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Conferral applicants residing overseas

Standard Operating Procedure

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1. Purpose

The purpose of this Standard Operating Procedure (SOP) is to assist officers processing applications for Australian citizenship by conferral for applicants that are overseas. This includes:

- Applicants that are offshore for the entire application process.
- Additional considerations for offshore applicants.
- Applicants that lodge their application onshore and then depart.
- When an application should be transferred between the OCU and state and territory offices.
- Onshore applicants requesting overseas citizenship tests or ceremonies.

2. Scope

This SOP provides information for officers processing applications for Australian citizenship by conferral under section 21 of the *Australian Citizenship Act 2007* (the Act) in the following categories, where the applicant lodges from offshore:

- Subsection 21(2) - general eligibility;
- Subsection 21(3) - permanent or enduring physical or mental incapacity;
- Subsection 21(4) - aged 60 years or over; and
- Subsection 21(5) - under 18 years.

This SOP also provides information in relation to the above conferral categories for applicants that lodge onshore and depart Australia during the processing of their application. This includes onshore applicants that request to sit the citizenship test or attend a citizenship ceremony overseas.

All Citizenship Procedural Instruction (CPIs), SOPs and Supporting Materials (SMs) referred to in this document will be made available on the Citizenship and TIS Sharepoint (<https://teams.bcz.gov.au/sites/CitizenshipandTIS/SitePages/Welcome.aspx>).

3. Offshore applications

3.1. Overseas Citizenship Unit (OCU)

The Overseas Citizenship Unit (OCU) is currently located in the Sydney City Office. The OCU is responsible for processing conferral applications for applicants that are offshore for the entire application process. That is, they are offshore at time of lodgement, may require a test offshore, they may be approved while offshore, and they may attend a citizenship ceremony offshore.

3.2. Lodging the application from offshore

Conferral applications lodged online when the applicant is offshore flow in WMAN to a separate allocation point called "Offshore".

WMAN looks for applications that are lodged with an ICSE offshore service description and an address outside Australia and sends these cases to the "Offshore" allocation point in WMAN for processing by the OCU. This WMAN allocation point is managed by the OCU.

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If an applicant lodges a paper application while offshore, the application form directs them to post the application directly to the OCU in Sydney.

If the applicant incorrectly posts their application to another office, the application should be transferred to the OCU for processing.

3.3. Transferring applications to onshore offices

Offshore applicants may return to Australia permanently at different stages in the processing of their application.

- If the applicant permanently returns to Australia after lodgement and has not sat the citizenship test, the application should be transferred to the relevant state or territory office for processing. The application can then be treated like any other onshore application and the onshore office can arrange a test appointment as normal. NOTE: if the application looks to be one for refusal and no test appointment is required, the application should remain with the OCU for finalisation.
- If the applicant permanently returns to Australia after sitting the test but before approval, the application should remain with the OCU for finalisation. If the application is approved, the OCU will then need to refer the applicant to the relevant onshore office for a citizenship ceremony.
- If the applicant permanently returns to Australia after their application is approved, the OCU will then need to refer the applicant to the relevant onshore office for a citizenship ceremony.

Before transferring the application to an onshore office, the OCU should be satisfied that the applicant has in fact returned permanently to Australia and has provided sufficient supporting evidence.

3.4. Transferring applications to the OCU

Very rarely should applications lodged onshore be transferred to the OCU for processing. The expectation is that an onshore application would have the entire process completed onshore. Onshore offices generally should process applications where the applicant has departed Australia.

The only circumstance where it would be reasonable to transfer an application lodged onshore to the OCU is if it is clear the applicant lodged right before departing and they are not returning to Australia for the foreseeable future (or if the applicant was already overseas). It should be clear from the day of lodgement if the application should remain with the onshore office or be transferred to the OCU. For example:

- The applicant has provided an overseas residential address and contact details on the application form; or
- The applicant has included a covering letter advising they are departing Australia for an extended period to live or work overseas and provided a departure date (if not already offshore before the application comes to an officer's attention).

Where an applicant lodges their application onshore and then their circumstances change and they depart Australia, these applications should remain with the onshore office for processing.

4. Additional considerations for offshore applications

The legislative requirements for conferral applications are the same no matter the location of the applicant at time of lodgement or time of decision. However, offshore applications may require additional considerations

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and supporting evidence in order for the officer to be satisfied that the applicant meets the requirements. Generally speaking, offshore applicants:

- May have gaps in their permanent residence visas which can affect their permanent residence status at time of application and time of decision, and it may affect their ability to meet the general residence requirement.
- May not meet the general residence requirement, in particular, exceeding the allowable absences from Australia in the relevant period. For these applications, officers will need to determine if the applicant can meet the residence requirement with the assistance of a Ministerial discretion.
- Will need to provide evidence to demonstrate that they are likely to reside in Australia or maintain a close and continuing association with Australia under paragraph 21(2)(g) of the Act if their application were approved.
- May be affected by the prohibition on approval under subsection 24(5) of the Act in that they must be in Australia at time of approval.

4.1. Permanent residence status

It is important to manually check that the applicant holds a permanent visa at the time of application and at the time of decision as offshore applicants are more likely to have gaps in their permanent residence status. Please refer to CPI - Who is a Permanent Resident under the Citizenship Act (VM-5286).

Where an offshore applicant's permanent visa ceases before their application can be approved, it is reasonable to write to them and give them the opportunity to rectify their permanent residence status by applying for a Resident Return Visa (RRV). Your letter should require the applicant to advise you within 35 days of receiving the correspondence of the steps they are taking to reinstate their permanent residence status.

Where the application looks to be a refusal, their permanent residence status should be addressed in the decision record under the relevant section so the applicant is aware and can make steps to re-instate their permanent residence status in the future.

Gaps in permanent residence status can also affect an applicant's ability to meet the general residence requirement. This is discussed further in this document below and in SOP - Calculating the residence requirement (ADD2020/580288).

4.2. General residence requirement

Subsection 22 of the Act sets out the general residence requirement. Applicants who lodge their applications from offshore may not meet the general residence requirement. The main issue will be their overseas absences in the relevant 4-year period, but it is important to manually check that the 4 years lawful requirement and the 12 months permanent residence requirement are also met. Please refer to SOP - Calculating the residence requirement (ADD2020/580288).

Officers should not assume calculation performed by the Citizenship Interval Calculator is always correct. It may be necessary to manually enter the correct permanent residence date in the residence calculator and manually calculate the residence requirement.

For example, in the scenario where:

- an applicant departed Australia on an RRV;
- their RRV then ceased while offshore and they were not granted a second RRV for three months; and

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- they returned to Australia a month after their second RRV was granted offshore.

There are two possible issues with how the Citizenship Interval Calculator in ICSE may reflect the above applicant's visa status:

- In some cases, the system will not recognise the three months the applicant was offshore without a permanent visa. It will only recognise that they departed Australia on a permanent visa and returned on a permanent visa. Gaps in permanent visas will need to be manually checked by an officer.
- In some cases, the calculator will default to the first arrival on a permanent visa that was granted offshore and take this as the date of permanent residence. However, in the above scenario, section 5 of the Act will allow us to take the date of grant as their permanent residence date.

If the period in which the applicant did not hold a permanent visa while outside Australia occurred during the 12 months immediately before making an application for conferral of citizenship, the applicant will not be able to meet the general residence requirement. Applicants are required to hold a permanent visa at all times during that 12 month period (see subsection 22(1B) of the Act).

Where an offshore applicant does not meet the general residence requirement, officers should consider whether the applicant would meet the requirement with the assistance of a Ministerial discretion. Eligibility for a Ministerial discretion will come down to the individual's circumstances. However, many offshore applicants are limited by their overseas residence as most Ministerial discretions refer to time spent in Australia and treating it with the relevant status in order for the applicant to meet the general residence requirement. The only Ministerial discretions that refer to time spent offshore are:

- 22(9) in relation to the spouse, de facto partner or surviving spouse or de facto partner of Australian citizen,
- 22(10) in relation to the surviving spouse or de facto partner of a person who has died, and
- 22(11) in relation to a person in an interdependent relationship.

Subsections 22(9), 22(10) and 22(11) only allow time spent offshore to be considered as time spent in Australia (provided all of the requirements are met) to assist those that exceed the allowable absences from Australia. It will not assist those that have not been a permanent resident for the 12 months prior to lodgement or who do not meet the 4-year lawful requirement.

4.3. Spouse discretion

A common Ministerial discretion requested by offshore conferral applicants are the 'spouse discretions' available under subsections 22(9), 22(10) and 22(11) of the Act.

Subsection 22(10) of the Act is only available if the surviving spouse has not become the spouse or de facto partner of another person after the death of their partner and prior to making an application for conferral of Australian citizenship.

Subsection 22(11) only applies if the person was granted a visa on the basis on an interdependent relationship – i.e. the applicant holds a subclass 110 (Interdependency) visa or a subclass 814 (Interdependency) visa. These visa subclasses were repealed on 1 July 2009. Same sex couples are now covered by subsection 22(9) of the Act.

This section of the SOP will focus on subsection 22(9) of the Act:

(9) *If the person is the spouse, defacto partner or surviving spouse or defacto partner of an Australian citizen at the time the person made the application, the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:*

(a) the person was a spouse or defacto partner of that Australian citizen during that period; and

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(b) the person was not present in Australia during that period; and

(c) the person was a permanent resident during that period; and

(d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

This discretion allows periods of time spent outside Australia as a permanent resident to be counted as time spent in Australia for the purposes of meeting the requirements subsection 22(1)(a) and subsection 22(1)(c) of the Act in circumstances where the applicant has exceeded the allowable absences set out in subsection 22(1A).

The discretion can only be applied to periods when:

- the applicant was a spouse or de facto partner of a person at time of application; and
- the applicant was not present in Australia during that period; and
- the applicant was a permanent resident during that period; and
- the applicant had a close and continuing association with Australia during that period

To assess the above, officers should consider the following:

(a) the person was a spouse or de facto partner of that Australian citizen during that period;

It is important to note that applicant's spouse/partner only needs to be an Australian citizen at time of application to be eligible for the discretion to be applied. It is not a requirement that the spouse/partner is an Australian citizen during each and every absence.

Information about assessing whether the applicant is in a genuine relationship with an Australian citizen spouse/ partner is detailed in CPI - Residence Requirements and Ministerial discretions (VM-5285). Please note, that just because the applicant may have held a permanent Partner visa, it does not mean that they are still in a relationship with their Australian citizen sponsor. You must seek evidence to confirm that they were together during the relevant overseas absences in order to be satisfied that the applicant meets subsection 22(9)(a) of the Act.

