QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 25 August 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

LACA/001 - Visiting Dying relatives - *Programme 2.1: Citizenship*

Asked:

CHAIR: There was some evidence given yesterday—and it wasn't particularly challenged; it was accepted on the basis on which it was given—of cases where people have for reasons been permanent residents of Australia for up to 10 years and were just about to apply for citizenship but couldn't. That wouldn't fit into an exceptional circumstance? If the minister—

Senator PRATT: Visiting dying relatives, for example, where you need to spend three months overseas to see your parents.

CHAIR: That is a good example.

Senator PRATT: That was one of the examples.

CHAIR: Thank you, Senator.

Mr Wilden: They had met the residency requirement other than the fact that they had been away for three months? I'm not sure. I didn't hear that evidence, so—

Senator PRATT: Yes, they would have to spend time overseas with dying relatives.

CHAIR: I don't want you to give an answer as to whether they could or couldn't.

Mr Wilden: No. I was just going to say I wouldn't answer that particular circumstance.

CHAIR: What we are asking is: is that something the minister could look at?

Mr Wilden: Under the current provisions, no. The fact that you were outside for a particular reason at a point in time in and of itself wouldn't necessarily hit those barriers. For example—

Senator PRATT: Which might be okay if it is a year's residency requirement, but it becomes a lot more complicated if it is a requirement of four years residency in terms of controlling your overseas travel for a much longer period of time, particularly if you have personal demands that take you overseas.

CHAIR: If you have a look at some of the examples that were given—as I say, I didn't particularly challenge or go into them; I accepted them for what they were—on notice perhaps.

Mr Wilden: We could do that.

CHAIR: I'm not asking whether you would recommend or the minister might be inclined to say yes or no. I'm asking whether there is a power for him to look at cases like that.

Mr Wilden: Sure. We will go into a bit of detail and give examples of the sorts of circumstances—and I have mentioned some on record today—and where they go to issues such as you have outlined. We will come back by, say, Monday, with that evidence?

CHAIR: Yes, that is all we could expect, I guess. That will be fine.

Answer:

Section 22 of the *Australian Citizenship Act 2007* (the 'Act') sets out the general residence requirement. A person seeking to satisfy the general residence requirement must be present lawfully in Australia for 4 years immediately before making the application for citizenship, the last year of which must be spent in Australia as a permanent resident.

Over the 4 year period, the person is permitted to be overseas for up to a total of 12 months and still be taken to be present in Australia during each period of absence. In the final year of the general residence, the person is permitted to spend up to 90 days overseas (as long as they retained their permanent resident status during this time).

For example, a person who lived in Australia (except as an unlawful non-citizen) for 4 years immediately before applying for Australian citizenship, but for the following overseas absences, would satisfy the general residence requirement:

- in the first year, the person holidayed overseas for 1 month;
- in the second year, the person cared for a sick relative overseas for 6 months;
- in the third year, the person holidayed overseas for 1 month and attended a funeral overseas for 1 month; and
- as a permanent resident in the final year, holidayed overseas for 60 days.

Periods of permitted overseas absence are preserved in the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017.

In addition to the permitted periods of overseas absence, further periods of time that would not ordinarily count towards a person's residence may be permitted where the Minister exercises a discretion. The Minister may exercise discretion in cases where the Minister considers or is satisfied that:

- an administrative error has wrongly recorded a person as being an unlawful non-citizen or not a permanent resident during a period of time;
- it would be unreasonable to not allow time spent confined in prison as psychiatric institution as time spent in Australia ;
- the person will suffer significant hardship or disadvantage if a particular period of time during which the person was lawfully present in Australia other than as a permanent resident is not treated as time spent in Australia as a permanent resident;
- the person is a spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen, and was not present in Australia during a period of time but was a permanent resident who holds a close and continuing association with Australia during that period; or
- the person is in an interdependent relationship with an Australian citizen, and was not present in Australia during a period of time but was a permanent

resident who holds a close and continuing association with Australia during that period.

