



Refugee Council
of Australia



DELAYS IN CITIZENSHIP APPLICATIONS FOR PERMANENT REFUGEE VISA HOLDERS

October 2015

“The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.”

Article 34, 1951 Refugee Convention

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1. EXECUTIVE SUMMARY

Citizenship has particular significance for refugee and humanitarian entrants. Refugees are, by definition, unable to return to their country of origin because of a well-founded fear of persecution or other forms of serious harm. Australian citizenship is therefore often the first effective and durable form of protection that many refugees receive, and is celebrated and cherished by them. For those who know what it is like to live without freedom and democracy, obtaining citizenship in a free and democratic country is particularly meaningful.

Obtaining citizenship is also especially important for people who wish to sponsor family members to Australia. While refugees on permanent visas can sponsor family members to Australia, Ministerial Directive 62 places the family members of boat arrivals at the lowest processing priority. Gaining citizenship is one way people hope to be able to sponsor their family, many of whom are at risk of persecution and death. Citizenship also allows former refugees to travel safely to their countries of origin to visit family members who they have not seen for many years.

As will be explained further below, there are in effect two steps to becoming a citizen. One is having your citizenship application approved – but you do not become a citizen until the citizenship pledge is taken and this normally happens at a citizenship ceremony.

Over the past few months it has come to the attention of the Refugee Council of Australia (RCOA) that refugees on permanent visas are experiencing significant delays in the process of applying for Australian citizenship. In response to this issue, RCOA held a face-to-face consultation and an online survey involving 188 people from refugee backgrounds who have experienced substantial delays in their citizenship applications.

While the Department of Immigration and Border Protection (DIBP) claims to reach a decision on 80% of citizenship applications within 80 days (not including additional time to attend a ceremony), those that RCOA consulted or surveyed have been waiting on average 215 days since lodging their application. For those who have completed the citizenship test and are yet to attend a ceremony and receive their citizenship, the average wait is 357 days from the time of their application. In addition, three other people consulted failed the citizenship test – indicating further barriers the test places on humanitarian entrants.

The evidence collected by RCOA suggests that these delays are disproportionately affecting those who arrived in Australia by boat, as over 89% of those people who have been consulted arrived in this manner. RCOA notes that these delays appear to have commenced after September 2013.

The evidence collected suggests the delays are occurring either when recognised permanent residents are applying to complete the citizenship test (ie they are taking longer to be given a time to take their test), or when those who have completed every other requirement are waiting to attend a citizenship ceremony. Other applicants are being asked for documents that are almost impossible to obtain, due to the nature of their refugee experience. The fact that permanent refugee visa holders, who have passed rigorous security assessments and identity checks, are being asked for supplementary information is also of great concern.

A number of applicants have received letters of approval from the Minister of Immigration and Border Protection, stating that the final step to gain citizenship is to attend a citizenship ceremony. However, these people have not been invited to participate in a citizenship ceremony, despite regular, often monthly, citizenship ceremonies occurring in each municipality. We have also heard from applicants who received a call or text message the night before they were due to attend the ceremony indicating that the ceremony was cancelled. However, months later, they still have not been invited to attend another event.

Participants spoke of their frustration regarding the lack of communication and information from DIBP, with many receiving little or no information about their application and the reason for the delays.

Finally, and as a separate issue, RCOA has also heard of circumstances where the Minister of Immigration and Border Protection has failed in his obligation to grant stateless children born in Australia citizenship, as required to under 21(8) of the *Australian Citizenship Act 2007*. While the Act requires the Minister to confer citizenship, the current Minister and his predecessor have failed to respond to the applications and this also breaches the Minister's responsibilities regarding making a decision under the Act.

RCOA believes these delays are unreasonable, discriminatory and unfair, and calls on the Minister for Immigration to resolve this issue for the hundreds of people affected by these delays.

RCOA urges the Minister for Immigration to urgently adopt the following recommendations:

Recommendation 1:

RCOA recommends that the Minister for Immigration clarify if there has been a policy change in regard to citizenship applications for refugees with a permanent visa, specifically in relation to those who arrived by boat.

Recommendation 2:

RCOA recommends that the Minister for Immigration take steps to process the citizenship applications of refugees immediately, or otherwise clarify the specific reasons for the delay to each individual applicant.