(b) the person was not present in Australia during that period;

Officers should be able to determine when the applicant was outside Australia by checking Departmental systems.

An important factor to consider, is that while the applicant may satisfy the requirements to apply the spouse discretion, it could be that even if it was applied to all of the eligible overseas absences, the applicant will still exceed the allow absences from Australia. For example, the applicant may not have been a permanent resident for the entire four year period prior to lodgement, so not all of the applicant's absences will be able to be treated as time spent in Australia with the assistance of the spouse discretion.

(c) the person was a permanent resident during that period;

Guidance on determining an applicant's permanent residence status is provided earlier in this SOP and SOP - Calculating the residence requirement (ADD2020/580288).

The spouse discretion cannot be applied to any of the time that the applicant was offshore without a visa or as a temporary resident. This is another reason why it is important to manually check for any gaps in the applicant's permanent residence status while overseas.

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(d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

An issue for offshore applicants is whether they can provide sufficient evidence to show that they meet subsection 22(9)(d) of the Act in order for the discretion to be applied. It is important to remember that 22(9)(d) of the Act requires the applicant to have maintained a close and continuing association with Australia – not just Australians – during their overseas absences. Therefore, in addition to the information provided in CPI - Residence Requirements and Discretions (VM-5285), officers may wish to consider the following factors that may contribute to a close and continuing association with Australia:

- Evidence that the applicant migrated to and established a home in Australia prior to the period overseas.
- Australian citizen children. If applicable, the applicant should provide full birth certificates linking them to their children.
- Long-term relationship with an Australian citizen spouse or de facto partner. If applicable, the applicant should provide a marriage certificate or evidence of their de facto relationship such as joint bank accounts, evidence they reside at the same address, third party statements attesting to their relationship etc.
- Extended family in Australia.
- Explanation of why the applicant is offshore and their future intentions.
- The person has been on leave from employment in Australia while accompanying their spouse or partner overseas. If applicable, they should provide an employment letter or contract confirming their return date to Australia. Similarly, a new Australian employment contract with a start date may hold the same weight. An overseas employment contract with an end-date should be considered in association with other evidence i.e. what other evidence is there to suggest that the applicant is returning to Australia after their overseas employment ends.
- The person is accompanying their Australian citizen partner/spouse who is offshore representing the Australian government. For example, their partner/spouse works for the Department of Foreign Affairs and Trade (DFAT) at an Australian embassy or consulate. For these applicants, officers should consider the links to the Australian community available through their partner/spouse's employment, links to the Australian embassy or consulate and to the expatriate Australian community overseas. If applicable, the applicant should be able to provide evidence of their partner/spouse's employment (which should include an end date for the posting) and of their ties to the embassy/consulate or expat community.
- Ownership of property in Australia. The applicant should be able to provide evidence of home ownership. It is also important to consider this in context, has the applicant ever lived in the property? Are they planning to return to it to live? Was it just an investment opportunity?
- Evidence of income tax paid in Australia over the past four years.
- Evidence of active participation in Australian community based activities or organisations. This evidence must be considered in context, for example, how active can the applicant be in certain community groups if they are rarely in Australia? Can they be involved via skype or other means?
- Did the applicant provide evidence of a direct link to Australia and the Australian community, or is it evidence of their link to their Australian citizen spouse and children? I.e. is it a direct or in-direct link to Australia?
- Regular return visits to Australia.
- Has the applicant returned to their home country or a third country? If it is their home country, they have a right to remain there indefinitely. Is the evidence they have provided strong enough to show

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that they will in fact return to Australia or maintain a close and continuing association with Australia? If they are in a third country, what is their status there? Are they there on a temporary visa and will they return to Australia upon expiry or can they remain there permanently?

- How much time has the applicant spent in Australia in the relevant 4-year period? Three years presence in Australia is equivalent to 1095 days, have they spent most of the time in Australia, half of that, a quarter of that? It is open to the officer to consider the evidence provided by the applicant in the context of how much time they have spent in Australia.
- Regular periods of residence in Australia. How much time has the applicant spent in Australia since their first entry? Would that amount of time be considered reasonable to understand the rights and responsibilities of Australia, to understand the Australian community and to assist with social cohesion? Would it be enough time to meet the three year (1095 days) requirement or would they fail to meet it even if all of the time they had spent in Australia was considered?
- Is there any incentive for the applicant to return to Australia? For example, do they still have a car in Australia and are their belongings in storage? Alternatively, have they sold their car and all of their belongings?

The above list is not exhaustive, but aims to act as a guide to assist officers when assessing subsection 22(9)(d) of the Act. Further information about 22(9) of the Act is in CPI - Residence Requirements and Discretions (VM-5285).

4.4. New Zealand TY444 visa holders

A TY444 visa will automatically cease upon departure, so it is not possible for New Zealand applicants to hold a permanent visa while offshore. This will affect the 12 months permanent residency calculation, whether the applicant is a permanent resident at time of application and time of decision, and whether the applicant is eligible for one of the Ministerial discretions available under subsections 22(9), 22(10) and 22(11) of the Act.

Section 5(2) of the Act determines which New Zealand TY444 visa holders can be considered permanent residents for citizenship purposes. Subsection 5(2) also refers to *Legislative Instrument IMMI 17/108 in relation to Australian Citizenship (Permanent Resident Status)*. Additional information about New Zealanders is available in CPI - New Zealand citizens: residence status and eligibility for Australian citizenship (VM-5296).

To summarise, the status of New Zealand citizens in Australia has changed over time. Since 26 February 2001, New Zealand citizens are only considered permanent residents for citizenship purposes if:

- they were granted a permanent visa under the *Migration Act 1958*, or
- they were present in Australia on 26 February 2001 as a TY444 visa holder, or
- they were not present in Australia on 26 February 2001 but had been present in Australia as a TY444 visa holder for a total of 12 months out of the two years prior to that day, or
- they hold a Centrelink certificate issued under the *Social Security Act 1991*, which confirms their residence in Australia from a particular date.

For New Zealand citizens who meet one of the above requirements, Item 4 in *Legislative Instrument IMMI 17/108*, covers the periods that TY444 visa holders are offshore without a visa:

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4. *A New Zealand citizen mentioned in Items (1) and (2) is taken to be, or to have been, a person to whom subsection 5(2) of the Act applies during any period while the New Zealand citizen, although ordinarily resident in Australia, is or was outside Australia if:*
- (a) immediately before leaving Australia for that period, the New Zealand citizen:*
 - (i) was in Australia as the holder of a special category visa that was not cancelled; and*
 - (ii) was not taken to be the holder of a special purpose visa except for those persons and for the purposes specified in Item 2 of this Schedule; and*
 - (iii) was not in Australia as a diplomatic or consular representative of New Zealand, or the spouse or dependent child of a diplomatic or consular representative of New Zealand; and*
 - (b) the New Zealand citizen was not outside Australia for that period because he or she was removed or deported from Australia under the Migration Act 1958.*

Therefore, in order to consider TY444 visa holders to be permanent residents while they are offshore, officers must be satisfied that:

- they are 'ordinarily resident' in Australia during their absences, and
- the New Zealand citizen last left Australia on a TY444 visa, and
- that visa wasn't cancelled, and
- they were not present on a special purpose visa (except in limited circumstances), and
- they were not a diplomatic or consular representative (or the spouse or child of a diplomat or consular officer), and
- they were not deported or removed.

Ordinarily resident is defined in Section 3 of the Act:

ordinarily resident: *a person is taken to be ordinarily resident in a country if and only if:*

(a) he or she has his or her home in that country; or

(b) that country is the country of his or her permanent abode even if he or she is temporarily absent from that country.

However, the person is taken not to be so resident if he or she resides in that country for a special or temporary purpose only

4.5. Intention to reside or maintain a close and continuing association with Australia

Under subsection 21(2)(g), 21(3)(e) and 21(4)(e) of the Act, applicants must demonstrate an intention to reside in Australia, or to continue to reside in Australia, or to maintain a close and continuing association with Australia if their application were approved.

This requirement can be broken down into three parts:

1. Intention to reside in Australia, or

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2. Intention to continue to reside in Australia, or
3. Intention to maintain a close and continuing association with Australia

Applicants are only required to meet one of the above components in order to satisfy the requirement. As offshore applicants may not be resident in Australia during the processing of the application it may be difficult for them to provide evidence that they intend to continue to reside in Australia, in which case they must provide evidence to show they meet one of the other requirements.

CPI - Assessing likelihood to reside or continue to reside in, or maintain a close and continuing association with Australia (VM-5288) contains definitions for consideration and examples of material that may evidence intention to reside or to maintain a close and continuing association with Australia.

Intention to reside in Australia

If an applicant states they intend to return to Australia in near future to reside, they should be able to provide evidence to support this, for example, flight itinerary, evidence of employment, evidence of where they will live.

If you are not satisfied that the applicant intends to reside in Australia you should consider their intention to maintain a close and continuing association with Australia.

Intention to maintain a close and continuing association with Australia

This requirement is very similar to subsection 22(9)(d) of the Act regarding the spouse discretion. However, 22(9)(d) of the Act requires the applicant to provide evidence that they maintained a close and continuing association with Australia during their past overseas absences. Subsection 21(2)(g), 21(3)(e) and 21(4)(e) of the Act requires applicants to demonstrate that they will maintain a close and continuing association with Australia into the future if their application were approved. These are different requirements, which require separate assessments. You cannot assume that if the applicant meets the requirement for one, that they will automatically meet the other.

However, similar to 22(9)(d), when applicants provide evidence to show they meet the requirements of 21(2)(g), 21(3)(e) or 21(4)(e), the evidence should show that their link is with Australia and the Australian community, not solely with their Australian citizen spouse and children. There will also be a lot of overlap in the type of evidence that the applicant can provide, for example, involvement in community groups, again the difference is the timeframe in question. So rather than showing how they contributed to a community group over the previous four years, they need to prove how that will continue to be involved with that group in the future and what that means for the Australian community.

As well as the information in CPI 11, officers can also consider the list of factors that may contribute to a close and continuing association with Australia under section Spouse discretion of this SOP. Be aware that in order to assess 21(2)(g) or 21(4)(e) of the Act, the list needs to be considered in the context of a **future association** with Australia if the application were approved.

