, adversely, the person's criminality or conduct that is inconsistent with the Australian values to which they committed throughout their application process. Only those applicants applying under the general eligibility requirements will be subject to new paragraph 21(2)(fa).

Item 54 Paragraphs 22(1)(a) to (c)

143. A person seeking to become a citizen by conferral by satisfying the general eligibility criteria (in subsection 21(2)), the criteria for a person with a permanent or enduring physical or mental incapacity (21(3)), or the criteria for a person aged over 60 or has a hearing, speech or sight impairment (21(4)) must satisfy the general residence requirement (section 22) or the special residence requirement (section 22A or 22B) or

the defence service requirement (section 23) at the time the person made the application.

General residence requirement

144. A residence requirement is an objective measure of an aspiring citizen's association with Australia. This period allows a person the opportunity to gain an understanding of shared Australian values, and the commitment they must make to become an Australian citizen. It also allows them time to integrate into the Australian community and acquire English language skills required for life in Australia as a successful citizen. Extending the general residency period strengthens the integrity of the citizenship programme by providing more time to examine a person's character as a permanent resident in Australia. For these reasons the National Consultation Report on citizenship recommended increasing the permanent residency period to 4 years for the general residence requirement.
145. Item 54 repeals paragraphs 22(1)(a), (b) and (c) and substitutes those paragraphs with new paragraphs 22(1)(a) and (b). Current subsection 22(1) sets out the general residence requirement to require a person to be present in Australia for 4 years, with only the last 12 months (before applying for citizenship) spent as a permanent resident. At no time in the 4 year period can a person be an unlawful non-citizen.
146. New paragraphs 22(1)(a) and (b) provide that a person satisfies the general residence requirement for the purposes of section 21 if the person was present in Australia as a permanent resident throughout the person's residency period immediately before the day the person makes the application and the person was not present in Australia as an unlawful non-citizen at any time during that period. A person's residency period is determined by new subsections 22(1A) and (1B), which are inserted by items 56 and 57.

Item 55 At the end of subsection 22(1)

147. This item inserts a note to subsection 22(1), which states that a different version of section 22 applies in relation to certain New Zealand citizens. The note refers readers to subsection 22(11), which is repealed and substituted by item 67 of this Bill.

Item 56 After subsection 22(1)

148. This item inserts new subsection 22(1A) which defines "residency period". New subsection 22(1A) provides that a person's residency period (for the purposes of new paragraph 22(1)(a)) is a period of 8 years.

Item 57 Subsections 22(1A) and (1B)

149. This item repeals the overseas absence provisions set out in subsections 22(1A) and (1B) of the Act and substitutes new subsection 22(1B). New subsection 22(1B) reflects the changes made by items 54 and 56 in relation to the residency period. The opportunity is also taken to structure subsection 22(1B) slightly differently to current subsections 22(1A) and (1B) to aid readability.

150. Under current subsections 22(1A) and (1B), a person is taken to be present in Australia (and thereby continues to satisfy the general residence requirement) where they are absent from Australia for no more than 12 months in the required 4 year period, of which the person may not be absent from Australia for more than 90 days in the 12 month period of permanent residence immediately prior to making the application for citizenship.
151. New subsection 22(1B) makes provision for no more than 365 days of overseas absence in the 8 year period of permanent residence. As such, the permitted period of overseas absence is effectively the same across the 8 years. Referring to 365 days rather than 12 months is to allow for easier and more precise calculations.

Item 58 Subsection 22(1C) (heading)

152. This item amends the heading of subsection 22(1C) to refer to a ‘mental health care facility’ rather than a ‘psychiatric institution’. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 59 Subsection 22(1C)

153. This item contains a technical amendment that is consequential to the insertion of the new defined term ‘residency period’ by items 13 and 56 of this Bill.

Item 60 Paragraph 22(1C)(b)

154. This item amends the paragraph 22(1C)(b) to refer to a ‘mental health care facility’ rather than a ‘psychiatric institution’. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 61 Subsection 22(2)

155. This item repeals subsection 22(2), which contains a partial exemption to the general residence requirement in relation to a person born in Australia or a former Australian citizen. For these people, and where it is in the public interest to do so, the Minister may choose to exercise the discretion in new subsection 22AA to waive the general residence requirement, see item 68.

Item 62 After subsection 22(2)

156. This item inserts new subsections 22(3) and (4). The purpose of these amendments is to provide the Minister with the flexibility to prescribe, by way of legislative instrument, a range of circumstances in which, where those circumstances are satisfied by a person, the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen for the purposes of paragraph 22(1)(b) of the Act.
157. Current subsection 22(4A) of the Act provides that for the purposes of paragraph 22(1)(b), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers that the person

was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

158. Circumstances that may be prescribed for the purposes of new subsection 22(3) of the Act include, but will not be limited to, situations where a person has unintentionally become an unlawful non-citizen for a brief period. For example, if a person made a valid application for a visa while still holding a visa (that is, while they were still lawfully present in Australia) but was not granted a bridging visa prior to their substantive visa ceasing, they will have been an unlawful non-citizen for a period of time until a further bridging visa or a further substantive visa was granted.

Item 63 Before subsection 22(4A)

159. This item inserts new subsection 22(4AA). The new provision allows the Minister to treat a period (mentioned in paragraph 22(1)(a)) as one in which the person was present in Australia as a permanent resident if the Minister considers the person was present in Australia during that period but because of an administrative error was not a permanent resident during that period.
160. This power is necessary to overcome administrative errors that, without the exercise of the Minister's discretion, would have an adverse impact on a person's ability to meet the general residence requirement.

Item 64 Subsection 22(5)

161. This item repeals subsection 22(5) and is a technical amendment, consequential to the amendment made by item 63.

Item 65 Subsection 22(5A) (heading)

162. This item amends the heading of subsection 22(5A) to refer to a 'mental health care facility' rather than a 'psychiatric institution'. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 66 Subsection 22(6)

163. This item is a technical amendment, consequential to the amendment made by item 54.

Item 67 Subsections 22(9) to (11)

164. This item repeals current subsections 22(9) to 22(11) of the Act and substitutes new subsections 22(9) to 22(13).
165. Current subsection 22(9) of the Act contains a Ministerial discretion (in relation to where the Minister may treat a period as one in which the person was present in Australia as a permanent resident) in respect of the spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen. New subsection 22(9) provides that the discretion should only be considered if the applicant has spent 365 days or more in Australia in the 8 years immediately before making their application for citizenship. This reflects the policy position that this period of time is the minimum period of time that would sufficiently allow a spouse, de facto partner or surviving

spouse or de facto partner of an Australian citizen to understand the responsibilities and privileges of Australian citizenship.

166. This item also inserts a note after new subsection 22(9) of the Act. The note reflects that the meaning of “surviving spouse or de facto partner” for the purpose of section 22 is set out in new subsection 22(13), as inserted by this item. A definition of “spouse” is also inserted by item 7 of the Bill.
167. Under new subsection 22(10), the minimum periods of presence in Australia in new paragraph 22(9)(e) do not apply to a spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen where the Australian citizen was, throughout the period referred to in new paragraph 22(9)(a), working outside Australia as a Commonwealth officer or a State or Territory officer.
168. New subsection 22(11) saves the operation of current section 22 in relation to New Zealand citizens in a class determined under new subsection 22(12). It also saves the operation of current subsection 24(5), which provides that the Minister must not approve a person becoming an Australian citizen if the various matters set out under that subsection occur.
169. New subsection 22(12) empowers the Minister to make a legislative instrument to determine one or more classes of New Zealand citizens for the purposes of new subsection 22(11).
170. This arrangement for New Zealand citizens is a reflection of the agreement made by the Prime Ministers of Australia and New Zealand in 2016 to enable New Zealanders living in Australia to progress to permanent residence and, should they meet the requirements, citizenship.
171. The new visa pathway that resulted from this agreement, the New Zealand stream of the Subclass 189 Skilled–Independent visa, commenced on 1 July 2017 and is open to New Zealand citizens who have shown a commitment and continuous contribution to Australia. The instrument made under new subsection 22(12) will specify one or more classes of New Zealand citizens who hold this visa as people to whom the old rules apply.
172. Item 67 also inserts new subsection 22(13). New subsection 22(13) contains definitions, for the purposes of new subsections 22(9) and (10), of “Commonwealth officer”, “State or Territory officer” and “surviving spouse or de facto partner”.
173. The new definitions of “Commonwealth officer” and “State or Territory officer” reflect the policy position that a person who is the spouse or de facto partner of an Australian citizen on an overseas posting (whether they are engaged by the Commonwealth or a State or Territory) does not have to be present in Australia for a particular period in order to be eligible for the discretion in subsection 22(9) of the Act.
174. The effect of paragraphs (a) and (b) of the definition of “Commonwealth officer” and paragraphs (a) and (b) of the definition of “State or Territory officer” is that the discretion in subsection 22(9) may be available where the Australian citizen for the purposes of that subsection is in the employment of the Commonwealth or a State or Territory and holds or performs the duties of any office or position established by or

under a law of the Commonwealth, or a State or Territory. However, paragraph (a) of the definitions provides that a locally engaged employee is not a Commonwealth officer or a State or Territory officer for the purposes of new subsection 22(10).

175. Paragraphs (c) and (d) of the definition of “Commonwealth officer” extend the definition to members and other officers of the Australian Federal Police.
176. Paragraph (c) of the definition of “State or Territory officer” extends the definition to members of the police force or police service of a State or Territory.
177. New subsection 22(13) inserts the definition of “surviving spouse or de facto partner” into the Act. New subsection 22(13) provides that in section 22, “surviving spouse or de facto partner” of a person who has died means a person who was the person’s spouse or de facto partner immediately before the person died and who has not later become the spouse or de facto partner of another person. The purpose of this definition is to prevent a person who was the spouse or de facto partner of an Australian citizen from benefitting from the discretion in new subsection 22(9) of the Act in circumstances where they have re-married or entered into a de facto relationship with another person.
178. The intention is that the discretion operates to allow a person who is a surviving spouse or de facto partner at the time of application to ask the Minister to treat a period when they were outside Australia with their Australian citizen spouse or de facto partner, while that spouse or de facto partner was alive, as if it was a period when the person was in Australia. The discretion does not allow time spent outside Australia after the Australian citizen spouse or de facto partner has died to be counted as if it was time in Australia.

Item 68 After section 22

179. This item inserts new section 22AA, which provides the Minister with the personal, non-compellable power to waive the general residence requirement where the Minister is satisfied that either: (a) an administrative error made by or on behalf of the Commonwealth causes an applicant to believe that he or she was an Australian citizen, and the error contributed to the applicant not being able to satisfy the general residence requirement; or (b) it is in the public interest to do so
180. The discretionary powers under current subsections 22(4A) and (5) do not assist in this situation. These provisions empower the Minister to treat a period as one in which the person was present in Australia but for an administrative error. New section 22AA, by contrast, is intended to cover situations including where the person has spent some time outside of Australia under the belief that they were an Australian citizen and for that reason does not meet the general residence requirement.
181. New subsection 22AA(1) allows the Minister to determine, by writing, that paragraph 21(2)(c), (3)(c) or (4)(d) does not apply in relation to such a person. New subsection 22AA(2) provides that if the Minister exercises the power under subsection 22AA(1), the applicant is taken to satisfy the general residence requirement for the purposes of section 21.

182. New subsections 22AA(3) to (7) set out the rules relating to the exercise of a power under subsection 22AA(1).
183. New subsection 22AA(3) provides that the power may only be exercised by the Minister personally.
184. New subsection 22AA(4) makes it clear that subsection 22AA(1) does not impose a duty on the Minister. Rather, the power under subsection 22AA(1) is purely discretionary, even in circumstances where an applicant or another person requests the Minister to exercise that power.
185. New subsection 22AA(5) provides that the Minister must cause a statement to be tabled in each House of Parliament within 15 days of a person becoming an Australian citizen following an exercise of power under subsection 22AA(1). The statement must state that the Minister has exercised that power and set out the reasons for the exercise of the power. This is consistent with new section 52B, inserted by item 127, which requires a statement to be tabled when the Minister sets aside a decision of the Administrative Appeals Tribunal in the public interest. This ensures that the Minister is accountable to the Parliament in exercising his or her discretion under subsection 22AA(1).
186. New subsection 22AA(6) provides that a statement made under subsection 22AA(5) is not to include the name of the applicant. This protects the privacy of the applicant.
187. New subsection 22AA(7) clarifies that a determination made under subsection 22AA(1) is not a legislative instrument. This means that the laws around legislative instruments, particularly those in the *Legislation Act 2003*, do not apply, such as the requirement that the determination be registered on the Federal Register of Legislation.

Item 69 Subparagraph 22A(1A)(b)(i)

188. This amendment is consequential to the insertion of new paragraph 21(2)(fa) by item 43. The effect of this amendment is that when considering the exercise of the discretion for special residence requirements (in section 22A(1A), the Minister must be satisfied that the applicant satisfies the new criterion inserted in item 43 – that is, that the person has integrated into the Australian community.

Item 70 Paragraph 22A(1)(f)

189. Section 22A sets out the special residence requirements for persons engaging in activities that are of benefit to Australia. The purpose of the amendment made by this item is to put beyond doubt that, for the purposes of the special residence requirement, the 2 year period of the person’s presence in Australia immediately before the day they made the application must have been continuous. This is to ensure consistency with paragraph 22A(1)(e), which requires the applicant to have been ordinarily resident in Australia throughout the period of 2 years immediately before the day the applicant made the application.

Item 71 Subsection 22A(2) (heading)

190. This item amends the heading of subsection 22A(2) to refer to a ‘mental health care facility’ rather than a ‘psychiatric institution’. This amendment is intended to reflect

more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 72 Paragraph 22A(2)(b)

191. This item amends paragraph 22A(2)(b) to refer to a ‘mental health care facility’ rather than a ‘psychiatric institution’. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 73 After subsection 22A(5)

192. The purpose of this amendment is to provide the Minister with flexibility to prescribe, by way of legislative instrument under new subsection 22C(2A) of the Act (inserted by item 79) a range of circumstances in which the Minister may treat a period as one in which a person was not present in Australia as an unlawful non-citizen for the purposes of paragraph 22A(1)(g).

193. Circumstances that may be prescribed by way of legislative instrument for the purposes of new subsection 22A(5A) of the Act include, but will not be limited to, situations where a person has unintentionally become an unlawful non-citizen as a result of the legally correct application or operation of migration law. For example, if a person made a valid application for a visa while still holding a visa (that is, while they were still lawfully present in Australia) but was not granted a bridging visa prior to their substantive visa ceasing, they will have been an unlawful non-citizen for a period of time until a further bridging visa or a further substantive visa was granted.

Item 74 Paragraph 22B(1)(f)

194. Section 22B of the Act provides a special residence requirement for persons engaged in particular kinds of work requiring regular travel outside Australia. The purpose of this amendment is to put it beyond doubt that, for the purposes of the special residence requirement in section 22B of the Act, the 12 month period of the person’s presence in Australia immediately before the day the person made the application must have been continuous. This will ensure consistency with paragraph 22B(1)(e), which provides that the person was ordinarily resident in Australia throughout the period of 4 years immediately before the day the person made the application.

Item 75 Subparagraph 22B(1A)(c)(i)

195. This amendment is consequential to the insertion of new paragraph 21(2)(fa) by item 43. The effect of this amendment is that when considering the exercise of the discretion for special residence requirements (in section 22A(1A), the Minister must be satisfied that the applicant satisfies the new criterion inserted in item 43 – that is, that the person has integrated into the Australian community.

