

Centre for Human Rights Education

Division of Humanities

Curtin 
University of Technology

Centre for Human Rights Education
GPO BOX U1987
PERTH WA 6845

Phone: +618 9266 3484

Fax: +618 9266 2594

E-mail:

chre.enquiries@exchange.curtin.edu.au

Web: <http://humanrights.curtin.edu.au>

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

Via Email: legcon.sen@aph.gov.au

Inquiry into Australian Citizenship Amendment (Citizenship Testing) Bill 2007

The Centre for Human Rights Education welcomes the opportunity to comment on the Australian Citizenship Amendment (Citizenship Testing) Bill 2007. We have serious concerns about the introduction of a Citizenship test upon people seeking Australian citizenship by conferral. We do not accept that such a test would “help migrants successfully integrate into the Australian community” In our view a Citizenship test has the potential to operate as a device of exclusion rather than inclusion.

The CHRE will outline some of its concerns about the proposed changes which include:

- 1 The proposed changes will potentially have a disproportionate negative impact on already disadvantaged and marginalised groups within society including refugees, women, people with disabilities, people living in rural areas, people from non-English speaking backgrounds, and people from lower socio-economic groups.
- 2 The proposed changes encourage a politick of fear at a time when we need cross cultural dialogue, engagement and to develop deeper understanding between the many cultures which make up Australia.
- 3 How orientation and community education programs could be further developed and implemented to encourage greater understanding of citizenship.
- 4 Concerns about the transparency and objectivity in the structuring of any citizenship testing regimen.
- 5 A consideration of Australia’s international human rights obligations in respect of citizenship.

**CENTRE FOR
HUMAN RIGHTS
EDUCATION**

Division of Humanities



Introduction

Migrants coming through the general skilled migration scheme are tested for English proficiency even before they are admitted into Australia. Those that are not include those who migrate to Australia under the family migration program and those that migrate to Australia under the Refugee and Humanitarian program.¹ Others may arrive in Australia on a temporary visa and convert their status to permanent visas; those for whom English is not a requirement are those who obtain a Partner Visa or a Protection Visa.²

Importance of citizenship

People who have arrived in Australia through the Refugee and Humanitarian Program or who have obtained a protection visa after arrival in Australia have permanent residence. The next step to citizenship is particularly important for this group of people. Australian citizens have the right to live in Australia. A permanent resident on the other hand has permission to live here indefinitely provided they remain of good character. Citizenship is also linked to obtaining certain kinds of employment in the Australian public service.

Important benefits of citizenship and associated rights

For refugees and humanitarian entrants one of the most important tangible benefits of citizenship is the right to apply for a passport. Due to their status as refugees by definition they are generally no longer able to enjoy citizenship rights of their former country of citizenship.

The nature of refugee movement is one of displacement and separation from family and community. Refugees in Australia invariably have family members overseas in refugee camps or living in neighbouring countries in difficult and perilous situations; for example Afghans in Pakistan or Iran, Iraqis in Syria or Iran; Sudanese in Egypt or Kenya.

A refugee who has permanent residence has the ability to apply for a travel document in order to travel and visit family. However many of the countries those refugees have to travel through may not provide admittance to people unless they hold a passport (eg Syria, Kenya). In cases where they do provide admittance a travel document does not provide the same security as a passport.

Case examples³

A Sudanese family consisting of parents and 3 children arrive in Australia on a Refugee and Humanitarian visa (subclass 200 Refugee). Subsequent to their arrival they are notified that their eldest son (12 years old) is in Kakuma camp in Kenya. They had been separated from their son during the civil conflict in Southern Sudan as their son had gone to live and work for his maternal grandparents in lieu of his father payment of a sufficient dowry. The father is unable to obtain a passport from Sudan or Australia. Kenya will not grant a visa to a person on a travel document without waiting a period of 3 months. Instead the father has to travel to Uganda and enter Kenya illegally in order to see his son.

A Rwandan woman who arrived in Australia and obtained a protection visa wants to travel to Burundi to visit her mother who is her last remaining relative after the 1994 genocide. She travels first through Malaysia where she will stop over for 2 days before traveling on to Africa. Her travel

¹ In the period July 2006 – December 2006 it is interesting to note that the majority of migrants under the family migration program and refugee and humanitarian program were female (Family: 11,967 female, 7,048 male; Refugee and Humanitarian: 3,355 female and 3,145 male) whereas under the skilled program the majority were male (15505 male and 14165 female). From Research And Statistics Section Department of Immigration And Citizenship, *Immigration Update July - December 2006* (April 2007). Unfortunately these statistics are not broken down into primary and secondary applicants, previous research which has acquired such a breakdown has demonstrated the gendered nature of the Migration Program, see Catherine Dauvergne, 'Citizenship, Migration Laws and Women: Gendering Permanent Residency Statistics' (2000) 24 *Melbourne University Law Review* 280.