Recommendation 3:

*RCOA recommends that the Minister for Immigration fulfil his obligations under section 21(8) of the *Australian Citizenship Act 2007* and grant citizenship to stateless children born in Australia within a reasonable timeframe.*

Recommendation 4:

*RCOA recommends that the Minister for Immigration make every effort to expedite citizenship application and to reduce as far as possible the charges and costs for applications by refugees and humanitarian arrivals, as required under Article 34 of the *Refugee Convention*.*

Recommendation 5:

RCOA recommends that the Minister for Immigration ensure that those who have a permanent physical or mental incapacity which means they are not capable of understanding the nature of their application be exempt from the citizenship test, and that the Department accept professional medical reports attesting to this.

Recommendation 6:

RCOA recommends that the Australian Government:

- a) Consider waiving the requirement to complete the Australian Citizenship Test for refugee and humanitarian entrants and stateless people.*
- b) Address the difficulties faced by people with limited literacy or English language skills in completing the citizenship test through providing alternative options such as a spoken test or test papers in different languages.*

2. BACKGROUND

2.1. Significance of citizenship for refugee and humanitarian entrants

The right to a nationality is an essential human right. Article 15 of the 1948 Universal Declaration of Human Rights declares that everyone has the right to a nationality. Nationality creates rights and duties for both the State and the individual. These rights or duties are not available to a person without citizenship, resulting in a lack of opportunity, protection and participation. Citizenship is also essential in realising a number of other human rights, such as the right to take part in political affairs. While human rights apply globally, citizenship is the main way through which people can access these rights.

Citizenship has particular significance for refugee and humanitarian entrants. Refugees are, by definition, unable to return to their country of origin because of a well-founded fear of persecution or other forms of serious harm. Citizenship is therefore often the first effective and durable form of protection that many refugees receive, and is celebrated and cherished by them. For those who know what it is like to live without freedom and democracy, obtaining citizenship in a free and democratic country can be particularly meaningful. As one former refugee noted in RCOA's community consultations:

Having a citizenship is highly valued. It gives you equal rights and equal protection for the first time. Refugees are honoured to have an Australian citizenship and we appreciate the rights, protection and obligations that comes with it. If we didn't have an Australian citizenship we would have nowhere to go.

The acquisition of citizenship plays a central role in resolving the situation of refugee and humanitarian entrants. This is recognised by the 1951 Refugee Convention, which requires its signatories to "as far as possible facilitate the assimilation and naturalisation of refugees" and "make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings". Further, two of the three durable solutions for refugees promoted by the United Nations High Commissioner for Refugees (UNHCR) – local integration and resettlement – rely on refugees becoming citizens of another country.

International research provides evidence that people from refugee backgrounds are more likely than other migrants to invest in country-specific human capital, including through obtaining citizenship, because they lack the option to return to their homelands.¹ For many refugee and humanitarian entrants, obtaining citizenship represents the culmination of their journey: the point at which they are no longer displaced; can rebuild their lives in safety and security; and feel the sense of belonging which was denied to them in their country of origin.

Citizenship has even greater significance for stateless people, who by definition are not recognised as nationals of any country. The status of stateless people can only be resolved by obtaining citizenship. Under the 1954 Convention Relating to the Status of Stateless Persons, Australia is required to "make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings." This is similar to Australia's obligations under the Refugee Convention.

2.2. Background to Citizenship in Australia

Citizenship in Australia is determined under the *Australian Citizenship Act 2007*,² which provides that citizenship can be obtained automatically or through application. Citizenship by application is available by descent, adoption, resumption or conferral.

Australia does not automatically grant a person born in Australia citizenship. A person is only granted Australian citizenship upon birth in Australia, if one parent of the child is an Australian citizen or

¹ See RCOA's literature review on the economic, civic and social contributions of refugees and humanitarian entrants, available at <http://www.refugeecouncil.org.au/r/rpt/2010-Contributions.pdf>.

² *Australian Citizenship Act 2007* (Cth).

permanent resident at the time of the birth. Otherwise, a child is automatically granted citizenship after residing in Australia for ten years.³

Citizenship by conferral is the largest component of the citizenship by application program, and is the only pathway for refugees and humanitarian entrants to gain citizenship.

Citizenship by conferral is available to permanent residents who have lawfully resided in Australia for four years, with at least the last 12 months on a permanent visa. As such, people found to be refugees have to wait at least four years until they can apply to become an Australian citizen. In addition, time in Australia without a valid visa (primarily affecting those who arrive by boat) is not considered part of the four-year requirement.