4.6. Prohibited from approving while the applicant is offshore

Subsection 24(5) provides that if a person has made an application in accordance with subsection 21(2), (3) or (4) then they must be present in Australia at the time of decision unless:

- They were assessed as meeting a special residence requirement; or
- They have an Australian citizen spouse or de facto partner and have maintained a close and continuing association with Australia despite being absent. Ministerial discretion in subsection 22(9) or 22(11) may be applied only for the purposes of approving the application - it does not need to have been applied to meet the residence requirements.

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As discussed above, most offshore applicants will require the assistance of the subsections 22(9) or 22(11) in order to meet the general residence requirement.

However, the Ministerial discretions can also be applied to applicants that meet the general residence requirements and the applicant is currently offshore. The applicant will still need to meet the same requirements under 22(9) or 22(11) of the Act, and that includes being offshore, as a permanent resident, while they were the spouse or partner of an Australian citizen, they were still with their spouse/partner at the time of application and they maintained a close and continuing association with Australia during their absences. So, for example, if an applicant had been onshore for the entire 4 years prior to lodging their application, but departed before a decision was made, the Ministerial discretion could not be applied in this case as the applicant would not meet subsection 22(9)(b) of the Act, "the person was not present in Australia during that period". This applicant has no absences relevant to the spouse discretion, so it cannot be applied to avoid a refusal under 24(5) of the Act.

If the applicant departs prior to a decision being made and they are not eligible for the Ministerial discretions to be applied, then a letter needs to be sent to the applicant advising that you are prohibited from approving their application while they are outside Australia and they must:

- advise you within 35 days of receiving the correspondence of the arrangements they have made to return to Australia; and
- provide substantive evidence of those arrangements (e.g. airline tickets) to demonstrate that they will return to Australia within 35 days of the date of the letter or their applications will be finalised.

If the application is still within normal processing time and the applicant has only been outside of Australia for a short period (two weeks or less), wait another two weeks to provide the client with time to return to Australia. If the client does not return, provide them with a natural justice process as outlined above.

If the application is lodged from offshore and the applicant is not eligible for the Ministerial discretions to be applied, the OCU can consider advising the applicant of the subsection 24(5) requirement to return to Australia for approval in the acknowledgement letter or in Request for further information letters. This is not a requirement, but it will assist in managing the applicant's expectations. For example:

As provided in s24(5) of the *Australian Citizenship Act 2007*, if an applicant is not present in Australia, and the Minister did not apply the spouse/partner discretion in relation to the applicant, the Minister must not approve the person becoming an Australian citizen.

Therefore, because you meet the general residence requirements and the spouse discretion was not applied, your application cannot be approved while you are outside of Australia. There is no evidence with your application to show that you have an Australian citizen spouse/partner.

In the event that your application may be approved, you need to return to Australia for the approval to take place. You will be notified if your application is at this stage giving you a 35 day time period to return to Australia.

5. Applicant lodges onshore and then departs

Generally, it is expected that if an application is lodged onshore, the entire process will be carried out onshore. However, some applicants' circumstances may change, and they depart Australia prior to the finalisation of their application. The following provides guidance on how to treat these applications depending on where the application is up to when the applicant departs.

The Department recognises that some applicants may depart Australia at some point between lodging their application for Australian citizenship and before the application is finalised. Most of these applicants depart for only a brief period, such as for a holiday or to visit family. However, some applicants may depart

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Australia for an extended period, and this may affect their ability to meet the requirements for Australian citizenship.

Where an applicant has indicated travel plans of any kind on their application this must be discussed with them at interview or over the phone for clarification. The applicant should be advised of possible consequences associated with extended travel including the need for additional overseas penal certificates if travelling longer than three months, and the inability to approve an application while a person is outside Australia in most circumstances.

Otherwise, once it comes to notice that an onshore applicant has departed Australia for an extended period, if not already available to the Department, officers will need to write to the applicant seeking:

- An update on their circumstance, including an explanation of why they are offshore
- When they intend to return to Australia
- Evidence to support their claims

Depending on the applicant's response, officers can determine if the applicant will be absent from Australia for a reasonable or unreasonable amount of time.

Reasonable absence from Australia

A reasonable absence from Australia can be considered short term and easily verifiable in nature. For example, the applicant may be overseas looking after a sick relative and they state they will return in six weeks when alternative care arrangements become available. The applicant is able to provide evidence to support their claims including: medical documentation for their sick relative, a flight itinerary showing a return date to Australia and a letter from their employer showing they are on leave and due back to work on a particular date.

Short-term holidays or trips to visit family overseas would also be considered reasonable, especially where a flight itinerary with departure and return dates can be provided.

Unreasonable absence from Australia

An unreasonable absence from Australia can be considered a long-term absence, with or without a verifiable return date. For example, if a person lodged an application and a month after lodging they depart Australia for 'at least 6 months' to look for work because they cannot find employment in Australia in their chosen field, it may not be reasonable to delay finalising the application.

Where the absence is over three months, for example, they have taken a 3-year work contract offshore, or if the applicant's plans are unclear or they have departed 'indefinitely', additional scrutiny is required for these applications.

These applicants fall into three main groups:

1. Applicants who lodge and depart without attending a test appointment;
2. Applicants who meet the eligibility requirements and leave before a decision can be made on their application; and
3. Approved applicants who depart Australia prior to attending a ceremony.

5.1 Applicant departs Australia after lodgement without sitting a test

Where a person makes a valid application, they must be given a reasonable opportunity to demonstrate that they meet the eligibility requirements, including passing a citizenship test. Applicants applying under general eligibility are fully aware that they will be required to sit a test. Where the applicant resides in Australia and

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makes their application in Australia they will be expected to sit their test in Australia. Overseas tests should not be arranged for people who reside in Australia.

Only in exceptional circumstances would an overseas applicant be offered a test appointment overseas. For example, applicants that are accompanying a DFAT spouse/partner overseas and is eligible to have the spouse discretion applied (to allow approval while offshore) or an applicant who is being considered under the special residence requirement.

Applicants in this cohort may come to attention because they are missing their scheduled test appointments, or because they make contact with the Department advising they are offshore. Section 5 above, provides information in relation to reasonable and unreasonable absences from Australia. Depending on the applicant's circumstances, applications in this cohort can be actioned accordingly:

Reasonable absence from Australia

In cases where the absence seems reasonable, and the officer has no concerns regarding intention to reside or close and continuing association with Australia, it is reasonable to arrange a test appointment for when the applicant returns to Australia.

Unreasonable absence from Australia

In cases where the absence seems unreasonable, officers should contact the applicant and advise them that this is not reasonable and set them a period in which they must attend an appointment and demonstrate their eligibility.

Another consideration for those with unreasonable absences from Australia is their ability to meet subsection 21(2)(g) of the Act in relation to intention to reside in Australia or maintain a close and continuing association with Australia. Depending on an individual's circumstances, it may be relevant to first assess them under 21(2)(g) of the Act before considering any further test appointments. If they fail to meet 21(2)(g) of the Act, the application can be finalised accordingly.

Otherwise, non-attendance at multiple test appointments may mean the applicant has failed to demonstrate that they meet all the eligibility requirements for conferral Australian citizenship. The applicant must be provided with natural justice to give them an opportunity to provide an acceptable explanation, supported by relevant evidence, as to why they were unable to/ did not attend the appointments.

In this case, the applicant may request a refund of the test component of the application fee (see regulation 17(6) of the Australian Citizenship Regulation 2016). Careful consideration should be given as to whether a refund is appropriate and a refund should not be given until after the AAT review period has passed.

5.2 Applicant departs Australia after sitting the test and before a decision is made

Once it comes to notice that the applicant departed Australia after passing the test but before a decision has been made, officers will need to write to the applicant seeking an update on their circumstances, why they are offshore and when they intend to return to Australia if that information is not already available to the Department. Those aged over 60 applying under 21(4) of the Act who do not need to sit the test may also fall into this cohort and may be required to attend an interview to demonstrate they understand the nature of the application.

Three issues must be addressed when the applicant departs Australia at this processing stage:

- Does the applicant intend to reside in Australia or maintain a close and continuing association with Australia?
- Will the applicant be required to provide additional overseas penal certificates?

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- Are you prohibited from approving the application?

See section 5 above, in relation to reasonable and unreasonable absences from Australia. Depending on the applicant's circumstances, applications in this cohort can be actioned as follows.

Reasonable absence from Australia

In such cases where the absence seems reasonable, the officer has no concerns regarding intention to reside or close and continuing association with Australia and the overseas absence is not long enough to require any additional overseas penal certificates, it is reasonable to wait for the applicant's return to Australia to finalise the application. You will need to wait for the applicant's return in order to avoid the prohibition on approval under subsection 24(5) of the Act.

Unreasonable absence from Australia

In such cases where the absence seems unreasonable, officers will need to address the following three issues:

- Does the applicant intend to reside in Australia or maintain a close and continuing association with Australia?

The requirements under 21(2)(g) and 21(4)(e) of the Act are discussed throughout this SOP. To summarise, the conferral application can only be approved if the applicant intends to return to Australia to reside, or if they are remaining offshore then they must maintain a close and continuing association with Australia.

Unreasonable absences are a trigger for further assessment under 21(2)(g) or 21(4)(e) of the Act. Further information to consider in assessing these requirements is available in this SOP above at Intention to reside or maintain a close and continuing association with Australia.

If you are considering refusing on this ground, you must go through a natural justice process giving the applicant an opportunity to respond prior to making a decision.

If based on the applicant's response you are satisfied that this requirement is met, you also need to consider whether the applicant's absence warrants any additional overseas penal certificates to be satisfied that the character requirement is met and whether you are prohibited from approving the application.

- Will the applicant be required to provide additional overseas penal certificates?

While generally the requirement to provide overseas penal certificates in order to assess good character is calculated on the date of lodgement, if the applicant has spent considerable time offshore since lodging their application it is open to you to request additional penal clearances to be satisfied of character.

Further information about assessing character is available in CPI - Assessing Good Character under the Citizenship Act (VM-5292).

- Are you prohibited from approving the application?

If you are satisfied that despite the applicant's absences from Australia they still meet the requirements for Australian citizenship, officers must then consider if they are prohibited from approving the application while the applicant is offshore. Subsection 24(5) of the Act provides that if a person has made an application in accordance with subsection 21(2), (3) or (4) of the Act, then they must be present in Australia at the time of decision unless certain conditions apply. Please see section above, Prohibited from approving while the applicant is offshore, of this SOP details provides further detail in relation to 24(5) of the Act and offshore applicants.

