

Community Relations Commission

For a multicultural NSW

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Senator Guy Barnett
Chair
Senate Standing Committee on Legal and Constitutional Affairs
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Dear Senator Barnett,

The Premier of New South Wales, the Hon Morris Iemma MP requested the Community Relations Commission respond to the inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007.

The Community Relations Commission For a multicultural NSW made a submission in response to the discussion paper on the proposed citizenship test, *Australian Citizenship: Much More than a Ceremony* (attached), released on 11 December 2007. It is requested that this letter be read in conjunction with the attached submission.

The Commission notes that the proposed Bill includes :

- requirements for the citizenship test under section (21(2A))
- the citizenship test is not a legislative instrument and is subject to the approval of the Minister (23A(7))
- the Minister cannot delegate the approval (53(2))

In the Commission's submission, the CRC has commented on the knowledge of Australia and Australian values required by the applicant to successfully pass the citizenship test. In this regard the values of a society cannot be prescribed in a democracy such as Australia. They are dynamic. Values are not only underpinned but shaped by laws and institutions. Any testing of Australian values for citizenship must be within the parameters of Australian law and based on testing of knowledge of the application of laws and regulations which underpin values. For example, any assessment of the equality of men and women should be tested within a knowledge of anti discrimination and human rights as embodied in the legislation and democratic processes of the Australian society.

Any knowledge of Australia needs to be presented as facts and cannot be based on subjective interpretation. For example, knowledge of Australian indigenous history, system of government, legal system, voting procedures and the rights and responsibilities of a citizen are appropriate for inclusion.



Further the Commission is concerned that the proposed amendments provides for no transparent review of the test in terms of its content or the evaluation of the success or otherwise of those who have undertaken it.

This is a matter of concern as without such review and evaluation there will be no assessment of the effectiveness and validity of the test or the government's policy in implementing the citizenship test.

The Commission is also concerned that, some migrants, including entrants under the Government's Humanitarian Programme may find it difficult to pass the test and call upon the Australian Government to provide adequate resources to assist this group to successfully complete the test.

The Community Relations Commission thanks you for this opportunity to respond to the inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007.

Yours sincerely

Stepan ~~Kerkyasharian~~ AM
Chairperson

Community Relations Commission

Submission to Citizenship Task Force, Department of Immigration and Multicultural Affairs (DIMA), October 2006,

on the

Australian Citizenship: Much more than a ceremony Discussion Paper, September 2006

Introduction

The Commission welcomes the publication of the discussion paper by the Australian Commonwealth Government and recognizes its intention to develop a legislative framework for an effective and comprehensive reform to the citizenship policy.

Australia is renowned for its rich, diverse and inclusive multicultural society. Immigrants bring vitality, optimism and prosperity which are critical to its character. The role that immigrants play in enhancing the economic and social benefits to Australia is significant. Encouraging eligible persons to become Australian citizens is important in developing our nation's sense of identity and shaping its modern multicultural society.

Encouraging "eligible people to become Australian citizens" is a legislated function of the Commission under the NSW Community Relations and Principles of Multiculturalism Act 2000. In the context of the Act, a definition of citizenship is stated as.

"The expression of citizenship is not limited to formal citizenship, but refers to the rights and responsibilities of all people in a multicultural society in which there is:
(a) recognition of the importance of shared values within a democratic framework governed by the rule of law, and
(b) a unifying commitment to Australia, its interests and futures." [3(2)]

The Act promotes the equal rights and responsibilities of all people of NSW within a cohesive and harmonious multicultural society in which diversity is regarded as a strength and an asset, individuals share a commitment to Australia, and English is the common language. [Preamble]

Further, the second Principle of Multiculturalism reinforces that people operate within an Australian legal and institutional framework where English is the common language. [3(2)b]

Response

The Commission has considered the contents of the discussion paper by the Department of Immigration and Multicultural Affairs and appreciates the opportunity to respond to the discussion of the introduction of a formal citizenship test.

The Commission generally agrees with the introduction of the formal citizenship test and recognizes the government's commitment to set principles in formulating and implementing this process. However, in such matters the details of policy and implementation are of greater importance in giving effect to the Australian government's pursuit of its legitimate aim.