A person does not need to satisfy the general residence requirement where they satisfy the special residence requirement (see sections 22A and 22B of the Act) or the defence service requirement (see section 23 of the Act).

The residence periods under the special residence requirement are shorter than under the general residence requirement. The special residence requirement includes alternative residence requirements involving limited residence periods. The Ministerial discretion relating to the alternative residence requirements can only be exercised by the Minister personally.

The defence service requirement is satisfied by the person (or a member of their family unit) completing a specified period of defence service in the Australian Defence Force, or by a member of their family unit passing away while undertaking service in the Australian Defence Force.

The special residence requirement exists for applicants seeking to engage in specific activities that are of benefit to Australia or that require regular travel outside Australia. Applicants eligible for the special residence requirement include those seeking to be employed in a position requiring a Negative Vetting 2 or higher security clearance, or applicants participating in an Australian sporting team such as the Olympic Games team. Applicants engaged in regular travel outside Australia includes members of the crew of a ship or aircraft or performing artists who hold a Distinguished Talent visa.

The defence service requirement exists for applicants for Australian citizenship who have served in another nation’s armed forces, often the United Kingdom’s, and who have then migrated to Australia to join the Australian Defence Force.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 25 August 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

LACA/002 - Acknowledgement Letter - *Programme 2.1: Citizenship*

Asked:

Senator McKIM: You have said you needed to change your letter of acknowledgement.
Mr Kilner: Yes.
Senator McKIM: You have said that one change was to advise that cases would be processed according to the new requirements if the legislation passed.
Mr Kilner: Yes.
Senator McKIM: Is that the only change you made to the—
Mr Kilner: Yes, largely. I don't have the letter with me, but we're able to provide you with—
Senator McKIM: Would you be able to provide me with a copy of the old one and a copy of the new one? If you could provide that on notice, that would be much appreciated.
Mr Kilner: Certainly.

Answer:

The Department has attached two Citizenship for Conferral Acknowledgement letters. The first letter is sent to applicants prior to the Governments' announcement of 20 April 2017. The second letter is sent to applicants post 20 April 2017.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 25 August 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

LACA/003 - English Language - *Programme 2.1: Citizenship*

Asked:

Mr Wilden: There's a range of elements within that and there's a range of different inputs to that. The genesis of this change goes back quite some time. It goes into the findings of the Fierravanti-Wells and Ruddock report, which was one of the inputs into this that covered a number of areas. There's a range of issues that came out of the Man Haron Monis review that highlighted issues around the potential gaps in the system on the national security side and the character side. So there's those sorts of inputs. The recommendations of the consultations, for example, said permanent residency should be four years, not one. We looked at similar comparisons internationally—and we have a lot of detail in our submission that goes to that—to see if that was reasonable in terms of the broad.

The key issue on residency really goes to the issue that the majority of people who come here arrive on a permanent visa, so their four years is already served on a permanent visa. Those people are not disadvantaged and nothing changes for them in these circumstances. For the group who arrive via other means—that might be students, who transition through a number of other visas, or 457 workers—the rationale is simply that, if people come here for a temporary purpose, they have not made any commitment to Australia other than that they wish to study here or work here. It is at the point they decide to apply for permanent residency that they are making a genuine commitment to Australia and being part of the long-term future. On that basis, the Fierravanti-Wells and Ruddock recommendation that it be four years was accepted.

If you look at issues around English language, I can provide on notice a list of research available that talks about English language being a strong contributor to economic outcomes for the individual—ability to access work, ability to participate in education and ability to participate in the economy. So on the issue of having an English language requirement for citizenship beyond that which was already in place—and that was not a formal standard; it was just an ability to navigate the system, sometimes with a high degree of assistance—again the rationale, based on the evidence, was that it is to the benefit of both the individual and Australia that people have a standard of English language that enables them to succeed and enables them to contribute effectively.