The process for citizenship application involves (for a comprehensive outline see Appendix A):

- The application stage, in which the applicant lodges an application and DIBP assesses the application and considers if the application meets identity and other requirements
- Citizenship test (in most cases)⁴, in which the applicants sits a test in English. Applicants who fail are able to re-sit the test
- A decision is made to grant or deny citizenship, and the Minister for Immigration sends a letter to the applicant stating that they have been approved for citizenship
- The applicant is invited to a citizenship ceremony, which are usually held every month by local councils. The applicant makes a pledge of citizenship in front of an approved person, usually at a Citizenship Ceremony.

However, it is not a legal requirement for the applicant to make a pledge at a ceremony. In the 2015 case of *Grass v Minister for Immigration and Border Protection*, the Federal Court noted:

As will appear from the Act, and the Regulations, once an applicant has an approval of her citizenship, the only remaining step is to take the pledge of commitment before a person authorised to take that pledge. This can be done at any time, and need not occur at any particular kind of function or ceremony. Despite this, the administrative practice of the Department of Immigration and Border Protection and of the Department of Immigration and Citizenship (as it then was) is to arrange for “citizenship ceremonies” to be held in various locations around the country, and for persons with approvals to take the pledge at such ceremonies. It is the existence of this practice, together with the fact that the appellant believed she had to wait for such a ceremony, which led to the unfortunate sequence of events underlying this appeal.⁵

Indeed, s 27(3) of the *Citizenship Act* provides that the pledge must be made before the Minister or an authorised person or class of persons. Further, the Regulations provide that ‘the pledge of commitment must be made in public if it is reasonably practicable.’⁶ Under the relevant instruments, Members of the Commonwealth Parliament are authorised to receive a pledge of commitment.⁷

While there may be legal grounds for other authorised people to receive the pledge, the common method, and the only one outlined in the letters to the successful applicants, is for the pledge to be made at a citizenship ceremony. However, it appears many people are being denied the chance to make the pledge at a ceremony.

³ *Australian Citizenship Act 2007* (Cth) s 12.

⁴ People do not have to sit the test if they are under 18, aged 60 or over, are stateless and were born in Australia or if they have a permanent physical or mental incapacity which means they are not capable of understanding the nature of their application. For further information, see <http://www.border.gov.au/Trav/Citi/Lear/Citizenship-test/changes-to-text-exemptions>

⁵ *Grass v Minister for Immigration and Border Protection* [2015] FCAFC 44, [20].

⁶ *Australian Citizenship Regulations 2007* reg 8.

⁷ IMMI 15/064 - Instrument of Authorisation 2015 (Subsection 27(5)), which provides that ‘Persons or classes of persons authorised to receive a pledge of commitment under subsection 27(5) of the Act: 1. Governor-General of the Commonwealth of Australia. 2. All Members of the House of Representatives of the Parliament of the Commonwealth of Australia. 3. All Members of the Senate of the Parliament of the Commonwealth of Australia.’

3. RESEARCH INTO CITIZENSHIP DELAYS

3.1. Methodology

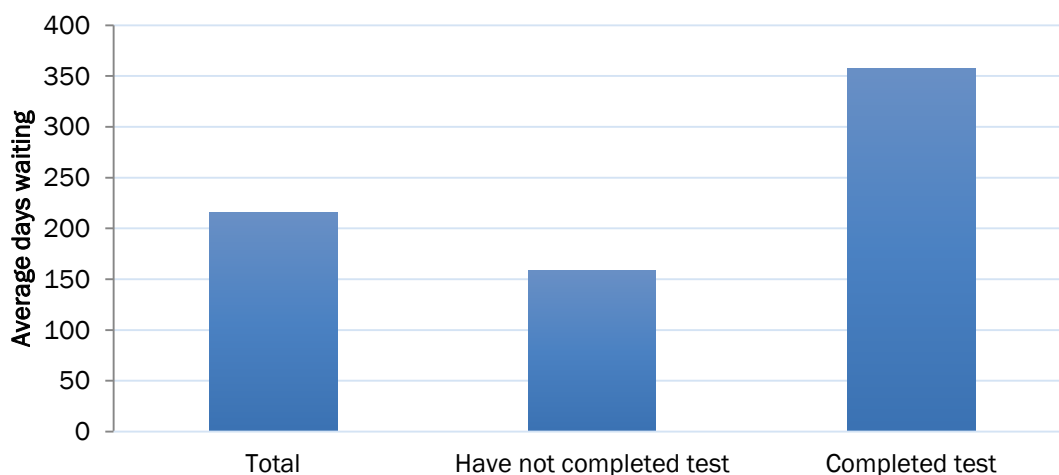
Over the last six months, former refugees and member organisations have contacted RCOA, expressing concern regarding the time that people are waiting to receive their citizenship. In order to research this issue, RCOA conducted a face-to-face consultation in Melbourne with over 50 participants and also held an online survey that was completed by 138 people. Those whom we consulted face to face also completed the survey. In addition, three further people consulted indicated they had failed their citizenship test, and their responses were not included in the data. Participants in the online survey were from all states and territories in Australia. This initial research has also been supplemented with consultations with migration agents, lawyers and academics who have significant experience with this issue.

