



Refugee Council
of Australia

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

SUBMISSION ON THE AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT (STRENGTHENING THE REQUIREMENTS FOR AUSTRALIAN CITIZENSHIP AND OTHER MEASURES) BILL 2017

JULY 2017

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 190 organisations and 1,000 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to express its profound concerns about the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the Bill). We strongly recommend that this Bill should not be passed.

This Bill reflects in part changes proposed in the Government's recent Discussion Paper,¹ and in part the Bill also reflects changes previously proposed in the Australian Citizenship and Other Legislation Amendment Bill 2014 (the 2014 Bill). RCOA made submissions in relation to both the Discussion Paper and to the 2014 Bill, and this submission reflects our previously stated concerns.²

For refugee and humanitarian entrants, Australian citizenship has a special significance. Gaining citizenship marks both their integration into their new country and the end of their displacement. For many, it will mark the first time they have experienced the protection of a State, rather than its persecution. Citizenship provides them with the safety they need to settle and to heal, and gives them the security to build and imagine their new lives. For this reason, most refugees and humanitarian entrants are eager to apply for citizenship as soon as they can, and prize it highly.

The current Bill would disproportionately affect refugees, and it would fundamentally alter the nature of Australian citizenship. The proposals in the Bill would effectively convert citizenship policy from being a tool of inclusion to a tool of exclusion. Other provisions in the Bill, by limiting merits review

¹ Department of Immigration and Border Protection, *Strengthening the Test for Australian Citizenship* (Discussion Paper, April 2017) <<https://www.border.gov.au/ReportsandPublications/Documents/discussion-papers/citizenship-paper.pdf>>.

² Refugee Council of Australia, *Response to the Proposed Citizenship Changes* (Submission, June 2017) <<http://www.refugeecouncil.org.au/publications/submissions/proposed-citizenship-changes/>>; Refugee Council of Australia, *Australian Citizenship and Other Legislation Amendment Bill 2014* (Submission, Senate Legal and Constitutional Affairs Committee, November 2014) <<http://www.refugeecouncil.org.au/wp-content/uploads/2015/05/1411-Citizenship.pdf>>.

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and greatly expanding ministerial discretion, would weaken the security and protection that is the hallmark of citizenship.

The inclusive nature of Australian citizenship is a crucial element in the success of our multicultural society. Gaining “citizenship should be an enabling, positive and welcoming process for applicants and one which is seen to contribute to building a cohesive and dynamic nation.”³

The Government has justified the Bill by claiming it will improve social cohesion and ensure that citizenship is valued.⁴ Yet by effectively excluding some people from citizenship, this Bill will undermine social cohesion, and deny citizenship to those who value it most highly and who are most vulnerable.

Other parts of the Bill would grant the Minister extraordinary powers, limiting access to both merits and judicial review, and limiting parliamentary scrutiny. Such aspects of the Bill gravely undermine the very rule of law that all prospective citizens would be required to commit themselves to under this new Bill.

This submission begins by highlighting the value of citizenship to people from a refugee background, and the disproportionate impact that this Bill will have for them. It then sets out our key concerns about aspects of this Bill including:

- The proposed English language requirements and other measures limiting the accessibility of the citizenship test
- The need for demonstrated ‘integration
- The extension of the residence requirement’
- The changes to the ‘ten-year rule’
- The proposed power to revoke for fraud or misrepresentation
- The supposed ‘strengthening’ of ‘Australian values’, and
- Other changes undermining the rule of law.

The submission also includes case studies to give examples of how the proposed changes would impact people who have experienced forced displacement. We are concerned that the Bill will exclude the very people that the Government wishes to see ‘integrate’ into Australian society.

Finally, we continue to argue for evidence-based policy that will help people settle and contribute to Australian society, rather than political rhetoric that divides and excludes. If the Australian Government genuinely wants people to ‘integrate’ and contribute, supporting people to participate and be included within the wider community would be a productive way to build on the “most successful multicultural society in the world”.⁵

1. The value of Australian citizenship for refugee and humanitarian entrants

1.1. 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 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.

³ Australian Citizenship Test Review Committee, *Moving Forward ... Improving Pathways to Citizenship* (August 2008) <<https://www.border.gov.au/Citizenship/Documents/moving-forward-report.pdf>>.

