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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Secretary

Inquiry into the Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009

The Refugee and Immigration Legal Service (RAILS) is Queensland's only specialist refugee and migrant community legal centre. RAILS provides free legal advice, casework, law reform and extensive community legal education to refugee and migrant communities and workers. The Service has operated for nearly 30 years, is highly regarded and has strong volunteer support.

Citizenship is very important, particularly for refugees and humanitarian visa holders as it provides a greater sense of inclusion and acceptance into their new home. Refugee and humanitarian entrants have a high uptake of citizenship. Our experience is that they are thrilled and immensely proud when they gain citizenship.

RAILS took part in the Citizenship Support Grants pilot program which has now been discontinued by the Department of Immigration and Citizenship. We support the revamp of the citizenship test and the introduction of a course for those who have difficulties with the test. This has largely been refugee and humanitarian entrants.

In relation to the Bill we make the following comments.

New Section 21 (2A), (3B) and 26 (1) (ba)

The proposed amendments indicate that a person satisfies the new subsections if:

... the person has a physical or mental incapacity, at the time the person made the application, that is as a result of the person having suffered torture or trauma outside Australia and that means the person:

(a) is not capable of understanding the nature of the application at the time the person made the application; or

- (b) is not capable of demonstrating a basic knowledge of the English language at that time; or
- (c) is not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time.

In August 2008 the Australian Citizenship Test Review Committee (at page 35) recommended:

that section 21(3)(d) could be amended in the spirit of the existing Act to read:

“has a physical or mental incapacity at that time means the person is not capable due to the physical or mental incapacity of:

- understanding the nature of the application at that time; or
- demonstrating a basic knowledge of the English language at that time; or
- demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time.”

The proposed amendment is narrower than this and RAILS would support the recommendation of the Committee.

RAILS also agrees with a submission from Australian Lawyers for Human Rights (ALHR) that there may be concerns if there is a large demand for reports from organisations that specialise in providing expert services to torture and trauma survivors. Within their stretched resources, valuable time and resources may be taken up in the provision of expert reports for people seeking exemptions from the test. This may be alleviated if allow a broad range of health professionals can provide such assessments. This is an implementation and resource issue.

Proposed new subsection 23A(5A)

The proposed amendments will allow most clients to make an appointment to lodge an application and, on the same day, sit the test and have their application approved if all the legal requirements are met. The proposed amendments will allow a time to be specified in a determination signed by the Minister within which a person may commence a test and successfully complete a test after making an application. This is to make sure that an application can be refused if a person does not successfully complete a citizenship test within a reasonable period of time.

RAILS clients who sat the citizenship test were reassured knowing that if they could not pass the test the first time then there were opportunities to sit it again without the extra cost and work involved in applying for citizenship again. Any ‘reasonable period’ should allow sufficient time for a person to study up and retry the test on a few occasions. This is particularly so because there is often long waits before an applicant can be booked into a test so the setting of the reasonable time should be sufficient to cater for these delays.

Proposed new s 21 (5)

We agree with the submission from Victoria Legal Aid that the broad discretion allowing the Minister to grant citizenship to persons under 18 recognises their particular vulnerability and there can be compelling reasons to grant citizenship to children.

We support the proposal of ALHR that any amendment regarding whether an applicant under the age of 18 years of age be eligible for conferral of citizenship should incorporate the best interest principle from Article 3 of the Convention of the Rights of the Child.

Sincerely

Robert Lachowicz
Solicitor
Refugee and Immigration Legal Service