

The Senate

Standing Committee on
Legal and Constitutional Affairs

Australian Citizenship Amendment
(Citizenship Testing) Bill 2007 [Provisions]

July 2007

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ABBREVIATIONS

Act	<i>Australian Citizenship Act 2007</i>
ACTA	Australian Council of TESOL [Teachers of English to Speakers of Other Languages] Associations
ALHR	Australian Lawyers for Human Rights
Bill	Australian Citizenship Amendment (Citizenship Testing) Bill 2007
Castan Centre	Castan Centre for Human Rights Law, Monash University
CMCF	Canberra Multicultural Community Forum
Department	Department of Immigration and Citizenship
ECCV	Ethnic Communities' Council of Victoria
EM	Explanatory Memorandum
FASSTT	Forum of Australian Services for Survivors of Torture and Trauma
FECCA	Federation of Ethnic Communities Councils of Australia
HREOC	Human Rights and Equal Opportunity Commission
NSWCCL	New South Wales Council for Civil Liberties
RACS	Refugee Advice and Casework Service
UK	United Kingdom
UNHCR	Office of the United Nations High Commissioner for Refugees
VIRWC	Victorian Immigrant and Refugee Women's Coalition

RECOMMENDATIONS

Recommendation 1

3.62 The committee recommends that the operation of the citizenship testing regime be reviewed three years after the Bill's commencement, particularly to gauge the regime's impact on citizenship application and conferral rates and on certain groups within society, particularly refugee and humanitarian entrants.

Recommendation 2

4.78 The committee recommends that the proposed citizenship test questions be tabled in parliament.

Recommendation 3

4.81 The committee recommends that proposed subsection 23A(1) of the Bill be amended to specifically require that the test relate to the eligibility criteria in paragraphs 21 (2)(d),(e) and (f).

Recommendation 4

4.86 Subject to the preceding recommendations, the committee recommends that the Bill be passed.

CHAPTER 1

INTRODUCTION

Background

1.1 On 13 June 2007, the Senate referred the provisions of the Australian Citizenship Amendment (Citizenship Testing) Bill 2007 (Bill) to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 31 July 2007.

1.2 The Bill proposes to amend the *Australian Citizenship Act 2007* (the Act) to provide for the testing of prospective applicants for Australian citizenship by conferral. Specifically, the Bill will require applicants for Australian citizenship by conferral under the general eligibility provisions (subsection 21(2) of the Act) to have successfully completed a citizenship test, before making an application, in order to be eligible to become Australian citizens.

Conduct of the inquiry

1.3 The committee advertised the inquiry in *The Australian* newspaper on 27 June 2007 and 11 July 2007, and invited submissions by 6 July 2007. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to over 100 organisations and individuals seeking their input.

1.4 The committee received 59 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.5 The committee held public hearings in Canberra on 16 July 2007 and in Sydney on 17 July 2007. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

Acknowledgement

1.6 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.7 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

CHAPTER 2

OVERVIEW OF THE BILL

2.1 This chapter provides a background to the Bill, and then outlines the main provisions of the Bill

Background

2.2 On 11 December 2006, the Australian Government announced the introduction of a test for certain applicants for Australian citizenship. This announcement followed a consultation process conducted by the then Department of Immigration and Multicultural Affairs (now the Department of Immigration and Citizenship (the Department)).

2.3 That consultation process began on 17 September 2006, when the Australian Government released a discussion paper entitled *Australian Citizenship: Much more than a ceremony* (the discussion paper). The discussion paper sought the Australian community's views on the merits of introducing a formal citizenship test. Among other matters, the discussion paper sought comment on four key questions:

1. Should Australia introduce a formal citizenship test?
2. How important is knowledge of Australia for Australian citizenship?
3. What level of English is required to participate as an Australian citizen?
4. How important is a demonstrated commitment to Australia's way of life and values for those intending to settle permanently in Australia or spend a significant period of time in Australia?¹

2.4 The consultation period ran for two months, closing on 17 November 2006. In total 1644 written responses to the discussion paper were received, with 1486 from individuals and 158 from organisations. A series of face to face consultations were also held in Perth, Melbourne, Brisbane, Sydney, Hobart, Darwin and Adelaide. These consultations were reportedly attended by some 129 representatives from a range of government, business and community groups.²

2.5 The *Summary Report on the Outcomes of the Public Consultation on the Merits of Introducing a Formal Citizenship Test* (Summary Report) reported that there was overall support for the introduction of a formal citizenship test, with 60% of

1 Australian Government, *Australian Citizenship: Much more than a ceremony Discussion Paper*, September 2006, p. 14. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007).

2 Australian Government, *Summary Report on the Outcomes of the Public Consultation on the Merits of Introducing a Formal Citizenship Test*, Available at: http://www.minister.immi.gov.au/media/responses/citizenship-test/summary_report_citizen_test_paper.pdf, p. 1 (accessed 19 June 2007).

respondents supporting a test.³ In addition, an opinion poll reported in *The Australian* newspaper on 1 January 2007, found that 85 percent of respondents were in favour of the knowledge of English being a requirement to become an Australian citizen.⁴ Another poll conducted in September 2006 found that 77 percent of respondents favoured a formal citizenship test.⁵

Overseas examples

2.6 As noted in the Department's discussion paper, many other countries already have formal testing arrangements for citizenship, including Canada, the Netherlands, the United Kingdom, the United States of America and South Korea. Some of these have been in place for some time – for example, Canada has had written testing arrangements since 1994, and the United States' arrangement was introduced in the late 1980s.⁶

2.7 The four countries considered in detail in the discussion paper (Canada, the Netherlands, the United Kingdom and the United States of America) test for knowledge and for language skills. The discussion paper identified ten 'themes' on which applicants for citizenship are tested for knowledge. The themes include rights and responsibilities of citizenship; the legal system; equality of men and women; and values of the society.⁷ Written and oral tests are used to assess competence in the national language, but, except in the United States of America, a test may be waived where the applicant has demonstrated competence in the national language such as by the possession of an appropriate diploma. In the United States of America applicants for citizenship may be granted an exemption based on age and a long period of permanent residency and may be permitted to take the knowledge component of the test in a language of their choice.

2.8 In the United Kingdom and the Netherlands applicants take on-line tests using computer-based programs. The discussion paper lists six 'key characteristics of this approach which may be useful in the Australian context'. The list includes the facility to randomly select questions from a larger pool of questions, which would protect the

3 p. 2.

4 Parliamentary Library, "Australian Citizenship Amendment (Citizenship Testing) Bill 2007", *Bills Digest No. 188 2006-07*, 19 June 2007, pp 7-8.

5 Katherine Betts and Bob Birrell, "Making Australian Citizenship Mean More", *People and Place*, vol. 15, no. 1, 2007, p. 53.

6 Australian Government, *Australian Citizenship: Much more than a ceremony*, Discussion Paper, September 2006, pp 9-10. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007). See also *Committee Hansard*, 16 July 2007, p. 9.

7 Australian Government, *Australian Citizenship: Much more than a ceremony*, Discussion Paper, September 2006, p. 12. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007).

integrity and rigour of the testing arrangements; electronic marking; and the potential to conduct the test anywhere in the country.⁸

2.9 All four countries provide for exemptions or make special provisions for certain people. These exemptions or provisions typically relate to the age or health of the applicant, the length of residence, the individual's level of literacy or the level of disability.⁹

2.10 Each of the four countries sets a 'pass mark' for the knowledge test, ranging from 60 percent in Canada and the United States of America to 75 percent in the United Kingdom. The Canadian test includes three mandatory questions – two on the right to vote and nominate for elected office and one on voting procedures.¹⁰

2.11 The four countries also impose charges for applications for citizenship. The charge may include a fee for processing the test or there may be a separate fee for the test.¹¹ All four countries provide material in paper form or electronically, including sample questions, to help applicants prepare for the test.¹²

Key Provisions

2.12 The Bill proposes to amend the *Australian Citizenship Act 2007* (the Act) to require applicants for Australian citizenship by conferral to have successfully completed a citizenship test in order to be eligible to become Australian citizens.

2.13 Subsection 21(2) of the Act currently sets out the general eligibility provisions for citizenship. These include that applicants:

- understand the nature of their application for citizenship;

8 Australian Government, *Australian Citizenship: Much more than a ceremony Discussion Paper*, September 2006, p. 16. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007).

9 Australian Government, *Australian Citizenship: Much more than a ceremony Discussion Paper*, September 2006, pp 20, 22, 24-25, 26. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007).

10 Australian Government, *Australian Citizenship: Much more than a ceremony Discussion Paper*, September 2006, pp 20, 22, 24, 26. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007).

11 Australian Government, *Australian Citizenship: Much more than a ceremony Discussion Paper*, September 2006, pp 21, 23, 25, 26. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007).

12 Australian Government, *Australian Citizenship: Much more than a ceremony Discussion Paper*, September 2006, pp 21, 23, 25, 27. Available at: http://www.citizenship.gov.au/news/citizenship-test/DIMA_Citizenship_Discussion_Paper.pdf (accessed 19 June 2007).

- possess a basic knowledge of the English language; and
- have an adequate knowledge of the responsibilities and privileges of Australian citizenship.

2.14 The Bill proposes to amend subsection 21(2) to add a requirement that an applicant has an adequate knowledge of Australia (proposed paragraph 21(2)(f)).

2.15 Proposed subsection 21(2A) will provide that successful completion of a test will enable the Minister to be satisfied that applicants understand the nature of their application for citizenship, possess a basic knowledge of the English language, and have an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship. The EM states that 'there is no other way for these criteria to be satisfied, other than by successfully completing a test.'¹³

2.16 Proposed new subsection 23A(1) provides that the Minister must approve a citizenship test by written determination. Proposed subsection 23A(7) provides that the determination is not a legislative instrument under the *Legislative Instruments Act 2003* (and therefore not disallowable by parliament).

2.17 The EM states that the Minister may approve more than one test. It explains that this allows for some people, for example those with low literacy levels, to be given the opportunity to demonstrate that they meet the criteria in proposed paragraphs 21(2)(d), (e) and (f) in a different way from the majority of prospective citizenship applicants.¹⁴

2.18 The written determination must also specify what amounts to successful completion of the test (proposed subsection 23A(2)). The EM states that 'in considering the test or tests to be approved, the Minister may decide that certain mandatory questions must be answered correctly'.¹⁵ In his second reading speech, the Minister stated that:

The test is expected to be computer based and consist of 20 multiple-choice questions drawn randomly from a large pool of confidential questions. Each test is expected to include three questions on the responsibilities and privileges of Australian citizenship. The pass mark is expected to be 60 per cent including answering the three mandatory questions correctly. A person will be able to take the test as many times as required in order to pass.¹⁶

13 p. 4.

14 p. 4; see also Department of Immigration and Citizenship, *Submission 30*, p. 2.

15 p. 4.

16 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4; see also Department of Immigration and Citizenship, *Submission 30*, p. 2.

2.19 Persons will be required to satisfy eligibility criteria to be able to sit a citizenship test. New subsection 23A(4) provides that the determination may provide that a person is not eligible to sit the test unless:

- the person is a permanent resident; and
- the Minister is satisfied of the identity of the person.

2.20 The EM states that the Minister's determination (under proposed subsection 23A(1)) may set out other criteria not mentioned in new subsection 23A(4) which a person must satisfy to be eligible to sit a citizenship test.¹⁷

2.21 There will also be exemptions from the test requirements in certain circumstances. In particular, people under 18 or over 60, and those with a permanent physical or mental incapacity which prevents them from understanding the nature of the application, will not be required to sit the test.¹⁸ These categories of people already have separate eligibility criteria for citizenship, which are currently set out in subsections 21(3), (4) and (5) of the Act (and which are not proposed to be amended by the Bill). The EM also states that special arrangements will be made for people whose literacy skills mean they have difficulty undertaking a test. It explains that this issue will be covered by the Minister's determination.¹⁹

2.22 The Department stated in its submission that 'the test questions will assess knowledge of Australian history, culture and values based on information contained in a citizenship test resource book'. The Department explained that the resource book would be free and 'widely available' in paper, electronic and audio visual formats.²⁰ The Minister stated in his second reading speech that this book 'is currently being drafted and will be released once completed.'²¹

2.23 However, the Department indicated that the proposed test questions themselves would be kept confidential on the basis that this would:

...help to encourage prospective citizens to develop an adequate knowledge of Australia and the rights and privileges of citizenship as required by the legislation, rather than simply rote learning the answers.²²

2.24 The EM states that the estimated cost to implement and administer the citizenship test is \$107.4 million over 5 years.²³ The Department stated in its

17 p. 5.

18 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

19 EM, p. 5 and proposed subsection 23A(6).

20 *Submission 30*, pp 2-3.

21 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

22 *Submission 30*, p. 3.

submission that there will be an increase in the citizenship application fee for those who sit the test – from \$120 to \$240.²⁴

23 p. 1.

24 *Submission 30*, p.4; see also proposed subsection 46(1A). The fee for an application for citizenship by conferral for people who are not required to sit a test will remain at \$120.

CHAPTER 3

PURPOSE AND IMPACT OF THE BILL

3.1 The majority of evidence received by the committee opposed the Bill. However, not all of these submitters were opposed to the notion of citizenship testing itself; some just objected to the particular regime proposed by this Bill.