Item 76 Subsection 22B(2) (heading)

196. This item amends the heading of subsection 22B(2) to refer to a ‘mental health care facility’ rather than a ‘psychiatric institution’. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 77 Paragraph 22A(2)(d)

197. This item amends paragraph 22A(2)(d) to refer to a ‘mental health care facility’ rather than a ‘psychiatric institution’. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 78 After subsection 22B(5)

198. This item inserts new subsection 22B(5A) into the Act. The purpose of this amendment is to provide the Minister with flexibility to prescribe, by way of legislative instrument under new subsection 22C(4) of the Act (inserted by item 80) a range of circumstances in which the Minister or delegate may treat a period as one in which a person was not present in Australia as an unlawful non-citizen for the purposes of paragraph 22B(1)(g).
199. Circumstances that may be prescribed by way of legislative instrument for the purposes of new subsection 22B(5A) will include, but will not be limited to, situations where the person has unintentionally become an unlawful non-citizen as a result of the legally correct application or operation of migration law. For example, if a person made a valid application for a visa while still holding a visa (that is, while they were still lawfully present in Australia) but was not granted a bridging visa prior to their substantive visa ceasing, they will have been an unlawful non-citizen for a period of time until a further bridging visa or a further substantive visa was granted.

Item 79 After subsection 22C(2)

200. This item inserts new subsection 22C(2A) which empowers the Minister to make a legislative instrument for the purposes of new subsection 22A(5A) and described in relation to item 73.

Item 80 At the end of section 22C

201. This item inserts new subsection 22C(4) which empowers the Minister to make a legislative instrument for the purposes of new subsection 22B(5A) and described in relation to item 78.

Item 81 Subsection 23A(1) (note)

202. This item is consequential to the changes regarding a person’s English language proficiency. Applicants required to have competent English must provide information or documentation that accompanies their application that shows that they have competent English. This is discussed in relation to item 53. Consequently, English language proficiency is no longer tested in the citizenship test. This is discussed in relation to item 45.

Item 82 After subsection 23A(3)

203. This item inserts new subsection 23A(3A) into the Act and, along with subsections 23A(3), (4) and (5), deals with a person’s eligibility to sit the citizenship

test. Subsection 23A(1) requires the Minister, by written determination, to approve a test for the purposes of subsection 21(2A) (relating to general eligibility criteria for citizenship, and the citizenship test). Subsection 23A(2) requires the determination to specify what amounts to successful completion of the test, while subsection 23A(3) specifies that the determination may set out the eligibility criteria a person must satisfy to be able to sit the test.

204. Without limiting the scope of the eligibility criteria that may be determined under subsection 23A(3), new subsection 23A(3A) provides examples of what the determination may cover. New subsection 23A(3A) strengthens the integrity of the citizenship testing arrangements and makes clear that the Minister may determine that a person is not eligible to sit the citizenship test if the person has previously failed the citizenship test, if the person did not comply with one or more rules of conduct relating to the test, or if the person was found to have cheated during the test.
205. At present applicants are able to sit the citizenship test an unlimited number of times. Not only does this reduce the integrity of the testing arrangements but is also administratively and financially burdensome for the Government. A person who repeatedly fails the test does not meet the eligibility requirements and should have their application refused. This amendment will better support decision makers. Limiting the number of times a person can take a test and imposing penalties for cheating on the test was a recommendation from the National Consultation on Citizenship and had strong community support. New subsection 23A(3A) makes clear that the Minister may determine, for example, that a person who fails the citizenship test three times is not eligible to re-sit the citizenship test. Another example would be where a person is found to have cheated during the test. In this circumstance, the Minister is empowered to determine that the person is not eligible to re-sit the test. In both examples, the result would be that the person has not successfully completed the test and therefore cannot satisfy the criteria in paragraphs 21(2)(d) and (f).

Item 83 Subsection 24(1) (note)

206. This is a consequential amendment to items 90, 92 and 93.

Item 84 Subsection 24(2A)

207. This item amends subsection 24(2A) so that where the Minister exercises the discretion in new subsection 22AA(1) to determine that paragraph 21(2)(c), 21(3)(c) or 21(4)(d) (relating to the general residence requirement) does not apply in relation to a person, then the decision to approve or refuse the person's application under subsection 24(1) must be made personally by the Minister. This is consistent with what occurs where the Minister exercises the alternative residence requirement discretion in subsection 22A(1A) or 22B(1A).

Item 85 Paragraph 24(5)(c)

208. This item repeals paragraph 24(5)(c) as it refers to current subsection 22(11). Current subsection 22(11) empowers the Minister to treat a period as a period in which a person was present in Australia as a permanent resident if they meet certain requirements in relation to being in an interdependent relationship. Current subsection

22(11) is repealed by item 67 and its substance has not been replicated elsewhere. Therefore, paragraph 24(5)(c) is no longer necessary and must be repealed.

209. This item also substitutes the repealed paragraph 24(5)(c) to provide that the Minister's exercise of the power under new subsection 22AA(1) (relating to the Minister waiving general residence requirement) will cause the rule in subsection 24(5) (relating to where a person is not present in Australia) to not apply. The effect of the amendment is that where the Minister waives the general residence requirement in relation to a person under new section 22AA, the Minister is not precluded by subsection 24(5) from approving a person becoming an Australian at a time when the person is not present in Australia.

Item 86 Paragraphs 24(6)(f) and (g)

210. The purpose of new paragraph 24(6)(f) is to simplify the Act and to clarify that the Minister must not approve the person becoming an Australian citizen at a time when the person has been released from serving the whole or part of a sentence of imprisonment subject to conditions relating to the person's behaviour, during any period during which action can be taken against the person for a breach of any of those conditions. New paragraph 24(6)(f) recognises that a court can release a person from serving the whole or part of a sentence of imprisonment in circumstances where the person does not provide a security for compliance with conditions relating to their behaviour.
211. The purpose of new paragraph 24(6)(g) is to prevent a person who has been released by a court subject to conditions relating to the person's behaviour in respect of proceedings for an offence against an Australian law from being approved as an Australian citizen under section 24 of the Act while action could be taken against them for breaching any of those conditions.

Item 87 Paragraph 24(6)(h)

212. This item amends paragraph 24(6)(h) to refer to a 'mental health care facility' rather than a 'psychiatric institution'. This amendment is intended to reflect more contemporary language relating to mental health matters. See also items 10, 12, 16 and 17.

Item 88 At the end of subsection 24(6)

213. New paragraph 24(6)(i) of the Act recognises modern sentencing practices. That is, it is increasingly common for courts to impose orders for home detention against offenders as opposed to sentences of imprisonment. The amendment reflects the policy position that a person must not be approved to become an Australian citizen under section 24 if they have been charged with an offence against an Australian law and while they are subject to an order for home detention in connection with proceedings for that offence.
214. New paragraph 24(6)(j) of the Act reflects the policy position that a person must not be approved to become an Australian citizen under section 24 of the Act at a time when they have been ordered by a court to participate in a residential scheme or program in connection with the commission of a criminal offence, whether it be a drug rehabilitation scheme or a residential program for a person with a mental illness.

215. New paragraph 24(6)(j) of the Act recognises modern sentencing practices. That is, it is increasingly common for courts to impose orders on offenders that require them to participate in residential programs instead of imposing sentences of imprisonment. The amendment reflects the policy position that a person must not be approved to become an Australian citizen under section 24 of the Act if they have been charged with an offence against an Australian law and they are subject to a residential scheme or program in connection with proceedings for that offence.

Item 89 Section 25 (heading)

216. This is a consequential amendment to items 90, 92 and 93.

Item 90 Before subsection 25(1)

217. This item inserts new subsection 25(1A) to provide for the cancellation of a person's approval under section 24 to become a citizen by conferral. New subsection 25(1A) provides that where a person has been approved to become a citizen because they satisfied the criteria in subsection 21(2), 21(4) or 21(5) but the person has not yet become a citizen because they have not made the pledge of allegiance, then the Minister must, by writing, cancel the approval where, assuming that a decision on the application had not yet been made, the Minister is satisfied that the person would not be approved under section 24 because the Minister is not satisfied of the person's identity (subsection 24(3)), because the person is a risk to national security (subsection 24(4)), or because the person has been convicted of a national security offence (subsection 24(4A)). In effect, subsection 25(1A) requires the Minister to cancel an approval where no longer satisfied that the person meets the requirements of those provisions. This may occur where, for example, there is a change in the person's circumstances or where new information about the person comes to light. The mandatory nature of this new power reflects the mandatory bar on approval in subsections 24(3), 24(4) and 24(4A), such that a person whose identity is in doubt, or who is of national security concern, must not be approved to become an Australian citizen. This mandatory cancellation power only exists if the person has not yet become a citizen under new section 32AD.

218. This item also inserts a new heading 'Discretionary cancellation' for the subsections that follow subsection 25(1A). Given the insertion of a mandatory cancellation power, discussed above in relation to this item, the new heading better distinguishes the functions of subsections 25(2) and 25(3).

Item 91 Paragraph 25(1)(a)

219. This item changes the reference in this paragraph from 'section 28' to 'section 32AD'. This is a consequence of item 61D which, in part, deals with the day citizenship begins in new section 32AD.

Item 92 Paragraph 25(1)(b)

220. The purpose of this amendment is to clarify that the Minister has the discretion to cancel an approval given to a person to become an Australian citizen under section 24

of the Act if subsections 25(2) or 25(3) apply to the person. This amendment is also a consequential amendment to the amendments made by items 93 and 95.

Item 93 Subsection 25(2)

221. Under amended subsection 25(2) of the Act the Minister has the discretion to cancel the approval of a person as an Australian citizen if the person was approved as becoming an Australian citizen on the basis of meeting subsection 21(2), 21(4) or 21(5), and assuming the Minister were considering the person's application to become an Australian citizen at the time of the proposed cancellation, the Minister is satisfied that the person would not be given an approval under section 24 (other than because of reasons concerning the person's identity or concerns that they pose a threat to national security covered by subsection 24,(3), (4), (4A) or (5)).
222. The purpose of this amendment is to deal with situations where the Minister believed, at the time the approval was given, that the person met all the relevant requirements for being approved as an Australian citizen in section 21 of the Act, but before the person makes the pledge of allegiance to become an Australian citizen, the Minister is no longer satisfied that those requirements have been met. This may be because the person's circumstances change or because new information about the person comes to light.
223. This amendment includes the current grounds for the Minister to cancel approval in current subsection 25(2) of the Act (concerning the person's status as a permanent resident, the likelihood of the person residing, or continuing to reside, in Australia or to maintain a close and continuing association with Australia and the requirement to be of good character). The new subsection 25(2) of the Act also gives the Minister the discretion to cancel a person's approval if other eligibility requirements are not met, for example if the person had been approved as meeting a residence requirement but in fact they did not meet any of the residence requirements. In addition, the Minister could cancel approval if he or she had not been aware that one of the grounds for the bar on approval concerning criminal offences in subsection 24(6) applied, such as the person was subject to pending proceedings for an offence against Australian law or was subject to a good behaviour bond.
224. This amendment further clarifies that, unlike current subsection 25(2) of the Act, new subsection 25(2) does not apply to a person who is covered by subsection 21(3) (that is, a person with a permanent or enduring physical or mental incapacity) because they are not required to make the pledge of allegiance and become a citizen immediately upon approval. Therefore, there is no time period in which cancellation of approval could be considered.

Item 94 Subsection 25(3) (heading)

225. This is a consequential amendment to the amendments made by items 93 and 95.

Item 95 Subsection 25(3)

226. This is a consequential amendment to item 92 which repeals current paragraph 25(1)(b) of the Act and substitutes new paragraph 25(1)(b).

Item 96 Paragraph 25(3)(a)

227. The item changes the reference to the ‘pledge of commitment’ to its new name, the ‘pledge of allegiance’. For this amendment, see item 133.

Item 97 Sections 26 to 28

228. This item repeals sections 26, 27 and 28, which relate to the pledge of allegiance, how it is to be made, and the day upon which citizenship begins. The repeal of these provisions is consequential to the amendments being made by item 108 which replaces these provisions in new Subdivision D of Division 2 of Part 2. The broader amendments made by the Bill make the pledge of allegiance apply to the acquisition of citizenship beyond acquisition by conferral. Accordingly, provisions relating to the pledge of allegiance are better placed in a new subdivision outside of Subdivision C which relates only to citizenship by conferral.

Item 98 Section 28A

229. This is a consequential amendment to item 103. The amendment to the simplified outline is to more comprehensively outline the circumstances in which the Minister may be required to refuse an application.

230. The item also changes the reference to the ‘pledge of commitment’ to its new name, the ‘pledge of allegiance’. For this amendment, see item 133.

Item 99 After section 28A

231. This item inserts new section 28B. New section 28B sets out the requirements for a person to become an Australian citizen under Subdivision C of Division 2 of Part 2 of the Act, and establishes that a person becomes an Australian citizen by resumption where the Minister approves the person’s application and, if the person is required to make the pledge of allegiance, the person makes that pledge. This reflects the amendments made by the Bill that bring applications for citizenship by resumption into the operation of new Subdivision D of Division 2 of Part 2 of the Act, thereby requiring approved applicants to make the pledge of allegiance before acquiring citizenship.

232. The item also changes the reference to the ‘pledge of commitment’ to its new name, the ‘pledge of allegiance’. For this amendment, see item 133.

Item 100 Paragraph 29(2)(b)

233. The purpose of this amendment is to require all persons who make an application to resume their Australian citizenship under section 29 of the Act to be of good character at the time of the Minister’s decision on the application. This represents a change from current paragraph 29(2)(b) which only requires persons who are aged 18 years or over at the time the application was made to be of good character at the time of the Minister’s decision on the application. The amendment recognises the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen again.

Item 101 Subsection 29(2) (note 2)

234. This is a consequential amendment to item 111 which inserts new section 33A in the Act, and to item 113 which inserts new section 34AA in the Act. The item also removes reference to section 35 in the note because, under section 36A, a person whose citizenship ceases under section 35 may not apply to become an Australian citizen again.

Item 102 Paragraph 29(3)(b)

235. The purpose of this amendment is to require all persons who make an application to resume their Australian citizenship under section 29 of the Act to be of good character at the time of the Minister's decision on the application. This represents a change from current paragraph 29(3)(b) which only requires persons who are aged 18 years or over at the time the application was made to be of good character at the time of the Minister's decision on the application. The amendment recognises the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen again.

Item 103 At the end of section 30

236. This item adds new subsection 30(8) at the end of section 30 of the Act.

237. The purpose of this amendment, along with items 27 and 35, is to bring consistency to the citizenship programme by applying the bar on approval for criminal offences to all application types. This amendment provides that the Minister cannot approve a person becoming an Australian citizen again at a time when any of the circumstances mentioned in paragraphs 30(8)(a) to 30(8)(j) (concerning offences) apply in relation to the person. This amendment recognises that a person who makes an application to become an Australian citizen again under section 29 of the Act could have committed certain offences or be under an obligation to a court and that the Minister must not approve the person becoming an Australian citizen again while those issues remain outstanding.

238. The purpose of new paragraph 30(8)(a) is to prevent the Minister from approving a person becoming an Australian citizen again under section 30 at a time when the person is before the court in relation to an alleged commission of an offence, and those proceedings have not yet been finalised. This amendment mirrors current paragraph 24(6)(a) of the Act.

239. The purpose of new paragraph 30(8)(b) is to prevent the Minister from approving a person becoming an Australian citizen again under section 30 of the Act while the person is in prison. This amendment mirrors current paragraph 24(6)(b) of the Act.

240. The purpose of new paragraph 30(8)(c) is to prevent the Minister from approving a person becoming an Australian citizen again under section 30 of the Act for 2 years after the end of the time the person has been in prison because they have been given a serious prison sentence. The term "serious prison sentence" is defined in section 3. This amendment mirrors current paragraph 24(6)(c) of the Act.

