

Dissenting Report

Senator Andrew Bartlett

Democrat Senator for Queensland

The submissions and evidence presented to this inquiry demonstrate that the federal government's proposed new citizenship test is little more than a poorly thought through, pre-election stunt. It is probable that over time it will end up being a relatively harmless, albeit unnecessarily expensive and bureaucratic stunt. However, there is a risk that it will degrade the credibility of the citizenship compact. The concept of Australian citizenship is too important to risk harming it with divisive or trivializing measures.

The 'consultation' process used prior to the government adopting its proposal for a new citizenship test was a farce, the 'discussion paper' produced as part of that process was ill-thought out, and the many concerns expressed by migrant groups in Australia were all but ignored. The Australian Democrats response to that discussion paper is included as an appendix to this dissenting report. To repeat one statement from that response, "focusing on whether or not there should be a test, and what should be in it, is premature without wider debate, understanding and agreement about the nature of citizenship and what it entails for our nation, for the individuals who hold it, for the society they are part of and for the governments that serve them." That is where the political and public debate should be directed if we want to strengthen the effectiveness and meaning of the citizenship compact, and public understanding and support for it.

There was no evidence put forward at any stage of this Inquiry to indicate how this citizenship test process will improve the integration of people into the Australian community. Everyone who takes the test is already a permanent resident in Australia, and everyone who fails it will remain a permanent resident.

The time to address integration issues is when people first arrive in Australia, not when they are already permanent residents who have lived here for at least four years. Given that tests by their nature are designed to exclude some people, this process may increase segregation and division, rather than decrease it.

There has been no evidence put forward to indicate that there are any problems with the current arrangements in qualifying for citizenship, let alone how this test will improve them. Despite witnesses pointing to the use of a citizenship test in a few other countries, there was no evidence provided to show that these tests had produced any substantive benefits or improvements in those countries, or indeed to assuage any fears that they may have had a negative impact on more vulnerable minority groups.

The group in our community who are most likely to have difficulty with formal tests are people from refugee backgrounds, yet this group have been the ones who have been quickest to take up citizenship after their arrival in Australia. In that sense, they have been the most successful at integration.

By contrast, the group who have been the least willing to fully integrate, using the criteria of being willing to and interested in taking up citizenship, have been permanent residents who are originally from the United Kingdom or New Zealand. According to figures published by the Department of Immigration and Citizenship, there are currently over 900 000 permanent non-citizen residents who are eligible to become Australian citizens – that is people who live permanently in Australia but who have not yet got around to taking up citizenship, or simply do not want to - and more than half of them are from these two countries. By contrast, people from non-English speaking countries, and particularly those who come here as refugees, have been the quickest to take up their right to citizenship and become a full member of their new nation and its society.

If there are over 450 000 people from the UK and New Zealand residing permanently in Australia who haven't become citizens under previous requirements, they will be even less likely to do so now if there is an extra hurdle of having to undertake a test. This is not a commentary on whether this is positive or negative action, it simply demonstrates that suggestions that a citizenship test will of itself encourage better integration or commitment to Australia have no sound basis.

In my view, there have been insufficient arguments put forward to justify proceeding with the legislation. However, in the event that the legislation is proceeded with, there are a number of improvements which should be made.

It is crucial that there be a specific amendment made to the legislation to ensure that refugee and humanitarian entrants from non-English speaking backgrounds with low-level English proficiency may be exempted from the test if they fulfil an alternative requirement such as attending a citizenship course.

I also support the few recommendations which the Committee has put forward, particularly the requirement that the citizenship test questions be made public. There has been understandable disquiet amongst many sections of the Australian community that the questions developed by the government, or a future government, may be politically or culturally biased and even be designed with an eye to excluding particular groups within the community. This of course has been done before in Australia, where tests have been designed and applied with a deliberate aim of keeping potential migrants from certain countries or regions out of Australia. Given that one of the supposed aims of the new citizenship test is to encourage a better understanding of Australia's history, it would be ironic for the Senate to ignore history and refuse to acknowledge the danger of history repeating itself.