3.2 Some of the key issues and concerns raised in the course of the committee's inquiry include:

- the purpose of, and need for, the Bill, including whether the Bill will achieve its aims;
- the potential impact of the Bill;
- legal and drafting issues;
- the content and nature of the proposed test; and
- resourcing and alternatives to citizenship testing.

3.3 The first two issues are discussed in this chapter of the report. The remaining issues are discussed in Chapter 4.

Purpose of the Bill

3.4 The Explanatory Memorandum (EM) states that 'the introduction of a citizenship test is a key part of the Government's ongoing commitment to help migrants successfully integrate into the Australian community'.¹

3.5 In his second reading speech, the Minister advanced several reasons for the introduction of a citizenship test. First, he declared that:

The test will encourage prospective citizens to obtain the knowledge they need to support successful integration into Australian society. The citizenship test will provide them with the opportunity to demonstrate in an objective way that they have the required knowledge of Australia, including the responsibilities and privileges of citizenship, and a basic knowledge and comprehension of English.²

3.6 The Minister also noted that citizenship not only confers certain privileges, but also involves certain responsibilities, and that:

1 p. 1.

2 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

We need to make sure that people are not only familiar with Australia and our values, but also able to understand and appreciate the commitment they are required to make.³

3.7 Further, the Minister stated that:

The community also needs to be assured that migrants are able to integrate into Australian society. Maintaining broad community support for our migration and humanitarian program is critical. The ability to pass a formal citizenship test sends a clear signal to the broader community that new citizens know enough about our way of life and commit to it.⁴

Need for the Bill

3.8 However, many submissions queried the need for the Bill and expressed satisfaction with the existing, informal citizenship testing arrangements.⁵ For example, the Victorian Immigrant and Refugee Women's Coalition (VIRWC) argued that there is no evidence to indicate that a change in Australian citizenship law is necessary:

...Australia has been well served by its existing inclusive citizenship laws, to the extent that we now have a culturally diverse and socially cohesive collection of people who are proud to call Australia home.⁶

3.9 Similarly, the Centre for Human Rights Education at the Curtin University of Technology expressed its view that 'the current citizenship ceremony and concomitant pledge are sufficient to indicate a person's commitment to Australia and the community'.⁷

3.10 Indeed, the Castan Centre for Human Rights Law at Monash University (the Castan Centre) argued that there is actually less need for a formal test since the requirement for the period of permanent residence has been increased to 4 years.⁸

3 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, pp 4-5.

4 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 5.

5 See, for example, Federation of Community Legal Centres (Vic), *Submission 28*, p. 2; Ethnic Communities' Council of Western Australia, *Submission 29*, p. 2; Ethnic Communities' Council of Victoria (ECCV), *Submission 31*, p. 3; National Council of the St Vincent de Paul Society, *Submission 35*, p. 1; National Ethnic and Multicultural Broadcasters Council, *Submission 37*, p. 2; Darebin Ethnic Communities Council, *Submission 38*, p. 1; Multicultural Council of the Northern Territory, *Submission 45*, p. 1; B'nai B'rith Anti-Defamation Commission, *Submission 42*, p. 2; Victorian Government, *Submission 53*, p. 2; National Legal Aid, *Submission 57*, p. 5; Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 1; Ms Voula Messimeri-Kianidis, FECCA, *Committee Hansard*, 16 July 2007, p. 1.

6 Ms Depika Sherchan, *Committee Hansard*, 17 July 2007, p. 22; also *Submission 20*, pp 2-3.

7 *Submission 2*, p. 6.

8 *Submission 14*, p. 5.

3.11 The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) also stated its preference for retaining current citizenship arrangements, arguing that:

...over the years we have successfully integrated thousands of migrants and refugees from diverse cultural and linguistic backgrounds into Australian society, without the need for a written citizenship test. We do not believe there have been any significant changes to this situation that would warrant the introduction of a formal test.⁹

3.12 Similarly, Ms Misty Adoniou, President of the Australian Association of TESOL Associations (ACTA) told the committee that 'we seem to be fixing something that is not currently broken'.¹⁰

3.13 However, the Department explained that the Bill will make the citizenship conferral process more objective:

The current method for assessing whether prospective citizenship applicants meet the legal requirements for citizenship that they have a basic knowledge of English, an adequate knowledge of the responsibilities and privileges of citizenship and an understanding of the nature of their application, is via an interview which is arguably a less objective method of assessment.¹¹

3.14 Mr David Yates, National Chief of Staff at the Australian Christian Lobby, in expressing support for the proposed test, agreed that a test would be 'more objective'.¹²

3.15 In further support for the Bill, the Department also submitted that the additional requirement in the Bill for an applicant to have adequate knowledge of Australia would 'ensure that new citizens are familiar with Australia and our values with the aim of helping them to better integrate and participate in Australian society'.¹³ A representative of the Department added that:

It is the proposition of the government that in order to fully participate in the Australian community it is appropriate that you speak the national language or have a knowledge of the national language and that you have some understanding of Australia, its history, its values, its national symbols and its national geography. Therefore, in order to fully participate in our society, a test of this nature is an appropriate way to measure that person's commitment.¹⁴

9 *Submission 8*, p. 1.

10 *Committee Hansard*, 16 July 2007, p. 21.

11 *Submission 30*, p. 4; see also *Committee Hansard*, 16 July 2007, p. 31.

12 *Committee Hansard*, 16 July 2007, p. 9.

13 *Submission 30*, p. 4; see also Dr Stephen Chavura, Festival of Light Australia, *Committee Hansard*, 17 July 2007, pp 28-29.

14 *Committee Hansard*, 16 July 2007, p. 32.

A response to security concerns?

3.16 There was some indication during the inquiry that the recent introduction of citizenship testing in at least some countries had been a legislative response to heightened concerns about terrorism.¹⁵ In particular, one witness suggested that it was important to distinguish what is happening in the United Kingdom from what is happening in Australia and that:

For us just to adopt precedents from the UK without understanding the basic differences between our countries ... would be dangerous.¹⁶

Will the Bill achieve its aims?

3.17 Most submissions and witnesses generally agreed with the aims of the Bill, particularly the objectives of encouraging prospective citizens to acquire English language skills and an understanding of the Australian way of life. However, many queried whether the Bill, if passed, would actually achieve its stated objectives.¹⁷ For example, Professor Kim Rubenstein expressed her belief that:

Engendering a commitment to Australia can be encouraged in ways other than formal citizenship testing. Formal testing would not assist in ensuring a commitment to Australia's way of life and values.¹⁸

3.18 Similarly, Ms Anna Samson of the Refugee Council of Australia described the citizenship test as 'rather a blunt instrument for achieving these goals'.¹⁹ The Refugee Council of Australia submitted that:

...there remains little evidence forwarded as to the practical, positive impact that English language testing beyond that which currently exists within the citizenship process, or a quiz on "the Australian way of life", will have on ensuring a higher "quality" of Australian citizen.²⁰

3.19 Professor George Williams was concerned that 'the test will create extra costs for government and a bureaucratic impediment to becoming a citizen without actually providing the desired benefits'.²¹ In particular, Professor Williams argued that:

15 See, for example, Professor Rubenstein, *Committee Hansard*, 16 July 2007, p. 14 and Ms Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 3.

16 Ms Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 3.

17 See, for example, Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, p. 1; Professor George Williams, *Submission 7*, pp 1-2; Professor Kim Rubenstein, *Submission 18*, p. 1; Canberra Multicultural Community Forum (CMCF), *Submission 46*, p. 1 and Mr Sam Wong, CMCF, *Committee Hansard*, 16 July 2007, p. 2; Ms Misty Adoniou, ACTA, *Committee Hansard*, 16 July 2007, p. 19.

18 *Submission 18*, p. 2; see also *Committee Hansard*, 16 July 2007, p. 14.

19 *Committee Hansard*, 17 July 2007, p. 9.

20 *Submission 49*, p. 2; see also Mr Paul Power, *Committee Hansard*, 17 July 2007, p. 8.

21 *Submission 7*, p. 1.

...a test of this kind is an ineffective way of instilling values...someone who fundamentally disagreed with Australian values could pass the citizenship test by correctly identifying the answers even if they do not have a personal commitment [to] the values that the answers express.²²

3.20 Many submissions suggested that the proposed citizenship test would not be effective in building 'genuine, long term understanding and knowledge', but would simply encourage rote-learning.²³ For example, the National Ethnic and Multicultural Broadcasters Council suggested that 'cramming' can get people through a test but often the knowledge will be superficial'.²⁴

3.21 In the same vein, the Castan Centre submitted that:

It is difficult to understand how a formal test...will assist migrants to integrate into the Australian community or generate a desire in them to be "good citizens." Such a test merely requires a person to do the required reading and then tick the correct boxes based on what they have prepared. It does nothing to encourage them to participate or connect with the wider community. The test merely reflects a person's ability of rote learning.²⁵

3.22 Some submissions also felt that the test would set double standards. For example, Professor Williams suggested that many Australians have a poor knowledge of Australian history and aspects of governance. He was therefore concerned that the Bill would set the threshold of knowledge for new citizens at a higher level than is the case for current citizens.²⁶

3.23 Several submissions also criticised the proposed test on the basis that it would promote exclusion, rather than encouraging integration into Australian society.²⁷ For example, ACTA observed that:

22 *Submission 7*, pp 1-2; see also FASSTT, *Submission 8*, p. 4; ACTA, *Submission 34*, p. 1.

23 Professor George Williams, *Submission 7*, p. 2; see also FASSTT, *Submission 8*, p. 3; Castan Centre, *Submission 14*, p. 3; VIRWC, *Submission 20*, p. 3; Australia/Israel and Jewish Affairs Council, *Submission 26*, p. 3; ACTA, *Submission 34*, p. 1; National Council of the St Vincent de Paul Society, *Submission 35*, p. 2; Australian Lawyers for Human Rights (ALHR), *Submission 44*, p. 11; Multicultural Council of the Northern Territory, *Submission 45*, p. 4; CMCF, *Submission 46*, p. 2; Dr Ben Saul, Sydney Centre for International and Global Law, *Submission 27*, p. 2; Ms Depika Sherchan, VIRWC, *Committee Hansard*, 17 July 2007, p. 23.

24 *Submission 37*, p. 2.

25 *Submission 14*, p. 3; see also Country Women's Association of New South Wales, *Submission 25*, p. 2; CMCF, *Submission 46*, p. 2.

26 *Submission 7*, p. 2; see also Castan Centre, *Submission 14*, p. 2; Mr David T Bath, *Submission 9*, p. 2; National Ethnic and Multicultural Broadcasters Council, *Submission 37*, p. 4; Ms Anna Samson, National Policy Director, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 9; Professor Kim Rubenstein, *Committee Hansard*, 16 July 2007, p. 12.

27 See, for example, Professor Ingrid Piller, *Submission 19*, p. 2; Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, pp 1 and 3; Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1; Castan Centre, *Submission 14*, p. 5.

A feeling of belonging and acceptance is key to a cohesive, united and loyal society, and tests that by their very nature are exclusionary are not the way to a united society.²⁸

3.24 Indeed, Ms Adoniou of ACTA told the committee :

I can think of nothing more exclusionary than having a test to let you in. If we truly think of ourselves as an inclusive society then why would we use the most exclusive measure? A test is literally designed for you to fail or pass, so it is set up to keep people out.²⁹

3.25 The Parliamentary Library's Bills Digest further observed that:

The test might also suffer from historical perceptions of previous practice in immigration during the 'White Australia' era. The general test requirements, especially the language requirement could be said to resonate with earlier times in Australian history, with government bureaucrats backed by official prejudice deciding which aspiring immigrants had sufficient potential to become Australian/British to be allowed to stay in the country and be naturalised.³⁰

3.26 On the other hand, the Bills Digest suggested that if the government wishes:

...to maintain a large and non-discriminatory immigration program, it has to maintain the support of the general public. The citizenship test in this sense can be seen as having a significant symbolic role in reassuring the public. It is arguably then a pro-immigration gesture...³¹

3.27 Finally, it is noted that, as further justification for the Bill, the Minister also pointed out during his second reading speech that there was 'support from the community for the introduction of a citizenship test'. This statement was based on the response to the Department's consultation process during which, as outlined earlier, sixty percent of respondents supported the introduction of the citizenship test.³² The committee also notes polls that have been conducted by the media indicate considerable public support for the introduction of citizenship test.³³

28 *Submission 34*, p. 3; see also Ms Misty Adoniou, *Committee Hansard*, 16 July 2007, p. 21.

29 *Committee Hansard*, 16 July 2007, p. 21.

30 Bills Digest, p. 16; see also, for example, Refugee Council of Australia, *Submission 49*, p. 5; and Dr Martin Bibby, NSWCCCL, *Committee Hansard*, 17 July 2007, p. 16.

31 Bills Digest, p. 16; see also Katharine Betts and Bob Birrell, 'Making Australian citizenship mean more', *People and Place*, vol. 15 no. 1, pp 46-51.

32 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 5.

33 See Bills Digest, p. 8; and Department, Answers to Questions on Notice, received 27 July 2007, [Question 4 (Hansard)].

