



Freedom of Information Request - FA 24/11/01087

A. Definitions of words:

People who acquire Australian citizenship currently receive evidence of their Australian citizenship under section 37 of the *Australian Citizenship Act 2007* at the time of acquisition in the form of a certificate. People who are already Australian citizens (e.g. Australian citizens by birth and where evidence of citizenship has been lost, destroyed or stolen) may apply to the Department of Home Affairs (the Department) for evidence of their Australian citizenship.

The following definitions of the terms Citizenship Certificate, Naturalisation Certificate and Declaratory or Evidentiary are taken from the *Australian Citizenship Act 1948*:

Citizenship Certificate: "certificate of Australian citizenship" means a certificate of Australian citizenship granted under this Act and includes a certificate of naturalization or a certificate of registration granted under the *Nationality and Citizenship Act 1948*, or under that Act as amended, before the commencement of section 22 of the *Citizenship Act 1969*; As referenced in the: *Australian Citizenship Act 1948* - Federal Register of Legislation - Australian Citizenship Act 1948 and
https://legend.border.gov.au/legend_current/c/2002/legend_01_07_2002/c/legend_01_07_2002/ca/Pages/document00000/level%20100000.aspx#JD_5-4014134certificateofAustraliancitizenship34

Naturalisation Certificate: means a certificate of Australian citizenship granted under this Act and includes a certificate of naturalization or a certificate of registration granted under the *Nationality and Citizenship Act 1948*, or under that Act as amended, before the commencement of section 22 of the *Citizenship Act 1969*. As referenced in the: *Australian Citizenship Act 1948* - Federal Register of Legislation - Australian Citizenship Act 1948 and

https://legend.border.gov.au/legend_current/c/2002/legend_01_07_2002/c/legend_01_07_2002/ca/Pages/document00000/level%20100000.aspx#JD_5-4014134certificateofAustraliancitizenship34

Declaratory or Evidentiary: Evidentiary Certificate of Australian Citizenship (under s 46A or s 44A). This provides evidence of Australian citizenship where it has been acquired by grant. It is not available where citizenship has been acquired by any other means, such as by birth or registration by descent. (See 10.3). Few, if any, Evidentiary Certificates are issued. Applicants wishing to obtain evidence of their own citizenship status will usually apply for a Certificate of Evidence of Australian Citizenship – not an Evidentiary Certificate. Evidentiary Certificates are often issued to a third person who is acting on behalf of the person whose name is to appear on the Evidentiary Certificate, usually in relation to legal matters or legal circumstances. (For example, a spouse may apply for an Evidentiary Certificate for their deceased spouse, for purposes relating to the deceased's will and estate.) See 10.3.4 for more information. As referenced in the Australian Citizenship Instructions 4/4/2002-30/06/2002 – Chapter 10.

https://legend.border.gov.au/legend_current/c/2002/legend_04_04_2002/c/legend_04_04_2002/ci/Pages/document00000/level%20100011.aspx

- B. **Can you send me a copy of any statute or any document or a copy of the department of home Affairs manual, Rule or guideline that you use to make decisions that define the meaning of these words above (CITIZENSHIP, NATURALISATION AND DECLARATORY OR EVIDENTIARY) –**

As per the references/links above.

- C. **Any documents or a copy of any statute that explains the meaning of "Australian protected person" (Nationality and Citizenship Act 1948-1967) and exempt non-citizen (social security Act 1991)**

"Protected person" means a person who is included in such prescribed classes of persons as are under the protection of the Government of any part of His Majesty's dominions as referenced in:

https://www.foundingdocs.gov.au/resources/transcripts/cth13_doc_1948.pdf

The following extract is taken from the Australian Citizenship Instructions 19/9/2001-31/10/2001:

https://legend.border.gov.au/legend_current_c/2001/legend_19_09_2001_c/legend_19_09_2001_ci/Pages/document00000/level%20100000/level%20100001.aspx?searchstring=%22Australian%20protected%20person%22#search-highlight-anchor

1.8 Australian Protected Person

1.8.1 International law recognises the right of a nation to protect not only its own citizens or subjects, but the inhabitants or natives of territories which, though not the nation's own possessions, are under its protection (e.g. territories for which the nation is trustee under United Nations Trusteeship). Such inhabitants are referred to as "protected persons". The whole body of persons for whom a nation is responsible in international affairs (including both its citizens and its "protected persons") is known as its "nationals".

1.8.2 The status of protected person is significant mainly in international affairs and usually becomes important to individuals only when they may have need for protection in such affairs; e.g. when about to travel abroad and requiring the assistance of Australian overseas posts.

