



Refugee Council of Australia

SUBMISSION TO THE REVIEW OF THE AUSTRALIAN CITIZENSHIP TEST

The Refugee Council of Australia welcomes the opportunity to contribute to this review of the Australian Citizenship Test.

Background to the Refugee Council of Australia

The Refugee Council of Australia (RCOA) was established in 1981. RCOA is a national, not-for-profit organisation with 123 organisational and 170 individual members. RCOA's aim is to promote the adoption of flexible, humane and constructive policies towards refugees, asylum seekers and displaced persons by the Australian and other governments and their communities. As the umbrella advocacy body in Australia for refugee and humanitarian protection issues, RCOA conducts regular consultations with a broad range of settlement agencies, refugee communities, scholars, legal representatives and onshore asylum advocates. The views expressed in this submission draw from feedback received in these consultations.

Previous submissions and commentary on the introduction and operation of citizenship testing in Australia

RCOA has engaged positively in the debate about the re-introduction of a citizenship test in Australia as initiated by the previous federal government.

In particular, we would like to draw the committee's attention to:

- our [response](#) to the draft discussion paper, *Australian Citizenship: Much More than a Ceremony* proposing the introduction of a citizenship test;
- our [submission](#) to the Senate Legislative and Constitutional Affairs Committee Inquiry into the Citizenship Amendment (Citizenship Testing) Bill 2007;
- the [evidence](#) presented during our appearance before the Senate Committee Inquiry into the Citizenship Amendment (Citizenship Testing) Bill 2007; and
- our contributions to the recent community discussion/consultations conducted by the Citizenship Test Review Committee in Melbourne, Sydney and Canberra.

These contributions as well as the Council's general public commentary on the issues associated with citizenship testing highlighted the following concerns:

- insufficient appreciation for Australia's existing rich multicultural heritage and comparatively high degree of social harmony that has prevailed under the (now previous) citizenship regime;

- the risk that citizenship testing will operate in an exclusionary manner, create barriers to civic participation and undermine the establishment of a cohesive Australian community;
- the parallels between this test and that which existed during an earlier period in Australia's history but was abolished on account of its politicisation and discriminatory outcomes;
- the lack of proportionality between the new testing regime and the socio-political aims it is attempting to achieve;
- the inappropriateness of using a multiple-choice test to ascertain commitment to Australia and knowledge of civic rights and responsibilities;
- the discriminatory impact for refugees and humanitarian migrants whose migration experiences of torture, trauma, protracted displacement and pre-literacy compromise their capacity to undertake a computer-based citizenship test;
- formulation of English testing that discriminates against refugees and other migrants from non-English-speaking backgrounds;
- the more marked discriminatory impact for women;
- the significant problems confronting refugees who are unable to obtain citizenship and are thus prevented from having Australian travel documents that would facilitate them visiting family overseas; and
- potential breaches of Australia's international human rights obligations, in particular those outlined in the *International Covenant on Civil and Political Rights*, the *Universal Declaration of Human Rights*, the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Statelessness Convention* (despite the provision in ss 21(8) of the *Australian Citizenship Act 2007*).

RCOA's present submission

The Refugee Council notes that it is beyond this Committee's terms of reference to investigate the existence of the citizenship test or the merits of citizenship testing. While this is regrettable, in light of this limited remit, the Council has opted to frame its present submission within the context of the reality that a citizenship test will continue to exist in some form and at least some aspect of that test will be in English.

The proposals and suggestions contained within this submission should not, however, be construed as support for the notion of citizenship "testing". RCOA maintains that there are more appropriate means for both establishing an individual's appropriateness for assuming the rights and responsibilities of citizenship, as well as ensuring that an individual has sufficient English language skills to function in broader society. RCOA continues to oppose citizenship testing and suggests that the \$80 million that has been dedicated to the program could be allocated more appropriately to settlement services, English language training and broader human rights education.

RCOA would also like to commend to the committee submissions to this review from the Human Rights and Equal Opportunities Commission (HREOC), the Federation of Ethnic Communities Councils of Australia (FECCA) and Foundation House.

The impact of citizenship testing on refugee and humanitarian migrants

Eight months into the citizenship testing regime, it is becoming increasingly clear that many of the apprehensions the Refugee Council and other organisations expressed about the adverse impact of the citizenship test have been realised.