3.28 During this inquiry, this committee received some submissions which strongly supported the introduction of the proposed test.³⁴ For example, the Australian Christian Lobby told the committee that it supports the proposed citizenship 'in principle' and that:

It is right and appropriate that immigrants who wish to become Australian citizens should be expected to learn something about our history and culture before citizenship is conferred upon them. Such a process should assist immigrants to understand their new country and therefore help them to play their part in its future.³⁵

3.29 In supporting the test, the Hon. Dr Bob Such MP told the committee he believed that 'Australian citizenship is something that should be highly valued and regarded as a privilege'.³⁶ Dr Such also referred to the practice in other countries such as the United Kingdom, Canada and the United States of America, which already have a form of citizenship testing.³⁷

3.30 However, other submissions queried the success of these overseas experiences.³⁸ Professor Kim Rubenstein argued that 'the fact that other countries have introduced this form of testing does not necessarily mean it is the best way forward'.³⁹

3.31 In support of the introduction of citizenship test, a Departmental witness pointed to not only the public support for the test in Australia, but also the fact that many overseas countries have formal citizenship testing:

...there are a range of counties which believe that, in forming a decision as to whether a newcomer to that country should access the rights and privileges of becoming a citizen, it is appropriate that the person have some understanding of the country, its background and its people. That is clearly seen as a worthwhile policy instrument by a number of other countries.⁴⁰

3.32 The committee queried whether the Department had looked at the effectiveness of citizenship testing in other countries. A representative of the Department responded that 'we have not seen, to my knowledge, any data or research

34 See, for example, Festival of Light Australia, *Submission 4*; Mr Roger Cook, *Submission 10*; The Hon Dr Bob Such MP, *Submission 16*; Australia for Australians, *Submission 17*; Australian Christian Lobby, *Submission 47*, p. 1.

35 *Submission 47*, p. 1; see also Mr David Yates, Australian Christian Lobby, *Committee Hansard*, 16 July 2007, p. 8.

36 *Submission 16*, p. 1.

37 *Submission 16*, p. 1.

38 See, for example, Professor Tim McNamara, *Submission 33*, p. 10; ACTA, *Submission 34*, p. 2; Professor Ingrid Piller, *Submission 19*, p. 1; Ms Misty Adoniou, ACTA, *Committee Hansard*, 16 July 2007, pp 20-21.

39 *Committee Hansard*, 16 July 2007, p. 14.

40 *Committee Hansard*, 16 July 2007, p. 32.

that would lead one to conclude that the tests were a disincentive for people to apply'.⁴¹ The Department further noted that its enquiries indicated that, to date, the United Kingdom and Canadian governments have not conducted any formal evaluations of their citizenship tests.⁴²

Impact of the Bill

3.33 Concerns were also raised in relation to the potential impact of the Bill, including:

- whether the test would act as a disincentive to citizenship; and
- its potential discriminatory impact on disadvantaged groups.

3.34 Several submitters therefore suggested that exemptions or other safeguards should be included in the Bill in order to ameliorate these potential impacts. These issues are discussed further below.

Will the test be a disincentive?

3.35 Some submissions were concerned that the proposed testing regime would be a disincentive and even a barrier to citizenship.⁴³

3.36 Professor Rubenstein, for example, suggested that a test would be likely to discourage some people from applying for citizenship. She expected that there would be a drop in the number of applicants for citizenship once the test is introduced.⁴⁴ The Refugee Council of Australia considered that a test would exclude large numbers of people from being able to participate as full members of Australian society.⁴⁵

3.37 The committee also heard that the intimidating and stressful nature of formal testing could act as a particular deterrent for many people. For example, Ms Voula Messimeri-Kianidis, Chair of the Federation of Ethnic Communities Councils of Australia (FECCA), told the committee that:

41 *Committee Hansard*, 16 July 2007, p. 31.

42 Answers to Questions on Notice, received 27 July 2007, [Question 3 (Hansard)].

43 See, for example, Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, p. 3; FASSTT, *Submission 8*, p. 2; Castan Centre, *Submission 14*, p. 4; VIRWC, *Submission 20*, p. 3; Australia/Israel and Jewish Affairs Council, *Submission 26*, p. 1; ECCV, *Submission 31*, p. 3; B'nai B'rith Anti-Defamation Commission, *Submission 42*, p. 3; Premier Paul Lennon, MHA, *Submission 52*, pp 1-2.

44 Professor Kim Rubenstein, *Committee Hansard*, 16 July 2007, p. 15.

45 Ms Anna Samson, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 9.

Our concern is that a lot of people who would feel uncomfortable about any testing at all, particularly if they have a low level of literacy, will not apply for citizenship but will self-select out.⁴⁶

3.38 Some submissions also expressed concern that the test would be computer-based.⁴⁷ For example, the NSW Council for Civil Liberties (NSWCCL) suggested that special arrangements should be made for computer-illiterate applicants.⁴⁸

3.39 Although the citizenship test was seen as a potential barrier to some, the committee notes that a person may sit the citizenship test as many times as they want until they pass the test.⁴⁹ As the Parliamentary Library's Bills Digest points out:

...the current test will not be hard to pass, with the given concessions for age and disability, the study booklets, and AMEP [Adult Migrant English Program] and other assistance, sample questions on the internet, plus unlimited attempts.⁵⁰

Impact on disadvantaged groups

3.40 A key concern with the proposed test was its potentially discriminatory impact on disadvantaged groups.⁵¹ For example, the Centre for Human Rights Education at the Curtin University of Technology was concerned that the proposed testing regime would have a disproportionately negative impact on already disadvantaged and marginalised groups within society, including refugees, women,

46 *Committee Hansard*, 16 July 2007, p. 4; see also RACS, *Submission 39*, p. 4; Ms Zoe Anderson, RACS, *Committee Hansard*, 17 July 2007, p. 26; Professor Kim Rubenstein, *Committee Hansard*, 16 July 2007, p. 16.

47 ECCV, *Submission 31*, p. 3; NSWCCL, *Submission 32*, p. 3; Professor Tim McNamara, *Submission 33*, p. 4; FECCA, *Submission 51*, p. 4.

48 *Submission 32*, p. 5.

49 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

50 p. 16.

51 See, for example, Centre for Human Rights Education at the Curtin University of Technology; *Submission 2*, pp 4-5; Castan Centre, *Submission 14*, p. 3; Liquor Hospitality and Miscellaneous Union Victoria Branch (LHMU), *Submission 40*, p. 3; VIRWC, *Submission 20*, p. 3; Federation of Community Legal Centres (Vic), *Submission 28*, p. 2; ECCV, *Submission 31*, p. 3; ACTA, *Submission 34*, p. 2; Darebin Ethnic Communities Council, *Submission 38*, p. 1; Multicultural Council of the Northern Territory, *Submission 45*, pp 2-3; ALHR, *Submission 44*, p. 5; Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1; Refugee Council of Australia, *Submission 49*, p. 2; FECCA, *Submission 51*, pp 3-4; National Legal Aid, *Submission 57*, pp 2-3.

people with disabilities, people living in rural areas, people from non-English speaking backgrounds, and people from lower socio-economic groups.⁵²

3.41 In relation to women, several submissions pointed out that family and care obligations of women make it difficult for them to make use of government language assistance programs. For example, the VIRWC argued that:

...the imposition of a test places a particularly onerous burden on immigrant and refugee women...their primary duties often revolve around childcare and housekeeping obligations, which severely restrict their ability to attend classes, read examination materials and booklets, practise English, and spend time revising for a test.⁵³

3.42 In response to the committee's questioning as to the implementation of the testing regime in rural and regional areas, a Department witness responded that:

The test will be available in 47 locations around the country. Thirteen of those locations will be the DIAC [Department of Immigration and Citizenship] offices, which are in the capital cities, Torres Strait, Southport and Cairns I think. The other locations will be in Medicare and/or Centrelink offices and we are currently in negotiations with those two organisations. We estimate, on past business levels, that the DIAC network will account for some 90 per cent of business, so the balance, 10 per cent, will have access via Centrelink and Medicare. In the short to medium term it will be DIAC staff who travel to those locations to administer the test using the facilities of our colleagues in those two organisations. The 47, as I think I mentioned, were mapped according to business levels. Clearly the current spread of Australia Post offices is much wider than that, but some of those offices may not have seen a citizenship interview for some years, a decade or more.⁵⁴

3.43 In relation to impacts on refugee and humanitarian entrants, Ms Katie Wrigley of the Refugee Advice and Casework Service (RACS) told the committee that:

A significant number of refugees are survivors of torture and trauma, and many continue to suffer from debilitating after-effects, including those associated with post-traumatic stress disorder as well as many other psychological conditions, for years to come.

Such after-effects ... impact on an individual's ability to learn or process new material and, most relevantly in this context, to learn a new language.

52 *Submission 2*, pp 1, 4-5; see also Ms Anna Samson, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 9; Ms Depika Sherchan, VIRWC, *Committee Hansard*, 17 July 2007, p. 23; FASSTT, *Submission 8*, p. 4; and Ms Voula Messimeri-Kianidis, FECCA, *Committee Hansard*, 16 July 2007, p. 1.

53 *Submission 20*, p. 4; also Professor Ingrid Piller, *Submission 19*, pp 8-9; FASST, *Submission 8*, p. 3; Refugee Council of Australia, *Submission 49*, p. 4; FECCA, *Submission 51*, p. 8; see also Department, Answers to Questions on Notice, received 27 July 2007, [Questions 4 and 5 (written)].

54 *Committee Hansard*, 16 July 2007, p. 36.

Some refugees may have had a very limited education in their home country, possibly due to a denial of access to basic education on the basis of their race, ethnicity or religion. Others may have had their education interrupted by civil war or internal armed conflict, or may have simply been unable to access education due to poverty. In addition, some refugees are illiterate in their native language. All of these categories of people will struggle to learn English with the ease of other migrants.⁵⁵

3.44 Mr Paul Power, Chief Executive Officer of the Refugee Council of Australia, further told the committee that:

For refugees, arguably more so than any other category of migrants, obtaining citizenship in the country of their resettlement is crucial to ensuring good resettlement outcomes. That is demonstrated by the fact that there are much higher levels of citizenship uptake among refugees and humanitarian entrants than for any other category of migrant in Australia. As such, it must be recognised that any efforts to change citizenship requirements—in particular, any efforts to make citizenship more restrictive—will have a disproportionately adverse impact on this group of migrants.⁵⁶

Importance of citizenship

3.45 In this context, several submissions and witnesses pointed out the importance of citizenship in terms of access to certain basic rights, including rights to vote, to apply for an Australian passport, to access certain financial assistance from the government and employment opportunities, and freedom from deportation under the *Migration Act 1958* (Cth).⁵⁷ For example, for refugee and humanitarian entrants, the right to apply for a passport can be one of the most important practical benefits of citizenship, as it can assist in reunification with family members.⁵⁸

3.46 The Castan Centre warned that 'any measure which will prevent people from acquiring citizenship and thereby place them in a disadvantaged position must be carefully considered from a human rights perspective'.⁵⁹

3.47 Several submissions noted that citizenship may also have other important benefits, including 'a sense of inclusion and acceptance into their adopted

55 *Committee Hansard*, 17 July 2007, p. 21.

56 *Committee Hansard*, 17 July 2007, p. 8.

57 Castan Centre, *Submission 14*, p. 4; ECCV, *Submission 31*, p. 4; ALHR, *Submission 44*, p. 2; National Legal Aid, *Submission 57*, p. 2; Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 1; Dr Martin Bibby, NSWCCCL, *Committee Hansard*, 17 July 2007, p. 19.

58 Centre for Human Rights Education, Curtin University of Technology, *Submission 2*, pp 2-3; Ms Anna Samson and Mr Paul Power, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 12.

59 *Submission 14*, p. 4.

community'.⁶⁰ The Refugee Council of Australia also told the committee that 'for many refugees and humanitarian entrants, citizenship is closely connected to their sense of security and safety in a new country'.⁶¹ FASSTT similarly observed that:

Citizenship offers our clients an important contribution to healing and recovery from their past experiences as it provides a sense of security and settlement that is important in rebuilding their lives.⁶²

Exemptions and other safeguards

Possible exemptions from the test

3.48 As a result of the concerns about the impact of the Bill discussed above, several submissions suggested that the Bill should contain specific exemptions for certain groups of people. As outlined earlier, there are already separate eligibility criteria in the Act for people over the age of 60, under the age of 18 and for persons with a physical or mental disability. Under the Bill, it is proposed that special arrangements may also be made for people who have literacy problems.⁶³

3.49 Most submissions supported these exemptions. However, many suggested that these exemptions should be broadened, particularly to include an exemption for refugee and humanitarian entrants.⁶⁴ For example, FASSTT suggested that many refugee and humanitarian entrants:

...have limited education and/or interrupted schooling. Many do not have literacy in their first language. For many the impact of torture and/or trauma means that they experience learning difficulties. As such, they would be significantly disadvantaged in a formal test.⁶⁵

3.50 The Australian Christian Lobby, who supported the Bill, in response to the committee's questioning, agreed that such an exemption should be considered:

We share some of the concerns that have been raised. There should be some exemptions for people, especially those from the humanitarian side, who

60 Centre for Human Rights Education at the Curtin University of Technology *Submission 2*, p. 3; see also, for example, National Legal Aid, *Submission 57*, p. 2.

61 *Submission 49*, p. 4.

62 *Submission 8*, p. 2.