241. The purpose of new paragraph 30(8)(d) is to prevent a person who has a serious prison sentence, was released from prison and was then returned to prison because they were given another serious prison sentence from being approved as an Australian citizen again under section 30 of the Act for a period of 10 years after serving that second serious prison sentence. The term “serious repeat offender” is defined in section 3. This amendment mirrors current paragraph 24(6)(d) of the Act.
242. The purpose of new paragraph 30(8)(e) is to prevent a person who has been released by a court from serving some or all of a sentence of imprisonment on parole or licence from being approved as an Australian citizen again under section 30 of the Act at a time when the person could still be ordered to serve some or all of that term of imprisonment. This would include a situation in which the person breached their parole conditions and was ordered to serve the remainder of their prison sentence. This amendment mirrors current paragraph 24(6)(e) of the Act.
243. The purpose of new paragraph 30(8)(f) is to prevent a person who has been released from prison on conditions relating to their behaviour from being approved as an Australian citizen again under section 30 of the Act at a time when action could be taken for a breach of those conditions. New paragraph 30(8)(f) differs from current paragraph 24(6)(f) in that current paragraph 24(6)(f) refers to a person who was released from prison because they gave a security for compliance with conditions relating to their behaviour. It is not necessary for the person to have given a security in order for new paragraph 30(8)(f) to apply. This amendment reflects amendments to paragraph 24(6)(f) in item 44.
244. The purpose of new paragraph 30(8)(g) is to prevent a person who has been released by a court subject to conditions relating to the person’s behaviour in respect of proceedings for an offence against an Australian law from being approved as an Australian citizen again under section 30 of the Act while action could be taken against them for breaching any of those conditions. This amendment reflects amendments to paragraph 24(6)(g) in item 86.
245. The purpose of new paragraph 30(8)(h) is to prevent a person who has been ordered by a court to be confined in a mental health care facility in connection with proceedings for an offence against an Australian law from being approved as an Australian citizen again under section 30 of the Act while they remain in that facility. This amendment mirrors current paragraph 24(6)(h) of the Act.
246. New paragraph 30(8)(i) of the Act provides that the Minister must not approve the person becoming an Australian citizen again at a time when the person is subject to an order of a court for home detention, where the order was made in connection with proceedings for an offence against an Australian law in relation to the person.
247. There is no equivalent provision to paragraph 30(8)(i) in the current Act. This is a new provision which recognises modern sentencing practices. That is, it is increasingly common for courts to impose orders for home detention against offenders as opposed to sentences of imprisonment. The amendment reflects the policy position that a person must not be approved to become an Australian citizen again under section 30 of the Act if they have been convicted of an offence against an Australian law and while they are subject to an order for home detention in connection with proceedings for that offence. This amendment reflects amendments to subsection 24(6) in item 88.

248. New paragraph 30(8)(j) of the Act reflects the policy position that a person must not be approved to become an Australian citizen again under section 30 of the Act at a time when they have been ordered by a court to participate in a residential scheme or program in connection with the commission of a criminal offence, whether it be a drug rehabilitation program or a residential program for a person with a mental illness. The provision also applies to people who have been ordered to participate in “any other residential scheme or program” in connection with the commission of an offence, in recognition of the variety of residential schemes a court could order a person to participate in.
249. There is no equivalent provision to paragraph 30(8)(j) in the current Act. This is a new provision which recognises modern sentencing practices. That is, it is increasingly common for courts to impose orders on offenders that require them to participate in residential programs instead of imposing sentences of imprisonment. The amendment reflects the policy position that a person must not be approved to become an Australian citizen again under section 30 of the Act if they have been convicted of an offence against an Australian law and they are subject to a residential scheme or program in connection with proceedings for that offence. This amendment reflects amendments to subsection 24(6) in item 88.

Cessation of citizenship

250. This item also adds new subsection 30(9) to the Act. New subsection 30(9) of the Act provides that the Minister must not approve the person becoming an Australian citizen again during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen.
251. Subsections 17(5) (citizenship by descent), 19D(8) (citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption) and 24(7) (citizenship by conferral) of the Act provide that if an applicant has at any time ceased to be an Australian citizen, the Minister must not approve the person becoming an Australian citizen during the period of 12 months starting on the day on which the person ceased, or last ceased, to be an Australian citizen. There is currently no equivalent provision for those applicants who seek to resume Australian citizenship under section 29 of the Act.
252. The purpose of this amendment is to ensure that, regardless of the provision of the Act under which a person applies to become an Australian citizen again, the Minister cannot approve the person resuming their citizenship for a 12 month period from the day on which the person ceased, or last ceased, to be an Australian citizen.

Item 104 After section 30

253. This item inserts new section 30A to provide for the cancellation of a person’s approval under section 30 to become a citizen. This item mirrors cancellation provisions also provided in the Bill for persons approved to become citizens by descent (see item 18A) and in accordance with the Hague Convention on Intercountry Adoption or a bilateral agreement (see item 22A).
254. New subsection 30A(1) provides that the Minister must, by writing, cancel an approval where, assuming that a decision on the application had not yet been made, the Minister

is satisfied that the person would not be approved under section 30 because the Minister is not satisfied of the person's identity (subsection 30(3)), because the person is a risk to national security (subsection 30(4)), or because the person has been convicted of a national security offence (subsection 30(5)). In effect, subsection 30A(1) requires the Minister to cancel an approval where no longer satisfied that the person meets the requirements of those provisions. This may occur where, for example, there is a change in the person's circumstances or where new information about the person comes to light. The mandatory nature of this new power reflects the mandatory bar on approval in subsections 30(3), 30(4) and 30(5), such that a person whose identity is in doubt, or who is of national security concern, is not entitled to become an Australian citizen. This mandatory cancellation power only exists if the person has not yet become a citizen under new section 32AD.

255. New subsection 30A(2) provides the Minister with a discretionary power to cancel an approval given to a person under section 30 where, assuming that a decision on the application had not yet been made, the Minister is satisfied that the person would not be given an approval under section 30 (for reasons other than the identity and national security reasons covered by new subsection 30A(1)). The Minister may choose to exercise this power where, for example, new information about the person comes to light and causes the Minister to be no longer satisfied that the person meets the eligibility criteria in subsections 29(2) or (3). This discretionary cancellation power only exists if the person has not yet become a citizen under new section 32AD.
256. New subsection 30A(3) provides the Minister with a discretionary power to cancel an approval given to a person under section 30 where the person has been approved to become an Australian citizen but, within 12 months after the day on which the person received the notice of the approval, the person has failed to make a pledge of allegiance and the person's reason for the failure is not one that is prescribed by the Regulation. This reflects the policy position that, for persons required to make the pledge of allegiance in order to become an Australian citizen, the pledge should be made within a reasonable time after being approved to become a citizen.
257. The item also changes the reference to the 'pledge of commitment' in subsection 30A(3) to its new name, the 'pledge of allegiance'. For this amendment, see item 133.

Item 105 Section 31

258. This item repeals section 31. This reflects the amendments made by the Bill that bring applications for citizenship by resumption into the operation of new Subdivision D of Division 2 of Part 2 of the Act, thereby requiring approved applicants to make the pledge of allegiance before acquiring citizenship.

Item 106 Section 32 (heading)

259. This item is consequential to the repeal of subsection 32(1) by item 107. The remaining subsections of section 32 deal with "Same kind of citizenship", the new heading for this section.

Item 107 Subsection 32(1)

260. This item repeals subsection 32(1) which relates to when a person becomes a citizen again. This reflects the amendments made by the Bill that bring applications for citizenship by resumption into the operation of new Subdivision D of Division 2 of Part 2 of the Act, thereby requiring approved applicants to make the pledge of allegiance before acquiring citizenship.

Item 108 At the end of Division 2 of Part 2

261. This item adds new Subdivision D of Division 2 of Part 2 of the Act, which deals with the pledge of allegiance and the day on which citizenship begins for certain persons. New Subdivision D contains new sections 32AA, 32AB, 32AC, and 32AD.
262. Throughout the new Subdivision D (and throughout the Bill) the former ‘pledge of commitment’ is referred to by its new name, the ‘pledge of allegiance’. The new name is intended to more accurately represent the purpose and meaning of the pledge which requires a person to, in part, pledge their allegiance to Australia and its people. See also item 133.

New Section 32AA – Simplified outline

263. New Section 32AA provides an overview of new Subdivision D, mentioning in particular that a person aged 16 or older must make a pledge of allegiance to become an Australian citizen under Division 2 of Part 2 of the Act. It also makes clear that the new Subdivision contains the rules relating to pledge of allegiance and the day citizenship begins for persons under Division 2 of Part 2 of the Act.

New Section 32AB – Pledge of allegiance must be made

264. This item inserts new section 32AB which deals with who must make the pledge of allegiance and when it must be made.
265. New subsection 32AB(1) provides that a pledge of allegiance must be made unless the person is aged under 16 at the time the person made the application to become an Australian citizen or has a permanent or enduring physical or mental incapacity that means the person is not capable of making the pledge in accordance with new subsection 32AC. The intention of this new subsection 32AB(1) is to provide that a person approved to become an Australian citizen by application (of any type) must make a pledge of allegiance unless the person does not have capacity to do so.
266. Extending the pledge requirement consistently across all streams of citizenship by application will allow more aspiring Australian citizens to make a public commitment to their understanding of the rights and obligations of being a citizen. Based on strong public support, the National Consultation on Citizenship Report recommended extending the pledge of allegiance to all streams. Applicants for citizenship by conferral are already required to make the pledge of allegiance from 16 years of age. The age requirement for making the pledge is appropriate and consistent with arrangements for citizenship in similar countries.
267. New subsection 32AB(1) contains a note that refers to new section 32AC (which deals with how the pledge of allegiance is to be made).

268. New subsection 32AB(2) replicates the repealed subsection 26(2). New subsection 32AB(2) provides that a person must not make a pledge of allegiance before their application has been approved. Where a person purports to make a pledge of allegiance before they have been approved to become a citizen then the pledge is of no effect. The intention of this item is to make clear that a person cannot acquire citizenship by making the pledge of allegiance before they are approved to become a citizen.
269. New subsection 32AB(3) provides the Minister with the power to delay a person from making the pledge, thereby delaying the person becoming a citizen. The Minister may make such a determination, in writing, to delay a person making the pledge where:
- under new paragraph 32AB(3)(a)—the Minister is satisfied that the person’s visa may be cancelled under the Migration Act. The person does not need to be notified that the Minister is considering cancelling the person’s visa; or
 - under new paragraph 32AB(3)(b)—the Minister is satisfied that the person has been or may be charged with an offence under an Australian law; or
 - under new paragraph 32AB(3)(c)—the Minister is considering cancelling the approval given to the person to become an Australian citizen because the Minister’s mandatory cancellation power might be enlivened (on identity or national security grounds—under subsections 17A(1), 19DA(1), 25(1A) or 30A(1)) or because the Minister is considering exercising his discretionary cancellation power (under subsection 17A(2), 19DA(2), 30A(2) or 25(1) because of the application of subsection 25(2)).
270. New subsection 32AB(4) provides that the delay period determined by the Minister must not exceed 2 years. The Minister may determine a number of periods in relation to a person, in which case the total period of the determinations must not exceed 2 years.
271. New subsection 32AB(5) provides that the Minister may, in writing, revoke a determination made under new subsection 32AB(3).
272. New subsection 32AB(6) provides that while a determination is in place in relation to a person, the person must not make a pledge of allegiance. Where the person purports to make a pledge of allegiance while a determination is in place in relation to the person, the pledge is of no effect and the person does not acquire citizenship.

New Section 32AC – How Pledge of allegiance is to be made

273. New section 32AC is similar to the repealed subsection 27. It is being replaced in new Subdivision D of Division 2 of Part 2 because requirements relating to the pledge of allegiance are, as a result of this Bill, extended to all citizenship application types, and not restricted to citizenship by conferral.
274. New subsection 32AC(1) is similar to repealed subsection 27(1) and provides that a pledge of allegiance must be made in accordance with either of the forms of the pledge set out in Schedule 1 (see also item 76B).

275. New subsection 32AC(2) is similar to repealed subsection 27(2) and provides that a pledge of allegiance must be made in accordance with the arrangements prescribed by the Regulation. For example, the Regulation may provide for a pledge of allegiance to be made in public, or may provide that a person may only make a pledge of allegiance at a particular citizenship ceremony where they have been invited to make a pledge at that particular ceremony. The Regulation may also provide, for example, that a person invited to a particular ceremony must provide personal identification to enable an officer to be satisfied of the person's identity before the person can make the pledge.
276. New subsection 32AC(3) is similar to repealed subsection 27(3) and provides the pledge must be made before the Minister, an authorised person, or a person included in an authorised class of persons.
277. New subsection 32AC(4) is similar to repealed subsection 27(4) and provides that the Minister may, by writing, authorise a person to be a person before whom a pledge of allegiance must be made.
278. New subsection 32AC(5) is similar to repealed subsection 27(5) and provides that the Minister may, by legislative instrument, authorise a class of persons, the members of which being persons before whom a pledge of allegiance must be made.

Item 109 Section 32A

279. New section 32AD is similar to the repealed subsection 28. It is being replaced in new Subdivision D of Division 2 of Part 2 because requirements relating to the pledge of allegiance are, as a result of this Bill, extended to all citizenship application types, and not restricted to citizenship by conferral.
280. New subsection 32AD(1) is similar to repealed subsection 28(1) and provides that a person required under new section 32AB to make a pledge of allegiance becomes an Australian citizen under the relevant Subdivision (for example, the Subdivision relating to citizenship by conferral, or the Subdivision relating to citizenship by descent) on the day on which the person makes the pledge in accordance with the arrangements (if any) prescribed for the purposes of subsection 32AC(2).
281. New subsection 32AD(2) is similar to repealed subsection 28(2) and provides that subject to subsection 32AD(3), a person not required to make a pledge of allegiance under section 32AB becomes an Australian citizen under the relevant Subdivision on the day on which the Minister approves the person becoming an Australian citizen. For example, a person who is not required to make the pledge of allegiance because they have an incapacity of the type provided in new paragraph 32AB(1)(b) becomes a citizen on the day the Minister approves their application to become an Australian citizen.
282. New subsection 32AD(3) is similar to repealed subsection 28(3) and provides that subsection 32AD(3) does not apply to a child aged under 16 at the time the child made the application under the relevant Subdivision to become an Australian citizen if one or more responsible parents of the child made applications under the Subdivision at the time, and the Minister decided under the Subdivision to approve the child and one or more of the responsible parents becoming Australian citizens. In this circumstance, subsection 32AD(4) will apply to the child. Subsection 32AD(4) provides that the

child becomes an Australian citizen on the first day on which a responsible parent of the child becomes an Australian citizen.

283. For example, where a 12 year old child makes an application for citizenship by conferral at the same time as her mother, the child is not required to make a pledge of allegiance (because of new paragraph 32AB(1)(a)) but the mother is required to make the pledge of allegiance. The requirement that the mother makes the pledge of allegiance displaces the rule in new subsection 32AD(2) which would otherwise mean that the child becomes a citizen on the day the Minister approves the child's application to become a citizen. Instead, new subsections 32AD(3) and (4) apply and provide that the child becomes a citizen on the day the mother becomes an Australian citizen (which, because of new subsection 32AD(1)), is the day the mother makes the pledge.

Item 110 Section 32A

284. This is a consequential amendment to items 111 and 113 which insert new sections 33A and 34AA in the Act.

Item 111 After section 33

285. This item inserts new section 33A into the Act. New section 33A of the Act gives the Minister the discretion to revoke the Australian citizenship of a person who became an Australian by descent (under Subdivision A of Division 2 because of an approval under section 17) in circumstances where the Minister is satisfied that the person should not have been approved as an Australian citizen by descent because the person did not meet the requirements in section 16 of the Act. The Minister will have the discretion to revoke a person's Australian citizenship under new section 33A where he or she is satisfied that the person should not have been approved as an Australian citizen by descent because:

- in the case of a person born outside Australia on or after 26 January 1949 – the requirement in paragraph 16(2)(a) of the Act was not met. That is, a parent of the person was not, in fact, an Australian citizen at the time of the person's birth;
- in the case of a person born outside Australia on or after 26 January 1949 – the requirement in paragraph 16(2)(b) of the Act was not met. That is, at the time of the person's birth the parent of the person was not, in fact, present in Australia as a lawful non-citizen for a total period of at least 2 years at any time before the person made the application, or the person was not stateless at the time the application was made;
- in the case of a person born outside Australia or New Guinea before 26 January 1949 – the requirement in paragraph 16(3)(a) of the Act was not met. That is, a parent of the person did not, in fact, become an Australian citizen on 26 January 1949. In this situation, new section 33A does not operate to automatically revoke the person's citizenship. Instead the Minister can consider the person's particular circumstances when considering exercising the discretion;

- in the case of a person born outside Australia or New Guinea before 26 January 1949 - the requirement in paragraph 16(3)(b) of the Act was not met. That is, the parent of the person was not born in Australia or New Guinea or was not naturalised in Australia before the person's birth. In this situation, new section 33A does not operate to automatically revoke the person's citizenship. Instead the Minister can consider the person's particular circumstances when considering exercising the discretion;
- in the case of a person who was assessed as being of good character at the time of the Minister's decision on the application - the requirement in paragraph 16(2)(c) of the Act was not met. That is, the Minister becomes satisfied that the person in fact was not of good character at the time of the Minister's decision.
- approval of their application for citizenship by descent should have been barred by the new offences provision in subsection 17(4C) of the Act (inserted by item 10). That is, the Minister was not aware that one of the relevant conditions applied at the time of granting approval, for example the person was subject to pending proceedings for an offence against an Australian law or was subject to a good behaviour bond.