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5.3 Applicant departs Australia after approval and before attending a ceremony

Applicants applying under 21(2) and 21(4) of the Act are fully aware that they will not acquire Australian citizenship until they attend a citizenship ceremony and make the Pledge of Commitment to Australia. Where the applicant resides in Australia and makes their application in Australia they will be expected to attend a ceremony in Australia. Assessing offshore ceremony requests is covered in section "Overseas ceremony" of this SOP.

Applicants in this cohort may come to attention because they are missing their scheduled citizenship ceremonies or because they make contact with the Department advising they are offshore and request an offshore ceremony. Once it comes to notice that the applicant departed Australia after their application was approved by before attending a ceremony, if not already available to the Department, officers will need to write to the applicant seeking an update on their circumstances, why they are offshore and when they intend to return to Australia.

Section 5 above, provides information in relation to reasonable and unreasonable absences from Australia. Depending on the applicant's circumstances, applications in this cohort can be actioned as follows.

Reasonable absence from Australia

In such cases where the absence seems reasonable, and the officer has no concerns regarding intention to reside or close and continuing association with Australia, it is reasonable to allocate the applicant to a ceremony dated after their return to Australia (provided they do not exceed the 12 months since approval).

Unreasonable absence from Australia

In such cases where the absence seems unreasonable, officers will need to assess whether the applicant still meets the requirements for Australian citizenship, in particular do they intend to reside in Australia or maintain a close and continuing association with Australia. If the applicant no longer meets this requirement, the approval may be cancelled. Further information in relation to re-assessing these applications and cancelling approval is covered in section 7, "Overseas ceremony" of this SOP.

6. Overseas tests

Overseas tests are reserved for offshore applicants only, that is, applications processed by the OCU. This is because:

- It is expected that applicants that lodge their application onshore will complete the entire process onshore.
- If an onshore applicant were to request a test overseas, this would then become a question of their intention to reside in or maintain a close and continuing association with Australia.
- There is also the issue of the prohibition under subsection 24(5) of the Act. Assuming intention to reside or maintain an association is met, in most cases, those that lodge onshore will be required to return to Australia for approval. It is therefore more appropriate to await their return to Australia to sit the test and approve the application.
- There is limited availability for testing at overseas posts. There are only certain officers in a limited number of posts that are delegated to administer the Australian citizenship test. There are no dedicated testing officers at post, and test appointments must be conducted in addition to their other duties. For many OCU applicants, this may require interstate or international travel for the test appointment. For example, Washington is responsible for citizenship tests across the United States, and London and Berlin are responsible for testing all of Europe.

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6.1. Onshore applicants requesting a test offshore

Applicants are required to meet the legislative requirements in the Act in order to become an Australian citizen. Generally, where an onshore applicant requests to sit a test overseas, this would indicate that they may not be able to demonstrate an intention to reside in or maintain a close and continuing association with Australia (as per subsections 21(2)(g) or 21(4)(e) of the Act). Additionally, officers should consider that the prohibition on approving an applicant if they are offshore (as per subsection 24(5) of the Act) would likely apply.

For most conferral applicants, their link to Australia is demonstrated by their residence in Australia and their physical presence in the Australian community. It can be difficult for conferral applicants to prove a close and continuing association with Australia if they have no intention to return to Australia. Further, in these cases the application may not be able to be approved if the applicant is not in Australia at time of decision.

For some applicants, this calls into question their intention in applying for Australian citizenship. Is it to engage fully in the Australian community by enjoying the rights and upholding the responsibilities of Australian citizenship? Alternatively, is their primary intention to obtain an Australian passport to facilitate international travel? Or, is it to avoid paying the Visa Application Charge/s for RRVs? Other applicants may have a genuine or compassionate reason for being offshore for an extended period, for example looking after a sick relative.

While applicants make their decisions about lodging an application, officers are expected to consider all aspects of an applicant's circumstances. Even in cases where applicants have a genuine or compassionate reason for being overseas, they must still meet all of the legislative requirements and it is open to the officer to keep the application on hold pending their return to Australia.

The earlier sections of this SOP provide guidance for officers processing onshore applications where the applicant requests a test offshore. Please refer to the sections above regarding:

- Intention to reside or to maintain a close and continuing association with Australia
- Prohibited from approving while the applicant is offshore
- Applicant departs Australia after lodgement and before sitting the test

6.2. Arranging an overseas test

Due to the nature of OCU applications, it is best practice is to ensure that all non-test related citizenship requirements are met before arranging an offshore test. This includes assessing:

- whether the applicant has provided supporting evidence to assess whether any Ministerial discretions apply (if the residence requirement is not met),
- whether the applicant is likely to reside or to continue to reside in Australia or maintain a close and continuing association with Australia (21(2)(g)); and
- that you have obtained all overseas penal certificates as these may affect the decision.

For most OCU applicants, sitting a test will require travel to a post that is able to carry out testing, so it is best to ensure the application will most likely be one for approval. Where it appears that application is likely to be refused on other grounds, it is not necessary to arrange an offshore test prior to finalising the application.

The following provides instructions for the OCU on how to request a citizenship test at an offshore post. Only the OCU is to request offshore tests.

Step	Action	Responsible area
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1	Once the officer is satisfied that the application appears to be one for approval, all of the identity documents including the passport photo must be scanned into ISR.	OCU officer
2	Once the documents are in ISR, you can create a Summary Identity Report – SDP. This is essentially a PDF document will all of the applicants identity documents.	OCU officer
3	You then need to identify the closest offshore office with officers delegated to administer the Australian citizenship test.	OCU officer
4	You then need to send a Test request email to the offshore office, using the template available in TRIM at ADD2018/1282745. You also need to attach the Summary Identity Report – SDP to the email. Once the email is sent, TRIM it and record a note in ICSE. Add relevant WMAN label “Citz OCU Appointment ready”.	OCU officer
5	Once the relevant post receives the Test request. They contact the applicant to arrange a test appointment.	Post
6	Once an appointment date is confirmed. The Post emails an invitation to the applicant with the details. Post also emails Citizenship Helpdesk using the template available in TRIM at ADD2014/64523.	Post
7	Citizenship Helpdesk undertakes all the back-end tasks including booking the appointment in CTMS and providing a paper test back-up.	Citizenship Helpdesk
8	On the date of the appointment, the post is responsible for administering the test as per the instructions in ADD2014/64523.	Post
9	If the applicant sat an e-test, the test result will automatically appear in ICSE. If the applicant sat a paper test, it must be sent back to Citizenship Helpdesk for marking.	Post
10	If the applicant sat a paper test, Citizenship Helpdesk marks the test and manually enters the result into the system.	Citizenship Helpdesk
11	Once the test result is in ICSE, the OCU continues to process the application as normal.	OCU officer

It is important to note that some overseas posts are more familiar with citizenship tests than others. Those posts that are less familiar with the process may require more assistance.

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7. Overseas ceremony

Overseas citizenship ceremonies are generally reserved for offshore applications processed by the OCU. It would only be under exceptional circumstances that an onshore applicant would be approved for an overseas citizenship ceremony.

The responsibility for determining if an onshore applicant can attend an overseas ceremony remains with the office that approved the application. The OCU acts as an intermediary between onshore offices and overseas posts, but they take no responsibility for onshore applications. There would be very few occasions when an overseas ceremony would be contemplated as this indicates that the applicant is not likely to reside or continue to reside in Australia or maintain a close and continuing association with Australia. Requests for an overseas ceremony must be considered for cancellation of approval under subsection 25(2) of the Act.

7.1. Onshore applicants requesting a ceremony overseas

There are several steps involved in assessing whether an onshore applicant should be approved for an overseas ceremony:

- Applicant makes the request for an overseas ceremony
- Compelling and compassionate circumstances are assessed
- Onshore office assesses if the applicant still meets 21(2)(g) or 21(4)(e) of the Act
- There are three possible outcomes to re-assessing 21(2)(g) or 21(4)(e):
 - o a requirement is not met and the citizenship approval is cancelled;
 - o each requirement is still met but an offshore ceremony is not approved;
 - o each requirement is still met and an overseas ceremony is approved.

Applicant makes the request for an overseas ceremony

Applicants seeking an overseas ceremony may contact a few different areas of the Department with their request. They might contact the processing office, the offshore post, the OCU or the onshore Service Centres. No matter how the applicant makes contact with the Department, it is the original processing office's responsibility to respond to any overseas ceremony requests.

Compelling and compassionate circumstances

In most situations, applicants who were approved onshore would attend an onshore citizenship ceremony. However, the Department recognises that some applicants may be affected by compelling or compassionate circumstances which require them to spend extended time outside of Australia and it would be difficult for them to return to Australia for a citizenship ceremony. It is expected that an overseas ceremony would be approved for an onshore applicant only rarely.

All cases must be assessed on a case-by-case basis. Evidence must be provided in all cases where the applicant claims they require an overseas ceremony for compelling or compassionate reasons. Examples of compelling or compassionate circumstances where an overseas ceremony may be approved include, but are not limited to:

- medical treatment that was not available in Australia;
- where the applicant was already overseas and was unexpectedly hospitalised;
- an extended stay overseas to care for a person who was critically ill;

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- an extended stay overseas for funeral and other associated arrangements.

Consideration must be given to the applicant's circumstances.

For example, Mr Smith was approved for Australian citizenship last week. He is now overseas seeking medical treatment that is not available in Australia. He has provided a letter from his treating doctor confirming he is undergoing medical treatment. It says the recovery time from the treatment is four to six weeks. Potentially, Mr Smith could return to Australia after his recovery and would still have 10 months to attend a citizenship ceremony onshore. In this case, it would be appropriate to refuse the overseas ceremony and invite Mr Smith to onshore ceremonies as per normal procedure. There is nothing stopping Mr Smith from seeking another overseas ceremony in future should his circumstances change.

In a different context, this same situation may warrant an overseas ceremony. For example, Ms Jones was approved in Australia and was invited to two ceremonies at her local council but was a no-show at both ceremonies because she was unwell and unable to attend. She has provided evidence from several medical professionals in Australia that she is suffering from a debilitating illness and is having mixed success with available treatments. Ms Jones then departed Australia for medical treatment not available in Australia. She has provided a letter from her doctor overseas, stating she is to commence treatment in the next two weeks and the length of the treatment will depend on any improvements. Ms Jones only has two months left to attend a ceremony before the 12-month period after approval lapses. In this case, an overseas ceremony may be warranted as it may be unreasonable to expect Ms Jones to return to Australia for a ceremony in the next two months while undergoing treatment for her medical condition.