63 See subsections 23(3), (4) and (5) of the Act; and also EM, p. 22.

64 See, for example, Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, p. 6; FASSTT, *Submission 8*, p. 4; Mr David T Bath, *Submission 9*, p. 4; Federation of Community Legal Centres (Vic), *Submission 28*, p. 2; LHMU, *Submission 40*, p. 3; ECCV, *Submission 31*, p. 5; NSWCCCL, *Submission 32*, p. 5; RACS, *Submission 39*, pp 2 and 6; Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1; Refugee Council of Australia, *Submission 49*, p. 4; National Legal Aid, *Submission 57*, p. 3; UNHCR, *Submission 50*; Ms Depika Sherchan, VIRWC, *Committee Hansard*, 17 July 2007, p. 23; cf Festival of Light Australia, *Submission 4*, p. 2.

65 *Submission 8*, p. 4.

have a poor understanding of English—for instance, they may have been in the country working a lot and have not necessarily had the chance to learn English to a proficient level...We agree with the test, and the minister should have some discretion, we believe, for special exemptions for those people who may not necessarily be able to complete in the normal way.⁶⁶

3.51 However, Dr Stephen Chavura from the Festival of Light Australia felt that an exemption for refugee and humanitarian entrants would send the wrong signal:

...in the long run that [the proposed exemption for refugees] will actually have a detrimental effect, because it does not really show that we are interested in them participating in our democracy. If we tell them, 'You must learn English if you can,' that shows that we are actually interested in their input. We are not just excluding them immediately; we are actually giving them a sign that we want their opinions, we want their voice...⁶⁷

3.52 In answers to the committee's questioning on this issue, a Departmental representative responded that:

Ultimately it becomes a philosophical question as to whether you see the test as a bar or as an incentive. Certainly it is the government's view that the test is an incentive for people to learn about Australia and to be able to communicate in English given that citizenship is not a tokenistic thing.⁶⁸

3.53 The witness from the Department acknowledged that refugee and humanitarian entrants may have low levels of education and literacy, but also pointed out that the government is spending 'hundreds of millions of dollars' on English language training and English language services which are accessed by many refugee and humanitarian entrants.⁶⁹ The witness also informed the committee that:

The introduction of formal testing will be carefully monitored to identify those prospective citizens for whom an alternative test or tests may be appropriate. This approach will enable the development of an alternative test or tests designed on the basis of identified need rather than on conjecture.⁷⁰

Other safeguards

3.54 The Human Rights and Equal Opportunity Commission (HREOC) argued that the Bill contains no adequate safeguards to ensure that the creation of different tests does not operate unfairly against particular categories of applicants. HREOC therefore proposed that the Bill should provide a mechanism to allow for exemptions or an

66 *Committee Hansard*, 16 July 2007, p. 9.

67 *Committee Hansard*, 17 July 2007, p. 29.

68 *Committee Hansard*, 16 July 2007, p. 29.

69 *Committee Hansard*, 16 July 2007, p. 30.

70 *Committee Hansard*. 16 July 2007, p. 26; see also pp 30 and 32.

alternative process for applicants who are unfairly disadvantaged by having to sit a test.⁷¹ HREOC suggested that:

...a suitable alternative procedure would be to enable an applicant to undergo an interview with an officer of the Department of Immigration and Citizenship to assess the requirements of s 23(2)(d), (e) and (f), along similar lines to the procedure that exists currently. This alternative procedure could be conditional upon the applicant sitting and failing the written test (either once or on a number of occasions) or could simply be triggered by an application to the Minister. In exceptional cases, it might also be appropriate for the Minister to waive the testing requirement altogether for a particular applicant.⁷²

3.55 HREOC therefore made detailed suggestions for amendments to be made to section 23(2A) of the Bill.⁷³ In support of these suggestions, HREOC pointed out that Canada's citizenship legislation allows a person to demonstrate adequate knowledge of Canada, and one of the official languages of Canada, by undergoing an interview with a citizenship judge as an alternative to a formal test. The Canadian legislation also provides their Minister with a discretion to waive the eligibility criteria on 'compassionate grounds'.⁷⁴ HREOC further noted that New Zealand's *Citizenship Act 1977* allows their Minister to grant citizenship to an applicant if it 'would be in the public interest because of exceptional circumstances of a humanitarian or other nature...'.⁷⁵

3.56 Several organisations suggested that the impact of the Bill should be monitored and/or reviewed. For example, FECCA advocated 'consistent monitoring of the consequences of the introduction of a citizenship test, to ensure that there are no unintended consequences, bias or lack of fairness'.⁷⁶ FECCA specifically suggested that data be collected to identify any groups or clusters of people who were failing the citizenship test.⁷⁷ The NSWCCCL suggested that the Bill should contain a sunset clause to ensure that the proposed testing regime is reviewed after three years. The NSWCCCL felt that this should include a review of the regime's impact on citizenship conferral rates and certain groups within society.⁷⁸

71 *Submission 41*, pp 3 and 6; see also Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 2.

72 *Submission 41*, p. 7; see also Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 2; Mr Brook Hely, HREOC, *Committee Hansard*, 17 July 2007, p. 4 and ALHR, *Submission 44*, p. 11.

73 *Submission 41*, see pp 8-9 for specific proposed amendments to address this issue.

74 See further *Submission 41*, pp 7-8.

75 *Submission 41*, p. 8.

76 *Submission 51*, p. 4.

77 *Submission 51*, p. 4; see also Community Relations Commission, *Submission 56*, p. 1 and Mr Sam Wong, CMCF, *Committee Hansard*, 16 July 2007, p. 5.

78 *Submission 32*, p. 6.

3.57 As outlined earlier, the Department noted that the Bill contains provisions to allow for different tests, and reassured the committee that the implementation of the test would be monitored on an ongoing basis to identify those prospective citizens for whom an alternative test or tests would be appropriate.⁷⁹

Committee view

3.58 The committee accepts the Department's evidence that the proposed citizenship testing regime will be more objective than the current system of an informal interview. The committee considers that the proposed test will encourage prospective citizens to familiarise themselves with Australian society and will therefore help them integrate and participate in Australian society. The committee also notes that there appears to be considerable public support for the introduction of a citizenship test, and that many overseas countries have similar tests. As discussed earlier, there is at least a perception that the introduction of citizenship testing in some of those countries is, in part, a response to concerns about terrorism. The committee acknowledges that the test is being introduced in the context of heightened security concerns in Australia but notes that this has not been put forward as a reason for introducing citizenship testing in this country.

3.59 The committee notes suggestions that the proposed regime could provide a disincentive for some people to apply for Australian citizenship. In the absence of evidence of the effects of testing on applications for citizenship in countries where testing is a feature of the application for citizenship, the committee was not able to test that proposition.

3.60 The committee also acknowledges concerns about the potential impact of citizenship testing on certain groups within society, such as refugee and humanitarian entrants. The committee is reassured by the evidence from the Department that the regime will be monitored on an ongoing basis and that the Minister will have discretion to approve different tests designed on the basis of identified need. This should cater for most applicants. However, the committee remains concerned that special cases might arise, for example, for non-citizens who have served the nation in some special way, and that there is apparently no provision for a waiver and for conferring citizenship in those cases.

3.61 The committee welcomes the Department's evidence that it will monitor and evaluate the regime on an ongoing basis. However, the committee believes that, in addition to this ongoing monitoring, a more formal and comprehensive review of the citizenship testing regime should be conducted three years after the commencement of the regime. In particular, the committee suggests that this review should examine the regime's impact on citizenship application and conferral rates and on certain groups within society, such as refugee and humanitarian entrants, women and people from non-English speaking backgrounds.

⁷⁹ *Committee Hansard*, 16 July 2007, p. 26.

Recommendation 1

3.62 The committee recommends that the operation of the citizenship testing regime be reviewed three years after the Bill's commencement, particularly to gauge the regime's impact on citizenship application and conferral rates and on certain groups within society, particularly refugee and humanitarian entrants.

CHAPTER 4

LEGAL AND OTHER ISSUES

4.1 This chapter discusses the following issues:

- legal and drafting issues;
- the content and nature of the proposed test;
- resourcing and alternatives to citizenship testing; and
- other issues.

Legal and drafting issues

4.2 Several legal and drafting issues were raised during the committee's inquiry, including:

- the nature and breadth of the Minister's determination; and
- the Bill's commencement clause.

Proposed ministerial determination

4.3 Item 5 of the Schedule to the Bill would insert a new section 23A in the principal Act. Specifically, subsection 23A(1) would require the Minister to make a written determination to approve a test for the purposes of the proposed new subsection 21(2A).¹ Subsection 23A(7) declares that a determination made under subsection (1) is not a legislative instrument.

4.4 The Senate Scrutiny of Bills Committee observed that:

If the determination of a proposed citizenship test is not of a legislative character, then it may be considered not to apply generally to a group of people, but is more of an administrative decision tailored to a particular applicant for Australian citizenship... If the determination is taken to be an administrative decision to approve a test for a particular applicant, then there does not appear to be any provision in the bill for the determination to be subject to any form of merits review under the *Administrative Appeals Tribunal Act 1975*.²

4.5 The Department responded to this concern as follows:

1 Subsection 21(2A) would oblige persons applying for Australian citizenship to sit and successfully complete a test to demonstrate that they understand the nature of their application, that they possess a basic knowledge of English and an adequate knowledge of Australia and the responsibilities and privileges of citizenship.

2 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 6 of 2007*, pp 18-19.

This view seems to be based on the Committee's reading of paragraph 5(2)(a) of the *Legislative Instruments Act 2003* (LI Act), which provides that an instrument is taken to be of a legislative character if, among other things, "it determines the law or alters the content of the law, rather than applying the law in a particular case".

It does not follow, however, that if an instrument does not determine the law or alter the content of the law it must be an instrument that applies the law in a particular case. An instrument that does not determine the law or alter the content of the law may nevertheless be an instrument that applies the law (or makes provision for its application) to a group of people. The Government is of the view that the power in section 23A(1) is a power to make a determination that applies generally and not in relation to a particular case or cases and therefore merits review is not appropriate.

Whatever the precise 'character' of a determination under proposed section 23A(1), the Government does not believe that such a determination, which will approve the content of the new citizenship test, should be subject to the disallowance provisions of the LI Act.³

4.6 In oral evidence the Department stated that:

It is also the government's view that the determination should not be the subject of disallowance provisions in the Legislative Instruments Act. This is because the government believes that this is likely to be a source of uncertainty and confusion, especially where potential applicants have sat and passed a test that may then be disallowed.⁴

4.7 HREOC in supplementary evidence informed the committee that under section 15 of the *Legislative Instruments Act 2003* there would be no legal confusion in relation to any rights that might have accrued prior to a disallowance of, or motion to disallow, the minister's determination. According to HREOC, that section of the Act and particularly subsections (b) and (c) make it clear that any rights that have accrued prior to a disallowance or motion to disallow would not be affected.⁵

4.8 HREOC assumed therefore that the 'uncertainty' to which the Department referred would result from the period of time that the Parliament might take to resolve any disallowance motion. HREOC submitted that either administrative or legislative steps could easily be taken to avoid the 'uncertainty', specifically, that:

At the administrative level, the Minister could ensure ... that the test would not be implemented pending resolution of the matter within Parliament. Alternatively, the instrument could be drafted in such a way that either it

3 *Submission 30*, p. 3.

4 *Committee Hansard*, 16 July 2007, p. 25.

5 HREOC, *Answers to Questions on Notice*, Received 24 July 2007, pp 3-4.

does not come into effect until the 15 sitting days have elapsed, or if a motion for disallowance is put, pending the outcome of the motion.⁶

4.9 Several other witnesses also commented on matters to do with ministerial discretion, particularly on the breadth of ministerial discretion in the Bill and whether the Minister's determination should be a legislative instrument.

4.10 The Western Australian Government, for example, having canvassed the definition of a legislative instrument as defined under section 5 of the Legislative Instruments Act, submitted that it is 'unclear why the Minister's determination [under proposed subsection 23A(7)] does not have the character of a legislative instrument and [is] therefore capable of being reviewed by Parliament'.⁷ The Western Australian Government also submitted that:

While it would not be appropriate for the details referred to in s23A to be contained in the Bill, it would be appropriate that they be made through legislation and therefore subject to an appropriate level of public scrutiny.⁸

4.11 The Centre for Human Rights Education submitted that:

... the Bill provides that there will be a test that a person has to complete and it is for the Minister to approve the actual test by "written determination" (s. 23A(1)) and to also determine what amounts to successful completion of the test (s. 23A(2)). Where then does this leave any scrutiny by Parliament? The design and structure of any proposed test should be transparent, objective and open to public consultation and scrutiny.⁹

4.12 Another submission argued that:

There seems to be no restriction on the minister making determinations on the content, passing grades, means of administration or eligibility to set the test on an individual-by-individual basis, opening up the possibility for abuse similar to that a few decades ago when a test "in a language of the British Isles" was given to a continental European in Gaelic ...¹⁰

4.13 The B'nai B'rith Anti-Defamation Commission stated that:

It is unsatisfactory for legislation to be passed which leaves all aspects of a proposed scheme to the discretion of the Minister. While the intention at

6 HREOC, *Answers to Questions on Notice*, Received 24 July 2007, p. 4.

7 *Submission 24*, p. 2.

8 *Submission 24*, p. 2.

9 Centre for Human Rights Education, Curtin University of Technology, *Submission 2*, p. 6; see also CMCF, *Submission 46*, p. 2.

