



Refugee Council of Australia

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill

10 July 2007

Introduction

The Refugee Council of Australia (RCOA) welcomes the opportunity to comment on the Australian Citizenship Amendment (Citizenship Testing) Bill 2007, currently before the Senate's Legal and Constitutional Committee. RCOA is the peak non-government refugee organisation in Australia representing over 90 member organisations.

RCOA participated in the public consultations on the precursor to this legislation, the Commonwealth Government's discussion paper, *Australian Citizenship: Much more than a Ceremony*. Our submission to this current inquiry should be read in conjunction with our comments addressing the proposals outlined in that earlier discussion paper. We note that proposals from the Government discussion paper appear to have been incorporated in the Citizenship Testing Bill without significant amendment.

While we recognise that the Bill will have a significant impact on a range of migrant groups in Australia, we have restricted our comments to the impact that this Bill will have on refugees and humanitarian migrants in Australia who represent a particularly vulnerable class of migrants.

The role of citizenship testing in creating "better" Australian citizens

RCOA understands that it is the intention of the Committee to focus specifically on the content of the legislation as currently drafted; however, we feel that it is necessary to make some comments, if only in passing, on the broader context in which the Bill has been introduced. In particular, RCOA believes it is important to acknowledge the express intention of the legislation as a measure designed to improve the quality of new Australian citizens. As the Minister for Immigration and Citizenship, the Hon. Kevin Andrews, has indicated, citizenship testing of the type provided for in this Bill "*will ensure a level of commitment to these values [of democracy, gender equality and the rule of law] and way of life from all Australians*" and as a means of "*maintaining our national identity*".¹

¹ Australian Citizenship Amendment (Citizenship Testing) Bill 2007, Second Reading Speech, House of Representatives Hansard, 20 May 2007, at page 5 (emphasis added).

However, apart from these assertions, there remains little evidence forwarded as to the practical, positive impact that English language testing beyond that which currently exists within the citizenship process, or a quiz on “the Australian way of life”, will have on ensuring a higher “quality” of Australian citizen. In fact, Australia’s history is peppered with examples of individuals with no or little English who have made superlative contributions as citizens to our community. To exclude such people from citizenship in part because of a fear that significant numbers of such individuals may only be seeking citizenship to provide them with protection against deportation if (and when) they commit criminal offences² is misguided and disproved by the historical reality that English competence is not a marker of commitment to one’s community.

The discriminatory aspects of such English language testing must thus be acknowledged at the outset, not least because such a pre-requisite for citizenship disadvantages those individuals who are from non-English-speaking backgrounds. Such disadvantage is compounded in the case of particularly vulnerable classes of migrants such as refugees and humanitarian entrants who may, for reasons peculiar to the refugee experience, lack literacy skills, let alone a capacity to pass a complex knowledge/English test. In addition, refugees and humanitarian entrants, the vast majority of whom are from non-English-speaking backgrounds, are presently the category of Australian migrants who are most likely to seek Australian citizenship. English-language testing thus erects a barrier to citizenship that works against those migrant groups who are most enthusiastic about making a citizenship commitment and in favour of native English speakers who generally are much less keen to acquire Australian citizenship.

Further, while there is undoubtedly a connection between a grasp of English and the capacity to secure superior labour market outcomes, it is unclear how applying English/knowledge testing for citizenship will help augment migrants’ employment prospects. In our view, a more direct improvement could be obtained through increased and better targeted funding for English language classes. Further, restricting citizenship on the basis of a lack of English skills may further disadvantage migrants in the labour market given that there are a number of occupations for which Australian citizenship is a requirement.

In addition, rolling the English language assessment aspect of the citizenship test in with the Australian knowledge aspect unnecessarily complicates the broader objectives of the testing regime. The present citizenship eligibility criteria include an English language component. To supplement or replace this requirement with a knowledge test neither amounts to an effective language test nor an effective test of a person’s awareness of the nuances of life in Australia.