The above examples act as a guide for officers in considering whether a particular circumstance may be compelling or compassionate. Ultimately, it is for the delegate to decide whether an applicant's circumstances warrant an overseas citizenship ceremony. All decisions must be noted in ICSE.

Onshore office assesses if the applicant still meets 21(2)(g) of the Act

Where an onshore applicant seeks an overseas ceremony, this will trigger the need to re-assess the applicant under subsection 21(2)(g) or 21(4)(e) of the Act to ensure they still meet the requirements for Australian citizenship.

An assessment may be required regardless of whether the officer is considering approving or refusing the request for an overseas ceremony. The above section, Intention to reside or maintain a close and continuing association with Australia, of this SOP provides guidance on assessing this requirement. Re-assessing the requirement is a similar process, taking into consideration how much the applicant's circumstances have changed and whether they can still meet the requirement. This may require you to send a Request for Further Information to the applicant or go through a natural justice process. All decisions in this regard must be noted in ICSE and follow relevant WMAN instructions to ensure that the case is moved correctly in WMAN to the relevant folder.

There are three possible outcomes to re-assessing 21(2)(g) or 21(4)(e) of the Act

After re-assessing 21(2)(g) or 21(4)(e) of the Act, if the officer finds that the requirement is no longer met, then the applicant's approval can be cancelled. If the officer finds that the requirement is still met, they then need to consider whether to approve an overseas ceremony or if the applicant will be required to return to Australia to attend a ceremony.

- If the requirement is not met, the citizenship approval is cancelled

Subsection 25 of the Act states that the Minister may cancel an approval if the person has not attended a citizenship ceremony and, among other possibilities, the applicant is not likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia (subsection 25(2)(b)(ii) of the Act). The fact that there is a provision to cancel an approval on these grounds demonstrates the importance of this requirement when assessing citizenship applications.

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It is important to note that section 25 of the Act is a discretionary power, and ultimately it will depend on the delegate's assessment of an individual applicant's circumstances as to whether their approval should be cancelled.

Before cancelling an approval, the applicant must be given natural justice and sent a Notice of Intention to Consider Cancellation of Approval letter.

More information about cancelling an approval is available in CPI - Cancellation of Approval and Delay Making the Pledge (VM-5287).

- If the requirement is still met but an offshore ceremony is not approved

If the officer decides that 21(2)(g) or 21(4)(e) of the Act is still met, but that the applicant does not have a compelling or compassionate reason justifying a ceremony overseas, they should continue to be allocated and invited to onshore citizenship ceremonies as normal. As stated above, there is nothing stopping the applicant from seeking an overseas ceremony later if their circumstances change. The officer should write to the applicant, explaining why their overseas ceremony request has not been approved and advising how much time they have remaining to attend a ceremony.

- If the requirement is still met and an overseas ceremony is approved

If the officer decides that 21(2)(g) or 21(4)(e) of the Act are still met, and that the applicant does have a compelling or compassionate reason why they require a ceremony overseas, this should be clearly noted in ICSE. Once the officer has made that assessment, they then need to refer the applicant to the OCU, making note of their assessment and the applicant's overseas contact details. The OCU will then request an overseas ceremony with the relevant post.

7.2. Arranging an overseas ceremony

The following provides instructions for the OCU on how to request a citizenship ceremony at an offshore post. Only the OCU is to request offshore ceremonies.

Step	Action	Responsible area
1	The OCU officer will identify the closest offshore post with officers delegated to receive the Pledge of Commitment at Australian citizenship ceremonies.	OCU
2	The OCU officer then sends a Ceremony request email to the offshore office, using the template available in TRIM at ADD2018/1282917, and updates the ceremony preference in ICSE.	OCU
3	Once the relevant post receives the Ceremony request. They contact the applicant to arrange a ceremony date and send the applicant an invitation.	Post
4	Once the ceremony date is confirmed, the Post conducts the following steps in ICSE: • creates a ceremony group, • allocates the applicant/s to the ceremony group, • requests Australian citizenship certificate/s and a pledge report.	Post

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5	Citizenship Printing and Despatch Room will print the Australian citizenship certificate/s and the pledge report and send it to the post by diplomatic bag.	Citizenship Printing and Despatch
8	On the date of the ceremony, the post is responsible for implementing the requirements of the ceremonies code and: • setting up the ceremony venue to ensure it meets the requirements • verifying the conferee/s' identity • performing the ceremony • presenting the conferee/s with their certificate/s • signing the pledge report • recording the acquisition of Australian citizenship in ICSE • Trimming the pledge report. • Emailing a copy of the pledge report (or trim reference) to the OCU for their records.	Post

It is important to note that some overseas posts are more familiar with citizenship ceremonies than others. Some posts may require more assistance with the ICSE steps and details of the ceremony.

8. Quick reference Guide

Process	Carried out by
Client lodges an application by mail or eLodgement.	Client
Commence the application • If the client lodges online, the application will automatically be commenced in ICSE. The OCU will need to monitor the offshore allocation point in WMAN for e-Lodged applications, as WMAN filters are set up to move 'offshore' applications with an address outside of Australia to that allocation point. • If the client mails the application to the OCU, they commence the application in ICSE. • On rare occasions, the client may post the application to the offshore post. Best practice is for the post to commence the application in ICSE and send it internal mail to the OCU.	OCU Post
Assess validity of the application and take payment • OCU to assess validity and take payment for paper lodged applications. Online lodgements will have paid the fee online. • Invalid applications are invalidated in ICSE and returned to the applicant. Payment is not taken for invalid paper applications paying by credit card.	OCU
Assessment and eligibility check with relevant notes recorded in ICSE	OCU

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Process	Carried out by
If the client does not meet the requirements, the application is refused and the client is notified. Trim relevant docs.	OCU
If the client meets all of the requirements, the OCU emails the offshore post for a citizenship test, records notes in ICSE and assigns relevant WMAN label.	Post
Organise for client to sit the citizenship test - Arrange appointment date and time with client - Send the appointment confirmation letter/email to client - Notify the OCU and Citizenship Helpdesk via email of appointment for e-test	Post
Acknowledge email, book appointment for client in CTMS, update access to systems and send back-up paper test	Citizenship Helpdesk
Verify and confirm identity and facilitate the Citizenship Test - verify client's identity at appointment based on the Identity report provided by the OCU - scan and provide any additional documents the client provides at their appointment to the OCU - Client sits the Citizenship e-Test* (Pass/Fail)	Post
Assess and Decide the application - Review the application - Check citizenship test pass result/Character - Record Assessment notes, Assessment checklist & Approve/Refuse - Record Ceremony preferences Send Approval/Refusal Letter. Save refusal letter to TRIM	OCU
Organise Ceremony - Arrange ceremony date with client - Create Ceremony Group in ICSE and add client	Post
Request evidence and pledge list	Post
Citizenship evidence and pledge list are printed in Parramatta office and sent to Post	Citizenship Printing and Despatch room OCU
Citizenship Ceremony - A-Based officer conducts ceremony - A-Based officer records non-attendees and attendees and signs pledge list - Void evidence of non-attendees and return to OCU for destruction - LES TRIMs and emails signed pledge list to OCU - Record Ceremony Attendance (non-attendance)	Post
Records Management - OCU Trims Pledge Verification List - Confirm Ceremony attendance and non-attendance has been recorded - File application	OCU
Destroy evidence of clients who did not attend ceremony	OCU

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9. Children applying from offshore in their own right – subsection 21(5)

Applicants applying under subsection 21(5) of the Act must be aged under 18 years at time of application. They are not required to be aged under 18 at time of decision. Subsection 21(5) also requires applicants to be permanent residents at time of application and at time of decision.

Citizenship Operations Section strongly recommends that you first consult *CPI 4 Australian Citizenship by Conferral – Person under 18* in relation to processing applications under 21(5). Then if you still require further clarification, the below are some points for consideration in the offshore context and act as an addendum to the CPI. Many of the important points raised in the CPI will not be repeated below particularly with reference to significant hardship or disadvantage and best interests of the child.

9.1. Permanent residence

Subsection 21(5) requires applicants to be permanent residents at time of application and at time of decision. *Section 4.2. Permanent residence* status of this SOP provides guidance on additional considerations and the manual checks that officers must conduct in order to be satisfied that an offshore applicant is in fact a permanent resident at a particular time.

Of particular note in the 21(5) cohort is that children may be granted permanent visas offshore. If they lodge an application for Australian citizenship prior to entering Australia and activating their permanent residence visa, they will not meet the permanent resident at time of application requirement and their application will have to be refused.

Another cohort to be mindful of is New Zealand TY444 visa holders. Some may have previously held a permanent visa, but let the travel facility lapse and entered Australia on a temporary TY444 visa prior to lodging their citizenship application.

9.2. Applicants aged 15 years or younger

In addition to the legal requirements set out in 21(5), officers are to give due consideration to the policy guidelines in CPI 4 in deciding whether to approve or refuse the application of applicants who are 15 years of age or younger.

See CPI 4 for the full list of policy guidelines, but the most relevant to the offshore caseload would be in reference to children who are:

- usually resident overseas and living with a responsible parent who is an Australian citizen and who consents to the application. In this situation, it may be relevant for officers to consider whether the grant of the Australian citizenship could disadvantage the child or put them in significant hardship (for example, whether by acquiring the Australian citizenship, the child would lose another citizenship which can affect his rights and access to entitlements, such as claiming an inheritance).
- Refer to CPI - Assessing significant hardship, disadvantage or detriment for the purposes of Australian citizenship (VM-5289).

It should be relatively clear whether the child has an Australian citizen parent and whether the child may suffer significant hardship or disadvantage if they were to become an Australian citizen. Information about countries that do not allow dual citizenship is usually publicly available. Otherwise, officers may seek further guidance on possible significant hardship or disadvantage or cases that fall outside of these guidelines from

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the Citizenship Helpdesk. Please note, these policy guidelines must not be applied inflexibly and are only a guide to officers.

9.3. Applicants aged 16 or 17

Applicants for conferral of Australian citizenship aged 16 or 17 years at time of application are required to make a pledge of commitment in order to become an Australian citizen. As a result, there is a requirement for the officer to consider whether the person understands the commitment they are making. Factors that may be taken into consideration by officers include whether they have spent sufficient time in Australia to become familiar with the Australian way of life and the values to which they will need to commit as Australian citizens.

