



Immigration Advice and Rights Centre Inc.

(ABN: 45 808 320 822)

Level 5, 362 Kent Street Sydney NSW 2000

Ph: +61 2 9279 4300 (Admin Line, 9-5pm)

+61 2 9262 3833 (Advice Line, Tues & Thurs 2-4pm)

Fax: +61 2 9299 8467

Email: iarc@iarc.asn.au

Web: www.iarc.asn.au

CITIZENSHIP¹

(Reflects law as at 9 November 2009)

You should think carefully about whether you want to apply for citizenship. Although Australian citizenship does bestow some benefits upon you it also comes with obligations. You should think about these carefully before applying.

WHO CAN BECOME AN AUSTRALIAN CITIZEN?

It is possible to become an Australian Citizen in several ways. The ways of becoming an Australian citizen are set out below.

1. AUTOMATICALLY BECOMING AN AUSTRALIAN CITIZEN

1.1 Born in Australia

You automatically become an Australian citizen if you were born in Australia after 20 August 1986 and:

- at the time of your birth at least one of your parents was an Australian Citizen or Permanent Resident; **or**
- you have been 'ordinarily resident' in Australia throughout the 10 years from the day of your birth. (**Note:** 'Ordinarily resident' means that your permanent home/ abode is in Australia - temporary absences will not prevent you becoming a citizen automatically). For example, if you were born in Australia and never left, you would automatically become an Australian citizen on your 10th birthday.

If you were born in Australia before 20 August 1986 then you automatically became an Australian citizen at the time of your birth.

1.2 Other situations

You may automatically become an Australian citizen in certain other limited circumstances including:

- if you were legally adopted in Australia on or after 22 November 1984, at least one of your adoptive parents was an Australian citizen at the time of adoption, and you were present in Australia as a permanent resident at the time of your adoption
- if you are found abandoned in Australia as a child unless and until the contrary is proven
- certain people who were living in Australia before 1949 – generally these are people who were British subjects living in Australia prior to 26 January 1949, or

¹ * IARC does not guarantee the accuracy of any information contained in this information sheet. It contains general information and is not a substitute for legal advice

- if you are living in a territory which becomes incorporated as part of Australia.

2. APPLYING FOR CITIZENSHIP AS A PERMANENT RESIDENT

(a type of citizenship by conferral)

Section 2 below sets out the circumstances in which you are eligible to apply for Australian Citizenship. However, even if you are eligible to become an Australian Citizen, your application could be refused for reasons including:

- inadequate proof of identity
- character (ie, applicants over 16 must be of 'good character')
- national security, or
- you had ceased to be an Australian citizen within 12 months of making your current application to become an Australian citizen.

If the application is refused you may be able to appeal to the Administrative Appeals Tribunal – you should seek advice on your situation if this occurs.

To become an Australian citizen on the basis of your permanent residence you must (with some exceptions):

- either:
 - satisfy the residence requirements – see 2.1 below; or
 - have completed at least 3 months service in Australia's defence forces or 6 months in an Australian reserve force (or you were discharged due to becoming medically unfit because of your service); and
- be aged 18 or over – see 3.1 below if under 18;
- unless exempted, successfully complete the Citizenship Test (see 2.2 below) prior to applying – this will satisfy the requirements that you:
 - understand the nature of the application;
 - have a basic knowledge of English; and
 - have an adequate knowledge of the responsibilities and rights of a citizen; and
- if granted citizenship intend to live in Australia or to maintain a close and continuing association with Australia.

If the application is approved you must make a pledge of commitment within 12 months unless you are under 16 at the time of applying for citizenship or have a permanent incapacity that means you are not capable of understanding the nature of the application. If required to take a pledge you will not become an Australian citizen until you do so.

You cannot be granted citizenship (unless you are stateless) if you:

- have criminal proceedings still ongoing against you
- are in gaol or a psychiatric institution in relation to a criminal offence
- have been released on parole, licence or some other form of security, or
- have not been out of gaol for at least two years after a sentence of 12 months or at least 10 years if you have had more than one sentence of 12 months or more.

