

COALITION SENATORS' DISSENTING REPORT

1.1 The main issues that arose during the inquiry went to:

- The scope of the exception to the requirement to take the citizenship test and in particular, the exception for physical or mental incapacity resulting from torture or trauma outside Australia – s.21(3A) and (3B) amendments; and
- Citizenship applications for minors – s.21(5) amendment

1.2 Other issues regarding streamlining the administration of the test were non controversial, noting the concerns expressed by the Department about seeking to overcome people sitting the test well in advance of being eligible to apply for citizenship.

Opposition to the provisions seeking to remove the requirement for a 'permanent physical or mental incapacity'

1.3 Coalition Senators oppose the provisions seeking to remove the requirement for a 'permanent physical or mental incapacity' and maintain that the requirement in the exception for 'permanent physical or mental incapacity' be retained.

1.4 The amendments proposed in the Bill extend the exemption to people who have a physical or mental incapacity at the time of making the application that is as a result of the person having suffered torture or trauma outside Australia. Such persons would still need to satisfy the other criteria, e.g. 4 years residence in Australia.

1.5 Concerns were raised at the hearing about the introduction of extending the exemption to one category of people, namely those who had suffered torture or trauma outside Australia, to the exclusion of others, for example, women who had suffered torture and trauma in Australia as a consequence of trafficking. It must be noted that the current provisions refer to 'permanent physical or mental incapacity' without qualification of where or how that incapacity resulted.

1.6 Coalition Senators are concerned that in expressly referring to torture or trauma, the Bill inappropriately and unsuccessfully attempts to frame exclusion from citizenship testing around one (and only one) possible cause (torture and trauma) giving rise to the effect (a mental state) when the latter (the effect) is the appropriate trigger for exclusion, irrespective of its cause.

1.7 This approach is unnecessarily emotive, inflammatory, and unconstructive. Most importantly, it takes the Bill way 'off the mark'.

1.8 The Government has not adequately made the case in favour of their Bill for a range of reasons but in particular as the definition of 'trauma' is so vague and ambiguous; it is almost meaningless and could potentially open the floodgates. This also is unacceptable.

Australian Citizenship Test Review Committee suggested amendment

1.9 The Australian Citizenship Test Review Committee (the Review Committee) suggested the following simpler amendment That s.21(d) be amended to read:

'has a physical or mental incapacity at that time means the person is not capable due to the physical or mental incapacity of:

Understanding the nature of the application at that time; or

Demonstrating a basic knowledge of the English language at that time; or

Demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time.'

1.10 According to the Committee, s.23A sets out the process for a citizenship test and it states in the note that the test must be related to the eligibility criteria referred to in paragraphs 21(2)(d) understanding of the nature of the application, (e) a basic knowledge of the English language and (f) an adequate knowledge of Australia and the responsibilities and privileges of Australian citizenship. It argued that 'mental incapacity' ought not to be confined to just understanding the nature of the application at that time, but ought to refer to all three criteria, all of which are relevant to citizenship testing.

1.11 The methodology suggested by the Review Committee is simpler and non discriminatory. Coalition senators suggest that the Review Committee's proposed amendment be adopted with the addition of the word 'permanent'. Accordingly, we suggest that s.21(3A) and (3B) of the Bill be removed and substituted with the following amendment to s.21(d):

'has a permanent physical or mental incapacity at that time means the person is not capable due to the permanent physical or mental incapacity of:

Understanding the nature of the application at that time; or

Demonstrating a basic knowledge of the English language at that time; or

Demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship at that time.'

1.12 Coalition Senators have concerns that the dropping of word 'permanent' has the potential to extend this exemption to a much wider group of people. There is a big difference between a 'permanent physical or mental incapacity' and a 'physical or mental incapacity'.

1.13 At present the Act also allows exemption from sitting the test for people who suffer from permanent physical and psychological disorders of any origin. Removal of 'permanent' from the definition will lead to confusion about eligibility and definitions about 'permanent' and 'temporary' incapacity. We have no information about how many people may be in this category. Regrettably, this figure was not able to be provided by DIAC at the hearing because the Department did not know and indeed, have been unable to provide an answer in questions on notice. This is disturbing and unacceptable that the Government has no idea of the consequences intended or unintended, if the Bill passes.

1.14 Permanent residents including refugees are required to have lived in Australia for four years before eligibility for citizenship. If those granted protection visas are still suffering from a 'temporary' incapacity after four years, then arguably their

condition could be considered 'permanent', and the current law allows for those people to be exempt from the test.

1.15 There is concern that this new exemption could be used by some to bypass the requirement to have adequate English and knowledge of Australian values, in particular to limit the opportunity for women to learn English, a point that was canvassed by a number of the witnesses at the hearing.

1.16 It is particularly important for humanitarian and refugee entrants who suffer a range of other obstacles if an incentive to learn English language is removed.

Recommendation to bolster 'assistance' to sit the test

1.17 Current provisions in the legislation allow people who have a physical or cognitive impairment (whether permanent or temporary) that prevents them from sitting the Standard Test to sit an 'assisted test'. In the 'assisted test', an administrator may talk the person through the computer-based test. The test administrator may read aloud the questions and multiple choice answers, ask the person which answer they think is correct and select on the computer the answer that the person indicates. An applicant has 90 minutes to complete the test which is double the time allotted for others.