In relation to values and the value statement, it is a fairly straightforward change. We have been asking people to sign value statements for a very long time. You do it when you apply for nearly every visa that you come in on, and you make a commitment and a pledge when you go for citizenship. The shift from loyalty to allegiance was, again, informed by several of those reports that I mentioned and some of the research done earlier. I heard the monarchists' evidence before. The issue of whether it is an oath of allegiance or loyalty plays out differently in different environments. Legislation passed the parliament a year or so ago which focused on

allegiance. That was dealing with people fighting for ISIS and others, and the ability to take citizenship off people in those circumstances because they have breached their allegiance. The change to allegiance here really locks down the concept of allegiance as being a higher standard than just loyalty, which is what sits behind that. So those are the core issues. As I said, I am happy to provide on notice some of the research that underpins some of these decisions.

Answer:

The following table provides an overview of the research that has been referred to in the development of the approach to English language policy for immigration and citizenship. This research emphasises the importance of English language ability to the migrant's settlement experiences and outcomes in Australia. This research extends beyond Australia to the world more broadly. Generally, a migrant will be able to participate, integrate and contribute more quickly and effectively with a knowledge of the native language. This table provides only a brief snapshot of the wealth of research there is on English language in terms of migration and integration.

Name of research /study/report	Year	Internet link to report (where available)
Department of Linguistics, Faculty of Human Sciences, Macquarie University Adult Migrant English Program (AMEP) Longitudinal Study 2011-2014, Final Report.	2017	http://www.mq.edu.au/about_us/faculties_and_departments/faculty_of_human_sciences/linguistics/linguistics_research/a-z_research_list/adult_migrant_english_program_longitudinal_study/
Summary report on the outcomes of the public consultation on the merits of introducing a formal citizenship test	2006	http://pandora.nla.gov.au/pan/31543/20070124-0000/www.minister.immi.gov.au/parlsec/media/responses/citizenship-test/summary_report_citizen_test_paper.pdf
Provision of Migrant Settlement Services by Department of Immigration and Multicultural Affairs (DIMA)	1998	https://www.anao.gov.au/work/performance-audit/provision-migrant-settlement-services-dima
Management of the Adult Migrant English Program Contracts, Australian National Audit Office (ANAO)	2001	https://www.anao.gov.au/work/performance-audit/management-adult-migrant-english-program-contracts

A Significant Contribution: The Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants. Summary of Findings Report by Professor Graeme Hugo	2011	https://www.dss.gov.au/sites/default/files/documents/01_2014/economic-social-civic-contributions-booklet2011.pdf
Making Ontario Home 2012 : A study of settlement and integration services for immigrants and refugees – OCASI (Ontario Council of Agencies Serving Immigrants)	2012	http://www.ocasi.org/downloads/MOH_-english_LARGE_PRINT.pdf
AMES Australia – Finding satisfying work: The experiences of recent migrants with low level English	2015	https://www.ames.net.au/files/file/Research/AMES%20Australia%20Finding%20Satisfying%20Work.pdf
The International English Language Testing System (IELTS) – various research	2016	https://www.ielts.org/~/media/research-reports/ielts_online_rr_2016-4.ashx
Linguistic integration of adult migrants: Policy and practice. Final report on the 3rd Council of Europe Survey	2014	https://rm.coe.int/16802fc1ce
Research Reports Volume 13 – The use of IELTS for assessing immigration eligibility in Australia, New Zealand, Canada and the UK Report by G. Merrifield. IDP: IELTS Australia and British Council.	2012	https://www.ielts.org/~/media/research-reports/ielts_rr_volume13_report1.ashx
Language testing for migration and citizenship' in Research Notes by N. Saville.	2006	http://www.cambridgeenglish.org/images/23144-research-notes-25.pdf