2.1 Residence requirements

The general residence requirements are set out below. There are some very limited exceptions to these rules, eg where the applicant would suffer from significant hardship or disadvantage if they are not granted citizenship (eg inability to gain employment, difficulty in international travel because the person cannot obtain a passport from their country of nationality/citizenship, or are unable to use a passport issued by that country for safety or similar reasons or academic or other potential is being limited or restricted) and for partners, widows and widowers of an Australian citizen.

There are also special residence requirements for persons:

- involved in certain sporting activities (eg the Olympic Winter Games, the Paralympic Winter Games, the Olympic Summer Games, the Paralympic Summer Games, the Davis Cup Competition and the Fed Cup Competition)
- employed in a position which requires a high-level security clearance in a Department, an Executive Agency, or a Statutory Agency of the Commonwealth, and
- persons engaged in particular kinds of work requiring regular travel outside Australia (eg a member of the crew of a ship or aircraft; or engaged in work on a resources installation or a sea installation).

If you would like further advice on these exceptions you should contact IARC's advice services (see last page).

If you became an Australian permanent resident on or after 1 July 2007 OR applied on or after 1 July 2010, to satisfy the residency requirements you must:

- be present in Australia (other than confined in prison or a psychiatric institution in connection with a criminal offence unless the Minister waives this restriction):
 - for 4 years immediately before the date of your citizenship application (but not as an unlawful non-citizen)² unless you were born in Australia or were formerly an Australian citizen, and
 - as a permanent resident for at least 12 months immediately before the date of your citizenship application³

If you became an Australian permanent resident before 1 July 2007 AND applied before 1 July 2010, to satisfy the residency requirements you must have been physically present in Australia as a permanent resident for:

- a total of 1 year in the 2 years immediately before applying, and
- a total of 2 years in the 5 years immediately before applying (unless you are a former citizen or were born in Australia).

Periods spent in prison or a psychiatric institution in relation to a criminal offence cannot be included as residence in Australia (there is no waiver of this).

2.2 Citizenship test

A permanent resident must successfully complete the citizenship test **before** applying for citizenship unless they:

- are aged under 18 years or 60 years or over; or
- have a permanent or enduring physical or mental incapacity that means they are not capable of:
 - understanding the nature of the application; or
 - demonstrating a basic knowledge of the English language at that time; or
 - demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time; or
- have a permanent loss or substantial impairment of hearing, speech or sight.

There is no fee for sitting the test. To make a booking for a test the applicant must contact the Department. They will be advised where they can sit the test. This may be at a Departmental office or

² If you were absent from Australia for part of the 4 years immediately before your citizenship application and the total period of your absences wasn't more than 12 months, you will be considered to be 'present' in Australia during those absences

³ If you were absent from Australia for part of the 12 months immediately before your citizenship application but the total period of those absences wasn't more than 3 months, you will be considered to be 'present' in Australia provided you were an Australian permanent resident during those absences

alternative testing site including some Medicare and Centrelink offices. They must take evidence of their identity along when they sit the test.

All questions for the test are based on the booklet *Becoming an Australian Citizen*, which is available for free from the Department or on its website (www.citizenship.gov.au). This covers Australia's values, history, culture, geography, government, national symbols and emblems, and the responsibilities and privileges of being an Australian citizen. The test consists of 20 multiple choice questions to be answered in English on a computer. The test must be completed in 45 minutes (or 90 minutes for an assisted test). The test is available only in English. There are limited provisions for assistance with the test if required.

A person is considered to have passed the test if they answer 75 per cent of the questions correctly. If the test is completed in Australia the results are available immediately.

3. APPLYING FOR CITIZENSHIP IN OTHER CIRCUMSTANCES

Section 3 below sets out circumstances in which you are eligible to apply for Australian Citizenship. However, even if you are eligible to become an Australian Citizen, your application could be refused:

- because of character – this does not apply to stateless applicants or persons under 16
- because of inadequate proof of identity
- if there is an adverse or qualified ASIO security assessment in force in relation to you (unless you are stateless)
- if you are stateless, born in Australia or outside Australia to an Australian citizen parent, and convicted of a national security offence
- if you are stateless, born in Australia and convicted under Australian or foreign law and sentenced to at least 5 years imprisonment (unless the Minister waives this bar) - this does not apply to citizenship by descent applications, or
- if you had ceased to be an Australian citizen within 12 months of making your current application to become an Australian citizen – this does not apply to stateless applicants.