3.2. Findings

DIBP claims to process 80% of citizenship applications within 80 days.⁸ DIBP's Annual Report for 2013-2014 notes that the standard for processing was 60 days, and 74.5% of applicants were processed within this timeline.⁹ However, 83% of respondents have been waiting for more than 80 days since lodging their citizenship application. 20 people have been waiting for over one year. The three longest waiting times have been 603, 623 and 682 days. 89% of respondents had arrived in Australia by boat, signalling that these delays are disproportionately affecting people based on their mode of arrival.

The average time that participants have been waiting for their citizenship is 215 days. 73% of respondents were yet to undertake the citizenship test, while 27% had successfully completed the test. For those who have not completed the test, the average wait is 159 days. For those who have completed the citizenship test and are yet to attend a ceremony and receive their citizenship, the average total wait is currently 357.25 days, while the average wait time since completing the test is 270 days. RCOA has not heard of any respondents who have received citizenship after completing this survey, and thus the delays are likely to continue to increase.

Average Number of Days Respondents have been Waiting to Receive Citizenship



These delays are occurring either when a person has applied for citizenship and is waiting to sit the test or when they have completed the test and are waiting to attend a ceremony. The Minister for Immigration has sent some people who are waiting to attend a ceremony an approval letter, while others have not heard anything since sitting the test.

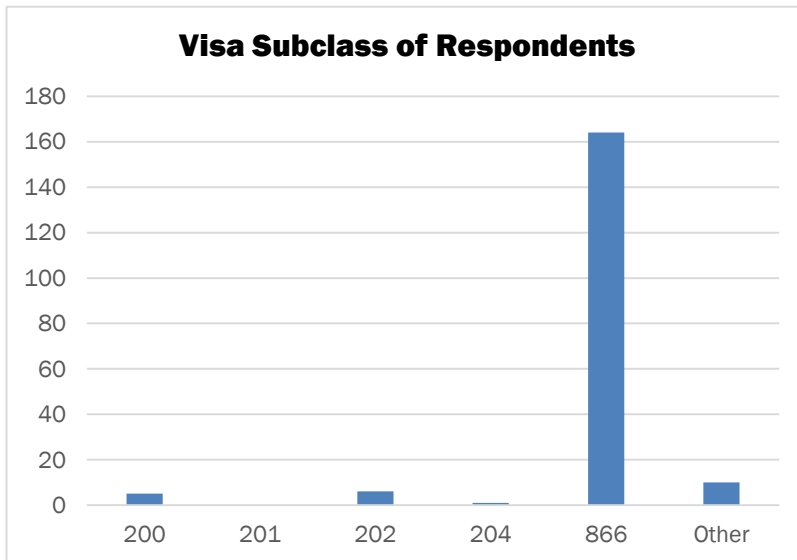
⁸ Available at <https://www.border.gov.au/about/access-accountability/service-standards/citizenship-processing>

⁹ Available at https://www.border.gov.au/ReportsandPublications/Documents/annual-reports/DIBP_AR_2013-14.pdf

Only one person consulted had applied for citizenship before September 2013, indicating that these delays have started to occur since the Coalition Government came to power. While RCOA has asked the Australian Government if there has been any formal policy change, we have not received any information from the Minister for Immigration and Border Protection or his Department.

A significant majority of participants applied for citizenship while on an Onshore Protection Visas (subclass 866), followed by 3% on Special Humanitarian Visas (subclass 202). Other participants were on Orphan Relative visas (subclass 117), Business Innovation and Investment visas (subclass 188), Refugee visas (subclass 200), Women at Risk visas (subclass 204) or Partner visas (subclass 801), when they applied for citizenship. 2% of people were unaware of their visa type.