Despite the misleading mantra by the government that 'citizenship is a responsibility, not a right', the fact is that citizenship is a right for many millions of people who are born in Australia to Australian parents. Those people (of which I am one) should not be in a position where they have greater rights than other Australians. There is a real risk that migrants applying for citizenship will be required to demonstrate a greater knowledge of Australia than that which many Australian born citizens have.

It is important for public confidence, and particularly the confidence of Australians and residents from migrant backgrounds, that the questions be made public. They must also be open to disallowance by the Senate.

Recommendation 1

No case has been made that there is any problem with the existing system, or that the proposed new citizenship test will improve things. On the contrary, the evidence suggests it will be an expensive, potentially divisive or at best benign process which will do little to enhance integration or strengthen the citizenship compact between Australians and their governments. I recommend that the legislation not be proceeded with.

In the event the legislation is proceeded with, I make the following further recommendations.

Recommendation 2

The test must be tested. No set of citizenship test questions should be adopted for use until they have been tested on a cross-section of Australian-born citizens. If more than a minimal percentage of people fail the test, the questions should not be used.

Recommendation 3

Determinations made by the Minister regarding the citizenship test, and the test questions themselves, must be subject to disallowance by the Senate.

Recommendation 4

That a specific amendment is made to the legislation to ensure that refugee and humanitarian entrants from non-English speaking backgrounds with low-level English proficiency may be exempted from the test if they fulfil an alternative requirement such as attending a citizenship course.

Senator Andrew Bartlett
Democrat Senator for Queensland

**INCLUDED AS AN APPENDIX TO THE MINORITY REPORT OF
SENATOR BARTLETT**

**Response to the Discussion Paper released by the Australian Government
on the merits of introducing a formal citizenship test**

by

Senator Andrew Bartlett

on behalf of

the Australian Democrats

17 November, 2006

Introduction

In preparing this response to the government's discussion paper, the Australian Democrats have taken into account as many views as we have been able to access, particularly from Australia's migrant communities, who are likely to be the most directly (and indirectly) affected by any changes made regarding Australian citizenship and how it is perceived by the wider community.

The Australian Democrats welcome the opportunity of a national debate on Australian citizenship. We believe that, to gain real value out of such a debate, it must be much broader than the framework put forward in the discussion paper, which deals predominantly with whether a formal test should be introduced for those people who wish to apply to adopt Australian citizenship.

Focusing on whether or not there should be a test, and what should be in it, seems to be premature without wider debate, understanding and agreement about the nature of citizenship and what it entails for our nation, for the individuals who hold it, for the society they are part of, and for the governments that serve them.

The non-Indigenous people of Australia are all migrants or descendents of migrants, who have significantly contributed in a rich variety of ways. These many different backgrounds are an essential component of modern Australia which have contributed to our arts, music, politics, language, food, education, religion, science, sport, cultures and industry in a myriad of ways to the common benefit of our nation. The strength of this diversity must be embraced and promoted, not ignored or curtailed.

Issues missing from the discussion paper and some problems in the assumptions contained in it

Whilst the four key questions put forward in the discussion paper are worthy of debate, there are aspects within some of the assumptions underpinning the questions that are put forward which the Democrats believe presents a major problem. Before answering some of the questions posed in the discussion paper, we wish to address some of the points that we believe are either missing or inadequately addressed in the paper.

Recognising Rights as well as responsibilities

Perhaps most critically, the discussion paper seems confused about whether or not to acknowledge that rights do (and should) attach to citizenship. Paragraph 2 of the discussion paper quotes the preamble of our current Citizenship Act, which asserts that "Australian citizenship is a common bond, involving reciprocal rights and obligations." Yet shortly after, in paragraph 5 of the paper, the bald statement is made that "Australian citizenship is a privilege, not a right." To add to the confused reasoning, straight after asserting that citizenship is not a right, the very next paragraph (correctly) asserts that "Australian citizens have the right to live in Australia." (emphasis in original)

The simple fact is that many people are entitled to Citizenship as of right - albeit that this right is not necessarily guaranteed in the Constitution, but only in legislation, a point we shall return to later. It is certainly a privilege to be an Australian citizen, but it is one that many people – such as those born in Australia of Australian parents - do not need to do anything, such as pass a test, to receive.