286. The purpose of this amendment is to allow the circumstances of a particular case to be taken into account in deciding whether a person's Australian citizenship should be revoked in circumstances where the person did not meet the requirements for being approved as an Australian citizen by descent. New subsection 33A(3) provides that if the Minister revokes a person's citizenship under new subsection 33A(1), the person ceases to be an Australian citizen at the time of the revocation.

287. The discretionary nature of the decision under new section 33A means that issues such as the length of time that the person has been a citizen, and the seriousness of any character concerns, can be taken into account. These are considerations that cannot be afforded under the repealed section 19A (see item 11) which provides an operation-of-law loss of citizenship. Further, the repeal of section 19A will mean that a person who did not, in fact, meet the requirements for being approved as and becoming an Australian citizen by descent in section 16 will remain an Australian citizen unless and until the Minister makes a decision to revoke the person's Australian citizenship under new section 33A. In this way, this is a beneficial amendment.

Item 112 Section 34 (heading)

288. This is a consequential amendment to item 113 which inserts new section 34AA into the Act. The heading substituted by this item more appropriately describes the power in section 34 and distinguishes it from the power in new section 34AA.

Item 113 After section 34

289. The purpose of new section 34AA is to provide the Minister with the discretion to revoke a person's Australian citizenship in circumstances where the Minister is satisfied that the person became an Australian citizen as a result of fraud or misrepresentation associated with the person's entry to Australia, the grant of a visa to

the person (or other permission to enter and remain in Australia) or the person being approved as an Australian citizen.

290. Unlike section 34 of the Act, it is not necessary for the person to have been convicted of an offence against a provision of the Act or the Criminal Code (or any other provision in any other Act) in order for the Minister to be able to revoke their Australian citizenship under new subsection 34AA(1). However, the Minister must be satisfied that the person obtained approval to become an Australian citizen as a result of fraud or misrepresentation connected with their application for a visa or their application to become an Australian citizen. In this context, this means that the Minister must be actually persuaded of that fraud or misrepresentation. In addition, the Minister's satisfaction must be based on findings or inferences of fact that are supported by probative material or logical grounds.
291. The Minister must be satisfied that it would be contrary to the public interest for the person to remain an Australian citizen in order to be able to revoke the person's Australian citizenship under new subsection 34AA(1).
292. New subsection 34AA(2) of the Act provides that the fraud or misrepresentation:
- may have been committed by any person; and
 - need not have constituted an offence, or part of an offence, by any person.
293. The purpose of new subsection 34AA(2) is to clarify that a person may potentially have their Australian citizenship revoked under new section 34AA regardless of whether the fraud or misrepresentation was perpetrated by the Australian citizen, or by a third party (for example, an agent of the Australian citizen). As the power to revoke a person's Australian citizenship under new section 34AA is discretionary, it will be open to the Minister to consider arguments that the person was unaware of the fraud or misrepresentation in deciding whether to revoke their Australian citizenship.
294. New subsection 34AA(3) of the Act provides that however, the fraud or misrepresentation must have occurred during the period of 10 years before the day of the revocation. The purpose of this amendment is to clarify that new section 34AA of the Act applies to fraud or misrepresentation which must have occurred during the period of 10 years before the day the person's Australian citizenship is revoked under new section 34AA.
295. New subsection 34AA(4) of the Act provides that without limiting subsection (1), the concealment of material circumstances constitutes a misrepresentation for the purposes of that subsection. The purpose of this amendment is to clarify that concealment of a material circumstance is taken to be a misrepresentation for the purposes of new section 34AA of the Act. For example, if a person concealed information that, if it were known to the Minister, would have meant that the Minister would have refused to approve the person becoming an Australian citizen, this will be a misrepresentation for the purposes of new subsection 34AA(1). However, new subsection 34AA(4) also makes it clear that there are other circumstances which may potentially constitute a misrepresentation for the purposes of new subsection 34AA(1).

296. New subsection 34AA(5) of the Act provides that if the Minister revokes a person's Australian citizenship, the person ceases to be an Australian citizen at the time of the revocation. The purpose of this amendment is to clarify the time the person ceases to be an Australian citizen in circumstances where the Minister makes a decision to revoke their Australian citizenship under new section 34AA of the Act.
297. The note to new subsection 34AA(5) of the Act provides that a child of the person may also cease to be an Australian citizen: see section 36.
298. The power under section 36 of the Act to revoke a child's citizenship would be enlivened if the fraud related to the parent's application. However, if the fraud is in relation to the child's application, then the relevant revocation provision would be new section 34AA. This reflects the existing situation in the Act where a child can have their citizenship revoked under section 34 if there is a relevant conviction for fraud in relation to that child's migration or citizenship application.

Item 114 Paragraph 36(1)(a)

299. This amendment bring sections 33A and 34AA into the operation of section 36. The purpose of this amendment is to provide that where a person ceases to be an Australian citizen under section 33A (Revocation by Minister—approval should not have been given for citizenship by descent) or section 34AA (Revocation by Minister—other cases of fraud or misrepresentation) and the person is a responsible parent of a child aged under 18, the Minister may, by writing, revoke the child's Australian citizenship. However, the Minister cannot exercise this power where, as a result of the revocation, the child would become a person who is not a national or citizen of any country. If the Minister decides to revoke the child's Australian citizenship in these circumstances, the child ceases to be an Australian citizen at the time of the revocation.

Item 115 Paragraph 38(1)(a)

300. This is a consequential amendment to items 111 and 113 which insert new sections 33A and 34AA in the Act. The effect of the amendment is that decisions made under section 33A or section 34AA to revoke a person's Australian citizenship are brought into the operation of subsection 38(1). Subsection 38(1) enables the Minister to request a person whose citizenship has ceased to surrender any notice evidencing the person's Australian citizenship that has been issued to the person under section 37.

Item 116 At the end of subsection 46(1)

301. This item adds paragraph (e) to subsection 46(1) to require that an application under a provision of the Act must be a valid application. This amendment is a consequence of item 118 which provides when an application is invalid.

Item 117 Before subsection 46(1A)

302. This item inserts a heading for current subsection 46(1A). The effect of the amendment is to better describe the function of subsection 46(1A) and distinguish it from new subsection 46(1B).

Item 118 After subsection 46(1A)

303. This item inserts new subsection 46(1B) after subsection 46(1A). Without limiting when an application is invalid (such as when it does not meet the requirements set out in subsection 46(1)), new subsection 46(1B) provides when an application is invalid.
304. New paragraph 46(1B)(a) provides that an application is invalid where the Regulation or an instrument require information or a document to be provided with an application, the Regulation or the instrument determine that the application will be invalid if the information or document does not accompany the application, and the applicant submits the application without providing the accompanying the information or document—then the application is invalid.
305. New paragraph 46(1B)(b) provides that an application is invalid where, if an Australian Values Statement is determined under new subsection 46(5), the Australian Values Statement does not accompany an application in accordance with any requirements determined under new subsection 46(5). Currently, the statement in relation to Australian values currently contained within the ‘declaration’ on citizenship application forms and an application is deemed invalid when an applicant does not sign the declaration. This new provision will formalise arrangements for making a valid application and assist decision makers to determine whether an application is valid. Applicants will be provided the opportunity to sign the Australian Values Statement, in order to make their application valid, where they had not done so in their original application form.
306. New paragraph 46(1B)(c) provides that an application is invalid in any other circumstances prescribed by the Regulation for the purposes of this paragraph.

Item 119 At the end of section 46

307. This item inserts new subsections 46(4) and (5).
308. Without limiting the operation of paragraph 46(1)(c), new subsection 46(4) provides for the Regulation to determine matters relating to the operation of paragraph 46(1)(c) which provides that an application made under a provision of the Act must be accompanied by any information or documents prescribed by the Regulation.
309. New paragraph 46(4)(a) provides that the Regulation may determine that information or a document prescribed for the purposed of paragraph 46(1)(c) must accompany all applications or applications of a particular kind. In determining information or a document that must accompany an application of a particular kind, the operation of section 33(3A) of the *Acts Interpretation Act 1901* (which deals with the scope of powers in respect of matters) is not limited.
310. New paragraph 46(4)(b) provides that the Regulation may determine any requirement relating to information or a document prescribed for the purposes of paragraph 46(1)(b).
311. New paragraph 46(4)(c) provides that the Regulation may determine that an application is invalid under new subsection 46(1B) if information or a document prescribed for the purposes of paragraph 46(1)(c) does not accompany the application in accordance with the Regulation.

312. New subsection 46(5) provides for the Minister to determine, by legislative instrument, an Australian Values Statement and any requirements relating to an Australian Values Statement. For example, the Minister may determine the text of the Australian Values Statement and determine that the statement must be read, understood and signed by an applicant. The Minister may also, for example, determine that the Australian Values Statement is not required from applicants who do not have the capacity to have an adequate knowledge of the responsibilities and privileges of Australian citizenship (such as applicants who have a permanent or enduring physical or mental incapacity for the purposes of the eligibility criteria in subsection 21(3)). New subsection 46(5) relates to the new requirement in new paragraph 46(1B)(c) that, if an Australian Values Statement is determined by the Minister under new subsection 46(5), then if an application is made without an accompanying Australian Values Statement then the application is invalid.
313. The policy intention of the Australian Values Statement is to underscore the significance of Australian citizenship and require applicants to acknowledge their understanding of the rights and privileges of Australian citizenship and of Australian values. This is similar to what occurs for many temporary and permanent migrants to Australia who must comply with public interest criterion 4019. That criterion requires visa applicants to sign the Australian Values Statement made in an instrument under Part 3 of Schedule 4 to the Migration Regulations. That instrument is the *Australian Values Statement for Public Criterion 4019 – 2016/113 (IMMI 16/113)* which is exempt from disallowance because of section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
314. Like the Australian Values Statement made for the Migration Regulations, the instrument made under new subsection 46(5) to determine the Australian Values Statement is exempt from disallowance because it concerns matters which should be under Executive control. The instrument provides the wording of the Australian Values Statement that an applicant must sign to make a valid application for citizenship. This aligns with the process for a visa application under the Migration Act which many applicants will have already signed as part of their visa application process. Australian citizenship aligns with national identity and as such matters going directly to the substance of citizenship policy such as Australian Values should be under Executive control, to provide certainty for applicants and to ensure that the intended policy is upheld in its application.

Item 120 After subsection 47(3)

315. This item inserts a new subsection 47(3A) and provides that if the decision is made by the Minister personally, the notice may include a statement that the Minister is satisfied that the decision was made in the public interest.
316. This amendment is linked to item 126. In general terms, new subsection 52(4) of the Act (inserted by item 126) provides that if a decision is made by the Minister personally the decision is not subject to review by the Administrative Appeals Tribunal if the notice under section 47 includes a statement that the Minister is satisfied that the decision was made in the public interest.

Item 121 Paragraphs 52(1)(a) to (d)

317. This item repeals the current paragraphs 52(1)(a) to (d) and substitutes new paragraphs (a) and (b). The new paragraphs consolidate the decisions listed in current paragraphs 52(1)(a) to (d) and adds the new cancellation powers created by the Bill – sections 17A, 19DA and 30A. The effect of this amendment is that, like the treatment of decisions to cancel an approval of a conferral application, decisions to cancel the approval of an application for citizenship by descent, Hague Convention on Intercountry Adoption and bilateral arrangement, and resumption may be the subject of an application to the Administrative Appeals Tribunal for review.

Item 122 Paragraph 52(1)(f)

318. This is a consequential amendment to items 111 and 113 which insert new section 33A and new section 34AA in the Act. The effect of the amendment is that for decisions made under new section 33A and new section 34AA an application may be made to the Administrative Appeals Tribunal for a review of the decision.

Item 123 After subsection 52(2)

319. This item inserts new subsection 52(2A) and provides that if the Minister makes a decision under section 24 to refuse to approve a person becoming an Australian citizen under subsection 21(5) (which relates to the eligibility criteria for a person aged under 18 applying for citizenship by conferral), the person cannot apply for review of that decision unless:

- the person is a permanent resident; or
- the person holds a permanent visa of a kind prescribed in an instrument made under subsection 3(2).

320. This is a consequential amendment to item 51 which repeals current paragraph 21(5)(b) of the Act and inserts new paragraph 21(5)(b).

321. If the decision maker made a factual error about whether the child is a permanent resident or the holder of a prescribed permanent visa, or whether they were in fact under 18 at the time of application, this could be addressed through internal review.

Item 124 Subsection 52(3)

322. This item is a consequence of the amendments to subsection 52(1). Subsection 52(3) continues to apply to a decision under section 24 to refuse to approve a person becoming an Australian citizen but now refers to that type of decision expressly.

Item 125 Paragraph 52(3)(a)

323. This item amends paragraph 52(3)(a) to provide that, when reviewing a decision under section 24 to refuse to approve a person becoming an Australian citizen, the Administrative Appeals Tribunal must not exercise the new Ministerial discretion to waive the general residence requirement (in new subsection 22AA(1)) and must not review any exercise of the power or any failure to exercise the power. This is consistent with what occurs where the Minister exercises the alternative residence requirement discretion in subsection 22A(1A) or 22B(1A).

Item 126 At the end of section 52

324. The purpose of new subsection 52(4) of the Act is to ensure that decisions personally made by the Minister under sections 17, 19D, 24, 25, 30, 33, 33A, 34 and subsection 36(1), where the notice under section 47 stated that the Minister is satisfied that the decision was made in the public interest, cannot be the subject of an application to the Administrative Appeals Tribunal for review. The person is able to seek judicial review of any of these decisions.
325. As an elected Member of Parliament, the Minister represents the Australian community and has a particular insight into Australian community standards and values and what is in Australia's public interest. As such, it is not appropriate for an unelected administrative tribunal to review such a personal decision of a Minister on the basis of merit, when that decision is made in the public interest. As a matter of practice it is expected that only appropriate cases will be brought to the Minister's personal attention, so that merits review is not excluded as a matter of course.
326. New subsection 52B(1) of the Act, inserted by item 127, provides transparency and accountability measures concerning personal decisions of the Minister which are not reviewable by the Administrative Appeals Tribunal, by requiring a statement to be tabled in Parliament when such a decision is made.
327. This proposal would bring the exclusion of personal decisions of the Minister from merits review under the Citizenship Act more in line with similar provisions involving personal decisions of the Minister under the Migration Act. In addition, the Citizenship Act itself has a precedent for non-reviewable personal decisions of the Minister, being paragraph 52(3)(b). In this instance, the Administrative Appeals Tribunal cannot review any exercise, or failure to exercise, of the Minister's personal discretionary power under sections 22A(1A) or 22B(1A) concerning special residence requirements.