Under policy, a relevant consideration when determining whether to exercise the discretion at subsection 24(2) of the Act is to take into account the amount of time that applicants aged 16 or 17 years have spent in Australia prior to lodging an application for citizenship by conferral.

A sufficient period is usually two years residence in Australia immediately prior to the application. This would usually mean that the applicant would have attended at least 12 months schooling in Australia and a officer may on that basis be satisfied that the person:

- Understands the nature of the application;
- Possesses a basic knowledge of English; and
- Has an adequate knowledge of Australia and the responsibilities and privileges of Australian citizenship.

The above policy exists for the purpose of guiding the exercise of the discretion in 24(2) of the Act to refuse to approve a person as an Australian citizen even if they meet the eligibility criteria in 21(5). The policy guidelines should not be applied inflexibly, particularly in circumstances where the applicant may suffer significant hardship or disadvantage.

More information is available in CPI – Australian Citizenship by Conferral – Person under 18 (VM-5281).

10. Statement of Expectation

10.1. Directions

The APS Code of Conduct states that 'an APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction' (subsection 13(5) of the *Public Service Act 1999*).

Failure by an APS employee to comply with any direction contained in a PPCF document may be determined to be a breach of the APS Code of Conduct, which could result in sanctions up to and including termination of employment, as set out in subsection 15(1) of the *Public Service Act 1999*.

The Secretary's Professional Standards Direction, issued under subsection 55(1) of the *Australian Border Force Act 2015*, requires all IBP workers who are not APS employees (such as contractors or consultants) to comply with any lawful and reasonable direction given by someone in the Department with authority to issue that direction.

Failure by an IBP worker who is not an APS employee to comply with a direction contained in a PPCF document may be treated as a breach of the Professional Standards Direction, which may result in the termination of their engagement under section 57 of the *Australian Border Force Act 2015*. Non-compliance may also be addressed under the terms of the contract engaging the contractor or consultant.

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10.2. Policy, guidance and recommendations

For all other provisions of PPCF documents, the Secretary and the Commissioner expect all IBP workers to:

- consider whether a proposed departure from any provision set out in a PPCF document is reasonable and justified in the circumstances;
- consider the risks of departing from any provision set out in a PPCF document;
- be responsible and accountable for the consequences of departing from, or not adhering to the content of, all PPCF documents, including where such departure or non-adherence results in a breach of any legal or other obligations which lead to adverse outcomes for the Department;
- be responsible for documenting the reasons/justification for their decision to depart from, or not adhere to, any PPCF document.

10.3. What happens if this Standard Operating Procedure is not followed?

Failure to comply with a direction contained in this document may constitute a breach of the APS Code of Conduct, and may result in a sanction, up to and including termination of employment, being imposed under subsection 15(1) of the *Public Service Act 1999*.

For IBP workers, failure to comply may constitute a breach of a direction under section 55 of the Australian Border Force Act 2015. Non-compliance may also be addressed under the terms of the contract engaging the IBP worker.

11. Accountability and Responsibilities

Position	Accountability and/or responsibility
Director – Citizenship Operations Section	Accountable for: • ensuring that the information contained in this Instruction is kept up to date, is accurate and meets stakeholder requirements; • ensuring the currency, effectiveness and relevance of their policies and procedures; • ensuring key stakeholders and end users are advised when a refreshed document has been issued and provide them with effective guidance on changes and contact details.
Assistant Secretary, Citizenship and Multicultural Affairs Programs	Accountable for: • the quality and delivery of the Citizenship Program; • approving, where appropriate, document owner applications to delegate ownership responsibilities; • approving the document for publication, being made obsolete or transferring to a new owner; • applying, where required, for the delegation of ownership responsibilities;

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Position	Accountability and/or responsibility
	ensuring required, training (certification or accreditation) is delivered across the program.

12. Version Control

Version number	Date of issue	Author(s)	Brief description of change
V1	12/8/2020	Citizenship Operations	This is a new document.

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Attachment A – Definitions

Term	Acronym (if applicable)	Definition
<i>Australian Citizenship Act 2007</i>	The Act	The Act governs, amongst other things, the way a person may acquire or lose Australian citizenship.
<i>Migration Act 1958</i>	Migration Act	The <i>Migration Act 1958</i> governs, amongst other things, the ways in which a person becomes a visa holder.
<i>Citizenship Regulation (2016)</i>	The Regulation	The Regulation governs, amongst other things, the fees that must accompany applications for Australian citizenship.
The Department of Home Affairs	The Department	The Department of Home Affairs administers, among other things, the Citizenship Program.
Case note generator	CNG	The CNG is the Citizenship Program preferred template for standardisation of case notes.
Integrated Client Services Environment	ICSE	Integrated Client Services Environment (System). ICSE is the Departmental legacy system for client management.
Overseas Citizenship Unit	OCU	The area responsible for processing applications for people residing overseas.
Pledge of Commitment	Pledge	The Pledge of Commitment must be made by candidates for citizenship by conferral at a citizenship ceremony as the final legal step to becoming an Australian citizen.
Pledge Verification List	PVL	The official register of attendance at a citizenship ceremony. Signed by the presiding officer after the ceremony and returned to the Department to update official records.
Resident Return visa	RRV	A permanent residence visa that allows the holder to depart and return to Australia as a permanent resident within the travel facility.
Administrative Appeals Tribunal	AAT	Provide independent merits review of a wide range of administrative decisions made by the Australian Government. We can review decisions made under Commonwealth and Norfolk Island laws.
Notice of intention to consider cancellation	NOICC	A notification that is issued to the client that the Department may consider cancellation of approval unless information is provided by the client as to why this should not occur.
Post		Overseas office of the Department.
Work Management	WMAN	Work Management (WMAN) is a portal based system integrated with ICSE and the Cancellations Portal (CANX) as part of the ICUE programme of work. It provides a single

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Term	Acronym (if applicable)	Definition
		system for workflow of all the Department's sponsorship, nomination, visa, citizenship and cancellation workloads globally.

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Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

Legislative Provision			Is this a delegable power?	If delegable, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Provision		
<i>Australian Citizenship Act 2007</i>	s.24	Minister's decision	Yes	Refer to LIN 19/033 (onshore) and DEL17/085 (offshore).

1.2 Controls and Assurance

Related Policy	Citizenship Policy Statement (VM-1545)
Procedures / Supporting Materials	Related instructions: CPI – Residence Requirements and Discretions (VM-5285) CPI - Who is a Permanent Resident under the Citizenship Act (VM-5286) CPI – Australian Citizenship by conferral – person under 18 (VM-5281) CPI – Assessing likelihood to reside or continue to reside in, or maintain a close and continuing association with Australia (VM-5288) CPI – Prohibitions on Approval (VM-5309) CPI - Assessing significant hardship, disadvantage or detriment for the purposes of Australian citizenship (VM-5289) CPI - New Zealand citizens: residence status and eligibility for Australian citizenship (VM-5296) CPI - Cancellation of Approval and Delay Making the Pledge (VM-5287)
Training/Certification or Accreditation	Citizenship training applicable to all officers undertaking duties under the <i>Australian Citizenship Act 2007</i> .
Other required job role requirements	Nil.
Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)	Departmental staff should raise any questions with their supervisor in the first instance. Inquiries should be sent to the Citizenship Helpdesk.
Escalation arrangements	Escalation, if required, should be to Director, Citizenship Operations Section

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Recordkeeping (eg system based facilities to record decisions)	ICSE, TRIM
Control Frameworks (please refer to a specific document outlining QA or QC arrangements)	EQuIP is the department's quality management for the Citizenship Division. Please see: ADD2019/4368355 - Line 1 Assurance Activities Procedural Instruction
Job Vocational Framework Role	Visa and Citizenship Decision Maker Client Liaison and Counters Program Advice and Support

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Attachment C – Consultation

1.1 Internal Consultation

- Overseas Citizenship Unit
- Citizenship Operations
- Citizenship Network

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Processing applications for assessment under the special residence requirements at 22A and 22B of the *Australian Citizenship Act 2007*

Standard Operating Procedure

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Document Contact	Citizenship Operations Section: s. 22(1)(a)(ii) @homeaffairs.gov.au

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1. Purpose

The purpose of this Standard Operating Procedure (SOP), is to provide guidance to citizenship officers on processing applications lodged for Australian citizenship by conferral under subsection 21(2), 21(3) or 21(4) of the *Australian Citizenship Act 2007* (the Act), where applicants have requested that the special residence requirements be applied to them.

This SOP supports Australian Citizenship – Policy Statement (VM-5431) and Citizenship Procedural Instruction (CPI) 8 – Residence Requirements and Discretions (VM-5285).

2. Scope

This SOP sets out the procedures that must be followed by citizenship officers when assessing whether an applicant for Australian citizenship by conferral under sections 21(2) or 21(4) of the Act, meets one of the special residence requirements at sections 22A or 22B of the Act.

All CPIs referred to in this document are available on Legend. Internal departmental documents, such as SOPs and Supporting Materials (SMs) referred to in this document are available on the Policy and Procedure Control Register (PPCR) and the Citizenship Division SharePoint site.

This SOP supports guidance in relation to the special residence requirements in CPI 8 – Residence Requirements and Discretions (VM-5285).

3. Work Management System (WMAN)

For workflow, allocation and management of conferral applications where one of the special residence requirements has been requested, delegates must refer to *WMAN Instruction Table – Stages 3-5 Appointment & Decision stages*, ADD2019/1599731.

4. Application lodgement

On lodgement the event **Residence Exemption/Discretion** is automatically recorded in ICSE for eLodged applications. When a processing officer assesses the application, they can then record the event **Residence Exemption/Discretion** to show that it has been accepted. **Note:** for paper lodged applications, officers will have to manually record both events.

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5. Section 22A of the Act – persons engaged in activities that are of benefit to Australia

5.1. Preliminary checks

Delegates must consider whether, for the applicant to engage in the activity, there is insufficient time for the applicant to meet the general residence requirement. Delegates must only consider applying the special residence requirement, if they are satisfied that there is not sufficient time for the applicant to meet the general residence requirement.

To meet the special residence requirement in section 22A of the Act, applicants must satisfy all of the elements of section 22A. That is, they must meet all criteria at paragraphs 22A(1)(a)(i), (b), (c), (d), (e), (f) and (g).