The financial cost of the initiative

RCOA notes with some concern that the estimated cost of the administration and implementation the proposed citizenship testing regime will be well over \$120 million over five years. In our view, such a significant financial commitment to citizenship testing aimed at improving the English literacy of the Australian citizenry could be more appropriately and effectively directed to ensuring that English language classes are more accessible and widely

² Sue Harris Rimmer (2007) *Australian Citizenship Amendment (Citizenship Testing) Bill 2007 Bills Digest*, 19 June 2007, no. 188, 2006-07, page 4.

available to all newly-arrived migrants. In May, RCOA congratulated the Commonwealth Government's 2007 Budget initiative to increase funding for English language learning for school-aged new arrivals by \$127.8 million over four years. The reallocation of the funds set aside for the citizenship test to a further expansion of English language services for recent arrivals would do much more to enhance the language acquisition and integration of potential new citizens.

Further, RCOA notes that refugees on temporary protection visas – that is, individuals who have been assessed as refugees who have legitimately engaged Australia's international protection obligations for resettlement – do not have access to federally-funded English language classes. In our experience, refugees are eager to learn English; however, this is extraordinarily difficult in the absence of accessible language courses. As such, RCOA encourages the Federal Government to consider expanding the eligibility for English language training to include this group of migrants who are keen to rebuild their lives in Australia and accept that developing English skills is both a key part of successful resettlement and an important step towards achieving active citizenship.

Substantive content of the Bill located in policy not legislation

While RCOA understands that there is a need for this legislation to provide a flexible means for implementing and administering the proposed citizenship test, we have some concerns that the Bill appears to allow for the substantive content of the testing regime to be located in Ministerial policy. In particular, the number and content of the citizenship test/s, eligibility for testing and determination of successful completion of the test, only require a "written determination" by the Minister. Given the import of such details for those applying for Australian citizenship, it appears curious that no Parliamentary scrutiny is required for any of these aspects of the citizenship test. Incorporation of some mechanism for Parliamentary review, even by way of Regulation (as opposed to legislative amendment), would prevent any speculation that citizenship testing could be used in the future in a political manner contrary to the expressed intention of the legislation.

Exemptions for refugees and humanitarian entrants

RCOA notes that the legislation in its present form provides scope for the approval of more than one English/knowledge test for those applying for citizenship as well as stipulating categories of applicants who will not be required to pass a citizenship test. The Minister's Second Reading speech also indicates that the test will take on an oral rather than written format for applicants with little or no literacy skills.

RCOA urges the Committee to consider recommending that additional flexibility be incorporated into the testing regime to compensate for the otherwise adverse impact that language testing will have on refugees and humanitarian migrants whose migration experiences are markedly different from all other categories of migrants.

In the first instance, Australia should not be limiting the opportunities for citizenship for those to whom it has recognised international protection obligations. Unlike other migrants who can make an active choice to either remain in their country of origin or move to Australia, refugees

have had this choice removed on account of the persecution they have faced. Many have, in effect, lost their initial citizenship as a result of the refugee experience. Stateless individuals similarly do not have any citizenship to which they can avail themselves while they await the Australian citizenship process. It is for this reason that, for many refugees and humanitarian entrants, citizenship is closely connected to their sense of security and safety in a new country. As such, delaying citizenship through the erection of such barriers will act as de facto barriers to successful settlement and integration.

While many refugees are bilingual or multilingual, for some refugees learning English can be a very long and difficult process. There are a number of barriers that confront many refugees which distinguishes them from other migrants including:

- a limited or interrupted educational background due to armed conflict, forced displacement, the experience of flight and many years in refugee camps and countries of asylum;
- illiteracy or pre-literacy in their mother tongue which means that, while basic spoken English may be acquired over a period of time, complex English or functional written English may take many years to be attained;
- learning difficulties resulting from experience of torture and/or trauma.

Testing along the lines proposed in this Bill would act in a doubly discriminatory manner for refugee women who may have difficulty accessing English classes due to family responsibilities, especially those women who are accepted in Australia as part of our “Woman at Risk” intake, who are the sole heads of households.