A large majority (85%) of people surveyed arrived from Afghanistan. This was followed by 8% from Iran, a small proportion (2%) from Iraq and Pakistan and 1% of those surveyed coming from Sri Lanka, Myanmar and South Sudan respectively.



4. IMPACT OF CITIZENSHIP DELAYS AND CONCERNS REGARDING THE APPLICATION PROCESS

4.1. Denial of family reunion

Each year as part of RCOA's annual consultations, community members and service providers across Australia highlight the devastating psychological, economic and social impacts of family separation. A common refrain from people from refugee backgrounds who have participated in RCOA's consultations in previous years, which was again repeated in this consultation, is that the physical security offered by Australia is offset by the ongoing mental anguish of family separation.

A community member in Sydney stated that "we love this country. This country gave us peace. But we can't find the peace inside our heads, because we are split". An Afghan asylum seeker who had arrived as an unaccompanied minor similarly commented that "while your family is back in a not safe place and almost you are losing them, what is the point of you being safe? You will be physically safe [but] you will not be mentally safe."

This devastating impact is made even harsher by Ministerial Directive 62, a policy that places applications for split-family reunion by those who arrived by boat as the lowest processing priority. Given the large number of applications and the quota on these applications, this policy makes family reunion under the humanitarian program effectively impossible for those who arrived by boat, leaving thousands without the chance to propose their family for resettlement.

Once a person receives Australian citizenship, they are apparently more likely to have their family reunion application processed, as they are no longer prohibited by the Ministerial Directive. However, these delays in citizenship are now affecting the very people who are also denied family reunion, creating significant trauma, stress and anxiety.

Almost every person consulted spoke of their fear and worry about the safety of their family members. As one participant noted: "I have a lot of tensions about my family, they are not safe in Pakistan. If I can get a ceremony, I can bring them to Australia."

Many noted the high level of stress is causing significant physical and mental health problems. One man from Afghanistan exclaimed that:

"My children are living in Pakistan. They are in a bad situation. I am intending to bring my family here, so to do that, I need to get my citizenship as soon as I can. I have a lot of pressure about this situation. I am receiving medical treatment because I am experiencing a high level of anxiety."

Likewise, RCOA has heard from psychologists and other mental health professionals regarding the psychological distress these delays are causing people. As one psychologist has provided:

"As you would be aware, these men cannot continue the processes of sponsorship of their families' migration to Australia until they acquire citizenship. This obstruction has caused them all severe emotional distress and extreme anxiety. It has severely aggravated their already precarious psychological health. Whilst their families' cases are held in abeyance, their psychological condition will endure and deteriorate. (This is clinically very apparent.) They suffer extreme helplessness and despair and there is little doubt that the long delays in processing their citizenship applications is a strong contributing factor in their severe emotional distress. In summary, the prolonged delays in processing of applications for citizenship, particularly in the case of 866 visa holders is causing acute and severe mental distress."

4.2. Inability to visit family

In addition to not being able to sponsor family to come to Australia, the lack of citizenship makes it very difficult for people to visit their family overseas. Without an Australian citizenship, many expressed concern that their lives would still be in danger if they were to travel to their country of origin, as they are not afforded diplomatic protection as they would once they receive citizenship. While most people are eligible for an Australian travel document, many countries do not issue visas to those with such documents. For example, Indonesia does not provide a visa to a person with an Australian travel document, leaving one participant to express frustration regarding the delays: *“My mother is very sick in Indonesia. I want to go visit them. I am worried it will be the last time I will see them. If something happens I can't forgive myself.”*

4.3. Lack of information and reason for delays

Almost every participant spoke of the lack of information from DIBP. Many people expressed significant frustration that they were yet to receive any documentation acknowledging their application or providing a reason for the delay. Many people consulted had not received a single letter or response from the department, despite completing the application form for citizenship and paying the relevant fee. While a number of applicants have now completed Freedom of Information requests, most have not received anything back. When applicants called DIBP, they were often told that there was no information that the operator was able to give them and they will simply have to wait to receive an invitation to complete the test or attend a ceremony. As one person noted: *“I have called them once a month from June 2014 but they have only answer me: ‘It's in process’.”*

For many applicants, they have paid all the necessary fees, up to \$260, with no final outcome. Some people even stated they never received any documentation of their payment: *“They have taken the money from my account, but they didn't even send me a confirmation letter that they had received my application.”*

The lack of a response and reason for the delay is significantly unreasonable,¹⁰ and also contributes to people's anxiety, stress and trauma.