Figures from the Department of Immigration and Citizenship in January and April 2008 indicate that:

- there has been a substantial decline in the numbers of people who are applying for Australian citizenship that cannot be entirely explained by a bubble effect associated with the introduction of the new requirements¹;
- refugee and humanitarian migrants continue to be more enthusiastic about acquiring Australian citizenship when compared with other migrant groups;
- refugee and humanitarian migrants are disproportionately represented among those individuals who are required to sit the citizenship test multiple times (there has been an increase from 1.5 tests per person to 1.7 tests per person between January and April 2008);
- refugee and humanitarian migrants sitting the test have a pass rate almost 20 per cent lower than that for skilled migrants; and
- applicants from countries with large numbers of refugee and humanitarian migrants in which English is not a language commonly spoken have test failure rates between 20 and 45 per cent, compared with one to three per cent for applicants from countries such as India, the United Kingdom and New Zealand.²

While this empirical data matches the anecdotal evidence obtained by RCOA and its member agencies, reports to RCOA also indicate that:

- the female members of refugee family groups applying for citizenship are often unable to pass the test and are thus unable to share in the fruits of citizenship together with the male members of their family;
- there is a significant degree of fear about the test among refugee communities, especially those for whom English is not a primary language;
- some refugees who fail the test are refraining from reapplying for citizenship;
- failure to obtain citizenship or lengthy delays in acquiring it for refugees who do not have travel documents has restricted overseas travel for these refugees, many who have not seen their family for a number of years; and
- there is a lack of clarity about the relationship between the citizenship test questions and the content of the book, *Becoming an Australian Citizen*, in particular, as to whether it is necessary to memorise every detail of the book in order to pass the test.

Further, while the data that has been made public about the test is useful in helping to comment on its operation and effectiveness, it would be useful for this committee and the general community to access information about issues including:

- the proportion of refugee and humanitarian migrants that are applying for citizenship and how this compares with previous years to determine if there is a self-selection effect;
- any qualitative assessments that have been undertaken by DIAC to determine the test's effectiveness, the utility of the test for achieving its objectives, and/or whether the test has had adverse discriminatory outcomes; and
- whether or not the Minister for Immigration and Citizenship has exercised his powers under the legislation to waive or vary the eligibility requirements as permitted under s23A of the *Australian Citizenship Act 2007* for any individual or class of individuals and the bases for such decision/s.

¹ Michelle Grattan (2008) " 'Daunting' Citizenship Test Scares Off Applicants". *The Age*. 30 January 2008

² These failure rates were for the period up to January 2008. The rates have improved for these countries – Iraq, Afghanistan and Sudan – to between 16 and 20 per cent by April 2008, but it is unclear whether or not this is due to a self-selection effect.

If no such information is readily available, the Refugee Council recommends that there be a periodic review of the operation of the citizenship testing regime to ensure that it is operating in an equitable manner without unintended discriminatory consequences.

Purported aims of the citizenship testing regime

The citizenship legislation, its associated instruments and the *Becoming an Australian Citizen* handbook appear to indicate that the citizenship test and process have been reconstructed to achieve the following aims:

- (a) highlighting the importance of Australian citizenship and ensuring that applicants value the institution of citizenship;
- (b) ensuring that applicants affirm their loyalty to Australia;
- (c) ensuring that applicants possess a basic level of English; and
- (d) ensuring that applicants have an “adequate knowledge of Australia”.

It should be noted that the legislative articulation of such criteria for applicants for citizenship promotes the notion that citizenship obtained through application is one that is deeply, qualitatively different from that conferred upon individuals born in Australia to an Australian citizen or permanent resident. In particular, criteria (a), (c) and (d) are not prerequisites for the automatic acquisition of citizenship for non-migrants; Australia, for instance, does not otherwise seek to withhold citizenship from its residents who do not have basic English skills.³

Achieving the aims of the citizenship test

The enshrined objects of the citizenship testing regime are arguably not problematic when they are considered individually and outside of the broader social context within which citizenship is obtained and exercised. However, it is the view of the Refugee Council that the present way in which the citizenship test itself is framed and administered does not represent the most appropriate mechanism for achieving these objectives, especially for migrants from refugee backgrounds. The reasons for this include:

