

SUBMISSION

TO THE

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO THE
PROVISIONS OF THE *AUSTRALIAN CITIZENSHIP AMENDMENT (CITIZENSHIP
TESTING) BILL 2007*.

Submission by:

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About QPILCH

QPILCH is a not-for-profit non-government incorporated association bringing together private law firms, barristers, community legal centres, law schools, legal professional associations, corporate legal units and government legal units to provide free and low cost legal service to people who cannot afford private legal assistance or obtain legal aid. QPILCH coordinates referral to members for pro bono legal services in public interest matters and provides direct services – advice, assistance and representation support - through targeted projects, including the Homeless Persons' Legal Clinic, the Administrative Law Clinic, and the Consumer Law Advice Clinic.

QPILCH was established in June 2001 as an initiative of the legal profession and commenced services in January 2002.

QPILCH is a member of the Queensland Association of Independent Legal Services, affiliated with the National Association of Community Legal Centres, and is a member of the PILCH network.

Introduction

The introduction of a Citizenship Test in Australia has recently been the subject of intense public debate and commentary whilst the government confirmed its resolve to proceed with this initiative. This is the first opportunity to comment upon the legislation proposed to govern the Citizenship test.

Values and principals

Nowhere in the Bill is there a statement of principal or explanation as to why the Citizenship Test is being introduced. This is recommended to provide a clear statement of intention and thus provide legislative parameters to future amendments and interpretations of the criteria.

Section 21 - general eligibility

Subsection 21(2)(d)

We are concerned that the phrase '*understands the nature of an application*' is so broad and undefined that potential applicants may experience subjective and inconsistent interpretations from different officers charged with making such a determination.

We recommend that some criteria be inserted as to how this understanding can be adequately demonstrated by applicants. This would benefit both decision-makers and applicants.

Subsection 21(2)(e)

We are similarly concerned that the phrase '*a basic knowledge of the English language*' is not defined by reference to any English language learning scheme or level of functionality. This leaves the standard of the test open to very subjective interpretation and possible manipulation depending upon the political climate of the times.

Subsection 21(2)(f)

The requirements that applicants have an '*adequate knowledge of Australia*' would be enhanced if there were some insertion of a statement of Principal into the Bill. This could be used as a reference point for future generations who may want to update questions to be used in the Citizenship Test. For example, are applicants to know about:

- History
- Government: Federal, State, Local
- Legal requirements of citizens
- Voting systems
- Geography
- Famous People/Inventors/Explorers/etc?

Section 23

We note that section 23 of the *Citizenship Act* permits a person to apply for Citizenship who has relevant defence service. However, information from the Department of Defence website stipulates that a person can only serve in the Australian Defence Force if he/she is already a citizen or is already eligible to apply for citizenship. If the section is not in fact as confusing on its face as it appears to be, it would perhaps benefit from clarified drafting.

Subsection 23A

The proposed subsections require the Minister to personally approve a test in writing (s. 23A(1)), yet there is merely a discretionary requirement for the Minister to provide the eligibility criteria a person must satisfy to be able to sit the test.

Applying for and obtaining citizenship is a process that is taken very seriously by all parties involved. In the interests of transparency and good governance, the legislation should require either the Minister or a person with properly delegated authority to declare the eligibility requirements in writing in an instrument rather than leaving this matter to an unaccountable Ministerial discretion.

If at some point in the future the Executive wishes to amend the eligibility requirements, having the requirements 'enshrined' in a proper Ministerial or delegated instrument will assist in ensuring that the matter is subject to public scrutiny and debate. We believe this appropriate, given the gravity of citizenship as a concept and the fact that as presently drafted, if a person does not meet the eligibility requirements, it appears that they are not entitled to a review of that decision under section 52 of the *Citizenship Act*.

Further to this, we recommend section 52 be amended to specifically provide that a decision that an applicant is found to be ineligible to sit the test be a reviewable decision.

We recommend our suggested approach as an alternative to the discretionary approach that is currently contemplated through the interplay of subsections 23A(3), (4) and (5).

Acknowledgements

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This submission was drafted and edited for QPILCH by Sonia Caton.