If the application is refused you may be able to appeal to the Administrative Appeals Tribunal – you should seek advice on your situation if this occurs.

3.1 Under 18 years old

(a type of citizenship by conferral)

The Minister has the discretion to grant citizenship to any permanent resident who is under 18 years old.

Under policy you are eligible to become an Australian citizen if you are aged under 16, hold a permanent visa and either:

- are living with a responsible parent who is an Australian citizen and consents to the application
- are living with a responsible parent who is not an Australian citizen and consents to the application and would otherwise suffer hardship or disadvantage
- are in the care of another person, such as a relative who consents to the application, and would otherwise suffer significant hardship or disadvantage, or
- are an unaccompanied humanitarian minor who is a ward of the Minister.

Under policy you are eligible to become an Australian citizen if you are aged between 16 and 18 years and you:

- are a permanent resident
- satisfy the residence requirements (see (a) above) unless this would cause significant hardship or disadvantage
- possess a basic knowledge of English
- have an adequate knowledge of the privileges and responsibilities of Australian citizenship

- are likely to reside, or continue to reside, or maintain a close and continuing association with Australia, and
- are of good character.

3.2 Born to former Australian citizen

(a type of citizenship by conferral)

You are eligible to become an Australian citizen if:

- you are born outside Australia
- one of your parents was not an Australian citizen because of restrictions on dual citizenship under the old Citizenship Act (eg they lost their Australian citizenship because they acquired citizenship of another country), and
- you are of 'good character'.

3.3 Born in Papua

(a type of citizenship by conferral)

You are eligible to become an Australian citizen if:

- you were born in Papua before 16 September 1975
- one of your parents was born in Australia and was an Australian citizen at the time of your birth, and
- you are of 'good character'.

3.4 Stateless persons

(a type of citizenship by conferral)

You are eligible to become an Australian citizen if:

- you are born in Australia
- you are not, and never have been, a national or citizen of any country, and
- you do not have, and have never had, any reasonable prospects of acquiring nationality or citizenship of a foreign country.

3.5 Citizenship by Descent

You may be eligible to apply for Australian citizenship if:

- (a) You were born outside Australia or New Guinea before 26 January 1949 and:
- at least one of your parents was born/ naturalised in Australia before your birth and was an Australian citizen on 26 January 1949, and
 - you are of 'good character'.

Or

- (b) You were born outside Australia on or after 26 January 1949 and:
- at least one of your parents was an Australian citizen at the time of your birth, and
 - you are of 'good character' (for applicants over 16).

(NOTE: If your Australian Citizen parent(s) is(are) Australian citizens by descent:

- *they will need to have spent at least 2 years in Australia before you can apply to become an Australian Citizen, or*
- *you (ie the person seeking to become an Australian citizen) must not be (or ever have been) a national or citizen of any other country.)*

3.6 Adopted under the Hague Convention (ie adopted after 1 December 1998)

(Children not adopted under the Hague Convention should refer to sections 2 and 3.1 above – the methods of adoption can be complicated and their impact on immigration can be great. Therefore we recommend you seek advice about your specific situation if you are uncertain.)

You may be eligible to apply to become an Australian Citizen if:

- you were adopted outside Australia in a Convention country⁴
- at least one Australian citizen adopted you (ie was an Australian Citizen at the time of adoption)
- the adoption was in accordance with the Hague Convention on Inter-country Adoption ('Convention') - you will need to provide an 'adoption compliance certificate' from the convention country in which the adoption took place to be eligible for automatic Australian citizenship
- the legal relationship with the people who were your parents prior to the adoption is terminated
- if you are over 18 years, your adoption was agreed to by the adoption authorities before you turned 18, and
- you are of 'good character' (for applicants over 16).