4.4. Delays and cancelations of citizenship ceremonies

Many participants spoke of receiving invitations to attend a citizenship ceremony, only for their invitation to be cancelled at the last minute. One participant spoke of receiving a call the night before the ceremony informing him that the ceremony was cancelled, and he has not received a further invitation since. Another applicant received an SMS message the day before informing him that his ceremony was cancelled. Those consulted pointed out that the local council in their area holds citizenship ceremonies monthly, yet they have not been invited to attend any of these monthly events. Indeed one participant noted that while he received notice that the ceremony had been cancelled, the ceremony still took place the following day.

RCOA has significant concerns that those who have passed the test and been approved for citizenship by the Minister are being intentionally denied a chance to attend a ceremony and thus be conferred citizenship. This is of particular concern as people have passed identity checks, passed the citizenship test and have been found to be fit by the Minister to be conferred citizenship. All that remains for these applicants is to make a pledge in front of an authorised person. While the pledge does not have to take place at a ceremony, the common way for applicants to complete this requirement is at a ceremony. Indeed, a pledge may also be made in front of other authorised persons, including Members of the Commonwealth Parliament.¹¹ Nevertheless, a denial of an invitation to attend a ceremony for applicants who have meet all other requirements is significantly unfair and discriminatory.

¹⁰ *Ombudsman Act 1976* (Cth) s 10.

¹¹ Discussed above at 2.2

4.5. Further identity checks and security checks

A few participants advised they have been told by DIBP that they are undergoing further 'internal checks', which may include identity checks and security checks. All applicants have passed rigorous security assessments by ASIO and have established their identity and refugee claim. Further, these applicants are already living in the community on permanent visas. None of the applicants have been given a chance to respond to any of these additional internal checks, and have not been given additional information regarding the reason for these checks. Again, it seems that these additional internal checks are happening to a very select group of citizenship applicants. While RCOA understands the need to verify an applicant's identity, we do not understand the need for applicants to undergo further identity and security checks, all of which were already undertaken during the refugee application process.

RCOA has also heard from lawyers and migration agents saying that a few people have had their permanent refugee visas cancelled and subsequently re-detained, after completing an application for citizenship and attending an identity interview. RCOA is especially concerned that these people may be forcibly deported back to their country or origin, or may face the prospect of indefinite immigration detention in Australia.

4.6. Requests for difficult to obtain documents

A number of participants have been asked to obtain documents which are very difficult, or even impossible, to obtain. The additional documents include police checks from Pakistan, Afghanistan and Iran; birth certificates from countries which do not issue birth certificates; and other identity documents which are not normally issued to people in the relevant countries. These documents are especially difficult for people to obtain due to their refugee experience – for many people, it is impossible for them to seek a birth certificate or identity document from a country which they have fled from due to persecution. Further, many people spent significant time in countries of asylum such as Pakistan or Iran, but were not officially registered in those countries. This makes receiving a police check or identity documents impossible to obtain, as they were never registered in these countries. RCOA has heard from participants that countries such as Pakistan do not issue police checks to people who are not residents in Pakistan, making it impossible for a person to receive the DIBP requested documents. As one participant expressed:

“They asked me to get Police Clearance Certificate from Pakistan or Pakistani consulate, as I had spent more than 90 days in Pakistan in total. The document is almost impossible to get, and I was not able to get the document. But my application was approved on 19th of November 2013 without submitting the document.”

4.7. Citizenship test

The citizenship test remains an additional barrier for people from refugee backgrounds, with three people consulted indicating they had failed the test. The test consists of a set of 20 multiple choice questions in English, relating to Australian values, history, culture and the political system. For refugee and humanitarian entrants, who typically arrive in Australia with little or no English language skills and may have a history of disrupted education (or, indeed, may never have received formal education), the Citizenship Test can present a significant hurdle. In 2013-14, 92.4% of refugee and humanitarian entrants passed the citizenship test, compared to the overall success rate of 98.7%. In addition, some refugee and humanitarian entrants may choose not to attempt the test at all because they have not yet attained a sufficient level of English.

Through our research, RCOA has heard from people who failed their initial test, but were never invited to re-sit the test. Another person was told they would be provided with further information regarding a course for the citizenship test, but again has not heard from the Department.