In addition, citizenship, whether received via birth or application, does bring rights with it. Whilst it is appropriate to emphasise that privileges and responsibilities attach to citizenship, this is misleading without an accompanying recognition that citizenship also has rights attached to it.

In order for any debate about citizenship to be complete, more thought needs to be given to what those rights are (or should be) and how we can guarantee that those rights are protected and enforced. The Democrats believe that both the rights and obligations which attach to citizenship should be formally spelt out and promoted to the entire Australian community, not just new citizens. If we are to strengthen and defend Australia's freedoms, it makes sense to more specifically identify what those freedoms are and ways they are formally protected, whether that be via our laws or other mechanisms.

To only talk of the privileges and responsibilities of citizenship, whilst ignoring or downplaying the rights, is to ignore the reciprocal nature of the citizenship compact which is reflected in the preamble of the Citizenship Act.

Recommendation 1:

That there be a clearer recognition of

- (a) the rights which attach to Australian citizenship,**
- (b) the responsibilities of Australia's governments to its citizens, and**
- (c) ways to protect those rights from being breached.**

The Migration and settlement process is the key vehicle to encourage integration and participation, not citizenship

Another problem with the framework of the discussion paper is the singular focus on the participation of people in the Australian community through citizenship. Hundreds of thousands of people live in Australia as permanent residents – some of them for decades - and many more than that live here on various forms of long-term temporary residency visas. To focus on the participation in and commitment to Australia of newly adopted citizens is to focus on the smaller area of how to achieve this important goal of maximising participation and engagement. While citizenship is the ultimate step for a migrant, the step which has by far the largest impact on Australia and on the migrant is the one where people choose to live and settle here, a process which does not necessarily involve applying for citizenship at any stage. Indeed if obtaining citizenship is made too onerous or bureaucratic, it will just

dissuade people from doing so, which is just as likely to be to the detriment of our nation as to the individual concerned.

To maximise the participation of migrants in Australia, we should be focussing much more attention at the period when they are newly arrived, rather than at what to require of them if they wish to become citizens. If we want to put in place any sorts of requirements for certain groups of people, such as knowledge of language or civic issues, it would make far more sense to do so at the time when people are seeking to become permanent residents, rather than when they are applying for citizenship.

Recommendation 2:

That more resources be put into settlement assistance, including English language classes and information about Australian society and cultures.

A test which some citizens must pass, but not others?

Another inadequacy in the discussion paper is the lack of consideration given to whether the proposals and views put forward in the discussion paper match with the reality of those who are born with citizenship and attain it as of right.

In considering what tests those who seek to apply to be accepted as Australian citizens might have to meet, it is also important to consider how those who are citizens as of right would fare if they were to face such a test.

To put a set of standards in place that some people have to meet to become a citizen, which could not be met by some of those who were born with the privilege of citizenship is not only unfair and discriminatory, it is likely to be counter-productive to the fabric of a nation and the ability of different groups within it to effectively and meaningfully integrate.

Recommendation 3:

Test the test on Australian born citizens first. If any citizenship test more formal than that which currently applies is to be adopted, it should be first tried out on a representative sample of Australians who attained their citizenship through birth. If more than a minimal percentage of this sample are unable to pass the test, it should not be adopted or applied to citizenship applicants.

What are the foundations of citizenship?

In most respects, it is reasonable to see the formal birth of the Australian nation as occurring with Federation on 1st January, 1901. Yet there was no such thing as a formal Australian citizen until 1948 with adoption of the Citizenship Act. Even then, the rights and privileges attached to citizenship have continued to evolve, as the notion of Australians as British Subjects has faded. Even in the early years of the 21st Century, the residual right still exists for some non-citizens to be able to vote in Australian elections, a right which is denied to some Australian citizens, such as those imprisoned at the time of an election. Recent High Court cases have wrestled with

concepts such as 'non-alien non-citizens', and the judgements have shown that fundamental components of the central issue of who is an Australian and what rights attach to that are still a matter of some legal uncertainty.^[1]

Much of this uncertainty derives from the fact that citizenship is a legislated concept and entitlement which is not directly referred to in our Constitution. As such, some of the key foundations of citizenship, including the rights and responsibilities attached to it, are more likely to be subjected to the vagaries of legislative interpretation and change.

