

UNCLASSIFIED**Back Pocket Brief Number:****BACK POCKET BRIEF**

**Home Affairs Portfolio
Department of Home Affairs
Budget Estimates – April 2019**

BACK POCKET BRIEF**Topic: PNG-born Australians – citizenship issues****Group: Immigration and Citizenship Services****Division: Refugee, Citizenship and Multicultural Programs****Talking points**

- From time to time the Department becomes aware of cases where people born in Papua New Guinea (PNG) mistakenly believe themselves to be Australian citizens.
- These cases generally arise where the person was born in:
 - the former External Territory of Papua (Papua), held Australian citizenship by birth and by operation of law ceased to be an Australian citizen on acquiring PNG citizenship; or
 - the former Trust Territory of New Guinea (New Guinea) and mistakenly thought they were registered for citizenship by descent or held citizenship by birth.
- In some cases the person has incorrectly been issued with evidence of Australian citizenship or an Australian passport after they ceased to be an Australian citizen.
- Determining the Australian citizenship status of people born in PNG prior to 16 September 1975 (PNG Independence Day) can be complex. It involves the consideration of each person's circumstances, including:
 - whether and how they acquired Australian citizenship;
 - whether they acquired PNG citizenship under the PNG Constitution;
 - whether they ceased to be an Australian citizen on acquiring PNG citizenship; and
 - whether they ceased to be an Australian citizen due to some other event. For example, prior to 4 April 2002 the *Australian Citizenship Act 1948* (1948 Act) provided that a person automatically ceased to be an Australian citizen if they acquired another citizenship in certain circumstances.
- It is not uncommon for a person who ceased to be an Australian citizen by operation of law to be unaware that the loss occurred.
 - The Department may have no record of a person's loss of citizenship until such time as the person engages with the Department, for example, when the person applies for evidence of citizenship or applies for citizenship by descent for a child.
 - When the Department becomes aware of a possible loss, the person is given the opportunity to provide relevant information before a finding is made.

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- If the person is found not to be an Australian citizen, Departmental records are updated and, to the extent possible, assistance is given to the person to regularise their status in Australia. This may include expediting processing of a visa and/or citizenship application.
- Given the range of circumstances that may apply to any individual, the Department has not estimated or determined how many people may be affected by the interaction of the PNG Constitution and Australian citizenship legislation.

Pathways to citizenship

- Where a person has been living in the community and is found to have ceased to be an Australian citizen on PNG Independence Day, or found to have erroneously thought they were registered for citizenship by descent, the Department provides the person (and where relevant, family members) with information on the pathways available to regularise their status and apply for Australian citizenship.
 - The most appropriate pathway will depend on the individual's circumstances.
 - People born in Papua prior to PNG Independence Day who had, at the time of their birth, an Australian citizen parent who was born in Australia are eligible for citizenship by conferral under subsection 21(7) of the *Australian Citizenship Act 2007* (the Act), subject to their meeting the requirement to be of good character.
 - People who were born in New Guinea prior to PNG Independence Day who had, at the time of their birth, an Australian citizen parent are eligible for Australian citizenship by descent, subject to their meeting the requirement to be of good character.
 - People born in either territory who are permanent residents may be eligible under one of the other conferral pathways.

Recent issues

- Some people who lost their Australian citizenship at PNG Independence, or who were never registered as a citizen by descent despite being eligible, have suggested that they should not have to apply for citizenship, not be subject to an application fee and that they should be recognised as citizens from birth.
- There is no provision in the Act to allow automatic citizenship for people born in PNG who ceased to be or never became Australian citizens. If such a person wishes to become an Australian citizen they must meet the requirements under one of the forms of citizenship by application.
- In order for a citizenship application to be considered valid for processing, it must be accompanied by the required fee. The amount to be paid is set out in the Australian Citizenship Regulation 2016 (the Regulation).
- The time when Australian citizenship begins is legislated under the relevant sections of the Act. For citizenship by descent, it is on approval. For citizenship by conferral, it is on approval or on taking the pledge of commitment, depending on the age of the person and provision under which the person is approved.

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- Prior to PNG Independence Day, the Papua and New Guinea were two separate territories.
 - Papua was part of Australia for the purposes of the 1948 Act.
 - New Guinea was a Trust Territory and was not defined as part of Australia under either the 1948 Act or the *Migration Act 1958* (Migration Act).
 - As a result, people born in Papua acquired Australian citizenship at birth, whereas people born in New Guinea did not.
 - However, persons born in Papua required an entry permit or authority to travel to, enter and remain in Australia. Right of permanent residence in Australia was not automatic, that right had to be granted by the Minister (or delegate) under the Migration Act.
- Under the PNG Constitution any person born in PNG with two or more grandparents born in PNG or surrounding areas automatically acquired PNG citizenship on PNG Independence Day.
- The PNG Constitution also provides in effect that a person born in PNG, who had two or more grandparents born in PNG or surrounding areas, did not become a PNG citizen on PNG Independence Day (and consequently retained their Australian citizenship on that day) if the person was:
 - a Papuan born Australian citizen who had a right of permanent residence in Australia prior PNG Independence Day;
 - born in New Guinea and a naturalised Australian citizen under the 1948 Act;
 - born in New Guinea and registered as an Australian citizen by descent under the 1948 Act; or
 - A Papuan born Australian citizen who held citizenship of another country on PNG Independence day, for example British citizenship by descent.
- While the PNG Constitution prohibited dual citizenship it made an exception for people under the age of 19 on PNG Independence Day. Such people were permitted to hold dual citizenship until they reached 19 years of age, at which time they would cease to be a PNG citizen if they had not renounced their other citizenship.
- In keeping with the 1948 Act's approach to dual citizenship, the Papua New Guinea Independence (Australian Citizenship) Regulations 1975 (PNG Regulations) provided that Australian citizens who became PNG citizens on PNG Independence Day under the PNG Constitution ceased to be Australian citizens on that day.
- The inadvertent operation of regulation 4 of the PNG Regulations meant that all children under the age of 19 who had two or more grandparents born in PNG or adjacent areas, regardless of whether they had right of permanent residence in Australia, ceased to be Australian citizens on PNG Independence Day. This included children who were born in New Guinea and had acquired Australian citizenship by descent or by naturalisation.

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- The Papua New Guinea (Australian Citizenship of Young Persons) Regulations 1980 came into effect on 25 September 1980 and corrected this anomaly.
- There have been no changes to either the current Act or Regulation relating to access to Australian citizenship for those born in PNG.
- Since the introduction of the current Act, section 21(7) has provided that a person is eligible for Australian citizenship if the person:
 - was born in Papua before 16 September 1975; and
 - had a parent who was born in Australia and that parent was an Australian citizen at the time of the person's birth; and
 - is of good character at the time of the Minister's decision on the application.
- The Revised Explanatory Memorandum for the Act states "These provisions remedy the anomalous situation under the old Act of a unique class of persons who were born in an Australian territory and are the children of a mainland Australian citizen parent who was born in an Australian State or internal Territory, yet have been denied Australian citizenship".

Consultation

N/A

Additional References

N/A

Attachments

N/A.

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