Lesley Dudley, "Integrating Volunteering into the Adult Immigrant Second Language Experience." The Canadian Modern Language Review 63 (4).	2007	https://muse.jhu.edu/article/217566/pdf
Boyd, M, Official language proficiency and civic participation of immigrants, working paper	2005	http://canada.metropolis.net/pdfs/boyd_civic_participation_paper_e.pdf
The Information Access Group Literacy in Australia: Understanding the Literacy Levels in Our Community. Report by Australian Bureau of Statistics (ABS) and Organisation for Economic Co-operation and Development (OECD)	2013	https://www.informationaccessgroup.com/docs/PIAAC_A4booklet_web.pdf
Adult Literacy and Life Skills Survey: An introduction. Report by Australian Bureau of Statistics (ABS).	2006	http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/4228.0Main%20Features22006%20(Reissue)
Productivity Commission Inquiry Report, Migrant Intake into Australia.	2016	http://www.pc.gov.au/inquiries/completed/migrant-intake/report/migrant-intake-report.pdf
The Boston Consulting Group, Settling Better Report, Reforming refugee employment and settlement services.	2017	https://cpd.org.au/2017/02/settlingbetter/
McKinsey Global Institute, People on the move: Global Migration's Impact and Opportunity.	2016	https://ac2.mckinsey.com/public_content/500182753

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 25 August 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

LACA/004 - Academic source and research - *Programme 2.1: Citizenship*

Asked:

Senator PRATT: The evidence base to which you referred that is driving these changes was very limited in your introductory remarks. Do you have any further academic sources and research you can point to?
Mr Wilden: I have already said we are happy to provide a range of sources that we have looked at as a part of our process.
Senator PRATT: Could you draw my attention to some of those sources now?
Mr Wilden: I didn't come prepared. I just said I would give it to you within the next 24 hours, if you would like. We didn't bring all the research we have undertaken with us.

Answer:

The Department of Immigration and Border Protection's submission to the Inquiry sets out the publicly available source material the Department had reference to in preparing the submission for the Inquiry.

In addition to the English language references provided in response to Question 3, the Department also contacted colleagues from like minded countries to seek information about the practices in those countries. This information also formed part of the Department's consideration and preparation of the submission.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 25 August 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

LACA/005 - Cancellations increase -

Asked:

CHAIR: Thanks, Senator McKim. Mr Wilden, if you could give me quick answers to my questions, please do. If you can't, please take them on notice because I only have five minutes.

There have been number of provisions since the government changed the rule on mandatory requirements. Have the visa cancellations increased since these mandatory cancellation powers occurred—in December 2014, I think it was?

Mr Wilden: For permanent residents?

CHAIR: Yes.

Mr Wilden: I don't have figures to hand yet, but, yes, there's been a significant increase in the 501 cancellations.

CHAIR: Can you break it down—certainly on notice—by offence, how many were permanent residents and how many permanent visas have been cancelled on national security grounds, such as adverse security assessments by ASIO? The longer permanent residency period allows for a greater period in which to assess someone's character and their commitment to Australia. Is that the purpose of the four-year thing that—

Mr McGlynn: Well, the evidence with four-year thing, as I said earlier, is that the move is to say that the four years, which is the period in play currently, now only applies to that permanent residency status. One of the reasons for that is, yes, to make sure that, firstly, people have made the commitment to Australia, which sets the clock ticking, and then, secondly, that over the four years they show that they wish to integrate and to move into that citizenship space.

CHAIR: There have been a lot of cancellations for people who have been convicted of serious offences—child sex offences, murder, manslaughter, rape and armed robbery. That is for visas, but I understand that the character requirement for people under 18 hasn't applied. So a 17-year-old who has been convicted of those offences can still submit a valid citizenship application. Is that correct? And how are the character provisions for citizenship being strengthened for 16- and 17-year-olds who may be involved in those serious crimes—foreign fighting and gang-related violence, for example? How does this bill address those issues for people under 18?

