

From: [Citizenship Identity & Character Helpdesk](#)
To: [Citizenship Identity & Character Helpdesk](#); [grp-Section-CITIZENSHIP PROGRAM DELIVERY QLD](#); [grp-Section-CITIZENSHIP PROGRAM DELIVERY NSW](#); [grp-Section-CITZ PROGRAM DELIVERY VIC TAS](#); [grp-Section-CITZ PROGRAM DELIVERY WA CENTRAL](#)
Cc: [grp-Section-CITIZENSHIP OPERATIONS](#); [grp-Section-CITIZENSHIP PROGRAM MANAGEMENT](#); [grp-Section-CITIZENSHIP CEREMONIES](#); [grp-Section-CITIZENSHIP INTEGRITY & ASSURANCE](#); [grp-Section-CITIZENSHIP DELIVERY SUPPORT](#); [s. 22\(1\)\(a\)\(ii\)](#)
Subject: UPDATE - Red Notice 2020/14 - Determinations to delay an applicant from taking the pledge under s26(3) [SEC=OFFICIAL]
Date: Friday, 21 August 2020 11:34:22 AM

OFFICIAL

Dear colleagues,

Further to Red Notice 2020/14 in relation to Determination to delay an applicant from taking the pledge under s26(3), please note that the two documents listed below have been uploaded to the Citizenship & TIS SharePoint at the following link:

s. 47E(d)

1. **Notice of intention to consider making a determination to delay the making of the pledge of commitment** (Deferral NJ letter) – also available at TRIM ADD2020/4657712
2. **Deferral Notification and Decision Record** – also available at TRIM ADD2020/4657862

As already indicated in the Red Notice, if you are considering delaying an approved applicant under s26(3), please contact CICH before taking any action.

Further information in relation to the above can be obtained via CICH. Email: [Citizenship Identity & Character Helpdesk](#)

This update will be recorded in the Citizenship Red Notice Register (TRIM ADD2017/3617325).

OFFICIAL

From: Citizenship Identity & Character Helpdesk [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>
Sent: Friday, 31 July 2020 1:53 PM
To: [grp-Section-CITIZENSHIP PROGRAM DELIVERY QLD](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [grp-Section-CITIZENSHIP PROGRAM DELIVERY NSW](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [grp-Section-CITZ PROGRAM DELIVERY VIC TAS](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [grp-Section-CITZ PROGRAM DELIVERY WA CENTRAL](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>
Cc: [grp-Section-CITIZENSHIP OPERATIONS](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [grp-Section-CITIZENSHIP PROGRAM MANAGEMENT](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [grp-Section-CITIZENSHIP CEREMONIES](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [grp-Section-CITIZENSHIP INTEGRITY & ASSURANCE](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [grp-Section-CITIZENSHIP DELIVERY SUPPORT](#) [s. 22\(1\)\(a\)\(ii\)](#) @homeaffairs.gov.au>; [s. 22\(1\)\(a\)\(ii\)](#) [s. 22\(1\)\(a\)\(ii\)](#) @HOMEAFFAIRS.GOV.AU>
Subject: Red Notice 2020/14 - Determinations to delay an applicant from taking the pledge under s26(3) [SEC=OFFICIAL]
Importance: High

OFFICIAL**FOR ATTENTION OF:**

Onshore Citizenship Processing Officers

CC:

Citizenship Operations
 Citizenship Program Management
 Citizenship Ceremonies
 Citizenship Integrity and Assurance
 Citizenship Delivery Support

SUBJECT:

Citizenship Red Notice 2020/14 – Determinations to delay an applicant from taking the pledge under s26(3)

ACTION REQUIRED:

For Immediate Action

AUTHORISED BY:

[s. 22\(1\)\(a\)\(ii\)](#)

A/g Director, Citizenship Operations

Dear colleagues

Background

Subsection 26(3) of the *Australian Citizenship Act 2007* (the Act) provides that the Minister may make a written determination that an approved citizenship applicant cannot make the pledge of commitment for a specified period if he is satisfied that a person's visa may be cancelled, or that the person has been, or may be, charged with an offence under Australian law. The purpose of this provision is to prevent an approved applicant from reciting the pledge and becoming an Australian citizen during the determination period, which must not exceed 12 months. Should the person attend a ceremony and speak the pledge while a determination is in force, they are prevented under the Act from acquiring Australian citizenship. Current process is for applicants to be issued a written determination prohibiting them from reciting the pledge for a set period of time. The current determination notification letter also briefly sets out the adverse information before the decision maker and advises the applicant will be contacted in the future.

Issue

On 16 July 2020 the Federal Court quashed a determination made under s26(3) of the Act preventing an approved citizenship applicant from taking the pledge of commitment to become an Australian citizen. The Court found that procedural fairness should have been afforded to the applicant before the s26(3) determination was made to delay him from making the pledge.

Action for citizenship processing officers

Prior to making a decision to delay an approved applicant under s26(3), and issuing a determination letter advising of that decision, applicants need to be provided with a **Notice of intention to consider making a determination to delay the making of the pledge of commitment** giving the applicant a set timeframe to consider the adverse information and respond with information they believe demonstrates why they should not be delayed from taking the pledge. This process provides the applicant with the procedural fairness required by the Federal Court. Once the timeframe for response has passed, the decision maker should consider the adverse information in the context of any additional information provided by the applicant, and make a decision about whether to issue a determination under s26(3).

Applicants currently subject to determinations

Previously issued determinations under s26(3) are no longer in effect. The Citizenship Identity and Character Helpdesk (CICH) will contact officers directly about applicants that have been issued with a determination in the last 12 months. These applicants will need to be issued with a **Notice of intention to consider making a determination to delay the making of the pledge of commitment** immediately after CICH has provided guidance.

Further information

If you are considering delaying an approved applicant under s26(3), please contact the CICH before taking any action. *Citizenship Procedural Instruction 10 – Cancellation of Approval and Delay Making the Pledge* will be updated to reflect the new procedure outlined above. The **Notice of intention to consider making a determination to delay the making of the pledge of commitment** will be uploaded to the Citizenship & TIS Sharepoint site as soon as possible. In the interim it is available from the CICH for urgent cases.

Further information in relation to the above can be obtained via the CICH. Email: [Citizenship Identity & Character Helpdesk](#)

This notice will be recorded in the Citizenship Red Notice Register (TRIM ADD2017/3617325)

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