² There are limited visa categories which enables a person to remain in Australia, outside the business or student category the only two of any significance would be Partner Visas and Protection Visas.

³ These are based on real case examples provided by Legal Aid WA and SCALES Community Legal Centre

document is the subject of suspicion at the airport in Kuala Lumpur and she is questioned by immigration authorities for hours, they eventually call in a member of the Australian Embassy who comes to examine her document and she is taken into the Australian Embassy for further questioning. Her document is eventually authenticated.

In both cases the individuals involved have come from a background of trauma and conflict they are desperate for reunification with family members who may be in fraught situations themselves. The lack of access to a passport means that they may again be placing themselves in a position of unnecessary risk (in the first example) or at the very least mean that they are the subject of scrutiny and suspicion. This kind of re-traumatisation would be lessened if they were citizens and had the security of an Australian passport.

For refugees and humanitarian visa holders the most important benefit of citizenship is the sense of inclusion and acceptance into their adopted community. It is our belief that the introduction of a formal citizenship test would act as a significant barrier to many refugees attaining citizenship and thus fully participating in the Australian community. Instead of promoting Australian values, the proposed citizenship test fosters exclusion. It is not about including migrants into the community, but rather determining whom we want and whom we do not want to be part of the Australian community.

This runs contrary to Australia's international obligations which state that Australia should "facilitate" rather than obstruct the acquisition of citizenship by refugees and stateless persons.⁴

We note that in article 6(4)(g) of the European Convention on Nationality of 1997 which also establishes an obligation to facilitate the naturalization of stateless persons and refugees. That Convention now has 15 States parties. The Council of Europe's Explanatory Report to the Convention indicates that "[i]n order to comply with this paragraph, it is sufficient for a State Party to ensure favourable conditions for the acquisition of nationality for the persons belonging to each of the categories of persons listed in the subparagraphs. Examples include a reduction of the length of required residence, less stringent language requirements, an easier procedure and lower procedural fees."⁵

Australia claims to be a nation which respects and values human rights. It is a signatory to the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights, along with the optional protocols. The United Nations has devolved responsibility for the protection and promotion of human rights in Australia to Australia. Some human rights such as the right to vote are available to citizens only, whilst other rights such as the right to equality before the law are afforded to all people in Australia regardless of citizenship. The Federal Government is increasingly making citizenship a pre-requisite for access to basic human rights, such as access to federally funded education places. Citizenship in Australia is an important feature in determining the level of both protection and provision of human rights that a person will enjoy. By making citizenship a privilege rather than a right, the government erodes the foundation of human rights.

The proposed test

The proposed test will be assessing two of the requirements set in s. 23 for the conferral of Australian citizenship, that is that the person:

- "possesses a basic knowledge of the English language" (s. 21(2)(e))
- "knowledge of Australia and of the responsibilities and privileges of Australian citizenship" (s. 21(2)(f))

These are similar to the requirements under the previous Australian Citizenship Act 1958 for the grant of citizenship with the exception of the insertion that now requires a person have "knowledge of Australia." The Minister in his second reading speech has stated:

⁴ Article 34 of the 1951 Convention Relating to the Status of Refugees; Article 32 of the 1954 Convention relating to the Status of Stateless Persons

⁵ European Convention on Nationality Explanatory Report, paragraph 52, <http://conventions.coe.int/Treaty/en/Reports/Html/166.htm>

A person's English language skills will be assessed on their ability to successfully complete the test in English.

It is expected that most people will have the literacy skills necessary to complete the citizenship test unassisted. However, the government recognises that there will be some people who do not and may never have the literacy skills required. In these special cases, it is proposed that the test administrator read out the test questions and possible answers to the person.

Details about the format of the test⁶ provide that it will likely be on "Australia's values, history, traditional and national symbols. It will cover the sort of things that people learn in their primary and secondary years at school." The format of the test will be

- be computer based
- consist of 20 multiple choice questions drawn randomly from a large pool of confidential questions
- include three mandatory questions on the responsibilities and privileges of Australian citizenship
- be in English.

The pass mark will be 60 per cent including answering the three mandatory questions correctly.

English Language requirement

The Centre acknowledges the official status of English in Australia and the fact that such a requirement for citizenship currently exists. However we believe that the Government has failed to make any argument linking English language proficiency with good citizenship; nor has it demonstrated how the additional two years will enhance a person's capacity to be a good citizen. Many migrants arriving after World War II were given little or no assistance with learning the new language; many still have limited proficiency in English, yet have made significant contributions to Australia's development over the decades and are an integral part of Australia's demographic landscape.⁷ The Centre certainly supports efforts to assist new immigrants to learn English and to maximize their participation; however, the legislation before the parliament is punitive rather than supportive in nature and we cannot see that it will enhance participation or citizenship in any demonstrable way.