1.8.3 Until 1 May 1987, the Act made provision for the status of "Australian protected person" (see the then s 5(3A)). This related to certain persons connected with the former trust territory of New Guinea (see reg. 5 from time to time prior to its repeal on 1 June 1987):

- Prior to Papua New Guinea attaining independence on 16 September 1975, the then reg. 5 provided that anyone born in the trust territory of New Guinea who did not have the status of a British subject or the citizenship of another country was an Australian protected person. A child born outside of New Guinea to an Australian protected person became an Australian protected person.
- From 16 September 1975, the then reg. 5 continued that status for those who did not acquire another status - such as citizenship of Papua New Guinea - on or after that date. Citizenship of PNG is explained in 1.3(c) above.
- A person who was an "Australian protected person" immediately before 1 May 1987 retained that status, although this status is now legally meaningless.

The Department is not in a position to comment on the meaning of terms under the *Social Security Act 1991*. In case it is useful, the *Social Security Act 1991* can be found on the Federal Register of Legislation. See:

<https://www.legislation.gov.au/C2004A04121/latest/text>

D. A copy of any statute or manual or Rules or guideline or legislative documents that state that the United Nations Universal Declaration of Human Rights does not apply to the Department of Home Affairs.

The Department is not aware of any 'statute or manual or Rules or guideline or legislative documents that explicitly state that the United Nations Universal Declaration of Human Rights does not apply to the department of Home Affairs'.

The following information may be of interest and assistance.

- All bills and disallowable legislative instruments must contain a Statement of Compatibility with Human Rights (SoC). *The Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) (Parliamentary Scrutiny Act)* introduced a requirement for a Statement of Compatibility with Human Rights (SoC) to accompany bills and disallowable legislative instruments (including Regulations). The Parliamentary Scrutiny Act also established the Parliamentary Joint Committee on Human Rights (PJCHR), which reviews SoCs in aid of its function to scrutinise and report on the compatibility of legislative proposals with human rights to Parliament. The purpose of a SoC is to explain to Parliament, and in particular, the PJCHR, how the provisions of a bill or a disallowable legislative instrument are compatible with human rights. Its other purpose is to encourage early and ongoing consideration of human rights issues in policy and legislative development.
- Australia was a founding member of the United Nations and an original signatory to the Universal Declaration of Human Rights in 1948.

- For over 75 years, Australia has been a strong advocate for the promotion and protection of human rights, especially in the context of advancing human rights in the Indo-Pacific region.
- Further information is available at:
 - <https://www.dfat.gov.au/international-relations/themes/human-rights>
 - <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Everyone%20is%20entitled%20to%20all,property%2C%20birth%20or%20other%20st atus.>
 - <https://humanrights.gov.au/our-work/education/human-rights-explained-australia-and-human-rights-treaties>

Notes:

1. Source: Department of Home Affairs (internal documents).
2. Source: Federal Register of Legislation – Australian Citizenship Act 1948.
3. Source: LEGEND – Australian Citizenship Act 1948 – Part I – Preliminary.
4. Source: LEGEND – Chapter 10 Evidence of Australian Citizenship: Certificates of Evidence of Australian Citizenship ('Declaratory Certificates') and Evidentiary Certificates.
5. Source: Founding Docs – No (83) of 1948. An Act Relating to British Nationality and Australian Citizenship. Assented to (21st December, 1948).
6. Source: LEGEND – Page 2 of 2 Chapter 1 – Introduction and Definitions.
7. Source: Federal Register of Legislation – Social Security Act 1991

Caveats:

- *This information is provided for the specific purpose of this request.*
- *It is the responsibility of the area providing the Department of Home Affairs information to external stakeholders to ensure that the disclosure is in accordance with the ABF Act, Australian Privacy Principles or other relevant legislation.*



Australian Government

Department of Home Affairs

Freedom of Information Request - FA 24/11/01087

A. Definitions of words:

Provided below are definitions of the terms Citizenship, Naturalisation and Declaratory as cited in the *Australian Citizenship Act 2007*, *Nationality and Citizenship Act 1948*, the *Social Security Act 1991* and the *PAM3: Act - Identity, biometrics and immigration status > Australian declaratory visas*. In the absence of a specific reference to the term 'Evidentiary' the definition of 'Evidence of Citizenship' has been provided, as it is defined in the *Australian Citizenship Act 2007*.

Citizenship:

...Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity.

The Parliament recognises that persons conferred Australian citizenship enjoy these rights and undertake to accept these obligations:

- (a) by pledging loyalty to Australia and its people; and
- (b) by sharing their democratic beliefs; and
- (c) by respecting their rights and liberties; and
- (d) by upholding and obeying the laws of Australia.