- the conflation of an English test with a demonstration of knowledge about ideas relating to the rights and responsibilities of citizenship has transformed the citizenship test into a relatively sophisticated English comprehension test;
- multiple choice testing is not a form of assessment that is commonly encountered by refugees in their home countries and they are thus at a disadvantage when approaching the citizenship test;
- many refugees, particularly those who have lived in protracted displacement situations, have not had any experience using computer interfaces and thus find it difficult to successfully complete a test on computer;
- the idea of the test, the dense content of the preparatory handbook as well as the unavailability of questions for the test engenders fear in some refugee communities about the nature of the test;

³ To that end, it is worth noting that 15 per cent of people living in Australia who have between 11 and 16 years of formal schooling have prose and numeracy literacy levels that fall within the lowest two bands of the five-band OECD Adult Literacy and Life Skills Survey. These people are among the 46 per cent of the total population aged between 15 and 75 whose prose literacy skills are characterised as lying in the lowest two bands (see ABS Cat 4228.0 *Adult Literacy and Life Skills Survey, Australia, 2006* reissued in 2008: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4228.0Main%20Features12006%20\(Reissue\)?opendocument&tabname=Summary&prodno=4228.0&issue=2006%20\(Reissue\)&num=&view=](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4228.0Main%20Features12006%20(Reissue)?opendocument&tabname=Summary&prodno=4228.0&issue=2006%20(Reissue)&num=&view=))

- the current handbook and test do not acknowledge the universality of values of human rights or notions of democracy and the rule of law with which many refugees have significant affinity, nor does it speak to their experiences as part of the Australian community;
- multiple choice testing is not nuanced and does not allow applicants to demonstrate their knowledge of and engagement with complex concepts such as democratic processes; and
- the way in which the handbook is presented creates the misleading impression that citizenship in Australia and full participation in the Australian community is as much about respect for the rule of law and knowledge of indigenous history as it is about knowing how many soldiers were killed in Gallipoli or the name of Sir Donald Bradman's team when it toured England in 1948.

Given these shortcomings and the presumption that the committee accepts that it would be desirable for as many permanent residents in Australia to be encouraged to demonstrate their loyalty to Australia by taking up citizenship, the following are some proposals for alternative ways in which the provisions of the legislation could be met.

(a) Affirming loyalty to Australia and valuing citizenship – “understanding the nature of the application” for citizenship

It is the view of the Refugee Council that no comprehension test, but particularly one that is based on a database of multiple choice questions, can possibly hope to ensure that all who pass it will indeed be individuals who demonstrate loyalty to Australia and her people. At present, the taking of the Australian Citizenship Pledge, especially when it is coupled with the doubling of the residency requirements for eligibility for citizenship as well as the character test, provides a reasonably sound basis upon which applicants for citizenship can indicate such loyalty. There is no indication within the pledge that one should be required to understand English or, more importantly, be able to fully and accurately articulate the concepts contained in the pledge in English.

In RCOA's almost thirty years of experience in working with refugee communities, there is substantial evidence to show that refugees are among those applicants for citizenship who are most acutely cognisant of the importance of the institution of citizenship, in large part because of the nature of their migration experience. While they may not be able to frame their understanding in the manner outlined in the current citizenship handbook, due to their experiences of persecution, discrimination and uncertain status in transit countries, refugees strongly value citizenship and the opportunity to be recognised and participate as full members of the Australian community. As such, unless there is some means for providing for the interviewing of applicants about their willingness to be loyal citizens, the pledge should suffice for achieving this aim of the citizenship process.

The Refugee Council recommends that taking of the Australian Citizenship Pledge, together with the demonstration of “good character”, be considered adequate to test an applicant's loyalty to Australia and their understanding of their application for citizenship.

(b) Knowledge of “basic English”

As noted above, successful completion of the current citizenship process requires more than a basic level of English. Reading the handbook, understanding the range of concepts and terms used within the handbook, memorising the salient details and answering multiple choice questions require advanced prose English literacy skills as well as some skills and experience in sitting English comprehension exams.

It is the view of the Refugee Council that establishing an applicant's possession of basic English skills as required by the citizenship legislation should be separated from all other aspects of the citizenship testing regime.

The Refugee Council recommends that "basic English" skills:

- *be considered as covering the understanding of spoken English only;*
- *be established through a simple interview with the citizenship testing officer based on a discussion of everyday tasks associated with the applicant's life in Australia over the past four years of their residence; and*
- *be augmented, where necessary, by the demonstration of completion of English language courses through the Adult Migrant English Program, attendance of community English classes, participation in other community-based English conversation/training programs, engagement in paid employment or participation in voluntary work.*

(c) Demonstrating "adequate knowledge" of Australia, living in Australia, democracy and human rights

Developing an understanding of life in Australia is an ongoing process and one which is arguably enhanced by opportunities to participate as a full member of the Australian community. It is the view of the Refugee Council that refugees and humanitarian migrants applying for citizenship, after having met the residency and character requirements, already possess a knowledge of Australia that is "adequate" for citizenship purposes. This knowledge will only increase upon having been permitted to obtain citizenship.