(NOTE: If the Australian citizen parent(s) is(are) Australian citizens by descent at the time of adoption either or both parents will need to have spent at least 2 years in Australia before you can apply to become an Australian Citizen.)

4. PEOPLE WHO WANT TO RESUME CITIZENSHIP

In some cases it is possible to resume your Australian citizenship where you held citizenship previously. People who lost their Australian citizenship:

- when they acquired the citizenship of another country may be able to regain their Australian citizenship if they can show they are of good character (if over 18) and either:
 - they would have suffered significant hardship or detriment if they hadn't become a citizen of another country, or
 - they could not have acquired or retained nationality or citizenship of a foreign country otherwise
- under the following sections of the old Act may be able to regain their Australian citizenship if they can show they are of good character (if over 18):
 - section 17 (about dual citizenship)
 - under section 18 (about renunciation) where they renounced their Australian citizenship in order to acquire or retain nationality or citizenship of another country or in order to avoid significant hardship or detriment
 - under section 20 (about residence outside Australia), or
 - under section 23 (about children).

To apply for resumption of citizenship you must complete Form 132 and submit it with the application fee of \$70. The Minister has discretion whether or not to register the declaration made in Form 132. If it is registered you are automatically an Australian citizen again.

WHAT ARE THE BENEFITS OF CITIZENSHIP?

Australian citizens have the right to:

- be in Australia
- vote in government elections

⁴ As at 1 January 2007 the following countries have signed up for full and permanent Hague adoptions: Bolivia, Chile, China (since 1 January 2006), Colombia, Costa Rica, Lithuania, Sri Lanka.

- apply for any public office or stand for election as a Member of Parliament
- apply for an Australian passport
- apply to serve in Australia's defence forces
- apply for certain government jobs
- register children born overseas as Australian citizens
- claim protection or assistance from Australian diplomats while overseas, and
- not be removed or deported from Australia (except in limited circumstances).

WHAT ARE THE OBLIGATIONS & DISADVANTAGES OF CITIZENSHIP?

Australian citizens must:

- obey the laws of Australia
- make a pledge of commitment as a citizen of the Commonwealth of Australia (if granted citizenship) – this requirement is waived for certain applicants, eg those under 16 years, some stateless persons and some persons with mental or physical incapacity
- enrol on the electoral register and vote at Federal, State and local elections and at referendums
- serve on a jury if asked, and
- defend Australia if needed.

If you apply for citizenship you may be asked to explain what you think the benefits and obligations of a citizen are. You should refer to the above lists.

You should think carefully about applying for citizenship because it may affect your current citizenship. What disadvantages are suffered will depend on the law of your country of current citizenship. They could include:

- loss of your current citizenship
- restrictions on re-entry to your country of origin
- loss of your country's pension/benefits
- an obligation to pay dual taxes, and/or
- loss of property or inheritance rights.

You should check with the embassy or consulate of your country of citizenship for details before applying.

WHAT IF I DON'T KNOW MY CITIZENSHIP?

If you are unsure about your citizenship status you can apply to the Department of Immigration for a declaratory certificate of citizenship. To do this you will need to complete Form 119 which you can download from the Department of Immigration website at www.immi.gov.au or obtain directly from a Department of Immigration office (see below for addresses), provided without charge. The application fee for this is \$60.

If you are unsure whether you have citizenship in another country, you should contact the embassy or consulate of any country in which you think you may have citizenship.

CAN I LOSE MY AUSTRALIAN CITIZENSHIP?