Answer:

The 2014-15 programme year saw visa cancellations on character grounds increase by approximately 595% on the 2013-14 programme year, as a result of the mandatory cancellation provisions introduced on 11 December 2014. The 2015-16 programme year saw character cancellations increase by approximately 70% on the

2014-15 programme year, and there was a further increase of approximately 30% during the 2016-17 programme year.

Section 501 Cancellations since 11 December 2014 - by offence and visa type - as at 31 July 2017

	Visa Type		
Offences	**Permanent**	**Temporary**	**Total**
Armed Robbery	64	173	237
Assault	208	384	592
Child Pornography	13	14	27
Child Sex Offences	121	83	204
Drug Offences	200	257	457
Fraud, Deception, White Collar	45	54	99
GBH, Reckless Injury	60	117	177
Kidnapping	<5	<5	6
Manslaughter	10	11	21
Murder	36	19	55
National Security/Org. Crime	16	9	25
Other Non-Violent Offence	79	133	212
Other Violent Offence	187	212	399
People Smuggling	0	<5	<5
Rape, Sexual Offences	75	43	118
Theft, Robbery, Break Enter	72	127	199
Use Threat Intent Weapon	6	10	16
War Crimes/Crms Against Human.	<5	0	<5
Total	**1197**	**1650**	**2847**

**Source – Departmental systems as at approximately 10 August 2017. Note as the data is sourced from a live systems environment the data may differ slightly between current and future reporting.

Engaging in criminal conduct, or engaging in conduct which presents a risk to the Australian community, can result in a person failing the character test, and having their visa cancelled under s501 of the *Migration Act 1958* (the Migration Act).

The Migration Act also contains powers to cancel visas under s116 if the Minister is satisfied that the presence of its holder in Australia is, or would be, a risk to the health, safety or good order of the Australian community.

There are grounds under both s501 and s116 that provide for the cancellation of a non-citizens' visa in circumstances where those individuals have been assessed by ASIO to be directly or indirectly a risk to security. There have been a small number of permanent visa cancellations using s501 or s116 grounds (the person has been assessed by ASIO to be directly or indirectly a risk to security) across the period in question.

For example, the Minister personally cancelled a permanent visa on the basis of s501(6)(g) as ASIO had assessed the visa holder as directly or indirectly a risk to

security. On the basis of the visa cancellation, this individual was no longer a permanent resident, and as such, was not eligible to become an Australian citizen. Accordingly, the individual’s citizenship application was refused.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 25 August 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

LACA/006 - AAT decision outside community standards - *Programme 2.1: Citizenship*

Asked:

CHAIR: Getting on to the AAT: I, like many Australians, have been very concerned about some of its decisions. Could you tell us about rulings that the AAT has made on character grounds that would be outside those which we would broadly call 'community expectations' as reflected by parliamentarians, talkback radio, newspapers and everyone else. Could you give us some examples of where the AAT has made some rulings on character grounds that are outside the normal community standards? Could you also tell me—if you can do this now, do it, but if not, on notice—the processes for setting aside an AAT decision that is outside community standards? How do those processes differ between the Migration Act and the current Australian Citizenship Act and the proposed citizenship act? Are you able to do that?
Mr McGlynn: That's probably a question I'll have to take on notice, at least partially, because it would be quite a long answer. But to answer the last part of your question first, which was about, if you like, what the effect is of these decisions—
CHAIR: And how do they apply with the existing provisions of the Migration Act?
Mr McGlynn: Yes. They're largely analogous, except in the citizenship space where a minister makes a decision that is also in some circumstances reviewable by the AAT. One of the matters that is referred to in the bill actually addresses that and brings that to consistency with the Migration Act, where that personal decision of the minister is only then subject to judicial review rather than review by the AAT.

Answer:

Examples of AAT decisions the Minister considers to be outside community standards are included in the response to LACA/007.

Under the *Migration Act 1958*, the Minister has power to set aside and substitute decisions of the Administrative Appeals Tribunal (AAT) (refusal or cancellation on character grounds) if the Minister is satisfied that this would be in the national interest.

