

EXPLANATORY STATEMENT

Australian Citizenship Act 2007

Australian Citizenship (Class of Persons Who May Receive a Pledge of Commitment) Authorisation (LIN 22/074) 2022

(subsection 27(5))

1. The instrument, Departmental reference LIN 22/074, is made under subsection 27(5) of the *Australian Citizenship Act 2007* (the Act).
2. The instrument repeals *Citizenship (LIN 20/084: Class of Persons Who May Receive a Pledge of Commitment) Instrument 2020* (LIN 20/084) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
3. The instrument commences retrospectively on 8 September 2020 and is a legislative instrument for the *Legislation Act 2003* (Legislation Act).

Purpose

4. Subsection 26(1) of the Act requires a person to make a pledge of commitment to become an Australian citizen, unless they are a person to whom paragraphs 26(1)(a), (b) or (c) of the Act apply. Section 27 of the Act sets out how the pledge of commitment is to be made, and subsection 27(3) provides that the pledge of commitment must be made before a person mentioned in that provision. Paragraph 27(3)(c) provides that a pledge of commitment may be made before a person who is included in a class of persons authorised under subsection 27(5) of the Act. Subsection 27(5) of the Act provides that the Minister may, by legislative instrument, authorise a class of persons for the purposes of paragraph 27(3)(c).
5. The purpose of the instrument is to authorise the class of persons listed in Schedule 1 to the instrument to receive a pledge of commitment. This instrument fixes a drafting error in

LIN 20/184 which will be repealed and replaced by this instrument. This instrument also reinstates authority for certain office-holders at City of Yarra Council and Darebin City Council to preside over citizenship ceremonies. Further, it takes account of an organisational restructure in the Department to enable listed position holders to continue to be authorised regardless of changes of name to areas within the Citizenship Division.

6. In accordance with subsection 12(1A) of the Legislation Act, section 2 of the instrument provides that the instrument, other than section 3, is taken to have commenced on 8 September 2020. The effect of this provision is that a pledge of commitment which was made before a person who is a member of a class of persons mentioned in Schedule 1 at any time from 8 September 2020 meets the requirements set out by subsection 27(3) of the Act.
7. The purpose of retrospective commencement of the instrument would be to ensure that all pledges given after this date are valid, by ensuring that persons who gave a pledge to a person holding, occupying, or performing the duties of the classes of persons in the instrument, validly become Australian citizens pursuant to section 20 of the Act.
8. LIN 20/084 used language which could be interpreted restrictively, being that, in certain circumstances, only a person holding a relevant position could receive the pledge, but not a person acting in that position.
9. For subsection 12(2) of the Legislation Act, the instrument does not affect the rights of any person so as to disadvantage the person, and does not impose a liability on any person in respect of anything done or omitted to be done before the instrument is registered.

Consultation

10. For paragraph 15J(2)(e) of the Legislation Act, consultation was not considered necessary as the changes that are made by LIN 22/074 are minor and machinery in nature when compared to LIN 20/084 and therefore do not substantially alter existing arrangements.
11. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 22-03597).

Details of the instrument

12. Section 1 sets out the name of the instrument.
13. Subsection 2(1) provides for the commencement of the whole of the instrument, other than section 3 on 8 September 2020, which was the commencement date of LIN 20/084. Subsection 2(2) provides that section 3 commences when the instrument is registered. The effect of subsection 2(2) is that LIN 20/084 will be repealed when this instrument is registered.
14. Section 3 of the instrument repeals LIN 20/084, made under subsection 27(5) of the Act.
15. Subsection 4(1) of the instrument provides that each class of persons mentioned in Schedule 1 to the instrument is authorised to receive a pledge of commitment to become an Australian citizen.
16. Subsection 4(2) of the instrument provides that, despite subsection 4(1), a person who is a member of a class of persons mentioned in Schedule 1 is not authorised to receive a pledge of commitment if the person receives a notice from the Minister indicating that the Minister is satisfied that the person has received or is likely to receive a pledge in a way which is inconsistent with the character of a citizenship ceremony as non-commercial, apolitical, non-partisan and secular.
17. Section 5 of the instrument sets out definitions used in the instrument, including Australian Public Service classifications set out by the *Public Service Classification Rules 2000*.

Parliamentary scrutiny

18. The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that there is no impact on human rights. The Statement is included in Attachment A to this explanatory statement.
19. The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with subsection 27(5) of the Act.

Statement of Compatibility with Human Rights

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

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This Disallowable Legislative Instrument 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 Disallowable Legislative Instrument

The Disallowable Legislative Instrument operates to authorise classes of persons who are able to receive the pledge of commitment for Australian citizenship. Subsection 26(1) of the *Australian Citizenship Act 2007* (the Act) requires a person to make a pledge of commitment to Australia before they become an Australian citizen, unless they meet the requirements set out in paragraphs 26(1)(a) to (c) of the Act.

This Disallowable Legislative Instrument repeals and replaces the *Citizenship (LIN 20/084: Class of Persons Who May Receive a Pledge of Commitment) Instrument 2020* (LIN 20/084).

Schedule 1 to the Disallowable Legislative Instrument updates the class of persons who are authorised to receive a pledge of commitment to become an Australia citizen. In particular, the update reinstates the authority for specified position holders in Yarra City Council and City of Darebin Council to receive the pledge of commitment.

The Disallowable Legislative Instrument also amends a drafting error in LIN 20/084 to allow a person who is “holding, occupying or performing” specified positions to receive the pledge of commitment. This means that a person acting in the position of an authorised presiding officer, for example an acting Mayor or acting Deputy Mayor, would also be able to receive the pledge. Previously only a person “holding” certain positions (for example, the Mayor but not the acting Mayor) was authorised to receive the pledge.

The update also amends references where appropriate, for example, due to recent changes to the Department of Home Affairs organisational chart, the following reference has been changed at section 5(v) of Schedule 1:

- ‘Citizenship Division’ has been changed to ‘Citizenship Program’

This means that SES 1, EL1, EL 2 and APS 6, 5 and 4 employees in the Citizenship Program continue to be an authorised class of persons – regardless of changes to the name of Citizenship Division.

The Disallowable Legislative Instrument will apply retrospectively and is taken to have commenced on 8 September 2020 to ensure that applicants who might have received a pledge from certain unauthorised presiding officers will not be required to attend another citizenship ceremony to remake the pledge in order to acquire citizenship.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Andrew Giles MP
Minister for Immigration, Citizenship and Multicultural Affairs**

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