Australian citizenship can be lost in a number of ways:

- where you formally renounce your Australian citizenship – you must complete Form 128 and pay a fee of \$285. You can only do this if you have citizenship of another country or will get citizenship immediately upon renouncing your Australian citizenship
- if you serve in the armed forces of a country at war with Australia
- if you are the child under the age of 18 of someone who loses their citizenship unless you have one parent who is still a citizen of Australia or unless you are not entitled to citizenship of any other country
- where you acquired citizenship by descent or adoption and:
 - you or another person are convicted of specific offences about false statements and misrepresentation, and

- if the offence was committed by another person, the offence was connected with you being approved to become an Australian citizen
- where you acquired citizenship by conferral and:
 - you are convicted of specific offences about false statements and misrepresentation
 - you are convicted of a serious offence (ie sentenced to death or imprisonment for at least 12 months) that was committed at any time before you became an Australian citizen (unless this would cause you to become stateless)
 - you obtain the approval to become an Australian citizen as a result of migration related fraud, or
 - another person is convicted of specific offences about false statements or misrepresentation and the offence was connected with you being approved to become an Australian citizen.

If you have been approved for citizenship that approval can be cancelled if you have not yet become an Australian citizen and:

- the Minister is satisfied that you are:
 - not a permanent resident
 - not likely to reside in Australia or maintain close and continuing association with Australia, or
 - not of good character, or
- you fail to make a pledge of commitment within 12 months of approval where required to do so (except in limited circumstances) – you will be required to make a pledge unless you are under 16, are mentally or physically incapacitated, born to a former Australian citizen (as described in 3.2), born in Papua (as described in 3.3) or stateless (as described in 3.4).

APPLICATION PROCESS

Step 1 If you are applying for citizenship by conferral generally you will need to pass the Citizenship Test prior to applying for grant of citizenship (unless you are exempted – see 2.2 above). To book an appointment to sit the test you should call 131 880.

Step 2 Applicant should fill out and sign:

- Form 124 for application for grant of citizenship
- Form 125 for application for grant of citizenship for children under 16 years of age where the responsible parent is a citizen by grant
- Form 118 for application for citizenship by descent
- Form 1272 for application for citizenship by full and permanent Hague adoption

It is very important that you fill in all the questions and answer them truthfully. If it is later discovered that you provided incorrect or misleading information or did not provide all relevant information then your citizenship may be revoked.

Step 3 Attach the following evidence:

- birth certificate
- passport or other documents showing current nationality, Australian permanent resident status and date of arrival in Australia
- all other passports or travel documents
- marriage certificate if married to an Australian citizen
- spouse's birth certificate if the spouse is an Australian citizen
- spouse's citizenship certificate if the spouse has been naturalised
- if applicable, evidence of change of name such as deed-poll or marriage certificate
- penal clearance certificates from any country where you have lived other than Australia since being granted permanent residence (only if you have spent more than 12 months outside Australia during the past 10 years and are applying for citizenship by grant), and
- any other relevant documents such as medical certificates, birth certificates and passports of any children included in the application.

If you are applying for citizenship by descent or adoption you should also attach:

- evidence of your parent’s Australian citizenship at the time you were born or adopted (as appropriate)
- an adoption compliance certificate (for citizenship by adoption)
- your Australian citizen parent’s birth certificate or evidence of Australian citizenship if your parent was not born in Australia
- official evidence of any change of name of your Australian citizen parent, and
- penal clearance certificates for all countries where you have lived since the age of 16 (if applicant is over 16 and applying for citizenship by descent).

- Step 4** Have the Proof of Identity declaration completed by an eligible person. This is a person who:
- has known you for at least one year
 - is not related by birth or marriage
 - is an Australian citizen, and
 - is currently employed in one of the professions listed on page 4 of Form 124.

This person must also write on the back of your passport photograph: “This is a true photograph of *[insert your name]*” and sign their name.

- Step 5** Attach a cover letter to the application form with:
- your name
 - current address
 - list of documents attached to application. If you are waiting for any information to be included with the application say that it will be provided to the Department as soon as it is received.

Also offer to provide any further information required by the Department of Immigration.

- Step 6** Keep a photocopy of all the documents you submitted to the Department of Immigration.