We reject the increasingly strict prescriptive test becoming a requirement for eligibility for citizenship. We are concerned that it will alienate already marginalized groups who have much to offer Australian society, particularly:

- *Refugees* – refugees and humanitarian entrants are not like voluntary migrants who chose to come to Australia. A refugee is a person who is forced to leave his/her country because of persecution. This is not to say that they do not want to be involved in the Australian community - they do, but their background and experiences are fundamentally different from other migrant groups. They face particular barriers which distinguish them from other migrants, including.⁸

⁶ From http://www.citizenship.gov.au/news/citizenship-test/Qs_prospective.htm#m

⁷ Jupp, J. (2002) *From White Australia to Woomera. The story of Australian immigration* Cambridge University Press, Cambridge

⁸ This is supported by research from the AMEP who found that in respect of English classes that learners who may be expected to encounter difficulties in the formal language learning classroom include:

- survivors of torture and trauma suffering from post traumatic stress syndrome;
- learners with low levels of formal education and/or low levels of literacy in their first language;
- older learners.

- a limited or interrupted educational background due to armed conflict, forced displacement, the experience of flight and many years in refugee camps and countries of asylum;
- illiteracy in their own language; and
- learning difficulties resulting from prior torture and/or trauma.

Various international studies consistently show a high incidence of torture and trauma survivors amongst refugee populations.⁹ Australian data reflects this with between 60% and 80% estimated to be survivors of torture.¹⁰ Post Traumatic Stress Disorder (PTSD) adversely affects the individual's ability to take in, process and maintain new information, putting sufferers of PTSD at a distinct disadvantage for such a test. Furthermore, trauma recovery literature is in general agreement that establishing both physical and psychological safety is an essential pre-requisite for healing.¹¹ This could create a 'catch-22' situation for traumatised refugees where the safety of citizenship is needed to enable them to learn and retain sufficient information about Australia so that they can pass the test to obtain citizenship.

- *Refugee women.* Many women arrive in Australia on "woman at risk" visas. This means that she has no male relative and generally she will have children to care for. The combination of family responsibilities, lack of support from a partner and previous experiences of trauma will mean that such women will find it difficult to attend English classes and further to be able to engage in the community through working or studying which would assist her in reinforcing English skills. At a forum held at Curtin University of Technology on in October 2006 speakers from the ethnic communities advised of the fact that child care had recently been cut from the places where English classes were held. Lack of childcare is a significant barrier for women's participation in ESL classes. Some women arriving with a partner and children would similarly be affected by the proposed changes. It is not uncommon for the male partner to be working, seeking work or attending English classes while the woman takes care of household responsibilities. Whilst arguments can be raised that women ought to have equal access to work and language classes, the proposed legislation will have a disproportionate impact on women.
- *Non English speaking migrants in rural areas* could also be discriminated against as there is not sufficient access to English language classes.
- *Children under the age of 18 years.* Children sometimes have difficulty proving their entitlement to be registered as Australian citizens. For example, the relationship between their parents can end acrimoniously and their citizen parent refuses to co-operate with the certification process. Alternatively the child can arrive in Australia "unaccompanied" and in such circumstances the Minister for Immigration assumes guardianship.¹² According to s. 23(5) they can apply for citizenship in their own right. There is no guidance in the legislation as to how such an application is to be dealt with, previously this has been set out in policy which currently provides: "Applicants are not required to attend a formal interview or meet standard interview requirements such as English language and knowledge of the responsibilities and privileges of Australian citizenship."¹³

⁹ A British Study of Iraqi refugees reported "65% of the sample had suffered systematic torture during a period of detention. The remainder were either detained without formal torture, or experienced other traumatic events" Gorst-Unsworth, C. and Goldenberg, E. (1998) "Psychological Sequelae of Torture and Organised Violence Suffered by Refugees from Iraq." in *British Journal of Psychiatry*, 172:90-94, 1998.

¹⁰ Steel, Z., Silove, D., McGorry, P., and Mohan, P. "The Tamil Survey." in Silove, D. and Steel, Z. (1998) *The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia*. Psychiatry Research and Teaching Unit, University of New South Wales, Liverpool; Victorian Foundation for Survivors of Torture "The East Timorese: Clinical and Social Assessments of Applicants for Asylum." in Silove, D. and Steel, Z. (1998) *The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia*. Psychiatry Research and Teaching Unit, University of New South Wales, Liverpool.

