**Report on discrimination against women in nationality-related matters, including the impact on children - UNHCR Resolution 20/4**

***Question 1***

***The laws and procedures relating to acquisition, change and retention of nationality upon marriage between a national and a non-national.  Outline in particular if there are differences in treatment with regard to nationality between men and women who marry non-nationals.  Are there any circumstances in which women automatically acquire or lose nationality upon marriage or dissolution of marriage?***

**Gender under the 2007 Act**

The *Australian Citizenship Act 2007* (the 2007 Act) sets out the legal requirements for Australian citizenship.  The Act does not discriminate on the basis of gender – all persons have equal access to Australian citizenship and must equally meet the requirements in order to be eligible for Australian citizenship. Historically there has been different treatment to people based on gender under the *Australian Citizenship Act 1948*, however relevant legislation has been enacted/amended so as to not discriminate on the basis of gender.

**Marriage and de facto relationships**

Marriage to an Australian citizen by a non-citizen may provide the non-citizen pathways to permanent residency through family migration (for example, a spouse visa); however marriage to an Australian citizen does not have any direct implications on a person’s eligibility for Australian citizenship. There are no circumstances in which women automatically acquire or lose Australian citizenship upon marriage or dissolution of marriage.

A non-national who marries an Australian citizen does not automatically acquire Australian citizenship, permanent residency or automatic right of entry to Australia.  Conversely, an Australian citizen who marries a non-national will not lose their Australian citizenship or automatic right of entry to Australia because of that marriage.  For clarity, one prerequisite, among others, for being granted Australian citizenship by conferral is that the non-national is a permanent resident.  
  
A non-national who is in a partner relationship (as a spouse or de facto partner) with an Australian sponsor (Australian citizen, Australian permanent resident or eligible New Zealand citizen), may apply for permanent residence via a Partner visa on the basis of their partner relationship.  *The Migration Act 1958* (the Act) and the *Migration Regulations 1994* (the Regulations) outline the definitions for both 'spouse' and 'de facto partner' as well as any additional criteria (i.e. health and character) that must be satisfied by anyone wishing to migrate to Australia under the Partner visa program.  Section 5CB of the Act and both Regulations 1.09A and 2.03A provide the requirements for 'de facto partner', while section 5F of the Act and Regulation 1.15A outline the requirements for the definition of 'spouse'.  
  
Whilst the intended outcome is the same for de facto partners of Australian sponsors as it is for spouses, this response will focus primarily on spouses, consistent with the content of the questionnaire.  Furthermore, there are no differences in outcome between an Australian sponsor being an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.    
  
The Partner visa process is conducted via two stages, two years apart.  A combined application is made for both a temporary Partner visa and a permanent Partner visa, with the permanent visa application usually being considered two years after the combined application is made. This application is sponsored by the applicant's Australian partner.  Whilst the partner relationship is the basis and focus of a Partner visa application, all other legislative criteria, including the relevant health and character requirements must also be met before the visa (temporary or permanent) can be granted.  Where all criteria have been met, the visa applicant is granted the temporary Partner visa, which allows them to remain in Australia until their permanent visa is decided.  
  
Assessment of the permanent visa application usually occurs two years after the application was lodged. As well as the aforementioned health and character requirements, evidence that the partner relationship is still ongoing is required for the grant of the permanent Partner visa.  In limited circumstances, however, a Partner visa applicant may still be eligible for consideration and grant of a permanent Partner visa even if they are no longer in a relationship with their sponsoring partner.  These circumstances include where:

* the sponsoring partner has died, but had the sponsor not died, the partner relationship would have continued;
* the partner relationship has broken down and the applicant (or a member of the family unit of the applicant, or of the sponsoring partner, or of both of them) has suffered family violence committed by the sponsoring partner; or
* the partner relationship has broken down and the applicant and sponsoring partner have a child for whom each of them have some form of parental responsibility.  Parental responsibility may include formal or informal custody or access arrangements, a residence or contact order made under the Family Law Act 1975 (FLA), or a child maintenance obligation (FLA), or any other formal maintenance obligation (FLA), in relation to that child.