10 Mr David T Bath, *Submission 9*, p. 3.

this time may be innocuous, legislation of this nature should not, as a matter of principle, be allowed to pass through Parliament and to become law.¹¹

4.14 Similarly, Ms Anna Samson of the Refugee Council of Australia was concerned that the Bill 'leaves some of the most contentious aspects of the policy within the sole purview of the Minister and beyond the scrutiny of the legislature.'¹² Indeed, some witnesses described the Bill as 'shell legislation'.¹³

4.15 The Australian Christian Lobby, however, submitted that the test questions should be approved by the Minister as a representative of the people.¹⁴

4.16 To reduce the potential for ministerial discretion, VIRWC suggested that the proposed test should be approved by an independent panel of reputable experts, rather than the Minister.¹⁵ Similarly, the NSWCCCL felt that the Bill should require the test be submitted to a consultative committee.¹⁶

4.17 HREOC contended that:

... on the one hand, the legislation confers too much discretion on the minister in formulating a citizenship test ... In this regard, the amendments do not limit the minister's discretion or subject it to external scrutiny. On the other hand, HREOC submits that there is insufficient discretion conferred on the minister to formulate alternatives or waive a formal test for applicants with special circumstances or in cases of hardship.¹⁷

4.18 In its submission to the inquiry, HREOC submitted that the Minister's determination of the proposed citizenship test under proposed section 23A should be made a legislative instrument. HREOC argued that:

The importance of citizenship to Australia's future and its implications for compliance with international human rights standards warrants parliamentary scrutiny of any instrument creating a new citizenship test. This oversight will enhance the credibility of the test process before it is applied to prospective Australian citizens. Additional Parliamentary scrutiny will also ensure that any provisions beyond the scope of the test initially foreseen by Parliament when drafting the empowering act can be addressed.¹⁸

11 *Submission 42*, p. 4.

12 *Committee Hansard*, 17 July 2007, pp 9-10.

13 See, for example, Professor Kim Rubenstein, *Committee Hansard*, 16 July 2007, p. 12.

14 *Submission 47*, p. 1.

15 *Submission 20*, p. 5.

16 *Submission 32*, p. 3.

17 Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 1.

18 *Submission 41*, p. 4; see also Dr Ben Saul, Sydney Centre for International and Global Law, *Submission 27*, p. [1]; NSWCCCL, *Submission 32*, p. 6; RACS, *Submission 39*, p. 6.

4.19 HREOC acknowledged that making the determination a disallowable instrument could disclose the test questions. It proposed two possible approaches to address that potential problem.

4.20 First, the Minister's determination might contain the full list of potential questions and state that the test would comprise 20 questions drawn at random from that list. HREOC submitted that there would be a mechanism for ensuring scrutiny over the appropriateness of the questions but that even though the questions would potentially be disclosed, an applicant would effectively need to learn the answers to all of those questions.¹⁹

4.21 Alternatively, HREOC suggested that the Parliament might delineate in the Bill between:

- a. the Minister's determination on the nature, form, source material and essential features of the test; and
- b. the Minister's determination on the actual questions comprising the test.²⁰

4.22 The Victorian Bar informed the committee that in Canada, although the Minister is responsible for compiling the citizenship test, the Minister is guided by the *Citizenship Regulations* 1993 which expand on what 'knowledge of Canada and of the responsibilities of citizenship is to be tested'.²¹ The Victorian Bar submission elaborated on the contents of the Canadian regulations as follows:

... regulation 15 describes what is to be tested, and it is all 'knowledge', not the 'acceptance of values' that is the theme of the Australian Minister's second reading speech. Regulation 15 identifies the things of which an applicant for Canadian citizenship is required to have a general understanding: the right to run for elected office, and to vote in federal, provincial and municipal elections; and the chief characteristics of Canadian social, cultural and political history and geography.²²

4.23 HREOC also referred to the Canadian legislation, noting that it 'more closely confines ministerial discretion than that proposed by the Bill',²³ but concluded that rather than adopt that example it would be preferable if the test were a disallowable instrument.²⁴ In answer to a question, a witness from HREOC acknowledged that the Parliament would be able to disallow a regulation in its entirety, but would not be able to amend it. The witness concluded that having a regulation tabled and having the

19 *Submission 41*, p. 5.

20 *Submission 41*, p. 5.

21 *Submission 55*, p. 5.

22 *Submission 55*, p. 5.

23 Ms Margaret Donaldson, *Committee Hansard*, 17 July 2007, p. 2.

24 Ms Margaret Donaldson, *Committee Hansard*, 17 July 2007, p. 3.

opportunity for debate might provide the people affected with some assurance or comfort.²⁵

Commencement

4.24 The Scrutiny of Bills Committee expressed concern that the provisions of the Schedule are to commence on Proclamation, but that no time has been specified within which the amendments must commence. That committee has sought the Minister's advice as to whether it would be possible to make the necessary arrangements for the test and for any computer systems needed to conduct the test within a fixed period after Assent to limit the 'currently unfettered discretion granted to the Minister'.²⁶

4.25 The Department informed this committee that the Government intends to commence testing on 17 September 2007 'subject to the passage of the legislation through the Parliament and meeting logistical requirements within a short time frame'.²⁷ A Departmental witness told the committee during the public hearing on 16 July that the Department is currently 'on track to meet this date'.²⁸

Other drafting issues

4.26 Two other significant issues were raised in relation to the drafting of the Bill.

Ambiguity about test questions

4.27 HREOC submitted that ambiguity exists in relation to whether the test questions would necessarily be related to the eligibility criteria. HREOC considered that proposed section 23A should be clarified, as it does not specifically require the citizenship test to be related to the eligibility criteria in paragraphs 21(2)(d), (e) and (f). HREOC recommended that, to avoid any potential ambiguity, the wording of proposed subsection 23A(1) should be amended to make clear that the content of any test is directly referable to the criteria in paragraphs 21(2)(d),(e) and (f).²⁹

4.28 In response to questions on this suggestion, the Department noted:

Proposed subsection 21(2A) expressly states that paragraphs 21(2)(d), (e) and (f) are taken to be satisfied, if and only, the person sat a test approved in a determination under section 23A and proposed section 23A expressly states that the Minister must by written determination approve a test for the purposes of subsection 21(2A).

25 Ms Margaret Donaldson, *Committee Hansard*, 17 July 2007, p. 4.

26 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 6 of 2007*, p. 18.

27 *Submission 30*, p. 1.

28 *Committee Hansard*, 16 July 2007, p. 25.

29 *Submission 41*, p. 3; see also Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, pp 5-6.

The department considers that there is no ambiguity and that it is clear that the content of any test is directly referable to the criteria in 21(2)(d), (e) and (f). Indeed, a test approved under proposed subsection 23A(1) may only be for the purposes of proposed subsection 21(2A) and those purposes relate only to the criteria in 21(2)(d), (e) and (f).³⁰

Eligibility criteria

4.29 Some witnesses submitted that under proposed subsection 23A(3) the Minister would have an unfettered discretion to determine eligibility criteria for persons sitting the test. HREOC, for example, suggested that proposed subsection 23A(3) be removed from the Bill because that section would allow the Minister's determination to set out additional eligibility criteria for sitting the proposed test. HREOC submitted that, in view of the eligibility criteria in subsection 21(2) of the Bill, there is no need to provide further criteria that must be satisfied in order to sit the test. Ms Donaldson of HREOC described this power as 'superfluous and unnecessary' and further submitted that:

The inclusion of additional eligibility criteria might lead to a situation where the minister is able to block certain applicants from taking the test despite these applicants satisfying all other eligibility criteria for citizenship.³¹

4.30 The Department responded to this concern as follows:

... the concern is that a determination may establish eligibility criteria that are inappropriate and unfair, with no parliamentary scrutiny and no opportunity for disallowance. Our legal advice is that the determination making power in proposed section 23A does not allow the minister to set eligibility criteria for sitting the test that are inconsistent with the provisions of the act and, in particular, with the general eligibility criteria in subsection 21(2).

... The power is required for two purposes. One is to ensure that the resources available for testing are used only for prospective citizens. The second is to enable access to any special tests ... to be limited to those for whom the special test is intended.

...To help alleviate the concerns about test eligibility criteria, the government intends to amend the bill by inserting a note that will explain that the power [to] set eligibility criteria to sit the test does not allow the minister to set criteria that are inconsistent with the act and, in particular, inconsistent with the general eligibility criteria for citizenship.³²

30 Answers to Questions on Notice, received 27 July 2007, referred to as [Question 1 (written)].

31 *Committee Hansard*, 17 July 2007, p. 2.

32 *Committee Hansard*, 16 July 2007, pp 25-26.

Testing 'knowledge of Australia': content and nature of the test

4.31 As outlined in Chapter 2, the proposed citizenship test is expected to be computer based and consist of 20 multiple-choice questions drawn randomly from a large pool of confidential questions. Each test is expected to include three questions on the responsibilities and privileges of Australian citizenship, which must be answered correctly. The Department stated in its submission that 'the test questions will assess knowledge of Australian history, culture and values based on information contained in a citizenship test resource book'.³³

What are Australian values?

4.32 Concerns were raised during the committee's inquiry about the possible content and potentially subjective nature of the proposed citizenship test questions. In this context, many submissions were critical of the testing of 'Australian values'.³⁴

4.33 As outlined earlier in this report, several submissions queried the efficacy of the test as means of testing commitment to such values.³⁵ Many also objected to the concept of 'values' as too subjective. For example, the NSWCCCL argued that:

There is no objective way to determine what are the 'common values we share'... Virtually no values could be identified which are universally held by Australian citizens.³⁶

4.34 Similarly, the Centre for Human Rights Education at the Curtin University of Technology was concerned that:

The idea of 'Australian values' is particularly subjective and open to considerable manipulation and political skulduggery. On a practical level we also query how such knowledge would be tested. How do we formulate a multiple choice question that would adequately test and assess a person's "values"?³⁷

33 *Submission 30*, p. 2; see also The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

34 See, for example, Scots of Victoria, *Submission 3*, p. 1; Professor Ingrid Piller, *Submission 19*, p. 11; VIRWC, *Submission 20*, p. 5; Federation of Community Legal Centres (Vic), *Submission 28*, p. 2; National Council of the St Vincent de Paul Society, *Submission 35*, p. 1; CMCF, *Submission 46*, p. 2; The Victorian Bar, *Submission 55*, p. 3; Community Relations Commission, *Submission 56*, p. 1; Ms Misty Adoniou, ACTA, *Committee Hansard*, 16 July 2007, p. 20; Dr Martin Bibby, NSWCCCL, *Committee Hansard*, 17 July 2007, p. 15; cf Dr Stephen Chavura, Festival of Light, *Committee Hansard*, 17 July 2007, p. 27; the Hon. Dr Bob Such, MP, *Submission 16*, p. [1].

35 See, for example, Professor George Williams, *Submission 7*, pp 1-2.

36 *Submission 32*, p. 2; see also Dr Martin Bibby, NSWCCCL, *Committee Hansard*, 17 July 2007, pp 15-16.

37 *Submission 2*, p. 6; see also Castan Centre, *Submission 14*, p. 2.

4.35 Mr Sam Wong of the Canberra Multicultural Community Forum also told the committee that:

It is almost impossible to draft questions to test Australian values, particularly concerns like mateship, respect for freedom or commitment to democracy. Testing people on common values, which implies that there is only one set of Australian values and one type of Australian citizen, undermines the vital role that multiculturalism and diversity play in Australian society.³⁸

4.36 Several submissions pointed out that the government's discussion paper on the citizenship test listed several values – such as freedom, democracy, respect for the rule of law, equality, non-discrimination – which are not uniquely Australian.³⁹ FASSTT suggested that 'as such, there should not be an expectation that potential citizens do not already hold these values'.⁴⁰

4.37 There was also some discussion during the committee's inquiry as to the extent to which Australia's Judeo-Christian heritage should be acknowledged and reflected in the proposed test. For example, the Centre for Human Rights Education at the Curtin University of Technology was concerned about:

...reports that the test will be focused on applicants demonstrating an understanding of "Judeo-Christian" values and British/Western traditions. Such values and traditions do not necessarily reflect the multicultural composition of Australia today.⁴¹

4.38 However, the Australian Christian Lobby told the committee that it:

...strongly supports the Minister's comments that applicants should be required to acknowledge Australia's Judeo-Christian heritage. This does not require prospective citizens to share the Judeo-Christian faith, but it would make clear that their new country's historical context is Judeo-Christian, rather than of any other faith or ideology.⁴²

4.39 In response to a question from the committee as to whether it would be desirable to include in the test questions about Australia's Judeo-Christian heritage, a departmental witness responded that:

... part of Australia and its history would go to our belief system, so I imagine that that is an area that will be covered in the resource book.⁴³

38 *Committee Hansard*, 16 July 2007, p. 2.

39 VIRWC, *Submission 20*, p. 5; FASSTT, *Submission 8*, p. 4.

40 *Submission 8*, p. 4.

41 *Submission 2*, p. 6.

42 *Submission 47*, p. 1; see also Mr David Yates, Australian Christian Lobby, *Committee Hansard*, 16 July 2007, pp 8, 9-10.

43 *Committee Hansard*, 16 July 2007, p. 28.