Item 127 After section 52

328. This item inserts new sections 52A and 52B into the Act.
329. New section 52A of the Act provides that the Minister may in the public interest set aside certain decisions of the Administrative Appeals Tribunal. This provision applies in relation to decisions of delegates because personal decisions of the Minister, made in the public interest, will be protected from merits review in the first place as provided in the amendments at item 126.
330. In the last few years, the Administrative Appeals Tribunal has made three significant decisions outside community standards, finding that people were of good character despite having been convicted of child sexual offences, manslaughter or people smuggling. Three other recent decisions of the Administrative Appeals Tribunal have found people to have been of good character despite having committed domestic violence offences.
331. In addition to the above specific instances, there is the potential for some decisions made by the Administrative Appeals Tribunal on identity grounds to pose a risk to the integrity of the citizenship programme. That is, a decision to refuse to approve a

person becoming an Australian citizen, or to cancel such approval, where identity is the basis for that decision is critical to ensuring that the value of Australian citizenship is not diminished. In addition, the provision of a false identity is intrinsically related to the question of whether the person is of good character.

332. Guidance will continue to be provided and updated as appropriate to reflect community standards. The potential nevertheless remains for Administrative Appeals Tribunal decisions to be made which are inconsistent with such policies.
333. Therefore, this amendment gives the Minister the power to make a decision setting aside the Tribunal's decision and make a new decision if the Minister is satisfied that it is in the public interest to do so. This power of the Minister is restricted to decisions where the initial decision of the delegate included the fact that the delegate was not satisfied that the person was of good character at the time of the decision or was not satisfied of the identity of the person. However, this does not need to be the sole reason for the initial decision of the delegate.
334. This power of the Minister is restricted to decisions where the person has not already become an Australian citizen, for example, if the person has already made the pledge or is not required to make the pledge. This power does not extend to revoking citizenship. The power to set aside an Administrative Appeals Tribunal (of the type described above) may only be exercised by the Minister personally.

Tabling statement in Parliament

335. New subsection 52B(1) provides that if the Minister makes a decision that is not reviewable by the Administrative Appeals Tribunal because of subsection 52(4), the Minister must table in each House of the Parliament, within 15 sitting days of that House after the day the Minister makes the decision, a statement that sets out the Minister's decisions and the Minister's reasons. New subsection 52B(2) provides that the statement is not to include the name of the person affected by the decision.
336. Similarly, new subsection 52B(3) provides that if the Minister makes a decision under new subsection 52A(1) to set aside a decision of the Administrative Appeals Tribunal, the Minister must table in each House of the Parliament, within 15 sitting days of that House after the day the Minister makes the decision, a statement that:
 - sets out the Tribunal's decision;
 - states that the Minister has set aside the Tribunal's decision;
 - sets out the decision made by the Minister in connection with the decision to set aside the Tribunal's decisions; and
 - sets out the reasons for the Minister's decision to set aside the Tribunal's decision.
337. New subsection 52B(2) provides that the statement under new subsection 52B(3) is not to include the name of the person affected by the decision.

338. In relation to both decisions that are not reviewable and decisions to set aside a decision of the Administrative Appeals Tribunal, the Parliamentary tabling requirements contained in new subsections 52B(2) and 52B(4) ensure that such decisions remain transparent, accountable and open to public comment.

Item 128 After section 53

339. This item inserts new section 53A in the Act, which is concerned with the use and disclosure of personal information obtained under the Migration Act or the Migration Regulations.

340. New subsection 53A(1) provides that the Minister, the Secretary or an APS employee in the Department may use personal information obtained under the Migration Act, or Migration Regulations, for the purposes of the Citizenship Act or the Citizenship Regulation.

341. New subsection 53A(2) provides that a person to whom personal information is disclosed under subsection 488C(3) of the Migration Act may use that information for the purposes of Citizenship Act or the Citizenship Regulation.

342. The purpose of this amendment is to clarify that the Minister, the Secretary or an APS employee in the Department may use personal information obtained under the Migration Act or the Migration Regulations or personal information disclosed under subsection 488C(3) of the Migration Act (inserted by item 134) for the purposes of the Citizenship Act or the Citizenship Regulation.

343. Such personal information would include, but would not be limited to:

- information provided by the person themselves or a third party to the Department concerning an application for a visa made by the person; and
- information provided by the person themselves or a third party to the Department concerning the cancellation, or possible cancellation, of a visa held by the person under the Migration Act.

344. The uses for which the personal information will be put include, but would not be limited to, making a decision whether to approve or refuse to approve the person becoming an Australian citizen under the Citizenship Act.

345. This provision will not affect the operation of section 503A of the Migration Act, concerning protection of information supplied to the Department by law enforcement agencies or intelligence agencies. That is, any information provided under section 503A would not be available for use for citizenship purposes unless express permission is received.

346. New subsection 53A(3) of the Act provides that the Minister, the Secretary or an APS employee in the Department may disclose personal information obtained under the Citizenship Act, or the Citizenship Regulation, to the Minister, the Secretary or an officer (within the meaning of the Migration Act) for the purposes of the Migration Act or the Migration Regulations.

347. The purpose of this amendment is to clarify that personal information obtained under the Citizenship Act or the Citizenship Regulation may be disclosed to the Minister, the Secretary or an officer (within the meaning of the Migration Act) for the purposes of the Migration Act or the Migration Regulations.
348. Such personal information would include, but would not be limited to, personal information provided by the person themselves or a third party to the Department concerning an application to become an Australian citizen made by the person.
349. The exchange of personal information between officers within one Department is regarded as a use, rather than a disclosure, of that personal information for the purposes of the *Privacy Act 1988* (the Privacy Act). As migration and citizenship matters are currently contained within the same portfolio (administered by the Department) the exchange of personal information between officers dealing with migration matters and officers who deal with citizenship matters constitutes a use, rather than a disclosure, of that personal information.
350. However, it is possible that migration and citizenship matters could be split between different portfolios in future. On this basis, a provision that permits the disclosure of personal information obtained under the Citizenship Act or the Citizenship Regulation to the Secretary or to an officer (within the meaning of the Migration Act) for the purposes of the Migration Act or the Migration Regulations is inserted.
351. This provision will not affect the operation of section 503A of the Migration Act, concerning protection of information supplied to the Department by law enforcement agencies or intelligence agencies. That is, any information provided under section 503A would not be available for disclosure for citizenship purposes unless express permission is received.
352. New subsection 53A(4) of the Act provides definitions for:
- “personal information”—which has the same meaning as in the *Privacy Act 1988*; and
- “Secretary”—which means the Secretary of the Department.
353. “Personal information” is defined in section 6 of the Privacy Act to mean information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.
354. The Privacy Act applies to the use and disclosure of personal information by Australian Privacy Principle (APP) entities. The Department is an APP entity for the purposes of the Privacy Act.
355. As an APP entity the Department must use and disclose personal information in accordance with the Australian Privacy Principles prescribed in Schedule 1 to the Privacy Act. Australian Privacy Principle 6 prescribes when the Department may use or disclose personal information. Australian Privacy Principle 6 generally provides that the Department can only use or disclose personal information for a purpose for which it was collected (the primary purpose) or for a secondary purpose if an exception applies. An exception prescribed in APP 6.2(b) of the Privacy Act provides that

personal information may be used or disclosed if it is required or authorised by or under an Australian law.

356. For the avoidance of doubt, the use of personal information in accordance with new subsections 53A(1) and 53A(2) is a use that is authorised by an Australian law for the purposes of the Privacy Act. The disclosure of personal information in accordance with new subsection 53A(3) is a disclosure of personal information that is authorised by an Australian law for the purposes of the Privacy Act.

Item 129 Section 54

357. This is a consequential amendment to item 130 which inserts subsection 54(2) in the Act.

Item 130 At the end of section 54

358. This item inserts new subsection 54(2) in the Act.
359. The purpose of this amendment is to enable the Minister to specify instruments in writing under the Regulation. This will enable the Minister to make legislative instruments under the Regulation that include (but will not be limited to) the payment of citizenship application fees in foreign currencies and foreign countries.
360. It is appropriate for this instrument making power to be in the Regulation because it is the Regulation which address issues such as setting the fees to accompany citizenship applications (see Regulation 16). Parliamentary scrutiny would be maintained because the legislative instrument would be disallowable.

Item 131 Schedule 1 (heading)

361. This item amends the heading to Schedule 1 to refer to the ‘pledge of allegiance’ rather than the ‘pledge of commitment’. See item 133.

Item 132 Schedule 1 (note to heading)

362. This item amends the note under the heading in Schedule 1 to refer to the new section 32AC in place of the repealed section 27.

Item 133 Schedule 1

363. This item replaces the words ‘loyalty to Australia and its people, whose’ with the words in ‘allegiance to Australia and its people, whose values and’ in the pledge of allegiance. This amendment applies to both forms of the pledge in Schedule 1 to the Act. The effect of the amendment is that the second and third lines of the pledge of allegiance read: *I pledge my allegiance to Australia and its people, whose values and democratic beliefs I share.*
364. This amendment is consistent with the terminology used in the Preamble as amended by item 1A. It is also consistent with the wording relating to the citizenship loss provisions inserted into the Act in 2015 by the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015*. The policy intention is to underscore the fundamental expectation and requirement that aspiring citizens demonstrate allegiance

to Australia. The change in wording is symbolic. The act of a person making the pledge and using the word 'allegiance' does not in itself renounce a person's other citizenship. Dual citizenship continues to be recognised as a means to support and build a strong and diverse multicultural community by encouraging those who wish to become citizens, and who meet the legal requirements for citizenship, to participate fully in the Australian democratic processes and community.

Migration Act 1958

Item 134 After section 488B

365. This item inserts new section 488C in the Migration Act. The new section is concerned with the use and disclosure of personal information obtained under the Citizenship Act and the Citizenship Regulation.
366. New subsections 488C(1) provides that the Minister, the Secretary or an officer may use personal information obtained under the Citizenship Act, or the Citizenship Regulation, for the purposes of the Migration Act or the Migration Regulations.
367. New subsection 488C(2) provides that a person to whom personal information is disclosed under subsection 53A(3) of the Citizenship Act may use that information for the purposes of Migration Act or the Migration Regulations.
368. The purpose of this amendment is to clarify that the Minister, the Secretary or an officer may use personal information obtained under the Citizenship Act or the Citizenship Regulation for the purposes of the Migration Act or the Migration Regulations.
369. Such personal information would include, but would not be limited to, information provided by the person themselves or a third party to the Department concerning an application by the person to become an Australian citizen.
370. The uses for which the personal information will be put include, but will not be limited to, making a decision under the Migration Act about whether to cancel a visa that has been granted to the person under that Act.
371. New subsection 488C(3) of the Migration Act provides that the Minister, the Secretary or an officer may disclose personal information obtained under the Migration Act, or the Migration Regulations, to the Minister, the Secretary or an APS employee in the Department for the purposes of the Citizenship Act or Citizenship Regulation.
372. The purpose of this amendment is to clarify that the Minister, the Secretary or an officer may disclose personal information obtained under the Migration Act or the Migration Regulations to the Minister, the Secretary or an APS employee in the Department for the purposes of the Citizenship Act or the Citizenship Regulation.
373. Such personal information would include, but would not be limited to:
- personal information provided by the person themselves or a third party to the Department concerning an application for a visa, or applications for visas, made by that person;
 - personal information provided by the person themselves or a third party to the Department concerning the cancellation, or possible cancellation, of a visa held by the person under the Migration Act.
374. The exchange of personal information between officers within one Department is regarded as a use, rather than a disclosure, of that personal information for the purpose of the Privacy Act. As migration and citizenship matters are currently contained in the

same portfolio (administered by the Department) the exchange of personal information between officers dealing with migration matters and officers who deal with citizenship matters constitutes a use, rather than a disclosure, of that personal information.

375. However, it is possible that migration and citizenship matters could be split between different portfolios in future. On this basis, a provision that permits the disclosure of personal information obtained under the Migration Act or the Migration Regulations to the Minister, the Secretary or an APS employee within the Department for the purposes of the Citizenship Act and the Citizenship Regulation is inserted.
376. New subsection 488C(4) of the Migration Act provides that however, subsection 488C(3) does not override section 488. The note to new subsection 488C(4) provides that section 488 prohibits the disclosure etc. of movement records except in limited circumstances.
377. Section 488 of the Migration Act is concerned with the use and disclosure of movement records (among other things). Subsection 488(1) of the Migration Act provides that a person must not:
- read; or
 - examine; or
 - reproduce by any means; or
 - use; or
 - disclose by any means;
- any part of the movement records, otherwise than in accordance with an authority given under subsection 488(2) of the Migration Act.
378. Subsection 488(2) of the Migration Act sets out the circumstances in which a person can be authorised to take any of the actions mentioned in subsection 488(1).
379. Subsection 488(3) of the Migration Act provides that authority under subsection 488(2) to disclose any part of the movement records may be limited to authority to so disclose to a specified person, a person in a specified class, or a specified organisation, only.
380. Subsection 488(4) of the Migration Act provides that a person (other than an authorised officer carrying out duties or performing functions under or for the purposes of the Migration Act) shall not:
- delete, alter or add to any part of the movement records;
 - alter any computer program connected with making, transferring or keeping movement records; or
 - in any other way tamper with a notified database.
381. “Movement records” is defined in section 5 of the Migration Act to mean information stored in a notified database. “Notified database” is also defined in section 5 of the

Migration Act to mean a database declared to be a notified database under section 489 of the Migration Act.

382. Section 489 of the Migration Act provides that the Minister may, by notice in the Gazette, declare a database containing information kept for the purposes of this Act in relation to the entry of persons into, and departure of persons from, Australia to be a notified database for the purposes of this section.
383. The effect of new subsection 488C(4) of the Migration Act is that personal information that forms part of the notified database within the meaning of section 489 of that Act cannot be disclosed to the Minister, the Secretary or an APS employee in the Department for the purposes of the Citizenship Act or the Citizenship Regulation, unless that disclosure is in accordance with an authority given under subsection 488(2) of the Migration Act.
384. The Privacy Act applies to the use and disclosure of personal information by APP entities. The Department is an APP entity for the purposes of the Privacy Act.
385. As an APP entity the Department must use and disclose personal information in accordance with the Australian Privacy Principles (APP) prescribed in Schedule 1 to the Privacy Act. Australian Privacy Principle 6 prescribes when the Department may use or disclose personal information. Australian Privacy Principle 6 generally provides that the Department can only use or disclose personal information for a purpose for which it was collected (the primary purpose) or for a secondary purpose if an exception applies. An exception prescribed in APP 6.2(b) of the Privacy Act provides that personal information may be used or disclosed if it is required or authorised by or under an Australian law.
386. For the avoidance of doubt, the use of personal information in accordance with new subsections 488C(1) and 488C(2) of the Migration Act is a use that is authorised by an Australian law for the purposes of the Privacy Act. The disclosure of personal information in accordance with new subsection 488C(3) is a disclosure of personal information that is authorised by an Australian law for the purposes of the Privacy Act.

Part 2 - Application and transitional provisions

Item 135 Application and transitional provisions

387. Part 2 of Schedule 1 to the Bill sets out the application provisions for the various items in the Bill.

Parent entitled to privileges and immunities

388. Subitem 135(1) of the Bill provides that new subsection 12(3) applies in relation to births that occur on or after the commencement of item 135.

Unlawful non-citizens and no visas

389. Subitem 135(2) of the Bill provides that new subsections 12(4), 12(5) and 12(6) apply in relation to a 10-year period referred to in paragraph 12(1)(b) of the Act that ends on or after the commencement of this item (whether the birth occurred before, on or after that commencement).

390. The purpose of this application provision is to clarify that new subsections 12(4), 12(5) and 12(6) apply to the 10-year period referred to in current paragraph 12(1)(b) of the Act that ends on or after the commencement of item 135. This is the case whether the birth of the person occurred before, on or after the commencement of item 135.

Status of parent

391. Subitem 135(4) of the Bill provides that new subsection 12(7) applies in relation to births in Australia, and entries into Australia, that occur on or after the commencement of this item. The intention is that where new subsection 12(7) applies, and the person for the purposes of that subsection was born in Australia on or after the commencement of this item, or the parent's entry into Australia for the purposes of that subsection was on or after the commencement of this item, then the person is not a citizen under paragraph 12(1)(b).

