



Our Ref: OG-07-86/44464

Ms Jackie Morris
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

INQUIRY INTO THE AUSTRALIAN CITIZENSHIP AMENDMENT (CITIZENSHIP TESTING) BILL 2007

I welcome the opportunity to make a submission to the Inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007.

The Western Australian Government raises two main concerns with the proposed Bill:

1. the proposed requirement for a citizenship test, in particular, the lack of any detail regarding the proposed test;
2. provision for fees for citizenship applications to include a component that relates to the sitting of a test or tests.

1. Citizenship Test

The Bill proposes that applicants must not only satisfy the general eligibility criteria (subsection 21(2)) but also have successfully completed a citizenship test (subsection 2A).

Under present arrangements, applicants for Australian citizenship already are required to meet seven eligibility requirements, all of which are tested through the provision of appropriate documentation or at a mandatory interview.

The Bill does not change the eligibility requirements *per se* but requires that

Paragraphs (2)(d), (e) and (f) are taken to be satisfied if and only if the Minister is satisfied that the person has, before making the application:

- a. sat a test approved in a determination under section 23A; and
- b. successfully completed that test (worked out in accordance with that determination).

Paragraphs (d), (e) and (f) contain requirements that the applicant:

- (d) understands the nature of an application under subsection (1); and
- (e) possesses a basic knowledge of the English language; and
- (f) has an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship;

These are no different from current eligibility requirements and are currently tested through an interview as part of the application process.

Western Australia is concerned that the Bill does not describe how the proposed amendments (Subsection 23A) differ from current testing requirements and contains no details regarding the:

- content of the test;
- what amounts to successful completion of the test; or
- the eligibility criteria a person must satisfy to be able to sit the test.

Instead, Subsection 23A proposes that these details be decided as part of the administration of the requirements of the Bill:

2. The Minister must, by written determination approve a test for the purposes of Subsection 21(2) (about general eligibility for citizenship).
3. A determination under subsection (1) must specify what amounts to successful completion of the test; and
4. a determination under subsection(1) may set out the eligibility criteria a person must satisfy to be able to sit the test.

New subsection 23A(7) provides that a written determination is not a not a legislative instrument i.e. within the meaning of s5 of the *Legislative Instruments Act 2003*, which states:

- (2) Without limiting the generality of subsection (1), an instrument is taken to be of a legislative character if:
 - (a) it determines the law or alters the content of the law, rather than applying the law in a particular case; and
 - (b) it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

Having regard to this definition, it is unclear why the Minister's determination does not have the character of a legislative instrument and therefore capable of being reviewed by Parliament. Similarly, without accompanying Federal human rights legislation, there is nothing by way of protection for applicants against any unintended and/or detrimental impact of the Minister's determination.

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 regulation and therefore subject to an appropriate level of public scrutiny.

Reference is also made to the Joint Press Conference announcing introduction of a citizenship test on 11 December 2006 by the Prime Minister and the Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs, Mr Andrew Robb, who stressed:

“...a working knowledge of the English language...[and] a formal test which will require people to have an understanding of basic aspects of Australian society, our culture, and our values and certainly some understanding of our history.”

It is pointed out that the requirement for a “**working knowledge** of the English language” is not contained in the Bill, which retains the reference to possessing “a basic knowledge of the English language” contained in the current Act. Any test approved by the Minister's written determination should be consistent with the Act. Given these

statements, concern is again expressed at the level of scrutiny that may be possible of the Minister's determination and its consistency with the provisions of the Bill.

2. Increases to citizenship application fees

The Bill also proposes that "the fee prescribed by the regulations for applications made under Section 21, in relation to persons who have sat a test or tests approved in a determination under Section 23A, may include a component that relates to the sitting of that test or those tests."

This provision clearly has the potential to result in an increase in the costs of applying for citizenship that will impact on the most vulnerable in the community who, in the case of those seeking citizenship such as humanitarian entrants, are also those who are often most keen to obtain it.

Reference is again made to the Joint Press Conference by the Prime Minister and Mr Robb during which Mr Robb stated that people who don't pass the test can sit it as often as they choose. While it is appropriate to allow for incorporating a component for sitting the test in the citizenship application fee, consideration should be given to ensuring that it is again those who may be least able to afford it, but who are most keen to do so, are not unduly penalised or inhibited.

In conclusion, Western Australia is concerned that the legislative changes are not warranted, significant detail is left to the Minister's discretion, and the changes present a risk of imposing unnecessary, costly changes to the requirements for citizenship that are unlikely to achieve the intended objectives described in the Discussion Paper, "Citizenship – Much more than a ceremony" released in September 2006.

Yours sincerely

Hon Ljiljana Ravlich MLC

Minister for Local Government; Racing and Gaming;
Multicultural Interests and Citizenship; Government Enterprises;
Minister Assisting the Minister for Planning and Infrastructure;
Goldfields-Esperance; Youth