⁴ Kylar Loussikian, ‘Malcolm Turnbull Pledges to Change Citizenship Program to ‘Improve Social Cohesion’ and ‘Enhance Security’’, *The Daily Telegraph* (19 April 2017) <<http://www.dailytelegraph.com.au/news/national/malcolm-turnbull-pledges-to-change-citizenship-program-to-improve-social-cohesion-and-enhance-security/news-story/94e7a3b717bef91da13b6b4d32d6afe6>>.

⁵ Hon Peter Dutton (Minister for Immigration and Border Protection) and Hon Malcolm Turnbull MP (Prime Minister), *Strengthening the Integrity of Australian Citizenship* (Joint Media Release, 20 April 2017) <<http://www.minister.border.gov.au/peterdutton/Pages/Strengthening-the-integrity-of-Australian-citizenship.aspx>>.

1.2. 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. 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 Australian citizenship, we would have nowhere to go.

1.3. Gaining citizenship plays a central role in resolving the situation of refugee and humanitarian entrants. This is recognised in Article 34 of 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.

1.4. 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.

1.5. 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.

1.6. The significance of citizenship for refugees has been a focus of our work in the past two years. In October 2015, we published a report documenting the prolonged delays experienced by thousands of refugees and humanitarian entrants in gaining citizenship.⁶ In December 2016, RCOA, together with pro bono lawyers, successfully challenged the Minister's delay in deciding these applications in the landmark case of *BMF16 v Minister for Immigration and Border Protection* [2016] FCA 1530. The Federal Court found that the Minister for Immigration had unreasonably delayed in deciding whether to grant citizenship to two of these former refugees who were waiting for over 14 months.

1.7. Despite this ruling, however, thousands of former refugees continue to face lengthy delays, with thousands of people waiting over one year. These delays deny people of refugee background in Australia their basic rights to stability, security and family reunion, leaving many families in war zones and unsafe environments while they wait to reunite with family in Australia.

1.8. In February 2017, as a follow up to our October 2015 report, RCOA conducted a second survey of nearly 980 people of refugee background. Of these, 928 were still awaiting a response to their citizenship application. The Federal Court decision found that a delay of over six months is unreasonable and unlawful — yet 92% of respondents have experienced delays greater than this length. The average waiting time was over 16 months. Two-thirds of those waiting have been waiting over a year, while 13% (120 people) have been waiting over two years.

⁶ Refugee Council of Australia, *Delays in Citizenship Applications for Permanent Refugee Visa Holders* (October 2015) <<http://www.refugeecouncil.org.au/wp-content/uploads/2015/10/1510-Citizenship-Delays-for-Permanent-Refugees.pdf>>.

2. Excluding the most vulnerable

2.1. While the Government's stated intention is to ensure that citizenship is valued, the Bill would effectively delay or deny citizenship to the people who value citizenship most. As we discuss below, the effects of the proposed changes are likely to be felt most by those from refugee and humanitarian backgrounds.

2.2. For decades, refugee and humanitarian entrants have been more eager than any other category of migrants to become Australian citizens. Yet they face many barriers in this quest. Persecution can affect their memory and capacity to learn and settle into society. Most will come from oppressive or dysfunctional States. Many of them will have lived for years in refugee camps or in precarious limbo. Most will learn English first in Australia, and some will not be literate in their own language. Many will also be still suffering from prolonged separation from families and distress about their safety.

Real-life example: delays and anxiety

Kamal is a 40-year-old Hazara man living in Victoria. Over 22 months have passed since Kamal applied for Australian citizenship. Kamal feels deeply anxious about the fact that his family are "not safe", living in a country where no safety is provided to the Hazara people from the threat of ISIL. Kamal has a medically diagnosed mental impairment that makes it difficult for him to retain information and pass the citizen test. Despite an application for special consideration, he still has not been informed if he is exempt from the test. Every time that Kamal has called the Department he is told that his application is being processed and he must continue to wait.

2.3. These factors will make it naturally more difficult for them to engage with the kind of formal testing that is familiar to most Australians, and to many skilled migrants. As discussed below, it will also make it difficult for them to achieve the level of 'competent English' required by the proposed changes. Statistics show that 8.8% of those who came as refugees or humanitarian entrants do not pass the current citizenship test, which is six times the average. Similarly, on average they needed to repeat the test 2.4 times.⁷ What is unknown is how many former refugees have given up on seeking citizenship because of fear of failing the test.