RCOA has also heard from psychiatrists who have written letters indicating their patients have a significant mental incapacity, which means they are not capable of successfully completing the test. While these people would generally be exempt from the test, RCOA has been informed that since late

last year a number of these psychologist's reports have been rejected. As one psychologist has informed us:

“Until September/October 2014, these applications were successful, the clinical report accepted and citizenship granted. However, since that time, of 22 applications that I have supported, there have been 4 responses, all rejecting the applications. In all cases the assessor has stated: ‘I am not satisfied that this information is conclusive evidence that your medical condition is a permanent or enduring incapacity..... I have therefore decided to give this report little weight in my assessment.’ For the other 18 people, who are all holders of 866 visas, there has been no decision made in any of their applications. Some of these claims have been lodged some 11 to 12 months ago.”

4.8. Babies born in Australia to stateless parents

Under the *Australian Citizenship Act 2007*, children who are born in Australia do not automatically acquire Australian citizenship. They will only be granted Australian citizenship if at least one of their parents is an Australian citizen or permanent resident at the time of their birth. Otherwise, a child born in Australia is automatically granted citizenship after residing continually in Australia for 10 years.¹²

Section 21(8) of the *Australian Citizenship Act 2007* provides another right to citizenship by birth, through conferral, for stateless babies born in Australia. Children who are born in Australia, are not and have never been citizens of any country, and are not entitled to acquire the citizenship of another country – that is, children who would otherwise be stateless – must be granted Australian citizenship. There is no discretion for the Minister for Immigration to refuse a citizenship application for a child in these circumstances.¹³

In recent years, a number of children have been born in Australia to parents who arrived in Australia by boat without documentation and are therefore subject to deterrence measures such as offshore processing and denial of access to permanent residency. As a result of legislative amendments introduced in late 2014,¹⁴ these children are considered, like their parents, to be “unauthorised maritime arrivals” – despite the fact that they did not themselves arrive in Australia by boat – and are therefore subject to the same punitive policies as their parents. These changes apply retrospectively, meaning that they will affect children who were born before the amendments were introduced.¹⁵

However, children born under these circumstances whose parents are stateless or who are stateless by virtue of the citizenship legislation in their parents' countries not granting them citizenship, should be eligible for Australian citizenship under the *Citizenship Act*. This would also mean that they would not be subject to these deterrence policies. As yet, neither the current Minister for Immigration nor his predecessor have acted on their obligations to grant citizenship to these children, despite the fact that they have no discretion to refuse them citizenship. Given that these children are unambiguously eligible for Australian citizenship, the reasons for this delay remains unclear.

¹² *Australian Citizenship Act 2007* (Cth) s 12, http://www.austlii.edu.au/au/legis/cth/consol_act/aca2007254

¹³ Amendments introduced in 2008 removed the Minister's discretion to refuse the approval of stateless persons becoming Australian citizens, see *Migration Legislation Amendment Act (No. 1) 2008* (Cth).

¹⁴ Under the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth), http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5346

¹⁵ As part of the negotiations to pass the legislation, however, the Australian Government agreed that a number of the children affected by this change who would otherwise have been subject to offshore processing, would instead have their claims processed in Australia.

5. RECOMMENDATION

RCOA urges the Minister for Immigration to urgently adopt the following recommendations:

Recommendation 1:

RCOA recommends that the Minister for Immigration clarify if there has been a policy change in regard to citizenship applications for refugees with a permanent visa, specifically in relation to those who arrived by boat.

Recommendation 2:

RCOA recommends that the Minister for Immigration take steps to process the citizenship applications of refugees immediately, or otherwise clarify the specific reasons for the delay to each individual applicant.

Recommendation 3:

RCOA recommends that the Minister for Immigration fulfil his obligations under section 21(8) of the Australia Citizenship Act 2007 and grant citizenship to stateless children born in Australia within a reasonable timeframe.

Recommendation 4:

RCOA recommends that the Minister for Immigration make every effort to expedite citizenship application and to reduce as far as possible the charges and costs for applications by refugees and humanitarian arrivals, as required under Article 34 of the Refugee Convention.