- 1) Australia is a secular democracy, where a person's race, ethnicity, religion and language will not be and should never be a determining factor in considering their right to Australian citizenship. The Commission recommends the continuation of the current overall inclusive and non discriminatory approach to Australian citizenship, that is characterised in current Australian citizenship law, of welcoming migrants and humanitarian entrants as a part of a planned migration programme.
- 2) Knowledge of life in Australia will aid new migrants and humanitarian entrants in fully participating in its society. However it is vital that thorough induction or orientation programmes are implemented to raise this awareness.
- 3) There is a recurrent reference to a commitment to Australian values. The values of society cannot be prescribed. They are dynamic. In a democracy such as Australia, values are not only underpinned but shaped by laws and institutions. Determining values outside of the context of the operation of the law is virtually impossible and may potentially lead to confusion and disharmony. Laws are enacted to reflect community and national values that is the strength of a democracy. Community Relations Commission supports the broader understanding of an Australian cultural environment underpinned by a common set of values that can be determined only by the rule of law and quasi legal systems.
- 4) Therefore any testing of Australian values for citizenship must be within the parameters of Australian law and based on testing of knowledge of the applications of laws and regulations which underpin values. For example, any assessment of equality of men and women should be tested within a knowledge of anti discrimination and human rights as embodied in the legislation and democratic processes of the Australian society. Some of these values are enshrined in the NSW Community Relations Commission and Principles of Multiculturalism Act, 2000 such as equal rights and responsibilities, civic participation, equal opportunity and adherence to democracy.
- 5) Citizenship provides participation in the electoral process. Knowledge of system of government, legal system, voting procedures and the rights and responsibilities of a citizen are appropriate for inclusion. It is the Commission's opinion that these concepts need to be presented as facts and cannot be based on subjective

interpretation. Any test of Australian values needs to be examined within the context of knowledge of appropriate legislation.

- 6) If it is required that potentially eligible people have a knowledge of Australian life, then programmes intended to help them acquire English should also include issues such as the industrial awards and tax systems in Australia, responsibilities of citizens, their rights and entitlements, the legal system and voting procedures.
- 7) Australian history should also include indigenous history and their systems of beliefs and lifestyles and contribution of migrants from non-English speaking background in the development of Australia. In other words, the history of Australia is a continuum of the history of the indigenous people up to our days.
- 8) The NSW Principle of Multiculturalism Act 2000 underlines the commonality of English as the common language in a legal and institutional framework of our nation. The discussion paper poses the key question of "what level of English is necessary for people to participate in ordinary everyday situations within the community and to fulfil their responsibilities and privileges as Australian citizens?" The Commission recommends that a working party be established to investigate and review the level of English language skill required to meet the Commonwealth's requirements of citizenship.
- 9) The task of setting language skill standards should not be left to the bureaucratic processes. It should be done by a transparent public process through the consensus of stakeholders.
- 10) The working party itself would include representatives of migrant groups of non-English speaking background, big and small business, indigenous peoples, unions, public sector agencies (as employers of large numbers of immigrants), and the legal profession.
- 11) Other than the groups identified elsewhere in this response, all applicants should be tested. There should be no presumption of English language skills based on race, ethnicity, country of birth and country of prior residence.
- 12) The Australian Government should assist people to fully participate by becoming Australian citizens. Commonwealth should provide adequate funds to services that assist potentially eligible people to meet the requirements for the proposed citizenship test, including English language acquisition.
- 13) Some potentially eligible people may have difficulty in accessing the opportunities indicated elsewhere in the paper. The needs of humanitarian entrants and others are well documented in this regard eg. parents with young children, torture and trauma victims, people with disabilities and older people. The Commonwealth should ensure that adequate resources are available to give people "a fair go" in this regard.
- 14) Leaflets in different languages should be produced and provide details of the information and knowledge required for the citizenship test.

- 15) Exemption from formal citizenship testing for Permanent Residents should include those that have entered under the family reunion and aged parent visa categories, and those with Temporary Protection Visas, and were in Australia at the time of the date of the commencement of formal assessment.
- 16) The commission recommends that the Australian government maintain the current system for humanitarian entrants whereby applicants who demonstrate the "Australian Citizenship Language Record" are exempt from further English language testing.
- 17) It has been noted by the Commission that there has been no reference in the discussion paper of citizens who fail in their application to be granted citizenship. They should be given reasons and discretion should be exercised within clear parameters of administrative and procedural fairness. To achieve fair and consistent system, it is important to have independent appeal mechanisms.
- 18) It has also been noted that significantly there is no reference to the length of time an eligible citizen needs to have resided in Australia before applying for citizenship.
- 19) The discussion paper also poses the question as to what form a commitment to Australian values should take. The Commission is of the opinion that a signature on the citizenship application form and subsequent undertaking of a public pledge should be a sufficient proof of commitment. Any evidence of loyalty to Australia beyond this is fraught with all sorts of complications.
- 20) The proposed discussion paper also makes reference to Permanent Residents and people living in Australia on long term temporary residence visas. Under the current system there is a requirement for competency in English language skills before residents are admitted to Australia. The Commission is of the view that applying further testing is too restrictive, particularly in the case of business visas and for international students, and for applicants with high level skills. Any test would be too prohibitive and unnecessary given that the process is being strengthened in other areas. In the case of business migrants, Australia could lose potential economic opportunities if the entry testing for these categories of long term residents is too rigorous.
- 21) While the Commission appreciates the openness of the discussion paper and recognizes the merits in debating the proposals, it emphasizes that all those eligible to apply for citizenship need to be fairly treated under an open legislative regime, their participation must be encouraged by fair and equitable, open processes. Most importantly, the Commission is of the view that the privileges and responsibilities of persons granted citizenship must be the same as of those born in Australia. That these citizens are subject to the same rules and protections as the Australian born citizens.