¹¹ Herman J *Trauma and Recovery. The Aftermath of Violence – from Domestic Abuse to Political Terror*. Basic Books, New York 1997.

¹² Immigration (Guardianship of Children) Act

¹³ Citizenship Instructions Chapter 4 at [4.3.8]

Such an exemption should be expressly included within the Australian Citizenship Act 2007. This would be in accordance with the current exemptions which apply to persons over the age of 60 and persons with some physical or mental disability.

According to s. 23 (3) and (4) of the *Australian Citizenship Act 2007* people over the age of 60 and persons with a physical or mental incapacity would be exempt from the test. This is in line with the law as it previously stood under the Australian Citizenship Act 1958.¹⁴ These exemptions are reaffirmed in the Minister's second reading speech and in the Explanatory Memorandum.

However we note that in the summary report collating the responses to the recent Public Consultation on the Merits of Introducing a Formal Citizenship Test it was noted that:

Exemptions for humanitarian entrants was a recurring theme, focussing on the learning difficulties caused by, for example experiences of torture or trauma, and on the sense of belonging that citizenship gives these vulnerable people (particularly as many would otherwise be stateless).¹⁵

Yet this was not an issue raised by the Minister in his second reading speech nor is it an issue covered in the Explanatory Memorandum to the Bill. There is only reference to special arrangements for people who may have literacy problems.¹⁶

Knowledge of Australia and Australian values

The Centre for Human Rights Education is particularly concerned about the proposals to test a migrant's knowledge of Australia and Australian values. 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"? The Centre is concerned of 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. The Centre is concerned that this is playing into the politics of fear and does nothing to recognize the core values across all cultures.

Another concerning aspect is the fact 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 be open to public consultation and scrutiny.

We note that it is indicated that a person can sit the test any number of times. There is a concern about what may happen if a person was still unable to pass the test after several attempts. Especially for refugees who are seeking a more secure life in Australia, they may hesitate to continue in their attempts because of fear of failing the test.

The Centre for Human Rights Education believes that the current citizenship ceremony and concomitant pledge are sufficient to indicate a person's commitment to Australia and the community.

Alternatives

We support any government initiatives which assist new migrants to increase their participation in Australian society such as English language classes, higher education or education about Australian legal, economic and social systems. We do not support the punitive exclusionary paradigm that a formal testing system represents; the focus should be on successful settlement rather than passing a test.

¹⁴ Except for the raising of the age from 50 to 60

¹⁵ Summary Report on the Outcomes of the Public Consultation on the Merits of Introducing a Formal Citizenship Test, at 10

¹⁶ Explanatory Memorandum [22]

There is no mention of research put forward by the government that the introduction of a test would lead to a greater understanding of English or the rights of citizenship.

The best way to encourage English learning is by providing additional support to refugees and migrants to access English language tuition through the Adult Migrant English Program (AMEP). Rather than testing, the Centre believes that a sustainable and effective way to foster effective learning is through full participation in the minimum hours at the AMEP and providing funding for increasing access and the numbers of hours where necessary. Research by the AMEP in terms of assisting marginalized groups acquire sufficient English found

learning programs which most effectively support these learners focus on the development of formal learning skills and language competencies related to settlement needs, and are delivered through low intensity classes. The recommendations included educational counselling for learners; professional development programs for teachers on the needs of survivors of torture and trauma; and recognition of the learning achievements of these students in the curriculum.¹⁷

There are also other, more preferable, ways which would support refugees and migrants to acquire knowledge and understanding about Australian culture and citizenship. The Refugee and Special Humanitarian Program already provides for refugees to access basic knowledge of Australia. For instance, the Australian Cultural Orientation program and other orientation aspects of IHSS and post-IHSS services include good information about Australia's way of life, values, laws and culture. These programs have proved very useful for refugees and should be supported and enhanced.

Conclusion

The Centre for Human Rights Education is fundamentally opposed to the Australian Citizenship Amendment (Citizenship Testing) Bill 2007. The proposed changes encourage a politick of fear at a time when we need cross cultural dialogue, engagement and to develop deeper understanding between the many cultures which make up Australia. It is our opinion that changes and exemptions would not address the root injustices and inequalities which these changes create. If the Federal Government were truly committed to including new migrants into the Australian community funds would be put into community education programs which would enable true participation.

Yours sincerely,

Mary Anne Kenny
Adjunct Senior Lecturer
Centre for Human Rights
Education
Senior Lecturer in Law
Murdoch University

Lucy Fiske
Lecturer
Centre for Human Rights
Education

Linda Briskman
Dr. Haruhisa Handa Chair
Centre for Human Rights
Education

26 June 2007

¹⁷ <http://www.immi.gov.au/living-in-australia/help-with-english/learn-english/reports/research/investigating.htm>