

Filipino Migrants Forum

Are the proposed changes to the Australian Citizenship legislation to your disadvantage?

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The Australian Citizenship Bill 2005 and Australian Citizenship (Transitional and consequential) Bill 2005 (the Bill) before Parliament will replace the existing Australian Citizenship Act 1948(Cth). As a consequence, applicants have to balance the pros and cons of this change in order to determine whether the advantages or disadvantages affect their specific situation.

It will be advisable for those persons that are worse off under the new bill to apply for citizenship prior to government announcement of the new law. This recommendation is based on the fact that persons that have made a valid application prior to government announcement of the new legislation would have the right to have their application determined under the existing Act.

The bill is expected to be implemented by July or September 2007.

The most significant changes are:

1. The residency requirement to be increased from 2 years to 4 years before application
2. An English language test to be required
3. Verification of identity of applicants
4. Security checking of citizenship applicants
5. Revocation provisions to be extended
6. Restrictions on re-acquiring Australian citizenship to be eased

In addition to the increase in the residency requirement from 2 years to 4 years, at least 12 months of permanent residency immediately before lodgement of application will be required. Overseas absences from Australia of up to 12 months in total during the four years prior and no more than three months in the 12 month period prior to application will be allowed.

This residence requirement change will apply only to those who are granted permanent residence on or after the date of the commencement of the legislation.

The English language test requirement will most likely be internet-based test plus an oral component. Applicants for citizenship will have to demonstrate their knowledge of the English language and of Australia. The reason for this tightening is that although the current Citizenship Act already includes an English language component, very little seems to be done in order to ensure that applicants actually meet that requirement.

As to the requirement of security checking of citizenship applicants there will be a mandatory refusal of applications in case a person is assessed as being a direct or indirect threat to the security of Australia. This will apply to all applicants for citizenship whether by descent, by conferral, or resumption of citizenship.

The revocation of Australian citizenship will be extended to serious criminal offences for offences committed in the period anytime before acquisition of Australian citizenship. It will include conviction of a serious offence against Australian or foreign law before the time the person became an Australian citizen or obtaining Australian citizenship on the basis of third party fraud.

On the other hand, the restrictions on re-acquiring Australian citizenship will be eased under the new legislation. As the abolition of restrictions on having a dual citizenship passed on 04 April 2002 was not retrospective, anyone who lost their citizenship before that date did not reacquire their Australian citizenship. However, under the new bill such persons can re-acquire Australian citizenship under special conditions such as “significant hardship” or “disadvantaged” or “beneficial to Australia” or did not know that Australian citizenship ceased as a consequence of their actions. This shall be interpreted broadly to include social, cultural as well as economic considerations.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent. The writer, Atty. Imelda Argel is a practising migration solicitor and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957.

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Readers of the Philippine Community Herald Newspaper are invited to send their comments to “The President, Filipino Migrants Forum” c/o Imelda Argel & Associates, Solicitors & Attorneys, by email at info@iargel.com.au or by fax at (+612) 9699 3210 or by post to Suite 41, Ground Floor, 61-89 Buckingham St. SURRY HILLS NSW 2010.