On the other hand, if meeting this legislative requirement is construed as understanding the history of Australia, principles of democracy, the rule of law and universal human rights, then it is clear that a multiple choice test based on the content of the current handbook is at best markedly inadequate, and at worst inappropriate. Teasing out the nuances of these concepts can best be done through debate and discussion drawing on the perspectives of a range of historians, legal theorists, sociologists and commentators from Australia and abroad, as well as the experiences of migrants themselves in both their countries of origin and in their new home.

Further, RCOA believes that it is not only applicants for citizenship who would benefit from such discussion about the tenets of citizenship and human rights; Australian democracy as well as civic and political engagement of citizens would also be enhanced by greater public discourse about these issues. To increase the accessibility and maximise the impact of such programs, a wide range of media and modes of content delivery should be explored.

RCOA recommends that the "adequate knowledge" condition of the citizenship application process be considered satisfied through the completion of residency requirements, the taking of the Australian Citizenship Pledge and meeting of the character requirements.

If demonstration of additional knowledge is considered necessary, RCOA recommends that:

- *a range of community media – newspapers, radio, websites, magazines, television, pamphlets – be used to deliver public programs about Australia's history, human rights and democracy;*
- *such program material be delivered in a range of community languages;*
- *such materials draw on the existing work of and be developed in conjunction with academics, broadcasters, community organisations and HREOC;*
- *community organisations be resourced to assist in the delivery of this community-based education; and*
- *applicants for citizenship indicate that they have accessed such materials and/or participated in community-based education.*

What happens to people who are still unable to pass the test but would otherwise make good Australia citizens?

Even if the recommendations to the citizenship testing regime outlined above are implemented, it is likely that there will continue to be a small number of people, including some who are residents with refugee backgrounds, who will still be unable to pass the citizenship test.

While there is an argument that the very purpose behind citizenship testing is to “screen out” people not of the calibre necessary to be granted Australian citizenship, RCOA believes that there will be people who could meet the legislative requirements for citizenship but are unable to demonstrate it in a manner mandated by a test. Ultimately, citizenship should be an holistic and enabling process, the conduct of which is focused on enhancing positive participation in the community for those who have chosen to be long term residents of Australia. A question remains, therefore, about ways in which the test regime can be framed in such a way that it does not operate in an unintentionally discriminatory manner.

The Council notes that at present there exists legislative exemptions for the test for citizenship applicants who are deaf and/or blind. It is RCOA’s view that similar exemptions should be available to refugees, humanitarian and other migrants who, on account of the nature of their migration experience, should have the option of being exempted from the requirement to complete a citizenship test. This exemption should be available particularly in cases where applicants have experienced torture or trauma or have language disorders, learning or other disabilities that compromise their capacity to undertake the test, but may not necessarily be classified as a mental or physical incapacity that prevents them from understanding the nature of their application for citizenship.

RCOA recommends that applicants for citizenship who have experienced torture and/or trauma, have language disorders and/or learning disabilities be given the option of being exempted from undertaking citizenship testing that extends beyond the taking of the Australian Citizenship Pledge and meeting the residence and character requirements.

RCOA further recommends that there should be a mechanism established for following-up individuals who fail the test so that their enthusiasm for citizenship can be acknowledged and they can continue to be engaged in the process of becoming Australian citizens.

Conclusion

The Refugee Council of Australia welcomes this review into the operation of the citizenship test. While there has been little evidence provided as to the impact of the test on improving the quality of new citizens, there is much to indicate that the test has been operating or is at risk of operating in an unintentionally discriminatory manner. In addition to receiving greater qualitative data about the impact of citizenship testing in Australia more generally, RCOA believes that modifying the manner in which the citizenship legislative provisions are sought to be implemented – through greater emphasis on the Citizenship Pledge, separating possession of basic English skills from an understanding of the principles of citizenship, and increased support for public human rights and civics education – will go some way to removing the barriers to full participation in the Australian community for the most committed of our permanent residents.

5 June 2008