

# ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS

## *Introduction*

1.2 The Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009 essentially seeks to amend the Citizenship Act to exempt applicants who cannot complete the test because of mental or physical incapacity occasioned by torture or trauma; and tighten the eligibility criteria for persons under 18 by requiring they be permanent residents before granting citizenship.

1.3 While the Greens do not support the premise of the Citizenship Test, and continue to hold concerns over aspects of this legislation, we recognise that the Minister has sought to improve the way in which the test is applied in response to some of the recommendations made in the report of the Australian Citizenship Test Review Committee.

## *Subsection 21(3) exceptions from the citizenship test*

1.4 The majority of submissions and evidence received by the Committee argue that while an exemption from the requirements to sit the citizenship test is provided for sufferers of past torture and trauma experienced, the exemption identified in Subsection 21(3) of the Bill is too narrow.

1.5 Many refugee and humanitarian entrants, for example, that may have suffered persecution within their countries of origin, would fall short of the legal definition of torture. Similarly, the requirement that mental or physical incapacity is as a result of suffering torture or trauma outside of Australia, is too prescriptive, particularly when discussing trafficked persons, or those held in detention whilst their visa application is being determined.

1.6 It is not appropriate to limit the definition of torture or trauma to those that have suffered psychological damage outside of Australia. In their submission, Castan Centre for Human Rights Law argues that:

Many refugees have been re-traumatised by their treatment in Australia, and have suffered trauma from prolonged detention...whilst under Australia's care and jurisdiction.<sup>1</sup>

1.7 At a minimum, consideration must be given to expanding the definition to include persons traumatised by their experience in an Australian detention facility, and trafficked persons who have suffered trauma and persecution in Australia at the hands of persons here.

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1 Castan Centre for Human Rights Law, Monash University, *Submission15*, p. 8.

1.8 There was also confusion around how a person's level of incapacity will be measured, and by whom. The Refugee Advice and Casework Service argued in their evidence to the committee that:

individuals falling within the exception would still be forced to submit to the potentially humiliating process of having themselves declared mentally incapable. In addition, a significant strain may well be placed upon the already overburdened mental health services.<sup>2</sup>

### **Recommendation 1**

**1.9 The Greens submit that the exemption within 21(3) is too narrow, and must be expanded to include all refugee and humanitarian visa holders from the requirement to sit the test.**

### **Recommendation 2**

**1.10 If the exemption proposal is not broadened, we recommend that the amendment be broadened to include people who have suffered significant trauma while in Australia.**

**1.11 Proposed subsection 21(3B) and paragraph 26(1)(ba) be amended by omitting the words "outside Australia"**

#### ***Subsection 21(5) removal of exemption for minors***

1.12 The Committee heard evidence throughout the Inquiry regarding concerns over the removal of the Ministerial discretion clause, effectively allowing the Minister to grant citizenship to a child or young person who is not a resident. Of particular concern was that by requiring a person under 18 years of age to be a permanent resident at time of the application and decision for citizenship, the best interests of the child are not being taken into account.

1.13 Children are a particularly vulnerable group of, and their visa status is often as a result of factors beyond their control. According to the Refugee and Immigration Legal Centre's submission into the Inquiry

Australia's obligations under the Convention on the Rights of the Child to act in the best interests of the child must be the guiding and determining factor in deciding whether a child can be conferred Australia citizenship. Of particular relevance is the degree of the child's connection to Australia, to the extent that it may amount to a form of citizenship, rather than their formal visa status.<sup>3</sup>

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2 Refugee Advice and Casework Service, *Proof Committee Hansard*, p. 2.

3 Refugee and Immigration Legal Centre, *Submission 21*, p. 13.

### **Recommendation 3**

**1.14** Given Australia’s commitment to the Convention on the Rights of the Child, the Greens recommend that Subsection 21(5) be omitted, and replaced with a clause that requires the Minister to take into account, when deciding whether an applicant under the age of 18 years of age is eligible for conferral of citizenship, the best interest principle from Article 3 of the Convention of the Rights of the Child.

#### *Alternative pathways to citizenship*

1.15 While a number of the proposed amendments contained in this legislation will make it easier to obtain citizenship, the Greens remain concerned at the lack of legislative implementation for alternative pathways to citizenship.

1.16 It is largely the most vulnerable applicants, such as refugee or humanitarian entrants, who have experienced most difficulties with the passing the test. Given the Australian Citizenship Test Review Committee recommended a range of other alternative pathways, including Citizenship Education Programs in English and in languages other than English, the Government must develop its alternative pathway to citizenship plan as a priority.

### **Recommendation 4**

**1.17** The Greens support the recommendation put forward by the Refugee and Immigration Legal Centre that “any alternative pathway proposed by the Government for refugee and humanitarian entrants, must not involve the completion of any form of computer-based, multiple choice test and the training element of this pathway must be available in languages other than English.”<sup>4</sup>

### **Recommendation 5**

**1.18** The Greens further recommend that if refugee and humanitarian applicants are not exempt from the test, a review mechanism be implemented, under the current powers of the Commonwealth Ombudsman, for refugee and humanitarian applicants to challenge their ability to access support, in order to undertake the test.

#### *Public scrutiny*

1.19 Given Recommendation No.18 of the Australian Citizenship Test Review Committee recommended that:

all citizenship test questions, regardless of the pathway, be made publicly available and education experts be consulted on the number of questions to be in the bank.<sup>5</sup>

1.20 It is disappointing that the Government does not see the merit in ensuring there is appropriate public scrutiny of the citizenship test.

1.21 Appropriate levels of public scrutiny would ensure and promote public discussion around what are appropriate questions to include in the test.

### **Recommendation 6**

**1.22 Considering the Department for Immigration and Citizenship recently published the “Australian Citizenship Test Snapshot Report”, the Greens recommend that this information, and the questions included within the test, be released, on an annual basis, to encourage public engagement and scrutiny in the process.**

### ***Conclusion***

1.23 The Greens continue to hold concerns around the narrow exemption clauses for minors and past sufferers of trauma and torture, as well as the failure to include alternative pathways for citizenship, or appropriate levels of public scrutiny of the citizenship test.

1.24 Although we have been strong advocates for the abolition of the citizenship test, we recognise that the amendments posed within this Bill seek to improve the current testing regime, and we will seek to address the recommendations outlined above, when the Bill is debated in the Senate.

1.25 As such, the Greens reserve our final position on the Bill.

**Sarah Hanson-Young**  
**Australian Greens’ Spokesperson for Immigration**

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5 Australian Citizenship Review Committee, *Moving Forward...Improving Pathways to Citizenship* (The Woolcott Report) Commonwealth of Australia, August 2008, p. 5.