Recommendation 4:

That citizenship be specifically recognised as a concept in the Australian Constitution.

Time Periods for Citizenship

The Democrats believe that the proposed extension of the residency period required before a person becomes eligible for citizenship from 2 years to 4 years to be problematic. We have previously expressed support for the proposal to increase the period to 3 years, as long as there is adequate scope for exemptions in special circumstances. However, we have not seen any evidence put forward that would suggest that 4 years residency is necessary, whether from a security or an integration point of view. It must be emphasised once again that in the vast majority of cases it is to Australia's benefit to receive new citizens and it follows from this that it is to our potential detriment if there are unnecessary delays or impediments to that occurring.

Longer waiting periods can be particularly difficult for refugees, who experiences shows are often the quickest to take up citizenship. Taking out citizenship can be a key experience for refugees in being able to fully and finally stabilise their lives and take full control of their future in their new homeland. In addition, for people who have already been displaced in often very traumatic circumstances, it can place undue pressure and stress on refugees who may have feelings of insecurity or instability rekindled if they should not pass the test.

There may also be an unintended effect of preventing migrants from accessing employment in the Public Service which usually require Australian citizenship as a prerequisite for an appointment. By needlessly delaying the opportunity for migrants to take up citizenship, we can be denying our nation's public sector the skills which such people possess. In addition, our defence forces are undergoing continuing difficulty in meeting their recruitment targets. Extra delays in a person being able to take up citizenship will reduce, albeit in a minor way, the pool of people that can be drawn from.

Should Australia introduce a formal citizenship test?

The Democrats agree with the view, stated at paragraph 23 of the discussion paper, that it should be "a key objective of our migration program that ultimately such individuals who come to Australia fully participate in Australian life as Australian citizens." We repeat the point made above that the key goal should be to ensure everyone who comes here to reside for any length of time, but particularly permanent residents, should participate as fully as possible in Australia's society and economy. While encouraging permanent residents to become citizens is an important goal, it does not cover everybody who is part of our community.

Whilst it is, again, acknowledged that it is a privilege for an individual to be granted Australian citizenship, the Democrats believe the discussion paper does not adequately recognise that it is also a privilege for our nation when someone chooses to fully commit themselves and their gifts to us by applying to become a citizen.

It should be accepted that enabling people to become citizens is not just a matter of Australia benevolently doing some individual a favour. It is very much in Australia's interests to encourage people of good character to become a fully fledged member of our community and body politic.

It flows from this that it is against Australia's interests to make it too onerous, bureaucratic or potentially even insulting for people who may be considering becoming Australian citizens.

Recommendation 5:

The potential consequences of deterring good quality potential citizens should be considered alongside any perceived gain from adding extra tests to the requirements for granting of citizenship.

What is the economic impetus for introducing a formal citizenship test?

This section of the discussion paper (paras 29-33) contains clear examples of a confusion of concepts and terminology.

It all but ignores the simple fact that it is the visa system which determines whether or not people are participating in the Australian labour market and the wider economy, **not** citizenship. There are some jobs, mainly public sector and defence force jobs, which require citizenship, but the majority simply require a person to hold a visa which has work entitlements attached to it. This includes many types of long-term temporary residency visas.

In considering economic impetus and labour market participation consequences of citizenship, it has to be recognised that - certainly at the moment and for the foreseeable future - many areas of migration are a 'buyer's market', where Australia is having to face ever increasing competition from other countries to attract migrants to participate in our labour market. The prospect of obtaining citizenship can be one

factor which people consider when deciding whether or not to migrate to Australia or somewhere else. We do not in any way suggest citizenship should be made too easy to obtain just as a way of bribing people to come here. We are simply acknowledging the current economic reality, in the context of the question put in the discussion paper, about whether there is an economic argument for introducing a formal citizenship test.