Not only will refugees and humanitarian entrants be disproportionately adversely affected by citizenship testing in the manner proposed vis a vis other categories of migrants, but they also more acutely affected by their inability to obtain such citizenship. Until they are able to become Australian citizens, refugees and stateless individuals are unable to hold an Australian passport. While they may be issued with travel documents, their ability to travel to see family members overseas is restricted in many situations. Contact with family is a significant part of the settlement process and essential for recovery from experiences of trauma.

In our experience, refugees and humanitarian entrants, despite their traumatic experiences, or perhaps because of them, make exemplary Australian citizens. Resilience, courage and very real commitment to freedom are characteristics possessed by refugees which should be lauded and encouraged in the broader populous. It would thus be unfortunate if citizenship testing as currently proposed in this legislation operated to prevent the rest of the Australian community from benefiting from and appropriately acknowledging the positive contribution that these individuals can and do make to their new homeland. By providing exemptions for refugees and humanitarian entrants from the strict operation of the test the spirit of the initiative could be maintained while discriminatory consequences avoided.

Use of “specified personal identifiers”

In addition to the specific concerns we have regarding the impact of the citizenship testing regime on refugees, RCOA also has a more general concern about the provision in the Bill for the use of “specified personal identifiers” including biometric data such as iris scans and

fingerprints for the purposes of identifying a person eligible to sit the citizenship test. In our view, the potential collection of such data from individuals already living within the Australian community is unnecessary. We are not satisfied that the existing provisions in the *Australian Citizenship Act 2007* (Cth) are adequate to protect individuals' privacy in relation to these identifiers.

Conclusion

The introduction of a language test was included in the Immigration Restriction Act passed by the new Commonwealth Parliament in 1901. This language dictation test was removed in 1959 after being heavily discredited for its racially discriminatory outcomes and its frequent use by the Executive in an overtly political manner to exclude all “undesirable” individuals, such as communists, Republican Irish Catholics and “immoral” women,³ as opposed to simply those who were simply “persons deemed unsuitable because of their Asiatic or non-European race”.⁴

There is no doubt that the current legislation has an entirely different motivation to the 1901 legislation (which helped to underpin the White Australia Policy). In the twenty-first century, following the codification of international human rights norms (often at the behest of Australian governments) and more sophisticated understandings of the notion of citizenship, it would be disappointing to see a new testing regime introduced which had the unintended consequence of excluding exemplary residents of Australia from citizenship.

It is in the interests of all current Australian citizens that the Commonwealth Government not press ahead with citizenship testing in the manner currently proposed in this Bill. Social cohesion, concrete support for universal values of respect and equality, and commitment to a place of residence are not achieved through multiple-choice testing, but through efforts aimed at nurturing strong communities that value the contributions of refugees, humanitarian entrants and other migrants, providing for family reunions and creating sound settlement experiences for these people.

While RCOA is generally opposed to the notion of citizenship testing in the manner promoted in this legislation, we acknowledge the commitment of the Commonwealth Government to the introduction of language/knowledge testing as part of the citizenship-acquisition process for migrants. In our view, if such testing must be introduced, it is incumbent upon Members that such a policy be implemented sensitively and with an understanding that “blanket testing” is not appropriate given the lack of a “blanket” resettlement experience for all migrants resettling in Australia.

Recommendations

1. That the Committee recommends that the Bill be rejected.
2. That the Committee acknowledges the positive aspects of the existing citizenship application process in contributing to internationally enviable levels of community harmony.

³ Kel Robertson, et. Al (2005) “Dictating to One of ‘Us’: The Migration of Mrs Freer”, *Macquarie Law Journal*, vol 12.

⁴ *The King v Davey and Others; Ex parte Freer* (1936) 56 CLR 381 at 386, per Evatt J.

3. If the Bill is not rejected, that the Committee support the provision of test exceptions for refugees and humanitarian entrants who apply for Australian citizenship in recognition of their particular migration experience and the significant adverse impact that failure to obtain citizenship will have on their resettlement outcomes.