

Senate Standing Committee on Legal and Constitutional Affairs

The Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009 ('the Bill')

QUESTION TAKEN ON NOTICE IN RELATION TO CHILDREN UNDER 18

Further information was sought by the Committee in relation to the proposed amendments to subsection 21(5) of the *Australian Citizenship Act 2007*. In particular the Committee asked how many children under the age of 18 acquired citizenship when they were not a permanent visa holder - that is how many children would have been affected if the proposed amendments had been in place at the time they applied?

The Committee sought any further statistical background available to support the proposed amendments.

The Committee also sought a history of the legislative and policy changes relating to the acquisition of citizenship by children. A table setting out the history of legislative and policy changes related to children under the *Australian Citizenship Act 1948* and the *Australian Citizenship Act 2007* is at [Attachment A](#).

Answer:

Between 1 October 2007 and 30 June 2009:

- **415** children who applied in their own right (ie. not as a dependant on a parent's application) acquired Australian citizenship.
 - Of these **14** were not permanent residents at the time of application
 - **4** were approved after the AAT set aside the original decision to refuse.
 - In the **10** remaining cases the particular circumstances of the cases were considered and each case decided on its merits.

Had the proposed amendment to subsection 21(5) been in place at the time the 14 children applied for citizenship, they would have first needed to have been granted a permanent visa under provisions in Migration Act. Where appropriate, this would have included consideration of their circumstances under Ministerial intervention powers in the Migration Act. Once they had been granted a permanent visa they would have been eligible for citizenship.

An analysis of the Sydney City caseload

Since 19 September 2008 the Sydney City office has been actively monitoring applications received under subsection 21(5) where the child is not a permanent resident.

Between 19 September 2008 and 17 August 2009 **105** children under the age of 18 have lodged applications at the Sydney City office where they have not been the holder of a permanent resident visa.

An analysis of this caseload showed that of these children:

- **50 (48%) were unlawful non-citizens in Australia** at the time of application;
- a further **36 (34%) had previously been in Australia unlawfully** at some time prior to lodging their application; and
- **18 (17%) of the applicants held a temporary visa** and had **not previously been residing in Australia unlawfully** at any time prior to making an application.

It is also worth noting that the Department has recently lost a number of cases at the Administrative Appeals Tribunal (AAT) involving cases where the child has not been a permanent resident visa holder. The Department has also chosen to withdraw from a number of cases as there was no reasonable expectation of success given the similarity of circumstances of the cases. This is in line with the Department's obligation to be a "model litigant" under the Legal Services Directions 2005.

The Department's losses at the AAT highlighted that legislative change was required in order to best realise the policy intention that people who wish to become Australian citizens should first be permanent residents.

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Hearing date 27 August 2009 - Melbourne

QUESTIONS TAKEN ON NOTICE – General information regarding citizenship by conferral

The Committee sought confirmation of the number of people who had been conferred Australian citizenship and the guidelines used by departmental staff for assessing such applications.

Answer:

During 2007-08 **121 221** people were conferred Australian citizenship.

During 2008-09 **86 981** people were conferred Australian citizenship.

Departmental staff use the Australian Citizenship Instructions (ACIs) as their guide for assessing citizenship applications. These guidelines are publicly available at www.citizenship.gov.au. Chapter 5 of the ACIs relates to s21 citizenship by conferral applications.

QUESTIONS TAKEN ON NOTICE – information relating to the proposed amendment to s21(3)

The Committee sought further information relating to the proposed amendment to s21(3). In particular, the Committee sought the number of people who have been conferred citizenship since the commencement of the citizenship test - ie the period between 1 October 2007 and 30 June 2009. The Committee also asked for the number of clients who had acquired citizenship under the current provisions in s21(3) relating to permanent incapacity and the number of clients expected to obtain citizenship under the newly proposed s21(3)(d).

Answer:

In the period 1 October 2007 to 30 June 2009 **168 393** people were **conferred** Australian citizenship.

During this period **366** people **applied** for citizenship under the permanent physical or mental incapacity provisions provided in subsection 21(3) of the Australian Citizenship Act 2007.

Of these, **189** people who applied under the permanent incapacity provision **acquired citizenship** when they were found to have a permanent incapacity which meant they were not capable of understanding the nature of the application. This number represents **0.1%** of the total number of people who acquired citizenship by conferral during this period.

In each case clients were required to provide evidence of their incapacity in the form of a letter from a specialist in the field related to their incapacity. Each assessment is made on the basis of the information provided by the specialist. Citizenship officers do not make assessments of a person's incapacity.

It is anticipated that the number of people who will be able to acquire citizenship under the proposed s21(3)(d) will remain a very small percentage of the overall caseload.

While the provision is not confined to those who came to Australia under the refugee and humanitarian program, it is expected that those who need to use this provision will predominantly be from this cohort.

Between 1 October 2007 and 30 June 2009, 12 727 refugee and humanitarian entrants have sat and passed the citizenship test. More than half passed on their first attempt. As such, there is no reason to expect that there will be any decline in the number and nature of people seeking to obtain citizenship under the general eligibility criteria – which includes the requirement to pass a test.

In addition, as has been announced by the Government, an assessable course is currently under development to provide an alternative pathway for undertaking a test for certain people who may need a more supportive learning environment.

The independent Australian Citizenship Test Review Committee highlighted though, that even with this alternative pathway, there will remain a small group of highly vulnerable people who require a different safety net if the Government does not wish to effectively bar them from citizenship. These people are unable to meet the general requirements of citizenship, including passing a test, due to their mental incapacity at that time.

In response to the Review Committee's report, the Government agreed the following in relation to amending section 21(3)(d). This can also be found on page 6 of the Government's published response of November 2008.

“The Government did however accept the Review Committee's recommendation that Section 21(3)(d) of the Australian Citizenship Act 2007 be amended in the spirit of the Act to include an inability to demonstrate a basic knowledge of English and an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship due to mental incapacity, resulting in those individuals not being required to sit a test. The Government agrees that there is a small group of individuals who suffer from psychological disorders as a direct result of having experienced torture and trauma. To assist these most vulnerable clients – many of whom need citizenship the most – the Government will amend Section 21(3)(d) of the Australian Citizenship Act 2007 as recommended by the Review Committee.”

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QUESTION TAKEN ON NOTICE IN RELATION TO PERSONS ARRESTED IN RELATION TO COUNTER TERRORISM INCIDENT

The Committee sought general information regarding the citizenship status of those people arrested in a recent incident in Melbourne. This incident was taken to mean the counter-terrorism raids in Melbourne on 4 August 2009.

Answer

Following the counter-terror raids in Melbourne on 4 August 2009, five people were arrested and charged with terrorism-related offences.

They comprised four Australian citizens and one non-citizen.

Of the four Australian citizens, three were born overseas and one was born in Australia.

The three citizens born overseas acquired their citizenship by conferral pre-2005 as minors or young adults.