In addition, where one of the following circumstances exist, the visa applicant may be granted the permanent visa immediately following the grant of the temporary Partner visa:

* where the applicant and their sponsor have been in the relationship for at least three years or two years if they have a child; or
* where the sponsor holds or held a humanitarian visa and, before they were granted that visa, the partner relationship was already in existence and it had been declared to the Department of Immigration and Citizenship.

***Question 2***

***The laws and procedures relating to conferral of nationality on children by men and women.  Specifically, do children of females nationals acquire the nationality of their mothers in equal circumstances with men?  If there are limitations on conferral of nationality by women on their children, please describe them with reference to relevant legal provisions and procedures.***  
**Children born in Australia**

A child born in Australia to an Australian citizen parent (mother or father) will automatically acquire Australian citizenship at birth.  A child born outside of Australia to an Australian citizen parent (mother or father) will not automatically acquire Australian citizenship and will be required to apply for citizenship by descent if Australian citizenship is desired.    
  
A child born in Australia after 20 August 1986 to parents holding permanent residence visas automatically acquires Australian citizenship at birth.  
  
A child born in Australia on or before 19 August 1986 automatically became an Australian citizen at birth unless either parent (for births on/after 22 November 1984) or his/her father (for births between 26 January 1949 and 21 November 1984) was entitled to diplomatic privileges or was a consular officer.  
  
A child born in Australia to parents holding temporary visas will automatically hold the same type of visa as each of his/her parents. In certain circumstances, a child born in Australia who is not a citizen at birth may become an Australian citizen automatically on his/her 10th birthday.

**Australian citizenship eligibility requirements**

The *Australian Citizenship Act 2007* (the 2007 Act) sets out the legal requirements for Australian citizenship. All persons, regardless of their gender, have equal access to Australian citizenship and must equally meet the requirements in order to be eligible for Australian citizenship.

Many people acquire Australian citizenship automatically, for example those born in Australia to an Australian citizen or permanent resident parent. There is no requirement as to the gender of the parent. Eligible non-citizens need to apply for Australian citizenship.

Citizenship by conferral is the most common method for migrants to acquire Australian citizenship by application. The other modes of acquisition are:

* citizenship by descent (for those born overseas to an Australian citizen parent);
* citizenship by adoption (for those adopted by an Australian citizen parent); and
* citizenship by resumption (for those who previously lost or gave up their Australian citizenship).

Most adult migrants who apply for Australian citizenship by conferral have to satisfy the general eligibility criteria and must:

* be a permanent resident (that is, be the holder of a permanent visa);
* satisfy the general residence requirement;
* pass an Australian citizenship test;
* be likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved; and
* be of good character.

**Citizenship by birth under the 2007 Act**

People born in Australia before 26 January 1949 were British subjects. People born in Australia on or after 26 January 1949 and prior to 20 August 1986 generally became Australian citizens at birth, unless a parent was a foreign diplomat.

20 August 1986 to the present

People born in Australia are Australian citizens if at least one parent is an Australian citizen or a permanent resident at the time of the person’s birth in Australia. There is no requirement as to the gender of the parent.

If neither parent is an Australian citizen nor a permanent resident at the time of a person’s birth in Australia, and the person is ordinarily resident in Australia until their tenth birthday, the person automatically acquires Australian citizenship on their tenth birthday. A child born in Australia of a foreign diplomat posted here for a limited period would not be taken to be ordinarily resident in Australia for the purposes of this provision.

Dual citizenship

Australian citizenship law and policy does not require people who wish to acquire Australian citizenship to give up a previously acquired foreign citizenship. Since 4 April 2002, Australian citizens who wish to acquire a foreign citizenship subsequent to their Australian citizenship are free to do so without changing their Australian citizenship status.

Non-citizens who wish to acquire Australian citizenship are able to do so according to the *Australian Citizenship Act 2007*.