As referenced in the: *Australian Citizenship Act 2007*:

URL - <https://www.legislation.gov.au/C2007A00020/latest/text>

Naturalized person:

"Naturalized person" means a person who under any law, whether in force before or after the date of commencement of this Act, becomes or became a British subject or an Irish citizen by virtue of a certificate of citizenship or a certificate of naturalization granted to him or in which his name is or was included or, in the case of a married woman, by virtue of a declaration that she desires or desired to acquire British nationality, and includes a person who under any such law was deemed to be a naturalized British subject by reason of his residence with his father or mother;

As referenced in the: *Nationality and Citizenship Act 1948*:

URL – https://classic.austlii.edu.au/au/legis/cth/num_act/naca194883o1948339/

Declaratory:

An Australian declaratory visa (ADV) is an administrative process that connects a person's status as an Australian citizen with a non-Australian travel document that the person holds. An ADV is an entry authority, not a visa under the Migration Act. There is no power to grant visas to Australian citizens.

However, the ADV process parallels that of visas issued under the Act so that an Australian citizen travelling on a foreign passport has their right to return to and enter Australia recorded in departmental systems in a manner accessible to border operations.

As referenced in the: *PAM3: Act - Identity, biometrics and immigration status > Australian declaratory visas:*

URL – <https://www.homeaffairs.gov.au/foi/files/2022/fa-220400160-document-released.PDF>

Evidence of Australian citizenship

- (1) A person may make an application to the Minister for evidence of the person's Australian citizenship.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

Notice

- (2) The Minister may give the person a notice stating that the person is an Australian citizen at a particular time.
- (3) The notice must:
 - a) be in a form prescribed by the regulations; and
 - b) contain any other matter prescribed by the regulations.

Identity

- (4) The Minister must not give the person such a notice unless the Minister is satisfied of the identity of the person.

Note: Division 5 contains the identity provisions.

Evidentiary status

- (5) A notice is prima facie evidence of the matters in the notice.

Cancellation

- (6) The Minister may, by writing, cancel a notice given to a person under this section.

As referenced in the: *Division 4, 37, Australian Citizenship Act 2007*

URL – <https://www.legislation.gov.au/C2007A00020/latest/text>

B. Can you send me a copy of any statute or any document or a copy of the department of home Affairs manual, Rule or guideline that you use to make decisions that define the meaning of these words above (CITIZENSHIP, NATURALISATION AND DECLARATORY OR EVIDENTIARY)

No documentation is able to be provided as it is not the Department of Home Affairs that makes the decisions on how to define the meaning of the words 'citizenship', 'naturalisation' and 'declaratory' or 'evidentiary'. The Department is guided by the definitions as set out in the relevant legislation.

C. Any documents or a copy of any statute that explains the meaning of “Australian protected person” (Nationality and Citizenship Act 1948-1967) and exempt non-citizen (social security Act 1991)

Below are definitions for ‘Australian protected person’ as cited in the *Nationality and Citizenship Act 1948-1967* and ‘exempt non-citizen’ as cited in the *Social Security Act 1991*.

Australian protected person

For the purposes of this Act, a protected person is a person declared by the regulations to be, for the purposes of this Act, under the protection of the Australian Government or of the Government of a country, or of a part of a country, to which section seven of this Act applies.

As referenced in the: *Nationality and Citizenship Act No 63, 1958*

URL - https://classic.austlii.edu.au/au/legis/cth/num_act/naca1958631958320/naca1958631958320.pdf

Exempt non-citizen:

...“exempt non-citizen” is defined in section 5 of the Migration Act 1958: it covers non-citizens who are diplomats, members of armed forces, ships' crew members and others and, under section 7 of the Social Security Act, exempt non-citizens do not need an entry permit or entry visa to enter Australia.

As referenced in the: Migration Act 1958, Sect 5 – Interpretation

URL – https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ma1958118/s5.html

As referenced in the: *Social Security Act 1991, No. 46, 1991 – Sect 7*

URL – <https://www.legislation.gov.au/C2004A04121/latest/text>

D. A copy of any statute or manual or Rules or guideline or legislative documents that state that the United Nations Universal Declaration of Human Rights does not apply to the Department of Home Affairs.

Upon undertaking a search of the Department of Home Affairs website, no existing material has been located that states that the Department of Home Affairs is not bound by the United Nations Universal Declaration of Human Rights.

Notes:

1. Source: Department of Home Affairs (internal documents)
2. Source: Federal Register of Legislation – Australian Citizenship Act 2007
3. Source: Nationality and Citizenship – No. 83 of 1948. An Act relating to British Nationality and Australian Citizenship
4. Source: Nationality and Citizenship – No. 63 of 1958. An Act to amend the Nationality and Citizenship Act 1948 – 1955.
5. Source: Commonwealth Consolidated Acts – Migration Act 1958 – Sect 5 Interpretation
6. Source: Federal Register of Legislation – Social Security Act 1991

Caveats:

- *This information is provided for the specific purpose of this request.*
- *It is the responsibility of the area providing the Department of Home Affairs information to external stakeholders to ensure that the disclosure is in accordance with the ABF Act, Australian Privacy Principles or other relevant legislation.*