Recommendation 5:

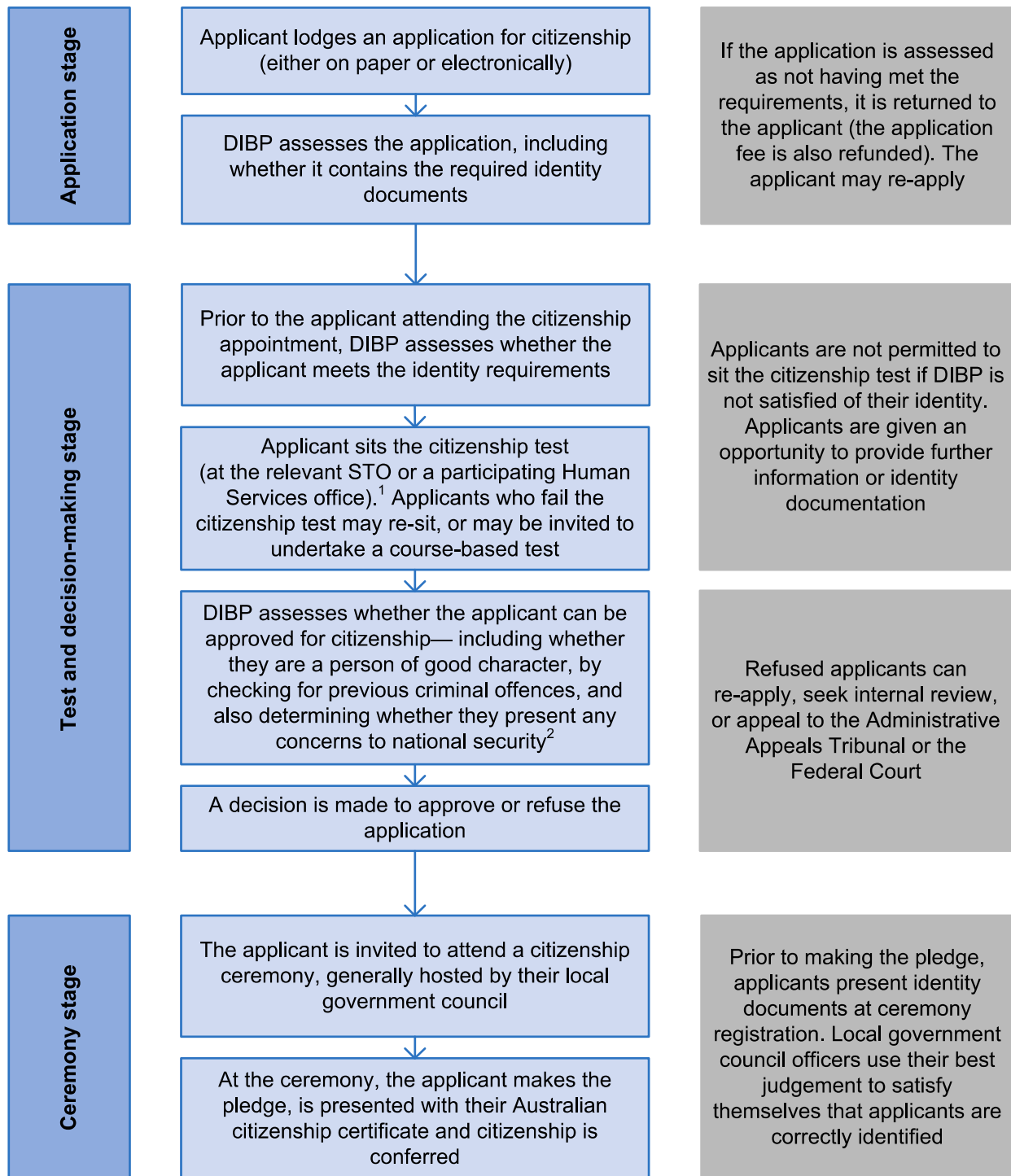
RCOA recommends that the Minister for Immigration ensure that those who have a permanent physical or mental incapacity which means they are not capable of understanding the nature of their application be exempt from the citizenship test, and that the Department accept professional medical reports attesting to this.

Recommendation 6:

RCOA recommends that the Australian Government:

- a) Consider waiving the requirement to complete the Australian Citizenship Test for refugee and humanitarian entrants and stateless people.*
- b) Address the difficulties faced by people with limited literacy or English language skills in completing the citizenship test through providing alternative options such as a spoken test or test papers in different languages.*

6. APPENDIX A: STEPS IN THE CITIZENSHIP PROCESS¹⁶



¹⁶ Australian National Audit Office, *Verifying Identity in the Citizenship Process*, available at http://www.anao.gov.au/~/_media/Files/Audit%20Reports/2014%202015/Report%2047/AuditReport_2014-2015_47.pdf