To assess that the applicant meets subsection 22A(1)(a)(i), check the table at Section 5 *Specified activities and organisations* of the Legislative Instrument *Australian Citizenship (Special residence requirement) Instrument (LIN 21/069) 2021* (the special residence Legislative Instrument) at:

<https://www.legislation.gov.au/Details/F2021L01422> to ensure that the activity they are seeking to engage in and the relevant organisation is listed.

The delegate must also manually check movements in the applicant's ICSE record to confirm they meet:

- Subsection 22A(1)(c) that requires the applicant to have been present in Australia for a total of at least 180 days, during the period of two years immediately prior to them lodging the application;
- Subsection 22A(1)(d) that requires the applicant to have been present in Australia for a total period of 90 days, during the period of 12 months immediately prior to them lodging the application;
- Subsection 22A(1)(e) requires the applicant to have been ordinarily resident in Australia throughout the 2 years immediately prior to them lodging the application (for further guidance, see section 7 Ordinarily resident in Australia);
- Subsection 22A(1)(f) that requires the applicant to have been a permanent resident for the period of 2 years, immediately prior to them lodging the application;
- Subsection 22A(1)(g) where the applicant must not have been present in Australia as an unlawful non-citizen, during the period of 2 years immediately prior to them lodging the application.

5.2. Person seeking employment in a position requiring Negative Vetting 2 or higher in a Department, Executive Agency or Statutory Agency of the Commonwealth

To assess subparagraphs 22A(1)(a)(i), (ii), (iii) and (iv), delegates must check applicants have provided from the relevant Commonwealth Department, Executive agency or Statutory agency:

- evidence the employment that they are seeking requires a Negative 2 or higher security clearance; and
- a statement providing the following information:
 - o why their engagement in that activity would be of benefit to Australia;
 - o why they need to be an Australian to engage in that activity; and
 - o why there is insufficient time for them to meet the general residence requirement.

To assess applications against paragraph 22A(1)(b) of the Act, check applicants have provided a letter from the head of, or a person who holds a senior position in, the relevant Commonwealth entity, stating that the applicant has a reasonable prospect of being engaged in that activity.

OFFICIAL**5.3. Athletes seeking to participate in an Australian team**

To assess subsections 22A(1)(a)(i), (ii), (iii) and (iv), delegates must check that the applicant has provided a letter from the relevant organisation as specified in the special residence Legislative Instrument as follows:

- Australian Olympic Committee;
- Australian Paralympic Committee;
- Commonwealth Games Australia;
- Tennis Australia (for Davis Cup and Federal Cup); or
- Cricket Australia

confirming that the applicant is seeking to participate in an Australian team in one of the following (respectively):

- the Olympic Summer Games, including qualifying events;
- the Olympic Winter Games, including qualifying events;
- the Paralympic Summer Games, including qualifying events;
- the Paralympic Winter Games, including qualifying events;
- the Davis Cup, including qualifying events;
- the Federal Cup, including qualifying events;
- the Commonwealth Games, including qualifying events;
- men's or women's International Cricket Match, being any match including:
 - o Test cricket;
 - o one-day internationals;
 - o Twenty20 International Match;
 - o Match played as part of an International Cricket Council (ICC) Event;
 - o other matches organised or sanctioned by the ICC from time to time to which the ICC deems it appropriate that the ICC Regulations should apply.

The letter must also confirm that they have a reasonable prospect of being engaged in the relevant activity and include the following information:

- the qualifying events they are seeking to be selected for;
- dates of the qualifying events;
- which of the qualifying events they must compete in;
- which of the qualifying events they must be an Australian citizen for; and
- the last date they can become an Australian citizen and still be eligible for selection.

To assess applications against 22A(1)(b) of the Act, check that the applicant has provided a letter from the head of, or a person that holds a senior position in the relevant organisation as outlined above, stating that the applicant has a reasonable prospect of being engaged in the activity as outlined above.

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6. Section 22B of the Act – Persons engaged in particular kinds of work requiring regular travel outside Australia

6.1. Preliminary checks

To meet the special residence requirement in section 22B of the Act, applicants must satisfy all the elements of section 22B. That is, all criteria under subparagraphs 22B(1)(a), (b)(i) and (ii) and paragraphs 22B(1)(c), (d), (e), (f) and (g).

To assess that the applicant meets subsection 22B(1)(a), check Section 6 *Specified kinds of work* of the special residence Legislative Instrument <https://www.legislation.gov.au/Details/F2021L01422> to ensure that the kinds of work they are claiming are listed.

The delegate must also manually check movements in the applicant's ICSE record to confirm they meet:

- Subsection 22B(1)(c) that requires the applicant to have been present in Australia for a total of 480 days, during the period of four years immediately prior to them lodging the application;
- Subsection 22B(1)(d) that requires the applicant to have been present in Australia for a total period of 120 days during the period of 12 months immediately prior to them lodging the application;
- Subsection 22B(1)(e) requires the applicant to have been ordinarily resident in Australia for 4 years immediately before they lodged the application (for further guidance on this see section 7 Ordinarily resident in Australia);
- Subsection 22B(1)(f) that requires the applicant to have been a permanent resident for the period of 12 months immediately prior to them lodging the application;
- Subsection 22A(1)(g) that requires the applicant must not have been present in Australia as an unlawful non-citizen during the period of 4 years immediately prior to them lodging the application.

6.2. Paragraph 22B(1)(a) and subparagraphs 22B(1)(i) and (ii) of the Act

To satisfy the requirements of paragraph 22B(1)(a) and subparagraphs 22B(1)(b)(i) and 22B(1)(b)(i) and (ii) of the Act, applicants must provide evidence that:

- at the time they lodged their application, they were engaged in a type of work as specified in Section 6 of the special residence Legislative Instrument and they are required to regularly travel outside of Australia because of that work;
- they have been engaged in that particular type of work for a total of at least two years of the four years immediately before making the application ;
- for the whole or part of the four year period prior to making their application, they were required to travel outside Australia for that work.

Evidence they may provide includes but is not limited to:

- letter from their employer;
- work contracts;
- payslips; or
- logbooks.

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6.3. Scientist

In addition to section 6.2 of this SOP, applicants who are engaged in work specified in paragraph 6(2)(d) or subparagraph 6(2)(e)(i) or 6(2)(e)(ii) of the special residence Legislative Instrument, must provide evidence from the relevant entity as described, respectively:

- Australian university (paragraph 6(2)(d));
- CSIRO (subparagraph 6(2)(e)(i)); or
- Medical Research Industry that is a member of the Association of Australia Medical Research Institute (subparagraph 6(2)(d)(ii));

the relevant entity considers the applicant to be a scientist who is qualified in one of the following branches of science:

- natural;
- social; or
- formal.

6.4. Research and development of benefit to Australia as a scientist

In addition to the requirements set out in sections 6.2 and 6.3 of this SOP, applicants who are engaged in work as specified in paragraph 6(2)(d) of the special residence Legislative Instrument, will also need to provide evidence that:

- they have been conferred a Doctor of Philosophy (PhD) in the field of speciality of their work with an Australian university;
 - o the PhD is not required to have been conferred by their Australian university nor any Australian university;
 - o they must have held the PhD whilst they were engaged in that work;
 - o in some cases, delegates may need to investigate that the PhD has been legitimately conferred;
- the research and development they are undertaking in relation to the work with an Australian university, is of benefit to Australia. Examples of evidence may include but is not limited to:
 - o published articles/work in peer reviewed journals or books;
 - o whether they are in receipt of funding from an Australian body for this research.

6.5. Scientist employed by a medical research institute

For applicants seeking eligibility under specified kinds of work in paragraph 6(2)(e)(ii) of the special residence Legislative Instrument, delegates must check that the kind of work was done in the course of duty as a scientist employed by a medical research institute that is a member of the Association of Australian Medical Research Institutes (AAMRI). To check this, visit AAMRI's website at <https://www.aamri.org.au/>.

6.6. Medical specialist

For an applicant claiming to be a medical specialist as set out in paragraph 6(2)(f) of the special residence Legislative Instrument, delegates must check the applicant is a fellow of an organisation listed in Schedule 1 of the *Health Insurance Regulations 2018* at http://classic.austlii.edu.au/au/legis/cth/consol_reg/hir2018273/sch1.html and holds a qualification relevant to the organisation.

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In addition to the requirements set out in section 6.2 of this SOP, applicants who are engaged in work specified in paragraph 6(2)(f) of the special residence Legislative Instrument, must provide evidence that they are an internationally renowned medical specialist in their field of speciality. Examples of evidence they may provide includes, but is not limited to evidence that they have:

- written work for internationally renowned journals;
- presented a paper at an international conference in their field of expertise; or
- worked as an international consultant with a university or hospital.

6.7. People who are undertaking work associated with a Distinguished Talent or Global Talent visa

6.7.1. Visa must have been granted under the Distinguished Talent pathway

Applicants who were granted their Distinguished Talent visa (DTV) or Global Talent visa (GTV) under the Global Talent (GT) pathway, are not eligible for the special residence requirement in section 22B of the Act via subsection 6(3) of the special residence Legislative Instrument, as they do not meet the definition of “*relevant talent visa*” in the Instrument. The definition provides that those who were invited by the Department to apply for a DTV or GTV are excluded from the definition ‘*relevant talent visa*’. Only those who were granted their DTV or GTV under the Distinguished Talent (DT) pathway are eligible because they would not have received an invitation by the Department to apply for a visa.

Delegates must check the applicant’s DTV or GTV permission request in ICSE to determine whether the visa was granted under the DT or GT pathway. If the visa permission request in ICSE contains an “Identified Talent” event, this means that the applicant was invited by the Department to apply for the visa. Therefore, their visa was granted under the GT pathway. The TRIM BCC file linked to the visa application will also contain relevant documents such as the Expression of Interest and invitation sent by the Department to the applicant to apply for the visa.

6.7.2. Kind of work has to be the same kind of work for which the visa was granted

Delegates must check that the kind of work done by the applicant is the same kind of work for which their GTV or DTV was granted. This can be identified by accessing the applicant’s relevant GTV or DTV permission request in ICSE and reading the assessment notes for the reason of grant.