Under this criteria at least, we would have to say the evidence suggests it would be a net economic negative to place extra hurdles on becoming a citizen. The place for ensuring adequate English (and where appropriate other knowledge of Australia) is not in the citizenship test, it is in the criteria for determining the granting of a visa.

What are the social criteria for introducing a formal citizenship test?

Whilst not disagreeing with the sentiment put forward in this segment of the discussion paper (paras 34-39), no evidence is provided to demonstrate that current arrangements are inadequate in enabling integration. Putting in place a more formal language and/or other test for citizenship may be seen as providing an extra *incentive* to learn these things, but it may also act as a *disincentive* for someone thinking of applying for citizenship.

It must be remembered that *everybody* who can apply for citizenship is already a permanent resident in Australia, with the likelihood that they will be able to live the rest of their lives in our community regardless of whether they become citizens or not. People who become citizens gain the right to vote and to employment in a public sector job. However, there are some people (including many Australian-born citizens) who wouldn't care greatly if they didn't have either of those rights (and in the case of voting, a responsibility).

If a more formal test is perceived by some people as a disincentive to apply for citizenship, it will have the counter-productive effect of *reducing* that person's participation and full engagement with our nation.

In other words, we may lose more than we gain by making a language test more onerous than it currently is. This may have the effect of *reducing* rather than increasing unity.

Rather than targeting just one section of the community – namely applicants for citizenship – to improve understanding about Australia's society and cultures, it would be far more effective to have a concerted effort to increase the awareness of all Australian citizens *and* residents about our nation's history, institutions and cultures.

Recommendation 6:

The Democrats recommend that extra resources and commitment be placed on:

- (a) following up on the outcomes of the recent national history summit;

- (b) adopting comprehensive measures to enable civics information and education to be provided in all educational institutions and, where feasible, workplaces.**
- (c) Ensuring indigenous Australians play a major role in the formulation and presentation of historical, cultural and social information as a way of ensuring all Australians, both migrants and those born here, gain the benefit of a meaningful attachment to the world's oldest living culture – one of the greatest privileges that any non-Indigenous Australian can receive.**

English proficiency testing

While the Democrats recognise that it is valuable for migrants to have English proficiency wherever practicable, this should not necessarily be made any stronger a part of the requirement for citizenship. There has yet to be any evidence that upgraded citizenship test in other countries have aided in integration or even social cohesion.

We believe that the funding to implement the administration of the tests should instead go into providing more English classes and services to migrants that will better equip them with what living in Australia entails and what is expected of all Australian citizens.

As Australia is a nation that has been built on migrants and so much of our post World War II prosperity has been derived from the major migration influx over many decades, it is puzzling why the need for English should be seen as such a pressing issue now. There are numerous examples of Greek, Italian and Vietnamese migrants, just to name a few, who have arrived without English proficiency and have thrived in Australia, built industries and business and contributed significantly to Australia's economy and communities. Some of the people are still not very proficient in English. Similarly, when we encourage the strengthening of family and the richness of multiculturalism through family migration, including aged parents, we are recognising that there is great value in these migrants even where English language skills may not be high.

It must be noted that not all people are equally equipped socially or mentally to learn languages and that this is especially difficult later in life. There is a genuine concern that a more onerous English language test would create a group of second class Australian residents, such as the elderly, refugees or people with a disability who may not be able to read or write.

Any test must have sufficient flexibility to ensure that such people are exempted – not just on grounds of fairness to the individual but because we must recognise that it is better for our community to include rather than exclude such people who will still be living among us.

It should also be recognised that being proficient in the English language is no guarantee of a person being of good character.

The potential consequences of negative perceptions about a new citizenship test

Values are not automatically bestowed with by ticking boxes or answering multiple choice questions which yield the right results in order to pass a test. Values are something one acquires from positive interactions with family, community and society. It is something that is learned through living in the country of choice and it will be enhanced if migrants feel they are strongly supported by their communities and by leaders with a commitment to multiculturalism.