392. It is considered fair to apply the amendments to any person who would otherwise come within the operation of existing paragraph 12(1)(b) on or after the date of commencement. While an individual may hold an expectation that at some point in the future they will benefit under the existing paragraph 12(1)(b), there is no right to citizenship in these circumstances. A person can acquire citizenship through the conferral process and a stateless person may apply for citizenship at any time under subsection 21(8) of the Act. Consequently, the amendments do not trespass unduly on personal rights; nor do the amendments impact on the individual's liberty or obligations.

Abandoned children

393. Subitem 135(5) of the Bill provides that new subsections 12(8) and 12(9) apply in relation persons found abandoned in Australia as a child on or after the commencement of item 135. The intention is that a child found abandoned in Australia on or after the commencement of item 135 will be a citizen if they are covered by subsections 12(8) and 12(9) as inserted by the Bill.

Citizenship by adoption and abandoned children

394. Subitem 135(6) of the Bill provides that the amendment of section 13 of the Act by the Bill applies in relation to adoption processes beginning on or after the commencement of this item. Where an adoption process began before the commencement of this item, section 13 will apply as if it was not amended by the Bill.
395. Subitem 135(7) of the Bill provides that the repeal of section 14 of the Act by the Bill applied in relation to persons found abandoned in Australia as a child on or after the commencement of this item. The intention is that, for a person found abandoned in Australia as a child on or after the commencement of this item, section 14 of the Act will not apply.

Item 136 Pledge of allegiance

396. The Prime Minister and the Minister announced on 20 April 2017 a number of measures relating to the requirements of Australian citizenship. To reflect the announcement made by the Prime Minister and the Minister, a number of provisions of the Bill apply to applications made on or after 20 April 2017.
397. The following provisions apply (as inserted, repealed or amended by the Bill) in relation to applications under Division 2 of Part 2 of the Act made on or after 20 April 2017:
- the insertion of:
 - section 15B—relating to requirements for becoming a citizen (by descent)
 - section 19BA—relating to requirements for becoming a citizen (by Hague Convention on Intercountry Adoption or bilateral agreement)
 - section 28B— relating to requirements for resuming citizenship
 - subsection 17A(3)—relating to discretionary cancellation for failure to make a pledge of allegiance (for persons approved to become an Australian citizen by descent)
 - 19DA(3)— relating to discretionary cancellation for failure to make a pledge of allegiance (for persons approved to become an Australian citizen by Hague Convention on Intercountry Adoption or bilateral agreement)
 - 30A(3)—relating to discretionary cancellation for failure to make a pledge of allegiance (for persons approved to resume citizenship)
 - Subdivision D of Division 2 of Part 2—relating to the pledge of allegiance and the day citizenship begins for certain persons
 - the repeal of:
 - section 18—relating to registration of a citizen by descent
 - section 19—relating to the day citizenship begins for a citizen by descent

- section 19E—relating to registration of a citizen by Hague Convention on Intercountry Adoption or bilateral agreement
- section 19F—relating to the day citizenship begins for a citizen by Hague Convention on Intercountry Adoption or bilateral agreement
- section 26—relating to how a pledge of allegiance must be made
- section 28—relating to the day citizenship begins
- section 31—relating to registration of a citizen by resumption
- subsection 32(1)—relating to the day citizenship begins for a citizen by resumption
- the amendments of:
 - Schedule 1—relating to the pledge of allegiance.

398. New paragraph 32AB(3)(c) enables the Minister to determine that a person cannot make a pledge of allegiance if the Minister is cancelling the approval given to the person to become an Australian citizen. Subitem 136(2) of the Bill provides that a person approved to become an Australian citizen under section 24 (citizenship by conferral) before, on or after 20 April 2017 may be made subject to a determination under new paragraph 32AB(3)(c).

Transitional instruments

399. Subitem 136(3) of the Bill preserves instruments made under the Act as they existed immediately before the commencement of the Bill so that those instruments continue to be in force after the commencement of the Bill. The table in subitem 136(3) that following the commencement of the Bill:

- instruments made under the former subsection 26(3) are in force under new subsection 32AB(3);
- instruments made under the former subsection 27(4) are in force under new subsection 32AC(4); and
- instruments made under the former subsection 27(5) are in force under new subsection 32AC(5).

400. Subitem 136(4) is also concerned with preserving with instruments made under old provisions of the Act. In these instruments, subitem 136(4) provides that a reference to the ‘pledge of commitment’ is taken to be, after commencement of item 136, a reference to the ‘pledge of allegiance’.

Item 137 Acquisition of Australian citizenship by application

Descent

401. Subitem 137(1) of the Bill provides that the amendments of sections 16 and 17 of the Act made by the Bill apply in relation to applications for citizenship by descent on or after the commencement of item 137.

402. Subitem 137(2) of the Bill provides that the repeal of section 19A of the Act made by the Bill, and section 33A of the Act inserted by the Bill, apply in relation to approvals to become a citizen by descent on or after the commencement of item 137.

Hague Convention etc.

403. Subitem 137(3) of the Bill provides that the amendments of sections 19C and 19D made by the Bill apply in relation to applications for citizenship by Hague Convention on Intercountry Adoption and bilateral agreement made on or after the commencement of item 137.

Citizenship by conferral

404. Subitem 137(4) of the Bill provides that the amendments of paragraphs 21(5)(b) and (c), as well as subsections 21(6), 22A(1) and 22B(1) and section 24 (except for subsection 24(5)) made by the Bill apply in relation to applications for citizenship by conferral made on or after the commencement of item 137. This item also provides that new subsection 22AA (relating to the Minister's power to waive the general residence requirement) applies in relation to applications made on or after commencement of item 137.

405. Subitem 137(5) of the Bill provides that subsections 22(3), 22(4), 22A(5A) and 22B(5B) of the Act, as inserted by the Bill, apply in relation to:

- applications for citizenship by conferral made on or after the commencement of item 137; and
- applications for citizenship by conferral made before the commencement item 137 but not decided by the Minister before the commencement of item 137.

406. Subitem 137(6) of the Bill provides that the following apply in relation to applications made under section 21 of the Act on or after 20 April 2017:

- the amendments of section 21 (but not including paragraphs 21(5)(b) and (c) and subsection 21(6)), section 22 (but not including subsections 22(3) and 22(4)) and section 23A made by the Bill;
- the amendments of subsections 22A(1A) and 22B(1A) and 24(5) made by the Bill.

407. This subitem also contains a note, which provides that section 22 of the Act, as in force immediately before the commencement of Part 1 of the Schedule to the Bill, applies in relation to applications made by certain New Zealand citizens on or after 20 April 2017. The note refers readers to new subsection 22(11).

Cancellation of approval of citizenship

408. Subitem 137(7) of the Bill provides that the following apply in relation to approvals given under Division 2 of Part 2 of the Act before, on or after the commencement of item 137:

- amendments of sections 25 and 52 made by the Bill; and
- subsections 17A(1), 17A(2), 19DA(1), 19DA(2), 30A(1) and 30A(2) inserted by the Bill.

409. The intention of subitem 137(7) is that the Minister's powers to cancel approvals contained in the provisions listed above, and the availability of review in the Administrative Appeals Tribunal, apply to approvals given before, on or after the commencement of item 137.

Citizenship by resumption

410. Subitem 137(8) of the Bill provides that the amendments of sections 29 and 30 made by the Bill apply in relation to applications for resuming citizenship made on or after the commencement of item 137.

Item 138 Revocation of citizenship

411. Item 138 of the Bill provides that section 34AA inserted by the Bill (which deals with revocation by the Minister in other cases of fraud or misrepresentation) applies in relation to approval to become an Australian citizen that given on or after the commencement of item 138. This is the case whether the fraud or misrepresentation occurred before, on or after the commencement of item 138.

Item 139 Application requirements

412. Item 139 provides that section 46 (which deals with application requirements, including when an application is invalid) as amended by the Bill applies in relation to applications made on or after 20 April 2017. The effect of this application provision is that applications made on or after 20 April 2017 which may have been made in reliance on the requirements of section 46 as it was before being amended by the Bill will not meet the application requirements set out in section 46 as amended by the Bill on and after the commencement of this item. This application provision reflects the changes to citizenship requirements that were announced by the Prime Minister and the Minister on 20 April 2017.

Item 140 Notification and review

413. Subitem 140(1) of the Bill provides that the amendments of sections 47 and 52 (but not the amendment of subsection 52(1)) made by the Bill apply in relation to decisions made on or after the commencement of item 140.

414. Subitem 140(2) of the Bill provides that new section 52A, inserted by the Bill, applies in relation to decisions made by the Administrative Appeals Tribunal on or after the commencement of item 140. This is the case whether the decisions of the delegate of the Minister were made before, on or after the commencement of item 140.

Item 141 Personal information

415. Item 141 provides that subsections 53A(1) and 53A(3), as inserted by the Bill, applied in relation to personal information obtained before, on or after the commencement of item 141.

Item 142 Saving of regulations

416. Item 142 provides that regulations in force under section 54 of the Act immediately before the commencement of item 142 continue in force on and after that commencement as if they were regulations in force under section 54(1) of that Act.

Item 143 Amendments of the *Migration Act 1958*

417. Subitem 143 of the Bill provides that subsections 488C(1) and 488C(3) of the Migration Act, as inserted by the Bill, apply in relation to personal information obtained before, on or after the commencement of item 143.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2018

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Bill

The Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2018 (the Bill) amends the *Australian Citizenship Act 2007* (the Act) and the *Migration Act 1958* (the Migration Act) to strengthen the requirements to become an Australian citizen and other key provisions.

The following amendments engage human rights under one or more of the seven core international human rights treaties to which Australia is a party:

- **increasing the general residence requirement for conferral applicants to eight years of residence in Australia as permanent residents to be eligible for citizenship.** The proposed amendments require conferral applicants to demonstrate a minimum of eight years in Australia as a permanent resident, with a maximum of 12 months outside Australia throughout this time period, before they are eligible to become a citizen. The previous exemptions to this requirement remain the same for applicants:
 - with permanent or enduring physical or mental incapacity; or
 - aged 60 or over or have hearing, speech or sight impairment; or
 - under 18 years of age; or
 - who were born to a former Australian citizen; or
 - who were born in Papua; or
 - who are stateless.

The amendment is aimed at the legitimate objective of ensuring aspiring citizens will be given a sufficient amount of time to integrate into the Australian community, gain an understanding of shared Australian values, and the commitment they must make to become an Australian citizen. It would also provide a basis for assessing aspiring citizens' commitment and contribution to Australia.

In recognition of the special bilateral relationship between Australia and New Zealand, it is intended that the previous general residence requirement would be retained for New Zealand citizens who are holders of the Skilled Independent (subclass 189) (New Zealand stream) visa.

- **requiring conferral applicants to demonstrate a competent level of English language skills prior to applying for citizenship.** Currently, a conferral applicant seeking to satisfy the general eligibility criteria must possess a basic knowledge of the English language. This criterion is satisfied where the applicant passes the citizenship test.

The proposed amendments will require conferral applicants aged 16 years and over to demonstrate competent English language. The purpose of this amendment is to allow the Minister to prescribe (in an instrument in writing) types of evidence that an applicant may present to the Department to establish that they have competent English. It is intended that the instrument will be similar, where relevant, to the *Language Tests, Score and Passports 2015 (IMMI 15/005)* prescribed in the *Migration Regulations 1994*. The instrument will specify the English language test providers, scores, and exemptions to meet the English language requirement prior to applying for citizenship by conferral. It will also determine the situations where people are not required to undertake English language testing, for example, if they are a passport holder of the United Kingdom, the Republic of Ireland, Canada, the United States of America or New Zealand or have undertaken specified English language studies at a recognised Australian education provider.

The proposed amendments recognise the importance of having competent English language and ensure that aspiring citizens can integrate into and contribute to the Australian community, including by obtaining employment.

The exemptions to the English language requirement will be for applicants who:

- have permanent or enduring physical or mental incapacity; or
 - are aged 60 or over or have hearing, speech or sight impairment; or
 - are under 16 years of age; or
 - were born to former Australian citizen; or
 - were born in Papua; or
 - are stateless.
- **providing a discretion to revoke a person's Australian citizenship in circumstances where the Minister is satisfied that the person became an Australian citizen as a result of fraud or misrepresentation, perpetrated by the Australian citizen themselves or by a third party.** The Bill proposes to amend the Act to provide that the Minister may revoke citizenship if the Minister is satisfied that the person obtained citizenship because of fraud or misrepresentation. This provision applies to circumstances regardless of whether the fraud or misrepresentation was committed by the person or a third party or an agent. This will prevent the defence that an agent or other third party was responsible for the fraud. As the power to revoke is discretionary, it will be open to the Minister to consider arguments that a client was unaware of the fraud when deciding whether to revoke.

For the purpose of these amendments, a conviction is not required. The amendment has the objective of strengthening the integrity of the Australian citizenship programme by preventing its abuse through misrepresentation and fraud, and seeks to provide stronger disincentives for people to provide false and misleading information in citizenship applications. It provides mechanisms to revoke citizenship obtained through misrepresentation and fraud.

- **extending the good character requirement to include applicants under 18 years of age.** The character requirement will apply to applicants aged 16 years and over, for whom it is possible to obtain police records. However, if the Department becomes aware of an applicant who is younger than 16 years and has character issues, the applicant will be assessed against the character requirement. In practice, it is proposed that the Department will not seek criminal history records of children under the age of ten, as this is below the age of criminal responsibility in Australia.
- **including the bar on approval for criminal offences in all citizenship by application streams and including reference to contemporary sentencing practices in the bar on approval for criminal offences.** Subsection 24(6) of the Act currently requires that a person not be approved for citizenship by conferral when a prescribed period of time has not passed since the person was confined in prison for certain categories of offences or the person is subject to proceedings in relation to a range of offences. The Bill amends this provision to reflect current sentencing practices. It also inserts an equivalent provision in all citizenship by application streams. The proposed amendments will extend the bar on approval when a person has been sentenced to a term of imprisonment to include contemporary sentencing practices, including home detention and when a person is not free of obligations to the court following a criminal offence. The policy objective is to ensure that citizenship is only available to those people who can demonstrate that they respect the laws of Australia even when they are not subject to an obligation to the court. Currently there is an inconsistent approach across citizenship streams with regard to the impact of criminal history on citizenship eligibility. For example, applications for citizenship by descent do not have the same bar on approval as applications for citizenship by conferral, yet the applicants may be in similar circumstances, that is, subject to actions, penalties or obligations arising from proceedings of an Australian court.

The proposed amendments will insert the equivalent of subsection 24(6) of the Act '*Offences*' into the descent, adoption and resumption provisions so that the same bar applies to all citizenship by application streams. This will ensure that applicants in all citizenship streams must meet the same requirements in relation to criminal history. This upholds the objective of maintaining the integrity of the citizenship programme. It also upholds the intent of the Act, as expressed through the Preamble, where full and formal membership of the Australian community is available to people who will agree to undertake the obligations of citizenship, including respecting the rights and liberties of others, and upholding and obeying the laws of Australia.

- **enabling the Minister to cancel approval of citizenship prior to the pledge of allegiance if the applicant is no longer eligible.** The current section 25 of the Act sets out the grounds for when the Minister may cancel an approval of citizenship by conferral. This includes when the Minister is satisfied that, at the time the Minister proposes to cancel the approval, the person:
 - is not a permanent resident, or
 - is not likely to reside, or continue to reside, in Australia or maintain a close and continuing association with Australia, or
 - is not of good character.

The Bill provides for a new mandatory cancellation of approval power and provides circumstances in which the Minister must cancel an approval of a person who is required to make the pledge of allegiance before becoming a citizen (applicable to all citizenship by application streams).

The Bill provides that the Minister must not approve a person's application for citizenship if the Minister is not satisfied of the person's identity, if an adverse or qualified security assessment in respect of the person is in force, or if the person has been convicted of a national security offence.