Step 1. Access the applicant’s record in ICSE

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Select the relevant DTV or GTV permission request

S. 47E(d)

Step 2. Select the **Request menu** and from the top of the permission request screen. Then select **Notes View**

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This will generate an **ICSE Notes Overview** in Microsoft word. Below is an example below of what to look for

Processing applications for assessment
under the special residence requirements
at 22A and 22B of the Australian

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S. 47E(d)

7. Ordinarily resident in Australia

Delegates must assess whether the applicant was ordinarily resident in Australia. Paragraph 22A(1)(e) of the Act requires that the applicant was ordinarily resident in Australia throughout the 2 year period immediately prior to them lodging their application. Whereas paragraph 22B(1)(e) of the Act requires the applicant to have been ordinarily resident in Australia throughout the 4 year period immediately prior to them lodging their application. If the applicant was not ordinarily resident in Australia during the relevant period, they are not eligible for further consideration, subject to the exercise of ministerial discretion under subsection 22A(1A) or 22B(1A). Refer to CPI 8 - Residence Requirements and Discretions (VM-5285).

Examples of evidence applicants can provide to show they were ordinarily resident in Australia during the relevant period as outlined above may include, but are not limited to:

- title deeds or leases for property in Australia;
- the presence of close family members in Australia;
- Australian tax return notices;
- bank accounts held in Australia; and
- club memberships.

8. Approving applications in ICSE

Even though the applicant is seeking eligibility under one of the special residence requirements, in order to complete the Assessment Checklist in ICSE to approve the application, the delegate must run a Citizenship Interval Calculator check to assess whether the applicant meets the general residence requirement. The Assessment Checklist is an ICSE pre-requisite event in order to approve an application. For information on calculating the general residence requirement, refer to SOP - Calculating the residence requirement (VM-6653).

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The results from the Citizenship Interval Calculator will automatically populate against the relevant residence requirement items in the Assessment Checklist. Where an applicant does not meet a general residence requirement, this is indicated as 'Not Met'. If 'Not Met' is present in the Assessment Checklist the 'Completed' status cannot be recorded because the **Record Event** icon is disabled.

For applicants that meet one of the special residence requirements, follow the below procedure in order to record it correctly in the Assessment Checklist.

Step 1. Click on the **Open Assessment Checklist** button in the relevant permission request, then select the **Display items** button.

S. 47E(d)

Step 2. Select the relevant special residence requirement from the drop down list:

- **22A Spec Res-Activities benefit A/a, or**
- **22B Spec Res-Work require travel.**

Then select the **Change Status** button and record relevant notes why the applicant meets the special residence requirement at 22A or 22B of the Act (whichever is relevant), as shown below.

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Step 3. Once the Assessment Checklist item status has been updated with the appropriate special residence requirement and all other relevant Item Descriptions have been updated, the **Record Event** button is available for selection. Select the **Record Event** button and the **Assessment Checklist Completed** event is then recorded in the citizenship permission request window.

S. 47E(d)

By following these steps, a complete decision is recorded in ICSE and reports will show that an applicant has been approved based on a discretion, instead of showing that they did not meet General residence requirements. Officers should also include a note detailing the evidence that was considered in deciding to exercise the special residence requirement.

Important: Please follow the procedure above and DO NOT record a manual Assessment Checklist Completed event.

9. Refusing an application in ICSE

As is required for all citizenship application refusals, the delegate must complete a notification letter and decision record that explains the reasons for refusal to the applicant. The decision record must include reasoning why the applicant does not meet the special residence requirement and refer to the evidence the applicant provided.

When refusing conferral applications, delegates must run a Citizenship Interval Calculator check in ICSE prior to recording the refusal event. This is required no matter which residence requirement the applicant is seeking eligibility under. For information on calculating the re-apply date and whether the applicant may be eligible for a nil fee in accordance with Schedule 3 of the *Australian Citizenship Regulation 2016*, refer to SOP - Calculating the residence requirement (VM-6653).

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To record the refusal decision in ICSE, select the **Event** and **Qualifier** as outlined in red below. In the refusal event, delegates must record an ICSE note stating that while the applicant was seeking eligibility under the special residence requirement at section 22A or 22B of the Act (whichever is relevant), they do not meet the legislative requirements and refer to the decision record for further information.

s. 47E(d)

10. Ministerial discretion - alternative residence requirements at subsections 22A(1A) and 22B(1A) of the Act

The *ministerial discretions - alternative residence requirements* at subsections 22A(1A) and 22B(1A) of the Act, are non-delegable and non-compellable powers that can only be exercised by the Minister. Referral of applications that seek exercise of an alternative residence discretion to the Minister is managed by Citizenship Operations Section.

Applications that may require referral to the Citizenship Helpdesk are those where:

- An applicant includes with their application, or at some point post-lodgement or pre-decision, that they wish to have their application considered under the alternative residence requirements.
- No specific statement requesting consideration under the alternative residence requirements is included with the application, however, the information provided with the application indicates the person wants to have the alternative residence requirements discretion applied. For example:
 - For applications seeking consideration under section 22A of the Act, there should be an accompanying letter from a relevant organisation, that sets out the person is supported for the purpose of section 22A of the Act and they are seeking exercise of the Minister's personal discretion.
 - Where the person is seeking assessment under section 22B of the Act and has provided evidence that the person's engagement in the kind of work concerned is of benefit to Australia, as the 'of benefit to Australia' requirement is in paragraph 22B(1A)(b), it could be inferred the person is seeking to address that requirement.

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Once it is determined that the person is seeking to have an alternative residence discretion applied, referral to the Citizenship Helpdesk should only be made once it has been assessed that the person:

- does not satisfy the general residence requirement or the defence service requirement;
- would not satisfy either of the special residence requirements without the application of an alternative residence discretion;
- is likely to satisfy the alternative residence requirements other than paragraphs 22A(1A)(e) and (f), 22B(1A)(g) and (h). The alternative residence undertaking referred to in these paragraphs must only be requested from the applicant on advice from the Citizenship Helpdesk. Unless and until an undertaking is requested, no indication should be given to the applicant that their application will be referred to the Minister.

11. Accountabilities and Responsibilities

Role	Description
Director - Citizenship Operations Section	Accountable for ensuring that the information contained in this instruction is kept up to date, is accurate and meets stakeholders requirements.
Assistant Secretary – Citizenship Program Delivery	Accountable for the quality and delivery of the Citizenship Program.

12. Version Control

Version number	Date of issue	Author(s)	Brief description of change
Version 1		Citizenship Operations Section	This is a new document.

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Attachment A – Definitions

Term	Acronym (if applicable)	Definition
<i>Australian Citizenship Act 2007</i>	The Act	The Act for the process of becoming an Australian citizen, the circumstances in which citizenship may cease and some other matters related to citizenship.
Legislative Instrument LIN 21/069 <i>Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021</i>	special residence Legislative Instrument	Made under section 22C of the Act, in relation to the special residence requirement in section 22A and 22B of the Act in relation to: • definitions; and • specifies activities and organisations in relation to s22A of the Act; and • specifies kinds of work in relation to s22B of the Act.
Work Management System	WMAN	Work Management (WMAN) is a portal based system integrated with ICSE and the Cancellations Portal (CANX) as part of the ICUE programme of work. It provides a single system for workflow of all the Department's sponsorship, nomination, visa, citizenship and cancellation workloads globally.
Integrated Client Services Environment	ICSE	Integrated Client Services Environment (system). ICSE is the Departmental legacy system for client management.
Distinguished Talent visa	DTV	A permanent visa for people who have an internationally recognised record of exceptional and outstanding achievement in an eligible field.
Global Talent visa	GTV	Interested people may express interest in this pathway and then be invited to apply by the Department.
Global Talent visa program	GT	Offers a streamlined and fast tracked permanent visa pathway to certain clients.

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Attachment B – Assurance and Control Matrix

1.1 Powers and Obligations

Please Note: Staff exercising any powers, delegations or authorisations outlined in this PI (listed here) must check the latest delegation advice on the Intranet or the relevant instrument in LEGEND to ensure they currently hold the applicable power, delegation or authorisation.

Legislative Provision			Is this power delegated?	If delegated, list the relevant instruments of delegation
Legislation	Reference (e.g. section)	Section heading/provision description		
Australian Citizenship Act 2007	Section 21	<i>Application and eligibility for citizenship</i>	Yes (except the Ministerial discretion-alternative residence requirement at subsection 22A(1A) and 22B(1A) of the Act	Refer to (ADMIN 21/051 Home Affairs Legislation (Minister – Decision-making powers for Immigration and Settlement Services Groups and Social Cohesion and Citizenship Group) Delegation and Authorisation 2021
Australian Citizenship Act 2007	Section 22A	<i>Special residence requirement – persons engaged in activities that are benefit to Australia</i>		Refer to (ADMIN 21/051 Home Affairs Legislation (Minister – Decision-making powers for Immigration and Settlement Services Groups and Social Cohesion and Citizenship Group) Delegation and Authorisation 2021
Australian Citizenship Act 2007	Section 22B	<i>Special residence requirement – persons engaged in particular kinds of work requiring regular travel outside Australia</i>		Refer to (ADMIN 21/051 Home Affairs Legislation (Minister – Decision-making powers for Immigration and Settlement Services Groups and Social Cohesion and Citizenship Group) Delegation and Authorisation 2021

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1.2 Controls and Assurance

Related Policy	Australian Citizenship - Policy Statement (VM-5431)
Procedures / Supporting Materials	CPI 8 – Residence Requirements and Discretions (VM-5285) SOP – Calculating the residence requirement (VM-6653) WMAN <i>Instruction Table – Stages 3-5 Appointment & Decision stages</i> , ADD2019/1599731.
Training/Certification or Accreditation	Citizenship Training Program applicable to all officers undertaking duties under the <i>Australian Citizenship Act 2007</i> .
Other required job role requirements	Nil.
Other support mechanisms (e.g. who can provide further assistance in relation to any aspects of this instruction)	Departmental staff should raise any questions with their supervisor in the first instance. Enquiries should be sent to the Citizenship Helpdesk (s. 22(1)(a)(ii) _____@homeaffairs.gov.au).
Escalation arrangements	Escalation, if required, should be to Director, Citizenship Operations Section. s. 22(1)(a)(ii) _____@homeaffairs.gov.au .
Recordkeeping (e.g. system based facilities to record decisions)	TRIM and ICSE.
Program or Framework (i.e. overarching Policy Framework or Business Program)	Citizenship Program Delivery.
Job Vocational Framework Role	Visa and Citizenship Decision Maker

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Attachment C – Consultation

1.1 Internal Consultation

For details of consultation undertaken (see ADF2021/243054).

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