The *Australian Citizenship Act 2007* does not contain comparable provisions that would allow the Minister to set aside and substitute a new decision of the AAT.

The power to set aside AAT decisions involving character and identity would bring the Citizenship Act in line with similar powers under the Migration Act.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 25 August 2017

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

LACA/007 - AAT decisions that aren't just borderline - *Programme 2.1: Citizenship*

Asked:

CHAIR: Okay. And on the other one—perhaps you might have to take this on notice—could you give some details of some of the decisions that have been made by the AAT that aren't just borderline but grossly out of step, clearly, with what—
Senator McKIM: Sorry, Chair, on a point of order. You've ruled the questions that I've asked out of order on the basis that they're soliciting an opinion. You're asking the witnesses here to respond to that question within the frame of what their opinion is around community expectations.
CHAIR: A valid point. Perhaps I can ask you to get from the minister, then, some examples of what he considers, on advice, to be the sorts of things we're talking about. This is just so we can be very clear about this.
With that, I'm very much afraid that we will have to adjourn. I fear for our time constraints when we meet again, but perhaps I could encourage my colleagues to have a number of questions they can put on notice if we don't have time. Thank you very much.

Answer:
A number of decisions of the AAT have been identified and referred to in the Explanatory Memorandum to the Bill tabled by the Minister as examples of decisions that may be outside of community standards.

The Explanatory Memorandum states that 'in the last few years, the Administrative Appeals Tribunal has made three significant decisions outside community standards, finding that people were of good character despite having been convicted of child sexual offences, manslaughter or people smuggling. Three other recent decisions of the Administrative Appeals Tribunal have found people to have been of good character despite having committed domestic violence offences.'

Further information about the decisions is provided below:

- An applicant pled guilty to, and was convicted of, eight sexual offences with a minor. The applicant was sentenced to six years imprisonment. He was released on parole. The AAT set aside the delegate's decision to refuse the application for citizenship and remitted the application to the Department for reconsideration with a direction that the applicant should now be considered to be a person of good character;

- An applicant was convicted of *manslaughter* in the Supreme Court of Western Australia and received a sentence of five years and 10 months imprisonment. The AAT set aside the delegate's decision to refuse the application for citizenship and remitted the application to the Department for reconsideration with a direction that the applicant should now be considered to be a person of good character. ;
- An applicant was convicted of one charge of '*Took Part in the Coming to Australia of a Non-Citizen contrary to Migration Act'* and was sentenced to two and a half years imprisonment and was released after serving 15 months of this sentence upon entering into a recognisance in the sum of $5000 for a period of 15 months. The applicant was later also convicted of '*Assault Common'* in relation to an incident between him and a detention guard in an immigration detention centre. He was sentenced to six months' imprisonment for which he was placed on a conditional release order with the conviction to be omitted from his criminal record after a crime free period (spent conviction) and fined $500. The AAT set aside the delegate's decision to refuse the application for citizenship and remitted the application to the Department for reconsideration with a direction that the applicant should now be considered to be a person of good character;
- An applicant was convicted of *unlawfully assault and thereby did bodily harm with circumstances of aggravation* and received a fine of $1200. The AAT set aside the delegate's decision to refuse the application for citizenship and remitted the application to the Department for reconsideration with a direction that the applicant should now be considered to be a person of good character;
- An applicant was convicted of 3 breaches of a Violence Restraining Order. He was later convicted of 20 additional breaches of a Violence Restraining Order, as well as 20 breaches of a bail condition. The AAT set aside the delegate's decision and substituted a decision that the application for conferral of Australian Citizenship be approved; and
- An applicant was convicted of assault and contravening an AVO, and was given a two-year good behaviour bond. Two years after the expiry of the good behaviour bond, the AAT set aside the delegate's decision and remitted the matter back to the Department with a direction that the applicant is of good character.