English language issues

4.40 Another issue raised frequently in evidence was the requirement for prospective citizens to demonstrate a basic knowledge of the English language.⁴⁴ For example, it was felt that this requirement could discriminate against prospective citizens from a non-English speaking background. It was also pointed out that people with limited English skills can still make an important contribution to Australian society.⁴⁵

4.41 On the other hand, some witnesses felt that the requirement for a basic knowledge of English was appropriate. For example, the Festival of Light Australia submitted that 'before citizenship is granted, applicants should be required to demonstrate a level of English sufficient to allow them to understand and participate in the political process.'⁴⁶ Similarly, Mr David Yates of the Australian Christian Lobby told the committee that :

It is exactly the same as most other countries that have tests. Again, Holland, the UK, Canada, the USA and South Korea all require a basic understanding of their own native tongue. We do not see why it should be any different in Australia. We do recognise that there are some people on the humanitarian visa side who may not necessarily have a proficiency in English, but to operate in the country we think it is common sense to at least have a basic knowledge of English. So we strongly support that an outcome of becoming a citizen requires that you do have a basic knowledge.⁴⁷

4.42 The committee notes that paragraph 21(2)(e) of the Act currently requires the Minister to be satisfied that an applicant for citizenship by conferral has (among other things) a basic knowledge of English, and this requirement is not being amended by the Bill.⁴⁸

44 See for example, Centre for Human Rights Education, Curtin University of Technology, *Submission 2*, p. 4; Queensland Public Interest Law Clearing House, *Submission 22*, p. 2; Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1; cf Festival of Light Australia, *Submission 4*, pp 1-2.

45 See, for example, Ms Voula Messimeri-Kianidis, FECCA, *Committee Hansard*, 16 July 2007, p. 3; FECCA, *Submission 51*, p. 3; Mr Sam Wong, CMCF, *Committee Hansard*, 16 July 2007, p. 4; Mr Paul Power, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 8.

46 *Submission 4*, p. 1.

47 *Committee Hansard*, 16 July 2007, pp 10-11.

48 See also the Department, *Committee Hansard*, 16 July 2007, pp 26 and 35.

4.43 However, some submitters were concerned that the proposed test may actually require more than a basic knowledge of English, and would therefore exceed the requirements of the Act.⁴⁹ For example, according to Professor Tim McNamara:

...if such a test were administered exclusively in English, and as a written test, it would represent a de facto language test at a far higher level than is required in the legislation and would also represent a literacy test.⁵⁰

4.44 In the same vein, Ms Adoniou of ACTA told the committee that the proposed test questions would be 'an extraordinarily difficult English language hurdle for people to jump over'.⁵¹

4.45 The NSWCCCL suggested that the resource booklet supporting the test should be available in various languages.⁵² The NSWCCCL also suggested that the Bill should require the Minister to make the citizenship test available in a language of the applicant's choice.⁵³

4.46 A representative from the Department told the committee that the resource booklet will only be made available in the English language, and 'the fact that the test will be conducted in English makes it important that the resource materials are based in English'.⁵⁴ At the same time, the representative reiterated that applicants for citizenship, including refugee and humanitarian entrants, are currently already required to satisfy requirements that they have a basic understanding of English and an adequate knowledge of their rights and responsibilities.⁵⁵

4.47 The representative also suggested that the citizenship test and application is 'part of a journey rather than simply a destination in itself' and that:

The department is placing increasing and significant emphasis on pre-visa or information at the time of visa. We are revamping material that has existed for many years about life in Australia and soon we will be producing a new document called Life in Australia. It will be available in a full range of community languages and provide very similar information about life in Australia as will be contained in the citizenship test book. People will have had access to that sort of material in their own language or certainly in more than 20 languages some years before they have considered

49 NSWCCCL, *Submission 32*, p. 4; Professor Tim McNamara, *Submission 33*, p. 12; ACTA, *Submission 34*, p. 1; RACS, *Submission 39*, p. 2; Australian Christian Lobby, *Submission 47*, p. 2.

50 *Submission 33*, p. 12.

51 *Committee Hansard*, 16 July 2007, p. 21.

52 *Submission 32*, p. 3.

53 *Submission 32*, p. 5; see also ACTA, *Submission 34*, p. 4 and Ms Katie Wrigley, RACS, *Committee Hansard*, 17 July 2007, p. 24.

54 *Committee Hansard*, 16 July 2007, p. 26.

55 *Committee Hansard*, 16 July 2007, p. 26.

applying for citizenship. So I think we regard citizenship as being the final step of fully participating in the Australian community, but it follows many other steps that have occurred in the journey of the person from being a visa applicant to becoming a prospective citizen.⁵⁶

Availability of questions and supporting material

4.48 The fact that the proposed test questions and supporting resource booklet have not been made publicly available was also an issue for some. For example, the Castan Centre observed that it is difficult to comment on the validity of the test when very little is known about the content of the test itself:

This lack of specific information clouds the ability of the community and Parliament to properly assess and debate this new proposal.⁵⁷

4.49 Others also suggested that the resource booklet and test questions should be subject to a public consultation process.⁵⁸

4.50 Professor Rubenstein raised with the committee the issue of the legal validity of the test. She informed the committee that the Department acknowledges that in order for the test to be lawful it must be within the scope of the Act, but that given that the questions will not be made public, there is no avenue available to allow for scrutiny of whether the test people sit is in fact lawful. In her view, it would be preferable that the test questions be made public as a matter of transparency and legal accountability given that the test is a threshold test for such an important legal status.⁵⁹

4.51 However, as outlined in Chapter 2, the Department told the committee that the test questions would be kept confidential on the basis that this would discourage rote learning of the answers.⁶⁰

4.52 In response to the committee's request for examples of the sorts of test questions that might be asked, a representative of the Department told the committee that the questions had not yet been written. However, the representative further stated that:

56 *Committee Hansard*, 16 July 2007, pp 26-27; see also Answers to Questions on Notice, received 27 July 2007, [Question 8 (written)].

57 *Submission 14*, p. 2; see also Country Women's Association of New South Wales, *Submission 25*, p. 2; Australia/Israel and Jewish Affairs Council, *Submission 26*, p. 2; NSWCCCL, *Submission 32*, p. 6; National Council of the St Vincent de Paul Society, *Submission 35*, p. 1; Newcomers Network, *Submission 36*, p. 3; Darebin Ethnic Communities Council, *Submission 38*, p. 1; Professor Kim Rubenstein, *Submission 18*, p. 1.

58 See, for example, Mr Mark Kulasingham, FECCA, *Committee Hansard*, 16 July 2007, p. 3; NSWCCCL, *Submission 32*, p. 6; CMCF, *Submission 46*, p. 1.

59 Professor Kim Rubenstein, *Answers to Questions on Notice*, 20 July 2007, pp 1-2.

60 *Submission 30*, p. 3.

I would prefer not to get into speculation as to what a question might or might not be, but I think there is sufficient information in the public domain from statements by the minister for people who have an interest in this matter to be quite clear that we are talking about questions that go to Australia, our values, history, geography, political system and national symbols. That will become more apparent when the test book is soon released. It is not the intention of the government to release the questions.⁶¹

4.53 The representative also told the committee that the test questions would be drafted by consultants and that:

Once the resource book is launched or released by the minister then the resource book will go to the consultants. They will start drafting a bank of questions based on the content of the resource book. That bank will go through processes that the development of questions for any testing regime will go through. The final set of questions will end up in the IT system that will run the test and that system will randomly generate 20 questions for each test-taker.⁶²

Resourcing and alternatives

4.54 Several submissions suggested that the resources spent on implementation of the proposed citizenship test could be better spent on improving settlement, orientation, language and education programs for new migrants.⁶³ Many felt that such 'programs are more likely to achieve the aim of increased knowledge of Australia than imposing a formal citizenship test'.⁶⁴

4.55 For example, Professor Williams submitted that:

Questions need to be asked about whether the money spent on this test could be better used on other types of education and programs that might have a longer term impact. There may well be better ways of producing a more harmonious and cohesive community based upon shared knowledge and values.⁶⁵

61 *Committee Hansard*, 16 July 2007, p. 27.

62 *Committee Hansard*, 16 July 2007, p. 37; see also p. 31.

63 See, for example, Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, pp 6-7; Professor George Williams, *Submission 7*, p. 1; Scots of Victoria, *Submission 3*, p. 1; FASSTT, *Submission 8*, p. 3; Castan Centre, *Submission 14*, p. 4; VIRWC, *Submission 20*, p. 3; ECCV, *Submission 31*, p. 3; ACTA, *Submission 34*, p. 4; National Council of the St Vincent de Paul Society, *Submission 35*, p. 2; National Ethnic and Multicultural Broadcasters Council, *Submission 37*, p. 2; B'nai B'rith Anti-Defamation Commission, *Submission 42*, p. 2; CMCF, *Submission 46*, p. 3; Refugee Council of Australia, *Submission 49*, p. 2; Victorian Government, *Submission 53*, p. 2; Ms Anna Samson, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 11.

64 FASSTT, *Submission 8*, p. 3.

65 *Submission 7*, p. 2.

4.56 Similarly, Mr Wong of the Canberra Multicultural Community Forum expressed the opinion that:

There are more practical and effective ways of using funds that will be spent on developing, administering and monitoring the proposed test—for example, on English language classes, ongoing community integration programs, employment skills programs, community support services, reciprocity programs—such as volunteer and community participation agreements—or a range of social cohesion or education programs. The focus of any citizenship funds should be on ensuring successful settlement and on ongoing support to ensure good citizenship, rather than on one-off multiple-choice tests.⁶⁶

4.57 The Refugee Council of Australia also proposed that the funding for the citizenship test should be reallocated to allow a further expansion of English language services. In this context, the Refugee Council suggested that the Australian Government consider expanding the eligibility for English language training to include refugees on temporary protection visas — who currently do not have access to federally-funded English language courses.⁶⁷

4.58 Others, such as the Ethnic Communities' Council of Victoria and the B'nai B'rith Anti-Defamation Commission, suggested that current programs could be improved by allowing more flexible delivery and providing childcare, to allow greater access for migrants with family and employment commitments.⁶⁸ The B'nai B'rith Anti-Defamation Commission felt that 'this would be a far more appropriate expenditure than spending money on an untested, educationally dubious process'.⁶⁹

4.59 Some suggested that completion of a civics education course could be required as an alternative to undertaking the proposed test, particularly for people given an exemption from the test.⁷⁰ The NSWCCCL, in suggesting that the Bill should provide alternatives to the test, pointed out that:

For example, in the UK, citizenship applicants who have not attained a certain level of proficiency in English can satisfy the citizenship test requirement by attending an English for Speakers of Other Languages

66 *Committee Hansard*, 16 July 2007, p. 2.

67 *Submission 49*, p. 3; and also Mr Paul Power, *Committee Hansard*, 17 July 2007, p. 9; see also FECCA, *Submission 51*, p. 7.

68 *Submission 31*, pp 1-2, 5; see also Mr Paul Power, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 13; and Department, Answers to Questions on Notice, received 27 July 2007, [Questions 4 and 5 (written)].

69 *Submission 42*, p. 2.

70 See, for example, ECCV, *Submission 31*, p. 4.

course which covers citizenship materials. In this system, the focus is on educating instead of screening future citizens.⁷¹

4.60 Several witnesses felt that, in order to achieve the proposed policy objectives of the Bill, the citizenship test could be replaced altogether with a requirement for prospective citizenship applicants to complete a relevant course. For example, Dr Ben Saul of the Sydney Centre for International and Global Law recommended that, instead of the test, it would be preferable:

...to engage potential citizens in a course, a series of seminars, or other program of instruction, over a period of time, in which they can genuinely learn about the rights and responsibilities of citizens, and the political community which they hope to shortly join. Participatory learning through civics education classes has a much greater chance of cultivating a deep and lasting knowledge of Australia than a one-off test...⁷²

4.61 Australian Lawyers for Human Rights (ALHR) suggested that this course could be modelled on the Adult Migrant English Program course entitled 'Let's participate: A course in Australian citizenship'. In their view:

...that mode of imparting knowledge about Australian society should be preferred over a citizenship test as one which places comparatively less emphasis on rote learning and offers more opportunities for participation and discussion about Australian society and what it means to be an Australian citizen.⁷³

4.62 However, Professor Tim McNamara warned that while such courses may have a beneficial impact:

The British experience is that while there is a strong demand for such courses, there are unfortunately long waiting lists for them. Proper provision for such courses would need to be made if they are to represent a realistic alternative.⁷⁴

4.63 A representative of the Department pointed out that the government was already administering a range of programs in this area, including the Adult Migrant English Program. He also noted that there were a number of programs being run by other Departments, such as the Language, Literacy and Numeracy program and the Workplace English Language and Literacy Program (run by the Department of Education, Science and Training). The representative told the committee that 'when

71 *Submission 32*, p. 5; Dr Martin Bibby, NSWCCCL, *Committee Hansard*, 17 July 2007, p. 17; see also RACS, *Submission 39*, p. 7.

72 *Submission 27*, p. 2; also Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1.

73 *Submission 44*, p. 7.