The Democrats submit that many migrants have a fuller appreciation of the special values and freedoms that Australia provides, and the importance of working to protect them. Many Australian born citizens who have been lucky enough not to have lived through wars or political upheaval, or had to flee their homeland can be unaware of just how precious and fragile our freedoms can be.

We have also heard many strong views expressed that a new test could have the opposite of a welcoming effect for some migrants. There is concern that it will only serve to further isolate groups in the community and is a departure from the ideas of egalitarianism and a fair go that Australia prides itself on.

People who make the conscious decision to apply for citizenship of a new country are unlikely to do flippantly or without some degree of thought. It is almost axiomatic that in making such a decision, they will have acquired enough knowledge about Australia and its society to make an informed decision that it is a country they wish to reside in indefinitely, in many cases in exchange for the country of their birth. In such circumstances, many new citizens would probably do better than most Australian born citizens in any knowledge test, assuming the test is not overly idiosyncratic or biased to one sub-culture.

The merits and impact of adopting a more formal citizenship test in Australia cannot be assessed in a vacuum, disconnected from the social and political context in which it has emerged. There is a real risk that, regardless of the intention in introducing such a test, new migrants and prospective new citizens may see it as a way of filtering out those who are too 'different' and targeting those from non-English speaking backgrounds.

In seeking feedback from the wider community, the Democrats have been struck by the level of suspicion, anxiety and sometimes downright hostility towards the proposals of a test – in most cases from people who are already Australian citizens. These feelings cannot just be dismissed as being mistaken or a misunderstanding.

The key rationale put forward in the discussion paper for introducing such a test is to increase unity in our society. Such a thing as unity cannot be imposed through tests, it must be encouraged and developed through people's hearts and minds. If a minority perceive the motivation behind a test or the possible effect of its implementation will be to devalue or target people of certain backgrounds, it will have a negative effect on social unity.

Recommendation 7:

That a more formal citizenship test would be counter-productive to the goals of greater unity and integration within Australia's multicultural society, and should not be introduced *unless* there is clear, verifiable and public support from the majority of Australia's migrant community – especially those of non-English speaking background or from a Muslim community who in the current context are most likely to feel targeted by such a measure.

Conclusion

The Democrats strongly support Australia's current high levels of migration – both permanent and temporary. We recognise that this does bring with it an added need to ensure community support is maintained for the various aspects of the migration program and for the policy of multiculturalism which is at its heart.

However, we would suggest that overtly targeting the citizenship process is not the best way of achieving this public support. It risks creating an unfounded perception that there are significant numbers of people choosing to become citizens who do not have a substantial commitment to our nation, when the Democrats do not believe there is any substantial evidence that this is the case. It also risks creating unnecessary antagonism and division, particularly amongst those Australian citizens and residents who feel such measures are targeting people of non-English speaking or non-Christian background.

This would be counter-productive and defeat the goals which the discussion paper says such a test would be seeking to achieve.

There is no sign that the examples in the discussion paper of countries who have adopted citizenship tests have improved social or national unity. In addition, it should be noted that all of those countries have different migration programs and policies to Australia, and have not necessarily have had such success in consciously carrying out and promoting policies of multiculturalism. Whilst not in any way being so arrogant as to suggest we have nothing to learn from others, the Democrats suggest that in this area, most of the countries provided by way of example have more to learn from Australia than we have from them.

Additional proposal:

Whilst it is beyond the immediate focus of the discussion paper, the Democrats wish to take the opportunity to emphasise our belief that the citizenship ceremony, as well as related documentation and processes, should have a much clearer and prominent recognition and involvement of indigenous Australians. Wherever possible, this should include a representative from the Indigenous people who are the traditional, original inhabitants of the area where the ceremony is taking place.

[\[1\]](#) for example, see:

Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Ame [2005]

Shaw v Minister for Immigration and Multicultural Affairs (2003)

Re Patterson; Ex parte Taylor (2001)