2.4. As we also discuss below, the changes in the Bill to the 'ten-year rule' and the powers to revoke citizenship on the basis of fraud or misrepresentation are also likely to disproportionately affect refugees.

3. Splitting families apart

3.1. Obtaining citizenship is especially important for people who wish to sponsor family members to come to Australia. While refugees on permanent visas can sponsor family members to come to Australia, Ministerial Direction 72 places the family members of boat arrivals at the lowest processing priority, which means that in practice it is impossible for these people to sponsor their family.⁸ Gaining citizenship is one way in which people hope to be able to sponsor their family, many of whom are at risk of persecution and death overseas.

3.2. 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. RCOA heard from many refugee community members about how, without Australian citizenship, 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

⁷ Department of Immigration and Border Protection, *Australian Citizenship Test Snapshot Report* (30 June 2015) <<https://www.border.gov.au/Citizenship/Documents/2014-15-snapshot-report.pdf>>.

⁸ 'Ministerial Directives and Family Reunion', *Refugee Council of Australia* (10 February 2017) <<http://www.refugeecouncil.org.au/getfacts/settlement/family-reunion-ministerial-directives/>>. There are some exceptional circumstances under Ministerial Direction 72.

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. One young man shared his frustrations while waiting for citizenship, saying:

My mother is very sick in Indonesia. I want to go visit. I am worried it will be the last time I will see her. If something happens, I can't forgive myself.

3.3. Another man on a permanent refugee visa told RCOA:

I need my citizenship to bring my wife here. Without citizenship, the application is just frozen. I don't know what the government wants from us. My depression and anxiety is increasing. I had been interpreter with US Army and I am worried about my wife's safety. Please let this ...government know about the terrible situation that we are suffering for nothing.

3.4. The harsher testing regime can also contribute to the perverse outcome of leaving families in Australia in limbo, with children becoming Australian citizens while their parent/s are not. The current testing regime has already contributed to this: a man and wife from a refugee background are both waiting (over 12 months) for their citizenship but their children are all Australian citizens. As the father put it:

I don't understand why the government has policies that cause families to be "divorced".

4. Impact on women and the stateless

4.1. Refugee community members have shared with RCOA their significant concerns about the effect of these proposed changes on women from a refugee background. Women who have made refugee journeys often shoulder additional caring responsibilities coupled with patchy access to ongoing education. Many refugee women and girls have faced sexual violence and other forms of torture and trauma. There is considerable evidence that this can impact memory, cognition and learning abilities. This has flow-on effects for learning English, sitting an important test, and being able to "demonstrate integration".

4.2. The impact of the Bill would be to isolate women further from the broader community, and render them even more vulnerable and potentially dependent on their male partners. This would be tragically ironic, given the inclusion of gender equality as a key 'Australian value' in the proposed test and the concerns about domestic violence reflected in the Discussion Paper.

Real-life example: English language tuition, caring responsibilities, isolation

Martha arrived in Australia with her husband and three young children. Her education was disrupted multiple times because of the conflict in her home country and her displacement. She spent over 18 years in precarious living situations as a refugee and was subject to sexual violence.

In Australia, she finds it difficult to attend AMEP without adequate childcare arrangements. She also has to drop off and pick up her children from school and take them to appointments. Martha has had to move to an area far from many services and her community, so she feels isolated. More flexible ways to learn English and engage in the local community would help her to feel like she belongs and can start her life again.

4.3. RCOA also expresses particular concern about the impact of these proposals on stateless people. These are people who do not have another nationality or citizenship, and are therefore especially vulnerable. These would include, for example, Rohingya refugees, one of the most persecuted minorities in the world, many of whom have not have formal education and are not literate. Under these proposals, they are likely to remain stateless in Australia indefinitely.

5. The new English language test

5.1. Under the provisions of the Bill, the Minister would need to be satisfied that an applicant for citizenship has 'competent English', rather than the current standard of possessing 'a basic knowledge of the English language'.⁹ The Bill would empower the Minister to make a legislative instrument that determines the circumstances in which a person has 'competent English'.¹⁰

5.2. The Explanatory Memorandum does not detail the level of English that will be considered 'competent' English, but confirms the Discussion Paper's statement that this would require a person to sit an examination and achieve a particular score.¹¹ The current approach is to require a 'basic' level of English that is established in an indirect assessment of language via sitting the citizenship test.