1.18 Coalition senators support extending 'assistance' to people to help them pass the test rather than opening up the category to a wider group of people, and hence, potential exploitation.

Why is there a need to change the citizenship test given the extremely high pass rate?

1.19 Coalition senators also question the need for changes to the citizenship test, given the high pass rates. DIAC officials were unable to explain the inadequacy of the current pass rate such as it needed changes, as is seen from the following exchange:

Senator Fierravanti-Wells—Given the very, very high levels of pass of the citizenship test—it is 97 per cent, from your snapshot—why do we need to change the test? Even in the humanitarian categories, it is 84 per cent. I just do not understand.

Ms Forster—I am sure you are aware, from previous discussions—

Senator Fierravanti-Wells—I am aware of the report.

Ms Forster—of the review of the committee. The government has stated its response to that review and it has indeed moved on with the test.

Senator Fierravanti-Wells—Perhaps I can ask the question in another way. What statistics are you relying upon that make a pass rate of 97 per cent inadequate, so that you have to change it completely? In other words, what are you trying to achieve? Are you trying to achieve 100 per cent? What is so materially and statistically wrong with the current system? What are you trying to achieve here?

Ms Larkins—I think the government's intent was to respond to the findings of the committee review, which found that, for a small subset of those people, they were disadvantaged in sitting the test.

Senator Fierravanti-Wells—In other words, make it easier for everybody.¹

1.20 The focus on extending the exception resulted in questioning of the high pass rates of the citizenship test and the number of conferrals of citizenship. Given the high pass rates, it is clear that the Government's changes are politically motivated. Reference was made during the hearing to the statistics contained in the Australian Citizenship Test Snapshot Report, July 2009. During the hearing, much was made that the humanitarian program had an 84% pass rate – roughly about 10,500 of 12,727 for period 1 October 2007 to 30 June 2009. The following points were made clear during the hearing:

- It was pointed out that humanitarian applicants sit the test on average 1.9 times;
- The 16% non-pass rate reflects people who come back (roughly 2,000) and sit the test at a subsequent time (can sit as many times as you need to); and
- DIAC agreed it was wrong to say that there were hundreds of people who are never going to sit the test for fear of failure to pass (contrary to other evidence given)

1.21 Citizenship can be acquired through application or conferral – in 7 situations:

- General eligibility criteria and successfully completing a citizenship test – ss.21(2) and (2A);
- Permanent physical or mental incapacity – s.21(3) - exempt from citizenship test;
- Person aged 60 or over or has hearing, speech or sight impairment – s.21(4) - exempt from citizenship test;
- Person aged under 18 – s.21(5) - exempt from citizenship test;
- Person born to a former Australian citizen – s.21(6) - exempt from citizenship test;
- Person born in Papua – s.21(7) - exempt from citizenship test; and
- Statelessness – s.21(8) - exempt from citizenship test

1.22 DIAC have advised that in the period 1 October 2007 to 30 June 2009, **168,293** people were conferred citizenship under s.21 either through application or conferral. DIAC was asked for a breakdown of the figures for each of the 7 situations, but has advised that:

We are not readily able to provide a breakdown of numbers against each subsection of the Act.²

1 Proof Committee Hansard, 27 August 2009, p. 40.

2 Email correspondence from Ms Renelle Forster to the Committee Secretariat, in response to questions from Senator Fierravanti-Wells, received 2 September 2009.

1.23 Coalition Senators find this remarkable. How can the Government seek to change provisions such as these and not have the statistical analysis to base its assertions of the need for change?

1.24 However, DIAC were able to count the number of people whose citizenship was conferred under the permanent physical or mental incapacity provisions of s.21(3) for the period 1 October 2007 to 30 June 2009 – **366** people applied and of these, **189** were conferred citizenship. It is amazing that DIAC cannot provide a breakdown and hence, Coalition Senators have sought to work this out from other information:

- For the period 1 October 2007 to 30 June 2009, **138,155** people sat the Citizenship test and **133,925** passed on the first or subsequent attempt (these are people in the general eligibility criteria ss.21(2) and (2A) referred to above (namely 1 of the 7 situations above)
- Hence, one would assume that the difference between 168,293 and 133,925 i.e. **34,368** represents people who had citizenship conferred on them (presumably the other 6 situations referred to above)
- This would then mean that roughly **20% or 1 in 5 people** acquire citizenship by conferral rather than applying and sitting the test.

1.25 Accordingly, Coalition Senators are concerned that s.21 conferrals other than for general eligibility criteria applicants who sit the citizenship test is already considerable and ought not be extended further.

Amendments to waive residency requirements for athletes and some other categories

1.26 Coalition Senators also note that on 31 August 2009 in a letter to our Committee Senator The Hon Chris Evans, Minister for Immigration and Citizenship, advised his intent to amend the Government's Bill with a not insignificant amendment (relating to a residence requirement for certain persons) of four (4) pages and notes of seven (7) pages which will now have to be considered on its merits.

1.27 The onus is on the Government to outline the urgency of waiving residency requirements for athletes and other categories of people. In the ordinary course, the proposed amendments ought to have been open to proper examination and scrutiny by the Committee and groups and organisations wishing to make submissions on the amendments. A separate inquiry on the amendments would also have afforded interested groups, organisations and members of the public the opportunity to comment on the changes.

Senator Guy Barnett
Deputy Chair

Senator Mary Jo Fisher

Senator Concetta
Fierravanti-Wells