The amendment provides that the Minister must cancel approval of a person's citizenship if the Minister is satisfied that the person would no longer be approved because of the above prohibitions. As such, the amendment aims to align cancellation of approval with the prohibitions on approval, and has the legitimate objective of ensuring that citizenship is only given to those applicants whose identities are assured and do not pose a risk to Australia's security. It does this by ensuring that identity and national security remain mandatory factors of assessment at every stage of the approval process, particularly where a person's application would not have been approved in the first place had the information leading to a cancellation come to light at the time of application. This provides consistency across citizenship approvals and upholds the integrity of the citizenship programme.

- **providing a discretion to revoke citizenship by descent in place of the current operation of law provision.** A child born overseas may be eligible for citizenship by descent under section 16 of the Act:
 - if at least one of the child's parents is an Australian citizen at the time of the child's birth; and
 - if the parent is a citizen by descent, the parent has spent an accumulated period of two years in Australia

Currently section 19A provides that where a person was approved for Australian citizenship by descent but did not have an Australian citizen parent at the time of birth, then that person is taken to have never become an Australian citizen. The same provision was contained in the *Australian Citizenship Act 1948* (the 1948 Act).

The 1948 Act also provided that where a parent who was a citizen by descent was later found not to have spent the required period in Australia before their child was approved as a citizen, the child never was a citizen. Section 19A does not apply to cases where a person was approved for citizenship by descent but their parent did not satisfy the parental residence requirement. The person remains an Australian citizen even though they did not satisfy all the legal requirements. The original policy intention of section 19A was to include such cases; that is, a person is not an Australian citizen by descent unless the legal criteria were met at time of application.

Over time the Department has encountered a number of cases where a person who was approved as an Australian citizen by descent has been found not to have been eligible and consequently to have never been a citizen. The operation of law aspect of section 19A means that the Department has no discretion in relation to these cases. Once it has been determined that the person was never entitled to citizenship by descent then a

finding of fact is made that the person is not and never was a citizen, regardless of matters such as the age of the person, whether they were an innocent party to the incorrect registration and their integration into the community.

The proposed amendments repeal section 19A and insert a discretionary power to revoke a person's citizenship by descent if the person has been approved as an Australian citizen by descent and the Minister is satisfied that the approval should not have been given. This allows decision makers to consider an applicant's circumstances on a case-by-case basis when deciding if their approval of citizenship should be revoked. The proposed amendments also attach merits review rights to a decision to revoke citizenship by descent of a person who was approved despite not meeting the requirements for approval. Access to judicial review of such decisions, as required under section 75(v) of the Constitution and section 39B of the *Judiciary Act 1903*, is also available.

- **limiting automatic acquisition of citizenship at ten years of age to those persons:**
 - **whose parent(s) is not entitled to any diplomatic and/ or consular privileges or immunities; or**
 - **who have maintained lawful residence in Australia throughout the ten years; or**
 - **who held a valid visa permitting them to travel to, enter and remain in Australia throughout the ten-year period; or**
 - **whose parent was a lawful non-citizen at all times between that parent's last entry to Australia prior to the person's birth and the person's birth.**

Section 12 of the Act provides, among other matters, that a person born in Australia who is not otherwise an Australian citizen becomes a citizen on their tenth birthday if they were 'ordinarily resident' in Australia for the first ten years of their life. This is known as the 'ten year rule'.

Section 3 of the Act provides that a person is taken to be 'ordinarily resident' in a country if they have their home in that country or it is the country of their permanent abode. There is no requirement that the person's residence in Australia was lawful, but they cannot have been present in Australia for a temporary or special purpose. The person may have been temporarily absent from Australia during the ten years provided they maintained their permanent abode in Australia throughout the ten year period.

In effect, the ten year rule provides Australian citizenship to children who were born in Australia, have spent their formative years here and have their established home here, regardless of their visa status.

The ten-year rule has the practical effect of encouraging some temporary residents and unlawful non-citizens to have children in Australia and to keep their child onshore until at least their tenth birthday, whether lawfully or unlawfully. These parents would then expect that their children would obtain Australian citizenship and provide an anchor for family migration and/or justification for a ministerial intervention request under the Migration Act.

- **clarifying the provision giving citizenship to a child found abandoned in Australia.** This amendment clarifies the intention of the abandoned child provision and ensures that

the language more closely reflects the original intent as provided for in the *Australian Citizenship Act 1948*.

- **enabling use and disclosure of personal information collected about a client under the Migration Act to be used for the purposes of the Act and vice versa.** These amendments clarify that the Minister, the Secretary or and APS employee in the Department may use and disclose personal information obtained either under the Migration Act or the Act.
- **providing that personal decisions made by the Minister in the public interest are not subject to merits review.** New subsection 52(4) of the Act ensures decisions made by the Minister personally under sections 17, 19D, 24, 25, 30, 33, 33A, 34 and 36(1) in the public interest cannot be subject to application to the Administrative Appeals Tribunal for review. This makes the exclusion of personal decisions of the Minister under the Act consistent with personal decisions of the Minister under the Migration Act.
- **providing the Minister with power to set aside decisions of the Administrative Appeals Tribunal concerning character and identity if it would be in the public interest to do so.** This power will apply to decisions made by delegates of the Minister where the original decision of the delegate included the fact that they were not satisfied as to a person's good character or identity. This is restricted to decisions where the person has not already become a citizen.
- **aligning access to merits review for conferral applicants under 18 years of age with citizenship eligibility requirements.** Persons aged under 18 years who apply under subsection 21(5) to become an Australian citizen currently have a right of merits review even when such right is futile, because they do not meet the objective legislative requirement that they must be a permanent resident to be eligible for citizenship.

The proposed amendments provide that persons under the age of 18 years who are permanent residents or hold a permanent resident visa prescribed for the purposes of subsection 21(5) are eligible to apply for merits review of an adverse decision made under this provision. This means that conferral applicants, who are under the age of 18 years (under subsection 21(5)) and are unable to meet the objective criteria of being a permanent resident or holding a prescribed visa, would no longer have a futile right to review.

The Australian Administrative Law Policy Guide states 'As a matter of policy, an administrative decision that will, or is likely to, adversely affect the interests of a person should be reviewed on the merits, unless there are factors justifying the exclusion of merits review'. Factors justifying the exclusion from merits review for those applicants who do not meet the fundamental and non-discretionary requirement of permanent residence are:

- the review body is not burdened by a caseload that has no prospect of success at review;
- the availability of informal internal review where it is claimed that the finding that the person was not a permanent resident at the time of application was an error of fact that led to a jurisdictional error;
- the availability of judicial review.

Human rights implications

Increasing the general residence requirement for conferral applicants to eight years of residence in Australia as permanent residents prior to applying for citizenship

The amendments engage Article 12(1) of the International Covenant on Civil and Political Rights (ICCPR), which states:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

It might be seen that an increase in the period of time in which an individual is required to be permanently resident in Australia before successfully applying for citizenship curtails a freedom of movement. However, this amendment does not operate to limit freedom of movement; an individual is free to come and go from Australia within the parameters of the visa they hold. This amendment does, however, endeavour to ensure that citizenship applicants will have spent a reasonable period of time living in Australia so that they are familiar with the Australian way of life, and appreciate the commitment that they are required to make to become citizens. Additionally, the new subsection 22(11) of the Act allows applicants to spend up to 12 months outside Australia (either as one period of 12 months, or several periods totalling 12 months) during the eight-year permanent residence period immediately before making their application. Therefore, these amendments are not inconsistent with Article 12(1).

The amendments also engage Articles 2(1) and 26 of the ICCPR. Article 2(1) provides as follows:

Each State Party to the [ICCPR] undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the [ICCPR], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.

These Articles are engaged as they treat certain New Zealand citizens differently to other New Zealand citizens and citizens of other countries, and therefore engage these Articles on non-discrimination on the basis of national origin. New subsection 22(11) of the Act preserves the previous general residence requirement to New Zealand citizens who hold a Skilled Independent (subclass 189) (New Zealand stream) visa. This reflects the treatment given to New Zealand citizens to acknowledge the special bilateral relationship between Australia and New Zealand. The primary holders of the New Zealand stream visa will have already lived in Australia for at least five years, and have generally contributed to Australia through employment and paying income tax. Consequently, the arrangement in favour of

New Zealand citizens in the proposed subsection 22(11) of the Act supports the operation of the agreement upheld by Australia and New Zealand.

The amendments will promote social cohesion and integration within members of the Australian community and may be seen to positively engage the right to non-discrimination on the basis of national origin by protecting the special relationship between Australia and New Zealand.

Therefore, these amendments are not inconsistent with Articles 2(1) or 26 of the ICCPR.

Requiring conferral applicants to demonstrate a competent level of English language skills prior to applying for citizenship

This amendment engages Article 3(1) of the Convention on the Rights of the Child (CRC), which provides that:

[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Under Article 3(1) member states are required to treat the best interests of the child as a primary consideration in all actions that concern a child. The best interests of the child may be outweighed by other competing interests.

The requirement for 16 and 17 year olds to demonstrate competent English is not inconsistent with Article 3(1) of the CRC as speaking English to a competent standard in an English speaking country supports the best interests of the child by placing the child in the best possible situation to obtain employment and thrive socially. Further, a majority of 16 and 17 year olds affected by this requirement will be studying at an Australian education institution and will be exempt from this requirement under the proposed legislative instrument. To the extent that this prevents children from obtaining citizenship, it does not preclude them from applying again once they meet the English language requirements. In similar jurisdictions such as Canada applicants for citizenship under 18 are required to demonstrate an adequate knowledge of the official language of the country.

This measure also engages Articles 2(1) and 26 of the ICCPR, described above. These Articles are engaged on the basis that the measure may be seen to discriminate on the basis of national origin by treating those applicants with lower levels of English language proficiency differently to applicants who are more proficient in the English language. However, this is not dissimilar to the current legislation which requires applicants to possess a basic knowledge of the English language; this is presently assessed through the existing citizenship test. Further, this measure emphasises the importance of having competent English language and ensures that aspiring citizens can integrate into and contribute to the Australian community, including by obtaining employment, and/or undertaking vocational/ tertiary education. Insofar as the measure may limit this right, any such limitation is thus a reasonable and proportionate response to the objective of promoting social participation and encouraging new citizens to fully participate in Australian life.

The proposed amendments increase the level of English language required to be held by applicants for citizenship by conferral. This requirement ties in with the new eight-year residence requirement to provide aspiring citizens sufficient time to reach a competent level

of English. This is important because English language proficiency is essential for economic participation, social cohesion and integration into the Australian community. Those who are currently entitled to the Adult Migrant English Program will still be able to access this program to improve their English language skills.

Therefore, these amendments are not inconsistent with Articles 2(1) or 26 of the ICCPR.

Providing a discretion to revoke a person's Australian citizenship in circumstances where the Minister is satisfied that the person became an Australian citizen as a result of fraud or misrepresentation, perpetrated by the Australian citizen themselves or by a third party

This amendment engages the CRC, because the Minister's discretion to revoke a person's Australian citizenship in these circumstances is not limited to the Australian citizenship of an adult. In other words, this includes the possibility of revoking a child's citizenship in certain circumstances in addition to (for example) the existing consequential cancellation of the child of an affected adult, currently under section 36 of the Act.

This amendment engages Article 3(1) of the CRC, described above. The proposed provision allows for a child's citizenship to be revoked due to the child's own act or acts of fraud or misrepresentation, or due to acts of fraud or misrepresentation committed by a third party in relation to the child's application. The decision to revoke Australian citizenship under this provision is discretionary. Factors to be considered in deciding whether to revoke a child's citizenship include but are not limited to the child's age and level of maturity and capacity, whether the child was aware of the fraud, and the potential for the child to be rendered stateless. The discretionary power to revoke a child's citizenship is not inconsistent with Article 3(1) of the CRC as it allows for the child's best interests to be considered as a primary consideration, although it is noted that the best interests of the child may be outweighed by other, competing primary considerations. A majority of 16 and 17 year olds affected by this requirement will be studying at an Australian education institution. There will be an instrument under this provision. The instrument will specify, for example, the evidence these people will need to provide to have competent English.

Further, this provision has the objective of preventing abuse of the citizenship programme. The provision has a rational connection to this objective because it prevents applicants from accessing citizenship through fraud or misrepresentation, including by possible exploitation of a child's application for citizenship, and provides a disincentive for people to provide fraudulent or misleading information on application.

In the context of engaging with Article 3(1) of the CRC, this amendment is a proportionate and reasonable measure to achieving the objective of preventing abuse of the citizenship programme for multiple reasons:

- First, a person (including a child) whose citizenship is being considered for revocation on these grounds will only have obtained citizenship as a result of fraud or misrepresentation, and will have had no other entitlement to that citizenship. The Department would not act to render a child, or adult, stateless, which is confirmed by the note at the end of proposed section 34AA).

- Secondly, it reflects the existing legislation (section 34) which allows the Minister to revoke a person’s citizenship following a conviction for fraud in relation to the person’s migration or citizenship application, including a conviction for third-party fraud. The only change is that the proposed basis of revocation is the Minister’s satisfaction that fraud/misrepresentation occurred, rather than a prior conviction. This will include a non-exhaustive list of examples of the types of evidence and material that might be needed for the Minister to be satisfied of the existence of fraud or misrepresentation. For example, documentary evidence that a person acquired citizenship using a false identity is likely to be more probative than a mere allegation.
- Thirdly, the amendment is reasonable and proportionate because following a decision by the Minister or delegate to revoke an individual’s Australian citizenship, the individual would automatically be granted an ex-citizen visa by operation of law (which is a permanent visa). It is noted that while an ex-citizen visa is a visa to remain in Australia and ceases on a person’s departure from Australia, a holder of an ex-citizen visa may be able to apply for another type of visa with a travel facility and will be granted such a visa if they meet the criteria.
- The note at the end of the proposed section 34AA of the Act refers to section 36, which provides that if:
 - a child’s responsible parent’s citizenship is revoked under this proposed provision; and
 - the child’s citizenship is not subject to revocation under the same provision; and
 - revocation of the child’s citizenship is considered under section 36 of the Act.

the Minister must not revoke the child’s Australian citizenship if the Minister is satisfied that the child would then become a person who is not a national or citizen of any country.

Extending the good character requirement to include applicants under 18 years of age

This amendment engages Article 3(1) of the CRC, which are described above.

The proposed amendment provides that all applicants will need to be of good character.

Currently, the good character requirements in the Act apply only to applicants aged 18 and over. The Department is aware, however, of a number of citizenship applicants who were minors (under 18 years of age) at the time of decision on their respective applications for Australian citizenship, but had significant criminal histories. This amendment aims to ensure that Australian citizenship is only given to those applicants, both adults and children, who are of good character and have not committed certain criminal offences. This measure recognises the fact that people under the age of 18 may have significant character concerns and have committed particularly serious crimes. The amendment will not have a significant impact on children overall, but will capture those young people who are of character concern and that the Australian community reasonably expect should not be extended the privilege of Australian citizenship at that time.

In the context of engaging with Article 3(1) of the CRC, while it may be in the best interests of the child to obtain citizenship the best interests of the child must be weighed against other

competing interests. The proposed change is similar to provisions which currently exist in the Migration Act, which does not have an age limit for “good character”. Similarly, in order to preserve the integrity of the citizenship programme, being the final stage of assessment of a person’s rights to reside in Australia and to access the rights and privileges of citizenship, it is appropriate that the assessment of the character of applicants for citizenship is at least as thorough as the assessment of character in the migration context. The amendment therefore aims to ensure the safety of the Australian community by upholding the value of citizenship and ensuring uniformity and integrity across the citizenship and migration programmes.

Finally, the Australian Citizenship Instructions (ACIs) will ensure the good character amendment will positively engage with Article 3(1) of the CRC. The Australian Citizenship Instructions (ACIs) set out the policy considerations to be taken into account by decision makers when assessing whether an applicant meets the good character requirements. After the amendment comes into force, the ACIs will set out instructions to ensure that decision makers relevantly consider Australia’s obligations under the Convention on the Reduction of Statelessness, and the best interest of the child as a primary consideration, amongst other things.