74 *Submission 33*, p. 11.

you take all programs across all portfolios, the estimated outcome for 2006-07 is in the order of \$285 million'.⁷⁵

Other issues

Fee increase

4.64 A few submissions noted that the citizenship application fee would double for those sitting the proposed citizenship test – from \$120 to \$240. National Legal Aid was concerned that those needing to take the test multiple times might pay additional fees.⁷⁶ The NSWCCCL was concerned that the fee 'might cause financial hardship or even preclude some applicants from applying for citizenship'.⁷⁷ The Council suggested that there should be a fee waiver for those on low incomes, and that any charges should be conditional on receiving citizenship.⁷⁸ RACS suggested that the additional fee would have a 'particularly harsh impact on refugees unable to easily afford this additional expense'.⁷⁹

4.65 On the same note, the Australian Christian Lobby submitted that:

The fees charged for the citizenship test should be set carefully so that the cost does not deter applicants. It would be unfair for citizenship to be available to those who can afford to pay for the test, but denied to those with lower incomes.⁸⁰

4.66 On learning that the fee would be \$240, Mr Yates from the Australian Christian Lobby told the committee that they felt this fee was a 'fair price'.⁸¹

4.67 In response to questioning on this issue, the Department told the committee that the fee would only be charged once, no matter how many times a person sat the citizenship test, because:

The payment does not actually become 'eligible' until the person applies for citizenship, which is after they have successfully completed the test. They approach us and sit the test, and if they fail they can simply continue to sit it. When they are in receipt of a test result that says they have passed,

75 *Committee Hansard*, 16 July 2007, p. 35; see further Answers to Questions on Notice, received 27 July 2007, [Question 5 (Hansard)].

76 *Submission 57*, p. 7.

77 *Submission 32*, p. 5; see also Newcomers Network, *Submission 36*, p. 3; RACS, *Submission 39*, p. 2; B'nai B'rith Anti-Defamation Commission, *Submission 42*, p. 3.

78 *Submission 32*, p. 5.

79 *Committee Hansard*, 17 July 2007, p. 22.

80 *Submission 47*, p. 2.

81 *Committee Hansard*, 16 July 2007, p. 8.

they can then lodge their citizenship application and that brings with it the application fee.⁸²

4.68 The Department also noted that fee concessions and exemptions are available. For example, a concession fee of \$40 would be available to applicants who sit the test and who have a permanent financial disadvantage and are recipients of certain pensions from Centrelink or the Department of Veterans' Affairs.⁸³

Australia's international obligations

4.69 Concerns were also expressed during the committee's inquiry that the Bill could be inconsistent with Australia's international obligations.⁸⁴ For example, the Office of the United Nations High Commissioner for Refugees (UNHCR) pointed out that Australia has obligations under the 1951 Refugee Convention⁸⁵ and the 1954 Statelessness Convention⁸⁶ to facilitate, rather than obstruct, the acquisition of citizenship by refugees and stateless persons.⁸⁷ It therefore recommended that any exemptions from the testing regime should be extended to include refugees and stateless persons.⁸⁸

4.70 ALHR suggested that the Bill could be in contravention of Australia's obligations under the *International Covenant on Civil and Political Rights* and the *International Convention on the Elimination of all forms of Racial Discrimination*.⁸⁹ That suggestion was based on the Bill's potential to operate in a discriminatory manner against particular groups of people, such as people from a non-English speaking background. ALHR therefore recommended a number of amendments to the Bill to address these concerns. These included that the Minister's determination be a legislative instrument; that conditions be placed on the Minister's determination

82 *Committee Hansard*, 16 July 2007, p. 29.

83 *Committee Hansard*, 16 July 2007, p. 29; see further: <http://www.immi.gov.au/allforms/990i/citizenship.htm> (accessed 17 July 2007).

84 See for example, Centre for Human Rights Education, Curtin University of Technology, *Submission 2*, p. 3; Castan Centre, *Submission 14*, p. 3; LHMU, *Submission 40*, p. 3; ECCV, *Submission 31*, p. 4; ALHR, *Submission 44*, pp 3-7; UNHCR, *Submission 50*; The Victorian Bar, *Submission 55*, pp 7 and 16-17; see also Ms Anna Samson, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 9.

85 *1951 Convention relating to the Status of Refugees*: see further UNHCR, *Submission 50*, p. 1.

86 *1954 Convention relating to the Status of Stateless Persons*: see UNHCR, *Submission 50*, p. 1.

87 UNHCR, *Submission 50*, p. 3; see also Centre for Human Rights Education, Curtin University of Technology, *Submission 2*, p. 3.

88 UNHCR, *Submission 50*, p. 5.

89 *Submission 44*, pp 2-7; also Castan Centre, *Submission 14*, p. 3; ECCV, *Submission 31*, p. 4; The Victorian Bar, *Submission 55*, p. 7.

power; and that the Minister be provided with a residual discretion to waive the requirement to pass a test, where it might cause unfairness.⁹⁰

4.71 The committee notes that these suggestions were discussed earlier in this chapter.

Other issues

4.72 Several submissions raised other concerns relating to citizenship, such as the situations of former permanent residents who have been unable to obtain Australian citizenship. The committee considers that these issues are outside the scope of the changes proposed by the current Bill.⁹¹

Committee view

4.73 The committee acknowledges concerns that the Bill gives the Minister a very broad discretion to formulate the proposed citizenship test, and it has some reservations about this broad discretion. The committee also accepts that there is some support for the notion that the citizenship test should be subject to parliamentary scrutiny by way of a disallowable legislative instrument. However, it is concerned about the practicality of that notion, given the detail and possible frequent changes to those details that would be contained in any such instrument, and the parliamentary process that would allow only for disallowance of the entire instrument.

4.74 The committee is also mindful of the Department's claim that if the Minister's determination were disallowable this would be likely to be a source of uncertainty and confusion, especially where potential applicants for citizenship had sat and passed a test that might then be disallowed. However, the committee also notes HREOC's suggestion that section 15 of the *Legislative Instruments Act 2003* addresses any legal confusion, and that any uncertainty that might arise during the time taken for a determination to be considered by the Parliament could be addressed by administrative or legislative means.

4.75 The committee has been informed that the government intends that the test questions will only test knowledge of matters that will be based on material in a published resource book. The committee is reassured by the Department's evidence that the test questions will need to be consistent with the legislation.

4.76 However, the committee has also been informed that the Australian Government proposes that the test questions themselves will be kept confidential. The committee acknowledges the Department's evidence that this will discourage rote-learning of the questions and answers, but notes that candidates would need to learn by rote over 200 questions.

90 See further *Submission 44*, pp 10-11; also FECCA, *Submission 51*, p. 2.

91 See, for example, Mr Michael Young, *Submission 5*; Mr Bruce Calderbank, *Submission 6*; Ms Jo Agar, *Submission 11*; Ms Cathy Agar, *Submission 15*; Ms Diane Agar, *Submission 21*.

4.77 Given the apparent level of community disquiet about the questions that might be included in the test, and that, as a general rule, delegated legislation should be transparent and disallowable, the committee suggests that the test questions be tabled in the Parliament to provide additional reassurance to those concerned. It would also help to ensure transparency and accountability of the proposed regime. The committee does not, however, consider that the test questions should be disallowable.

Recommendation 2

4.78 The committee recommends that the proposed citizenship test questions be tabled in parliament.

4.79 In relation to other drafting issues, the committee welcomes the Department's intention to clarify certain ambiguities in the Bill. The committee supports the proposal to insert a note in the Bill to explain that the power to set eligibility criteria to sit the test does not allow the Minister to set criteria that are inconsistent with the Act or the general eligibility criteria for citizenship.

4.80 However, the committee is still concerned that proposed subsection 23A(1) does not specifically require that the test be related to the eligibility criteria in paragraphs 21 (2)(d),(e) and (f). Despite the Department's evidence, the committee considers that this provision is ambiguous, and that it would be appropriate for the Bill to be amended to clarify this ambiguity.

Recommendation 3

4.81 The committee recommends that proposed subsection 23A(1) of the Bill be amended to specifically require that the test relate to the eligibility criteria in paragraphs 21 (2)(d),(e) and (f).

4.82 The committee is disappointed that the proposed resource booklet, upon which the test questions will be based, had not been finalised and made publicly available by the time of the inquiry. As a result the committee finds it somewhat difficult to comment on the nature and content of the proposed citizenship test. The committee encourages the government to finalise and release the resource booklet as soon as practicable.

4.83 As to concerns about the requirements for a basic knowledge of the English language, the committee notes that this is a requirement in the existing Act. The committee further considers that any concerns about the nature and content of the test, and whether the test proves to be more difficult to pass for certain groups within society, is a matter that can be assessed as part of the review proposed in recommendation 1.

4.84 The committee also considers it important that migrants be given adequate support and resources to enable them to pass the test. Indeed, the committee recognises the broader importance of resourcing for settlement, orientation, language and education programs for new migrants. The committee acknowledges the Department's evidence on this issue and recognises that the government is already

devoting considerable resources to these areas, including on English language training programs such as the Adult Migrant English Program, and on settlement programs, particularly for refugee and humanitarian entrants.

4.85 Finally, the committee notes the Department's evidence on the proposed fee increase for those who sit the citizenship test. The committee is comfortable with the proposed fee increase for those who sit the proposed citizenship test, particularly in light of the fee concessions that are available. The committee is also reassured by the Department's advice that the fee will only be payable once, no matter how many times a person sits the citizenship test.

Recommendation 4

4.86 Subject to the preceding recommendations, the committee recommends that the Bill be passed.

Senator Guy Barnett
Chair

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)

Australian Greens Dissenting Report

Senator Kerry Nettle

Multiculturalism is at the heart of Australian society and democracy.

Despite attempts by various governments over the years to limit and restrict the diversity of our nation, Australia has continued to grow into a mature and cosmopolitan country.

This is a testament to both those who have been born in Australia and the many migrants who have made a new life here.

From the beginning of Australia with the establishment of the White Australia policy to today, fair-minded people have had to stand up for a vision of Australia based on openness and generosity - not one based on fear and a closed door.

The government's proposed Citizenship Test contained in the *Australian Citizenship Amendment (Citizenship Testing) Bill 2007* is not only a test for those seeking to become citizens, it is a test for Australia's political leaders.

Do we again want to follow the government down the path of racism and division or do we want to stand up for a diverse and fair society?

The Australian Greens will oppose the citizenship test bill for the following reasons:

- The improvement of migrant's English language skills and understanding of Australian life can best be achieved by investing in and expanding English language and settlement programmes.
- The proposed citizenship test is a divisive and dangerous move that will break up our cohesive society rather than achieve the government's stated objective of increasing the cohesiveness of our society.
- It will distort and undermine existing English language settlement programmes.
- It will hand to a Minister an enormous and unregulated discretion to determine the scope and nature of a test that will determine the basis on which someone resides in Australia.
- It is based on a policy that is driven more by short-term political considerations than any identified policy need.

Recommendation: That the bill be opposed

Need for the bill

The Australian Greens agree with the evidence presented to the committee that the need for this bill has not been established. We agree with the Victorian Immigrant and Refugee Women's Coalition (VIRWC) who argued that there is no evidence to indicate that a change in Australian citizenship law is necessary:

...Australia has been well served by its existing inclusive citizenship laws, to the extent that we now have a culturally diverse and socially cohesive collection of people who are proud to call Australia home.¹

The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) expressed a similar view:

...over the years we have successfully integrated thousands of migrants and refugees from diverse cultural and linguistic backgrounds into Australian society, without the need for a written citizenship test. We do not believe there have been any significant changes to this situation that would warrant the introduction of a formal test.²

The federal government has failed to present evidence about why this bill is needed. During the Senate committee hearing the Secretary of the Department pointed to the fact that other countries had introduced a citizenship test and that the government had released a discussion paper on a citizenship test as evidence that a test was the best way to measure someone's commitment to Australia. The Secretary was unable to point to any evidence in Australia or overseas that a test was the best way to measure someone's commitment to a country.³

The submission from the Australian Association of TESOL Associations (ACTA) noted:

The Minister points to the use of tests in countries such as the UK, Canada and the US as evidence of the need to have one in Australia. These tests require basic recall such as the colours on the flag (US), the names of the aboriginal languages (Canada), or which court uses a jury (UK). We have no evidence that the use of these tests provides these countries with a greater sense of shared identity and values than ours. Indeed, there are quantifiable statistics to suggest that it is just the opposite.⁴

Ms Misty Adoniou, the President of ACTA expanded on this to the committee by talking about the London bombings:

¹ Ms Depika Sherchan, *Committee Hansard*, 17 July 2007, p. 22; also *Submission 20*, pp 2-3.

² *Submission 8*, p. 1.

³ *Committee Hansard*, 16 July 2007, p. 32.

⁴ *Submission 34*, p. 2.

We certainly saw that with the London bombings. These people had British citizenship, but it certainly did not mean that they automatically aspired to some kind of British value system—whatever that may have been—or that they felt part of that safe, secure and cohesive society. They certainly did not feel part of a cohesive society. There are many indications that there are many disenfranchised groups within the United States, including those who were born there but including people who have been given citizenship or who, in fact, have been denied citizenship and have since been sent home to their countries—for example, to Cambodia and Laos. Up to this point, we seem to have the most cohesive society and it would seem strange to be suddenly pursuing policies pursued by other countries which do not seem to enjoy the cohesivity that we have. We seem to be fixing something that is not currently broken.⁵

The test is a fatally flawed policy

The government has claimed that the 'test will encourage prospective citizens to gain knowledge they need to support successful integration into Australian society.'⁶

However evidence to the committee showed that the test may in fact do the opposite.