5.3. Under existing migration laws, 'competent' English is defined as meaning an International English Language Testing System (IELTS) score of at least six in each category.¹² This level of English is the level required for many postgraduate university places, and does not reflect the level of English that is needed to navigate through daily life or contribute to Australian society. Indeed, there are likely to be many current citizens, including some Australian-born citizens, who could not meet this demanding test.

5.4. The Explanatory Memorandum states that this:

*amendment reflects the Government's position that English language proficiency is essential for economic participation and promotes integration into the Australian community. It is an important creator of social cohesion and is essential to experiencing economic and social success in Australia.*¹³

5.5. Learning English is obviously important to help people integrate and participate in this economy. However, there is a clear difference between encouraging and supporting people to integrate by learning English, and excluding them from full equality within the Australian community if their English is deemed inadequate. Such exclusion undermines rather than fosters social cohesion.

5.6. The Government's position is also inaccurate. English language proficiency may help, but is not essential to, people becoming productive and valuable citizens in our community. Many citizens who do not have 'competent' English contribute enormously to this country's economy, culture and society. Projects such as the Snowy Mountain hydroelectric scheme were built by such people. There are people working on our farms and in our factories, creating enterprises, raising a new generation of citizens, and building our nation who have not and never will speak university-level English.

5.7. Excluding people from citizenship because they cannot write an essay with academic language proficiencies for university entry is both unfair, unnecessary and is discriminatory. As one person from a humanitarian background put it:

Passing this English test is more a reflection of a person's ethnic and academic background rather than an indication of their value as a member of society.

⁹ Sch 1, item 41.

¹⁰ Sch 1, item 53, proposed paragraph 21(9)(a).

¹¹ *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, (Explanatory Memorandum) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, 26.

¹² See *Migration Regulations 1994* (Cth) reg 1.15C; *Migration Regulations 1994 - Specification of Language Tests, Score and Passports 2015* (IMMI 15/005).

¹³ *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, (Explanatory Memorandum) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, [141].

5.8. This aspect of the reforms is the most likely to disadvantage people from refugee backgrounds, who are the most likely not to speak English upon arrival of all the migrant streams. For many, achieving an academic level of English is impossible, effectively denying them citizenship no matter how much they contribute to Australian life or however long they live here. The proposed English test has caused enormous anxiety among refugee communities already, creating yet another barrier to the increasingly elusive dream of Australian citizenship.

5.9. A group that would be disproportionately affected would be older refugees. While those over the age of 60 will be exempt from the citizenship, those who arrive later in life will typically find it more difficult to learn a higher level of English.

5.10. Another aspect that is unfair is that, while the citizenship test will require 'competent' English, the Adult Migrant English Program (AMEP) only supports people to achieve 'functional' English. Clients who have functional English or higher are not eligible to participate in AMEP.

5.11. As well, there are long-established difficulties with the existing AMEP program. RCOA has heard time and again that the initial 510 hours is simply not enough. We have therefore welcomed the Government's introduction of an additional 490 hours for people who require more tuition. However, the increased hours do not apply to anyone who has already completed their 510 hours. This means that there will be a sufficient gap between people exiting AMEP with a functional level of English yet not being able to meet the competent level for the citizenship test. RCOA is concerned that people who obtain a functional level of English after completing AMEP will risk not ever getting citizenship.

5.12. Even with the extension of hours, there remain other issues that still need to be addressed within AMEP. These include the expertise of instructors, the lack of use of bicultural workers, and the reduction in specialist pathway courses.¹⁴

5.13. Women are also more likely to be excluded by this requirement. Women often face additional barriers for learning. These can include pre-arrival torture and trauma, including as survivors of sexual violence. As well, caring responsibilities for the young and old particularly impact many women's ability to participate fully in the AMEP classes. Many AMEP classes still do not offer accessible childcare options. While there have been changes to roll these out later this year, these changes do not accurately reflect the cost of childcare needed to attend AMEP classes.