The amendment also engages Articles 2(1) and 26 of the ICCPR, previously set out above. The good character amendment provides for differential treatment on the basis of a criminal record and therefore engages the rights to equality and non-discrimination. However, this difference in treatment is permissible as it has an objective and reasonable justification, which is to protect the Australian community by ensuring that Australian citizenship is only given to those applicants who are of good character. Further, it does not prevent a person from again applying for citizenship at a later time.

The provision is therefore proportionate to the legitimate policy objective of protection of the Australian community, and is not inconsistent with Australia’s human rights obligations.

Including the bar on approval for criminal offences in all citizenship streams and including reference to contemporary sentencing practices in the bar on approval for criminal offences

The proposed offences provisions engage with Articles 2(1) and 26 of the ICCPR, in a similar way to the good character amendment discussed immediately above, by providing for differential treatment on the basis of a criminal record and therefore engages the rights to equality and non-discrimination. However, this difference in treatment is permissible as it has an objective and reasonable justification, which is to ensure that the privileges of Australian citizenship are only given to those who are of good character and have not committed certain criminal offences. The provisions are clearly articulated to meet this policy objective and are proportionate to achieving the legitimate aim of strengthening and achieving greater consistency across the citizenship programme, in the interests of the Australian community and national security.

These amendments also engage Article 5(1) and (2) of the Convention on the Rights of Persons with Disabilities which state:

(1) States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

(2) States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

The amendments may engage these provisions where they extend to people who have a mental illness and who have been subject to an order of the court requiring them to participate in a residential programme for the mentally ill in connection with proceedings for an offence against Australian law.

However, this measure has a rational connection to the legitimate objective outlined above. Being of good character is a fundamental tenet of the citizenship programme. In the same way, it is legitimate for the law to specify that a person cannot be approved for citizenship if they are currently before the courts or under an obligation to the courts following proceedings for a criminal offence, regardless of whether or not they may have a disability. Contemporary obligations to the court extend beyond traditional sentencing to include residential programs for those with drug addictions or the mentally ill. It is necessary for the citizenship programme to take into account these updated sentencing practices in order that the programme's bar on approvals are reflective of current practice and consistently applied to all applicants for Australian citizenship.

The amendments are proportionate and reasonable to achieving this objective in that they reflect the criminal law, which imposes consequences for committing a criminal offence on all persons, including those with a mental illness. The amendments therefore do not impose an arbitrary or unreasonable limitation on the rights of persons with a mental illness to enjoy non-discriminatory treatment under the law. They merely reflect the criminal law's inclusion of sentencing practices relating to persons with a mental illness. The criminal courts will have weighed up issues concerning a defendant's mental illness before imposing any sentence, including a residential program. The Act merely deals with the consequences of such a finding by the criminal courts and ensures that the citizenship programme can be more accurate and up-to-date in its ability to determine whether a person should be given the privileges of citizenship.

The measure provides for a bar on approval during the period a person is subject to an order of a court requiring his or her participation in a residential program in connection with a criminal offence. Once that residential program has been completed, the person is able to apply for citizenship. While the offence would be considered under the good character requirement, decision makers can consider extenuating circumstances, which could include evidence concerning any mental illness.

Enabling the Minister to cancel approval of citizenship by conferral prior to the pledge of allegiance if the applicant is no longer eligible

One of the proposed circumstances in which the Minister must cancel the approval of citizenship of a person is when the person has been convicted of a national security offence. The proposed amendments concerning cancellation of approval provide for differential treatment on the basis of a criminal record and therefore engage the rights to equality and non-discrimination in Articles 2(1) and 26 of the ICCPR, as set out and discussed previously. This difference in treatment is permissible as it has an objective and reasonable justification, which is ensuring that the privileges of Australian citizenship are only given to those who are of good character and have not committed certain criminal offences.

The provisions are therefore clearly articulated to meet this policy objective and are proportionate to achieving this legitimate aim.

Providing a discretion to revoke citizenship by descent in place of the current operation of law provision

These amendments engage Articles 3(1) of the CRC, which have been described above. These amendments engage these Articles because they may affect children applying for Australian citizenship by descent. However, they provide certainty as to the citizenship status of a person who was incorrectly approved for citizenship by descent. The amendments confirm that such a person will be a citizen unless the Minister exercises the discretion to revoke the person's citizenship.

The proposed discretionary revocation power allows the circumstances of a particular case to be taken into account when deciding if citizenship by descent should be revoked. This would include (where relevant) the best interests of the child as a primary consideration and the views of the child and/or the child's representative.

Further, the repeal of section 19A of the Act will mean that a person who did not, in fact, meet the requirements for being approved as an Australian citizen by descent in section 16 will remain an Australian citizen unless and until the Minister makes a decision to revoke their Australian citizenship under the new provision. In the context of engaging Article 3(1) and Article 12, the repeal of section 19A and introduction of the discretionary revocation power is thus reasonable. This therefore positively engages Article 3(1) insofar as it treats the best interests of the child as a primary consideration in circumstances where there was previously no scope to do so.

Limiting automatic acquisition of citizenship at ten years of age to certain persons

This amendment engages Article 7 of the CRC. Article 7 of the CRC provides:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Regarding Article 7 of the CRC, as stated previously, this amendment aims to encourage lawful migration and acquisition of Australian citizenship, and to discourage abuse of the ten year rule by unlawful non-citizens. By introducing a provision that encourages lawful residence, whereby a child will have greater access to education, health and social welfare, the Department is encouraging citizenship applicants to register their children's birth. This is consistent with Australia's obligations under Article 7.

It is noted that "in international law, the terms 'nationality' and 'citizenship' are used interchangeably" and the right to a nationality "does not necessarily require countries to give their nationality to every child born in their territory" (Human Rights Guidance Papers, *Right*

to a name and acquire a nationality). It remains a matter for States to determine under their own laws who can be regarded as their citizens.

The proposed amendment promotes a child's right to registration of birth, as it condones a child's lawful residence in Australia. Further, it does not derogate from a child's right to nationality. Where a child already has a nationality, their right to a nationality is unaffected by the proposed amendment. Children who are born onshore, have no nationality, and cannot become citizens through the ten year rule because of the proposed amendment will nonetheless have access to Australian citizenship through the statelessness provision in subsection 21(8) of the Act.

As such, the right to acquire a nationality is also engaged by the proposed amendment but is able to be addressed by other provisions of the Act.

These amendments also engage Articles 2(1) and 26 of the ICCPR, which have been previously described. New subsection 12(6) provides that new subsection 12(5) does not apply in relation to a person if the person is a New Zealand citizen and held a visa when the person left Australia and the person remained a New Zealand citizen throughout the period of their absence from Australia. Consequently, the amendments treat New Zealand citizens differently to citizens of other countries. This reflects the visa arrangements for New Zealand citizens under the Trans-Tasman Travel Agreement, which includes access to the Special Category visa (subclass 444). This visa is granted on arrival in Australia to most New Zealand citizens, and ceases on their departure from Australia. There is no facility to retain a Special Category visa for the duration of any absence from Australia, and New Zealand citizens are not expected to obtain another type of visa while absent from Australia. Consequently, the discrimination in favour of New Zealand citizens in proposed subsection 12(6) supports the operation of the Trans-Tasman Travel Agreement and is not inconsistent with Australia's human rights obligations under Articles 2(1) or 26.

Clarifying the provision giving citizenship to a child found abandoned in Australia

Section 14 of the Act currently provides:

A person is an Australian citizen if the person is found abandoned in Australia as a child, unless and until the contrary is proved.

The proposed amendment has the legitimate objective of clarifying the meaning of this provision. The proposed amendment makes it clear that the presumption applies unless and until it is proven that the person does not meet the requirements of the citizenship by birth provisions in section 12 of the Act or that the person was outside Australia at any time before the person was found abandoned in Australia as a child. In linking the abandoned child provision to the requirements for citizenship by birth, the amendments repeal section 14 of the Act and add the new provision to section 12.

The measure engages Articles 3(1) and 7 of the CRC and Article 24(3) of the ICCPR, which are outlined above, regarding treating the best interests of the child as a primary consideration and a child's right to acquire a nationality. However, it is the case that it remains a matter for States to determine under their own laws who can be regarded as their citizens. There is no positive obligation at international law that States must give citizenship to all abandoned children found in their territory, but the amendment clarifies the circumstances in which

abandoned children will be presumed to be Australian citizens and appropriately reflects Australia's obligations under the abovementioned Articles.

Enabling use and disclosure of personal information collected about a client under the Migration Act to be used for the purposes of the Act, and vice versa

The Bill amends the Act and the Migration Act to allow personal information collected for the purposes of one Act to be used for the purposes of the other Act. This means the Minister (or delegate) can rely on Australian Privacy Principle 6.2(b) as lawfully permitting the use of that personal information. The amendment is aimed at the legitimate objective of facilitating the efficient use of information held by the Department as a whole to ensure that it can carry out its functions under the two Acts that it administers, with accuracy and effectiveness.

There are often instances in which the personal information provided by a person to the Department under the Migration Act or the Migration Regulations is directly relevant to a decision in relation to the person under the Act or the Citizenship Regulations. Such information is often essential in verifying the information the person has provided in relation to their application for Australian citizenship. Confirming a delegate's ability to have regard to this information would enhance the Department's ability to detect fraud in individual cases, improve client service and improve decision-making on citizenship applications, and visa applications, overall.

The amendments concerning the use and disclosure of personal information may impact the privacy of individuals. Privacy is a right protected under Article 17(1) of the ICCPR, which relevantly provides:

No one shall be subjected to arbitrary or unlawful interference with his privacy...

Although the United Nations Human Rights Committee has not defined privacy, it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. However, this measure does not fall within this definition as properly understood, because the information is lawfully collected and used under sections 43 and 44 of the Act. The sharing of information obtained under the two Acts administered by the same department, where a decision under one Act could have consequences for the other and for the integrity of the whole Department's functions is therefore not an 'unwarranted or unreasonable' intrusion within the sphere of individual autonomy.

In the alternative, if this measure was seen to constitute an 'interference' with privacy, the measure is neither 'arbitrary' (in as much as it is unreasonable or capricious) or 'unlawful'. In the first instance, the measure cannot be characterised as arbitrary because it will:

- not be unlimited in nature and would have a high degree of certainty as to who is affected and in what circumstances;
- be effective in ensuring that decision-makers are legitimately able to use information held by the Department;
- apply equally to all people who engage with the Department for purposes of migration and citizenship; and
- not be unreasonable given that:

- for the majority of citizenship applicants the migration and citizenship processes form a continuum, managed by a single agency; and
- it is in the public interest that information held by the Department and other agencies be effectively utilised to arrive at lawful and merit-based decisions.

The collection of information would also be lawful, both under the amendment and for the purposes of the *Privacy Act 1988*.

Consequently, any ‘interference’ with privacy would be neither arbitrary nor unlawful and so not inconsistent with Article 17(1) of the ICCPR.

Providing that personal decisions made by the Minister in the public interest are not subject to merits review

This amendment engages Article 3(1) of the CRC by limiting review rights. However, all decisions personally made by the Minister currently take into account and will continue to take into account the best interests of the child as a primary consideration, and so the proposed measure is not inconsistent with Article 3(1).

This amendment also engages Article 16 of the ICCPR, which states that:

Everyone shall have the right to recognition everywhere as a person before the law.

The Australian Administrative Law Policy Guide states ‘As a matter of policy, an administrative decision that will, or is likely to, adversely affect the interests of a person should be reviewed on the merits, unless there are factors justifying the exclusion of merits review’. Factors justifying the exclusion from merits review for those applicants who do not meet the fundamental and non-discretionary requirement of permanent residence are:

- the review body is not burdened by a caseload that has no prospect of success at review;
- the availability of informal internal review where it is claimed that the finding that the person was not a permanent resident at the time of application was an error of fact that led to a jurisdictional error;
- the availability of judicial review.

Also, this amendment makes the exclusion of personal decisions of the Minister under the Act consistent with personal decisions of the Minister under the Migration Act.

Further, the removal of merits review for certain personal decisions of the Minister does not mean that affected persons would have no right of review, as such decisions will still be subject to judicial review.

Providing the Minister with power to set aside decisions of the AAT concerning character and identity if it would be in the public interest to do so

The proposed amendments provide the Minister with a power to set aside decisions of the Administrative Appeals Tribunal (AAT) concerning character or identity if it would be in the public interest to do so.

The proposed provision is similar to the power under s 501A of the Migration Act.

The amendment is aimed at the legitimate objective of ensuring that the public interest is taken into consideration when assessing issues of character and identity, particularly where the AAT presently has no obligation to do so. It seeks to uphold the Minister's role in representing the Australian community and protecting its interests.

It is recognised that such a power to set aside AAT decisions is a serious one, and it would be used in cases where a decision of the AAT about the character and identity of a citizenship applicant is outside community standards and expectations. Transparency and accountability would be provided by a statement tabled in Parliament within 15 sitting days of the decision being made.

This amendment engages Article 14(1) and Article 16 of the ICCPR. Article 14(1) of the ICCPR relevantly states that:

All persons shall be equal before the courts and tribunals.

Similarly, and as noted above, Article 16 of the ICCPR states that:

Everyone shall have the right to recognition everywhere as a person before the law.

The Minister's power to set aside AAT decisions concerning character or identity engages these rights as, although it does not affect a person's right to review by the AAT, it can impact the decision of the AAT in certain, limited circumstances. However, the provision does not breach these rights for the following reasons:

- Applicants for citizenship who have been affected by the Minister's decision to set aside AAT decisions will still be entitled to seek judicial review of the Minister's decision under s 75(v) the Constitution and s 39B of the *Judiciary Act 1903* at the Federal and High Courts.
- The AAT has stated that the Minister's power to set aside AAT decisions does not compromise its independence as a tribunal. In addition, the president of the AAT in *Visa Cancellation Applicant and Minister for Immigration and Citizenship* [2011] AATA 690 emphasised the role of the AAT as part of the executive government of the Commonwealth, noting that the AAT does not exercise judicial power.

This measure may also engage Article 3(1) of the CRC, which has been described above. However, to the extent that any decision of the Minister to set aside an AAT decision would affect a child, that decision of the Minister would take the best interests of the child into consideration as a primary consideration, as is practice in all decisions made by the Minister (and the Minister's delegates). Therefore, the human right enshrined in Article 3(1) is engaged but not limited.

Aligning access to merits review for conferral applicants under 18 years of age with citizenship eligibility requirements

As previously discussed, Article 3(1) of the CRC sets out that the best interests of the child shall be a primary consideration in all actions concerning children. However, as also stated above, it is the case that it remains a matter for states to determine under their own laws who

can be regarded as their citizens, and there may be competing primary considerations which are also relevant to an administrative action involving children, and which impact a child's best interests. The proposed measure is therefore not inconsistent with Article 3(1) in as much as it is acknowledged that a decision needs to take the best interests of the child into account as a primary consideration. Further, insofar as the merits review right is futile the impact of this change on the child will be minimal.

This measure also promotes the right to equality before the courts (through Articles 14(1) and 16 of the ICCPR which have been previously described above) for certain applicants who previously lacked a substantive right of merits review. The Australian Administrative Law Policy Guide states 'As a matter of policy, an administrative decision that will, or is likely to, adversely affect the interests of a person should be reviewed on the merits, unless there are factors justifying the exclusion of merits review'. Factors justifying the exclusion from merits review for those applicants who do not meet the fundamental and non-discretionary requirement of permanent residence are:

- the review body is not burdened by a caseload that has no prospect of success at review;
- the availability of informal internal review where it is claimed that the finding that the person was not a permanent resident at the time of application was an error of fact that led to a jurisdictional error;
- the availability of judicial review.

This amendment makes the exclusion of personal decisions of the Minister under the Act consistent with personal decisions of the Minister under the Migration Act. Further, the removal of merits review for certain personal decisions of the Minister does not mean that affected persons would have no right of review, as such decisions will still be subject to judicial review.

Conclusion

The Bill is compatible with human rights as stated above because, to the extent that it may limit human rights, these limitations are reasonable, necessary and proportionate to the objectives described herein.