Ms Adoniou, the President of ACTA told the committee:

I worry that what we will do is disenfranchise, disengage and marginalise people and the consequences of that could be exactly the opposite to what this test aspires to achieve.⁷

The committee heard from a number of witnesses including Ms Voula Messimeri-Kianidis from the Federation of Ethnic Communities Council of Australia (FECCA) that the citizenship test is likely to discourage many people from seeking citizenship:

Our concern is that a lot of people who would feel uncomfortable about any testing at all, particularly if they have a low level of literacy, will not apply for citizenship but will self-select out. Part of the deep concern we have about the introduction of a formal citizenship test is that it will create a two-tiered society, with the people who have been accepted into this country under humanitarian refugee settlement schemes in one tier. Australia is a welcoming and tolerant country in regard to its international obligations but, once we have accepted people as permanent residents, as opposed to having full citizenship, they will forever stay within that limbo.⁸

⁵ *Committee Hansard*, 16 July 2007, p. 21.

⁶ The Hon Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

⁷ *Committee Hansard*, 16 July 2007, p. 21.

⁸ *Committee Hansard*, 16 July 2007, p. 4.

The committee heard that it will undermine the efficacy of existing and future English language programs for migrants and will create barriers for many disadvantaged people.

Evidence to the committee showed that the proposed test would not be able to achieve the goals set for it by the government.

Mr Sam Wong, Chair of the Canberra Multicultural Community Forum summarised many of problems reflected in much of the evidence to the committee:

The test will not contribute to the government goal of instilling Australian values or helping migrants to integrate and maximising the opportunities available to them. It is unreasonable to suggest that a short, written, multiple-choice exam will [test] whether the applicant would be a good citizen rather than just test rote learning ... While it could be argued that it would be appropriate to test citizenship applicants on their English skills and understanding of citizens' responsibilities, the suggestion that Australian values can be tested based on the view of a single Minister is totally undemocratic. It is almost impossible to draft questions to test Australian values, particularly concerns like mateship, respect for freedom and commitment to democracy. Testing people on common values, which implies that there is only one set of Australian values and one type of Australian citizen, undermines the vital role that multiculturalism and diversity play in Australian society.⁹

The Australian Greens believe that rather than encouraging people to embrace Australian citizenship and support for so-called Australian values it will erode societal solidarity and cohesion.

The test will threaten to further widen the gulf between groups of people in society and bolster racism and discrimination.

The importance of English

The Australian Greens believe proficiency in a common language – English – is an important underpinning of our society and democracy.

Learning of English for many, if not most people, is a life-long process. It can not and should not be subject to arbitrary time limits or hurdles.

Acquisition of English should be encouraged and supported not imposed. English as a second language programmes are in desperate need of more resources and funding from government.

⁹ *Committee Hansard*, 16 July 2007, p. 2.

The Australian Greens concerns at the impression that English language proficiency amongst new migrants is somehow a problem have been deepened by our analysis of recent census data and analysis of the Department of Immigration and Citizenship reports that have examined English proficiency.

In our submission to the Minister's Discussion paper on the citizenship test we outlined statistical evidence that suggests that, rather than declining, in fact English language proficiency amongst new migrants has been improving over the last decade. Indeed this analysis is reinforced by the changes to English language classifications used by the Department of Immigration as a result of overall improvements in English language proficiency. The Secretary of the Department of Immigration noted in a 2001 report 'Statistical Focus 2001 - classification of countries into English proficiency groups':

The overall EP index for all overseas born has increased between 1966 and 2001 from 78.8 to 85.2. This increase may be attributed to changes in immigration policy over this period, favouring English language proficiency in selection procedures, as well as an historical trend towards increasing use of English around the world.

Evidence to the committee suggests that a citizenship test conducted in English rather than encourage proficiency in English will in fact undermine existing English programs and distort future programs.

The ACTA gave evidence to the committee of the grave impact a citizenship test could have on teaching programs.

The President of ACTA, Ms Adoniou told the committee:

As soon as there is a test, teachers feel the need to get their students to pass the test and students put pressure on to be given what it is that they need to pass the test. Suddenly, lessons become all about passing the test. Certainly from my experience overseas, where everybody is sitting English language tests to prove their English language proficiency, we have huge evidence that all good teaching practice goes out the door as people do test preparation ... It is very bad pedagogical practice because the aim is so limited. Your capacity to pass an English test is in no way an indication of your capacity to operate in the thousands of everyday communications you need to have.¹⁰

Ms Adoniou gave further evidence to the committee that even if, as was likely, the allocated AMEP hours were redirected to preparation for passing the citizenship they would be insufficient.

Ms Wrigley from the Refugee Advice and Casework Services (RACS) gave similar evidence:

¹⁰ *Committee Hansard*, 16 July 2007, p. 21.

The contents of the proposed test, including questions about Australian values, would be outside the vocabulary scope of basic language classes for those learning a new language within the first 510 hours of study.¹¹

Evidence was presented to the committee that the objective of improving migrant's understanding of life in Australia would best be achieved by presenting information about Australia in the migrant's own language.

The submission from ACTA argued:

Citizenship and values do not need to be presented in English to be understood. They are much better understood via the language that the migrant is most competent in.¹²

This is an approach that has been adopted overseas. For example, in the United States of America applicants for citizenship are permitted to take the knowledge component of the test in a language of their choice.

Ministerial power

In recent weeks we have seen the problems that arise from having too much discretion invested in the hands of a single minister.

The decisions of Minister Andrews in relation to the Haneef matter reinforce the dangers of this bill. The Australian Greens do not support and we are sure the Australian public would not support Minister Andrews deciding on the questions that are put to prospective citizens as part of this test.

There is some ambiguity about whether or not the bill gives total discretion to the Minister but it is clear from evidence to the committee that it is the intention that the Minister's decisions relating to the form, scope and content of the citizenship test would not be subject to Parliamentary disallowance.

This reflects a common practice of the present government which is again seeking to give discretion to the Minister to determine the nature and extent of the citizenship test without reference to Parliament.

Regardless of the value or otherwise of the present Minister's preferences for what should be contained in the citizenship test and how it will operate, there is no guarantee against any future Minister abusing such a power.

Notwithstanding The Australian Greens opposition to the whole bill we do not support the discretions contained in proposed subsection 23A of the bill.

¹¹ *Committee Hansard*, 17 July 2007, p. 21.

¹² *Submission 34*, p. 3.

Conclusion

Many of those who made submissions to the committee questioned the wisdom of attempting to test Australian values rather than more universal principles such as fairness and democracy.

The Australian Greens share these concerns. The idea that the acquisition of citizenship should be based on a historical adherence to a country's purported values – set by government decree – should give pause to any student of recent history. In fact the worth of a citizen may be evident more in their refusal to adopt the dominant values of a society rather than embracing them.

Dr Bibby from the NSW Council for Civil Liberties made this point to the committee when he said:

Think of Rwanda: you might choose to live in Rwanda for, say, the sake of your medical expertise, but you would not expect to adopt the values of the Hutu, or certainly not those of a few years ago. You might have chosen to stay in Nazi Germany. You might live at present in Zimbabwe. The notion that people ought to adopt the values of the society that they are in is plain nonsense.¹³

Rather it seems clear that the values often claimed as Australian values – fairness, respect for human rights and democracy - are in fact universal values shared by most people all over the world but often not honoured by their governments.

The Australian Greens support increased opportunities being available for migrants to Australia to improve their English language skills and understanding of life in Australia.

We do not accept that a test consisting of 20 multiple choice questions is an effective way to improve migrant's English language skills and understanding of life in Australia.

We share the view of Ms Adoniou, the President of ACTA that:

...tests have been developed to gate-keep. That is what they are there for.¹⁴

We support investment in programmes that improve migrant's English language skills and understanding of Australian life. We recognise that the introduction of the proposed citizenship test will undermine the effectiveness of existing English language courses as they will be forced to teach students to pass the test rather than learn the English language skills that they need.

¹³ *Committee Hansard*, 17 July 2007, p. 15.

¹⁴ *Committee Hansard*, 16 July 2007, p. 21.

We can not support this bill and the introduction of a citizenship test that will create division within the Australian community.

Senator Kerry Nettle
Australian Greens

APPENDIX 1

SUBMISSIONS AND ADDITIONAL INFORMATION RECEIVED

Submission Number	Submittor
1	Name Withheld
2	Curtin University of Technology
3	Scots of Victoria
4	Festival of Light Australia
4a	Festival of Light Australia
5	Michael Young
6	Bruce Calderbank
7	Gilbert + Tobin Centre of Public Law
8	Forum of Australian Services for Survivors of Torture and Trauma (FASSTT)
9	David T Bath
10	Roger B Cook
11	Jo Agar
12	Pauline Bleach
13	The Australian Gay, Lesbian, Bisexual, Transgender, Intersex and Queer Multicultural Council Inc
14	Castan Centre for Human Rights Law
15	Cathy Agar
16	The Hon Dr Bob Such, MP, Member for Fisher
17	Australia for Australians
18	Professor Kim Rubenstein
19	Professor Ingrid Piller
20	Victorian Immigrant and Refugee Women's Coalition (VIRWC)
21	Diane Agar
22	Queensland Public Interest Law Clearing House Incorporated
23	Steven Bateman
24	The Government of Western Australia
25	Country Women's Association of New South Wales
26	Australia/Israel & Jewish Affairs Council

- 27 Sydney Centre for International and Global Law
- 28 The Federation of Community Legal Centres (Vic)
- 29 Ethnic Communities Council of Western Australia
- 30 Department of Immigration and Citizenship
- 31 Ethnic Communities' Council of Victoria
- 32 New South Wales Council for Civil Liberties (NSWCCL)
- 33 Professor Tim McNamara
- 34 The Australian Council of TESOL Associations (ACTA)
- 35 St Vincent de Paul Society National Council
- 36 Newcomers Network
- 37 National Ethnic and Multicultural Broadcasters Council
- 38 The Darebin Ethnic Communities Council (DECC)
- 39 Refugee Advice and Casework Service (RACS)
- 40 The Liquor Hospitality and Miscellaneous Union
Victoria Branch (LHMU)
- 41 Human Rights and Equal Opportunity Commission
- 42 B'nai B'rith Anti-Defamation Commission
- 43 Coalition for Asylum Seekers, Refugees and Detainees (CARAD)
- 44 Australian Lawyers for Human Rights
- 45 The Multicultural Council of the Northern Territory (MCNT)
- 46 Canberra Multicultural Community Forum (CMCF) Inc
- 47 Australian Christian Lobby (ACL)
- 48 Australian Catholic Migrant and Refugee Office (ACMRO)
- 49 Refugee Council of Australia
- 50 United Nations High Commissioner for Refugees
- 51 Federation of Ethnic Communities Councils of Australia (FECCA)
- 52 Premier of Tasmania
- 53 Premier of Victoria
- 54 The Office of the Primate of the Anglican Church of Australia
- 55 The Victorian Bar
- 56 Community Relations Commission
- 57 National Legal Aid
- 58 ACT Government
- 59 Adult Migrant English Service Teachers Association (AMES)

ADDITIONAL INFORMATION RECEIVED

1. Opening statement by Tom Calma, Acting Race Discrimination Commissioner tabled at public hearing in Sydney on 17 July 2007
2. Answers to Questions on Notice received from New South Wales Council for Civil Liberties
3. Answers to Questions on Notice received from Human Rights and Equal Opportunity Commission
4. Answers to Questions on Notice received from Professor Kim Rubenstein
5. Answers to written Questions on Notice received from the Department of Immigration and Citizenship
6. Answers to Questions on Notice from 16 July 2007 public hearing received from the Department of Immigration and Citizenship
7. Response to Question on Notice received from Refugee Council of Australia

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Canberra, Monday, 16 July 2007

ADONIOU, Ms Misty Liane, President
Australian Council of TESOL Associations

ELLIS, Mrs Mary-Anne, Assistant Secretary, Citizenship Branch
Citizenship, Settlement & Multicultural Affairs Division
Department of Immigration and Citizenship

HUGHES, Mr Peter, Deputy Secretary
Department of Immigration and Citizenship

KULASINGHAM, Mr Mark, Director
Federation of Ethnic Communities Councils of Australia

MESSIMERI-KIANIDIS, Ms Voula, Chair
Federation of Ethnic Communities Councils of Australia

METCALFE, Mr Andrew, Secretary
Department of Immigration and Citizenship

MICKLETHWAITE, Ms Beth, Senior Research Officer
Australian Christian Lobby

PARKER, Ms Vicki, Assistant Secretary, Legal Framework
Department of Immigration and Citizenship

RUBENSTEIN, Professor Kim, Private capacity

VARDOS, Mr Peter, First Assistant Secretary, Citizenship Test and Values
Statements Task Force
Department of Immigration and Citizenship

WONG, Mr Sam, Chair
Canberra Multicultural Community Forum Inc

YATES, Mr David, National Chief of Staff
Australian Christian Lobby

Sydney, Tuesday, 17 July 2007

ANDERSON, Ms Zoe, Solicitor/Migrant Agent
Refugee Advice and Casework Service

BIBBY, Dr Richard Martin, Assistant Secretary
New South Wales Council for Civil Liberties

CHAVURA, Dr Stephen, Spokesman
Festival of Light Australia

DONALDSON, Ms Margaret, Director, Race Discrimination Unit
Human Rights and Equal Opportunity Commission

HELY, Mr Brook, Legal Officer
Human Rights and Equal Opportunity Commission

POWER, Mr Paul, Chief Executive Officer
Refugee Council of Australia

SAMSON, Ms Anna, National Policy Director
Refugee Council of Australia

SHERCHAN, Ms Depika, Convenor, Policy Working Group, and Treasurer
Victorian Immigrant and Refugee Women's Coalition

WRIGLEY, Ms Katie, Solicitor/Migrant Agent
Refugee Advice and Casework Service