- Step 7** Lodge the form with the application fee (paid by credit card, debit card, bank cheque or money order) at the Australian mission overseas or Departmental office if you are in Australia. For contact details of Australian missions overseas go to www.immi.gov.au. The application fee is:
- most applications: \$260
 - applicants not required to sit the citizenship test: \$130
 - citizenship by descent: \$120 (other siblings: \$95)
 - adopted under the Hague Convention: \$120 (other siblings: \$95)
 - concession fee for recipients of certain Centrelink and Department of Veterans’ Affairs payments: \$40
 - child under 16 applying on same form as parent: Nil
 - certain former child migrants and Australian Defence Force personnel: Nil
 - previous applicants refused for not meeting residence requirements and apply again within 3 months of meeting the residence requirements: Nil (\$130, or \$20 for concession holders, if the previous application was lodged prior to 1 October 2007)

Remember to keep your receipt as it is proof that you lodged the application.

- Step 8** If you are successful you will receive a letter from the Department telling you that your application has been successful and inviting you to a citizenship ceremony. You must attend a ceremony within 12 months of notification that your application has been approved. The ceremonies are usually held in local civic buildings.

Step 9 At the ceremony you must make a pledge of commitment as a citizen of Australia. This can be in the form of an oath (on the Bible or other religious book) or affirmation. It is up to you to choose which and you will be asked this at the interview. The pledge is as follows:

The oath

From this time forward, under God, I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect, and whose laws I will uphold and obey.

The affirmation

From this time forward, I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect, and whose laws I will uphold and obey.

After the pledge you will be presented with your Australian citizenship certificate and a personalised electoral enrolment form. Everyone will then stand together to sing the Australian national anthem.

Internet applications

You can make an application for citizenship on the Internet if you are a permanent resident over the age of 18 years living in Australia. For details on this you should go to www.immi.gov.au. To make the application you will need:

- your passport (with the visa on which you last travelled to Australia)
- your date of first arrival in Australia and the date on which you became a permanent resident of Australia, and
- your credit card.

Assistance with forms

For assistance in completing any of the above forms you should contact your nearest Migrant Resource Centre. If you are not sure of where this is contact the Immigration Advice and Rights Centre on the number listed below and we can provide you with their details.

Certified Copies, Statutory Declarations and Translations

Any photocopies of documents to be included with the application must be certified⁵ by a solicitor/Justice of the Peace/bank manager etc). People who make a statutory declaration for you must attach a certified copy of the front page of their passport, permanent resident's visa, Australian citizenship certificate or birth certificate if the person making the statutory declaration was born in Australia. The statutory declaration must be signed in front of a solicitor, Justice of the Peace or bank manager.

Any documents which are not in English should be translated by an accredited translator. Both the translation and a certified copy of the un-translated original should be submitted with the application. For accredited translators call either the Community Relations Commission on 1300 651 500 or the Department of Immigration Translating and Interpreting Service on 131 450.

FURTHER INFORMATION

For more information you can download *Form 1299i: How to apply for Australian citizenship by conferral* or request it free of charge from the Department of Immigration (see details below).

For background information to prepare for the citizenship test you can download the booklet *Becoming an Australian citizen* at www.citizenship.gov.au or call 131 880 to order a free copy.

⁵ a certified copy is a copy containing a statement to the effect that the copy is a true copy of the original document.

CONTACT INFORMATION

DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (DIAC)

Counter service all NSW offices

9am–4pm Monday to Friday

Sydney CBD 26 Lee Street, Sydney 2000
GPO Box 9984, Sydney, NSW 2001

Parramatta 9 Wentworth Street
Parramatta NSW 2150
GPO Box 9984, Sydney, NSW 2001

National Telephone Inquiry Line: 131 881

Website: www.immi.gov.au

IMMIGRATION ADVICE AND RIGHTS CENTRE INC (IARC)

Administration line: (02) 9279 4300 (between 9am and 5pm)

Website: www.iarc.asn.au

| IARC Telephone Advice | IARC Face-to-face advice (by appointment only) |
|---|--|
| (02) 9281 8355 Tuesday and Thursday 2.00pm–4.00pm | Contact us to make an appointment at: Immigration Advice and Rights Centre Inc. Level 5, 362 Kent Street Sydney NSW 2000 Ph: +61 2 9279 4300 (Admin Line, 9-5pm) |