

ADDITIONAL COMMENTS FROM THE AUSTRALIAN DEMOCRATS

1.1 I am largely supportive of the Committee's report and recommendations. In most respects, the Bill is a positive step and the committee's recommendations should improve it further. However, I believe there are a few extra areas where further change to the legislation is desirable.

Refugees on Temporary Protection Visas

1.2 I strongly agree with Recommendation 6 which provides that the new residential qualifying period of 3 years only apply after the commencement of subdivision (B) to ensure that current permanent residents are not affected by retrospective law.

1.3 However, while the committee has recognised that certain groups like refugees who are here on Temporary Protection Visas may be vulnerable, it falls short of making specific recommendations to protect this group. As has been noted, most of these people who have or will end up on permanent visas have already spent well over three years in Australia.

1.4 I believe it would be appropriate to specifically ensure that this period is taken into account in determining eligibility for citizenship. This ensures that those refugees who have already resided here for many years and wish to take up citizenship of Australia to be able to do so more quickly. The evidence of history shows this would be beneficial to Australia as well as to the individuals involved.

1.5 I note that Committee recommendation 7 recommends broadening the concept of 'significant hardship or disadvantage' to encompass this group, but I am of the opinion that a stronger proposal should be put forward.

Recommendation 1

1.6 For the purposes of determining eligibility for citizenship, refugees who have been on Temporary Protection Visas should have the time they have resided in Australia treated as if they had been permanent residents during that period.

Same sex partners

1.7 It is pleasing to note the committee's recognition that the definition of spouse (which has now been updated to encompass de facto spouses) does not extend to same sex partners, and also their comment that consideration should be given to including same sex partners within the definition of spouse. However, the Committee fell short of specifically recommendation that this should be so.

Recommendation 2

1.8 A specific amendment should be made to the legislation extending the definition of spouse to include same sex couples.

Ministerial Discretion

1.9 I remain concerned about whether the merits review that will be available in the AAT is an adequate protection against the unreasonable or unfair use of ministerial discretion to deny citizenship to someone who otherwise meets all the eligibility criteria under the law.

1.10 Whilst I accept that this discretion exists under the current Citizenship Act 1948, I believe there is now enough evidence of how the use of such discretion can be overly politicised to warrant restricting such power.

1.11 The proper area for dealing with people who present an unacceptable risk to the community is the Migration Act, not the Citizenship Act. If someone is so unacceptable that they should be denied citizenship, despite meeting all criteria under law, it is hard to see how the question would not also arise as to whether or not that person's residency visa should be cancelled. If a person is of good enough character and acceptable to remain as a long-term permanent resident of Australia, they should be of good enough character to take up citizenship, should they meet all the criteria.

Security assessments

1.12 The same point that I made above applies with people whose applications may be rejected on the grounds of national security. If someone poses a threat to national security, it is hard to see a situation where they should still be able to remain eligible for permanent residency, while being refused eligibility for citizenship.

1.13 The explanatory memorandum to the legislation mentions that there are some review rights available under Part IV of the ASIO Act which would be undertaken by the Security Appeals Division of the AAT. However, review of this kind can be very difficult to challenge due to the lack of information which is made available to the complainant in some circumstances.

1.14 There are already enough impairments to fair and due process for people subjected to security assessment.

1.15 I support the recommendation of HREOC that the *National Security Information (Criminal and Civil Proceedings) Act 2004* be amended so that it applies to the Security Appeals Division of the AAT. This at least ensures a right to review and is in line with the right to a fair hearing.

Stateless Persons

1.16 I support the Committee's recommendation 10 and 11, but I believe it should go further. I believe Paragraph 21(8)(c) as it stands can clearly be interpreted in a way which is outside our obligations under the Convention on Statelessness.

Recommendation 3

1.17 That the words "that the person has never had such reasonable prospects" be deleted from Paragraph 21 (8) (c).

Personal identifiers and Privacy issues

1.18 I am concerned that recommendation 12 does not go far enough in ensuring adequate protection of individual privacy. I believe this area needs further examination before the legislation is passed, and I reserve my position on possibly moving amendments to the legislation addressing these issues.

Dual citizenship

1.19 Finally, I believe it is becoming more and more urgent that an effort is made to make the necessary change to our Constitution that prohibits dual citizens from running for Parliament. Dual citizenship is part and parcel of modern society and certainly of Australian society. A significant proportion of Australians hold dual citizenship and that this number is growing, not least because of the recent changes made to the Citizenship Act.

1.20 These people are disenfranchised in the sense that they are not able to run for election to the federal parliament without relinquishing their dual citizenship. There may be valid arguments to require sole citizenship as part of eligibility to be a Minister or Prime Minister, where perhaps dual citizenship may not be appropriate. However, I believe we are short changing ourselves as a nation if we prevent dual citizens from becoming a Member of Parliament.

Recommendation 4

1.21 That all parties in the Parliament support as a matter of urgency, legislation to initiate a referendum to remove the prohibition on dual citizens being able to run for federal Parliament.

Senator Andrew Bartlett

Australian Democrats