5.14. We would also echo the concerns expressed by the Senate Standing Committee on the Scrutiny of Bills that it is inappropriate for the legislation to delegate to the Minister the power to determine the level of English required. As the Committee noted:

Competence in a particular skill is a question that can only be judged by reference to the purpose for which the skill is required. Whereas determination of English language competency, for example, for university studies may be based on evidence and clear requirements intrinsic to particular studies, the same cannot be said in relation to citizenship. Put differently, the level of English language ability a new member of the Australian community who wishes to become an Australian citizen should possess, is affected by subjective values rather than an assessment of technical requirements.¹⁵

Exemptions from English language test

5.15. RCOA welcomes the Bill's retention of the existing exemptions from the citizenship test for the English language test, including for those under 16 or over 60, and those with an 'enduring or permanent mental or physical incapacity'.

¹⁴ See Refugee Council of Australia and Federation of Ethnic Communities' Councils of Australia (FECCA), *Adult Migrant English Program* (Letter to the Minister for Education and Training, 19 October 2016) <<http://www.refugeecouncil.org.au/wp-content/uploads/2017/02/FECCA-RCOA-Letter-re-AMEP.pdf>>.

¹⁵ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest* (No 7, 21 June 2017) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest>, 4.

5.16. However, there are difficulties with the current process for people that have an ‘enduring or permanent mental or physical incapacity’ to seek an exemption. RCOA has heard of several cases in which the Department of Immigration refused exemptions even where complex medical and psychiatric reports had been submitted by qualified medical professionals to support an exemption. This troubling approach to the current process leaves little comfort that the exemptions will apply to people who need them most under the proposed changes.

Other changes to citizenship tests

5.17. In 2008, an independent review of the citizenship test led by retired ambassador Richard Woolcott “received overwhelming feedback calling for a range of pathways to citizenship which do not discriminate against migrants and refugee and humanitarian entrants with poor literacy or education levels, or who may have no knowledge or experience of computers and computer based testing”.¹⁶ This led the committee to recommend the development of alternative pathways to citizenship to ensure citizenship remained accessible to the most vulnerable.

5.18. The result was the option of a citizenship course for those that are unable to pass the test. This has provided an alternative for people who have had difficulty acquiring English due to interrupted education, trauma-induced learning and memory difficulties and other barriers that often arise as a result of forced displacement. The Discussion Paper proposed the removal of this option, which may be done by legislative instrument.¹⁷ This will further exclude many vulnerable people from citizenship.

5.19. In our submission to the Discussion Paper, RCOA also opposed the proposed change to bar people from applying for at least two years after they fail the citizenship test three times. As noted above, on average those from refugee and humanitarian backgrounds take the test 2.4 times, meaning that this cap would almost certainly disadvantage this stream of migrants most. Delaying the time taken to gain citizenship will only increase their sense of insecurity and undermine their sense of safety and belonging.

5.20. Rather than removing this proposal, the Bill extends its scope. The Bill enables the Minister to determine, by legislative instrument, other eligibility criteria for sitting the test, including that a person had previously failed the test, did not comply with one of the rules of conduct, or was found to have cheated in the test.¹⁸ Under the legislative changes, the Bill could enable the Minister to bar a person if they had failed a citizenship test once, and there is nothing in the Bill which would require the Minister to lift the bar so that a person could re-sit the test.

5.21. The justification given in the Explanatory Memorandum for this is that allowing people to take the test an “unlimited number of times” would “reduce the integrity of the testing arrangements but is also administratively and financially burdensome for the Government”.¹⁹ It is difficult to see how the relatively small costs of running a third citizenship test, for the relatively few who do need it, can possibly outweigh the interests of the Australian public in enabling a person to become part of the community.

Real-life example: English-language difficulties, lack of recognition of activities

San, a Karen woman, arrived in Australia aged in her early 50s, having spent over thirty years in a refugee camp on the Thai-Burma border. San attended her 510 hours of English language tuition at AMEP but still struggles with English. She does not read or write in her native language so she finds

¹⁶ Australian Citizenship Test Review Committee, *Moving Forward ... Improving Pathways to Citizenship* (August 2008) <<https://www.border.gov.au/Citizenship/Documents/moving-forward-report.pdf>>.

¹⁷ *Australian Citizenship Act 2007* (Cth) s 23A.

¹⁸ Sch 1, item 82.

¹⁹ *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, (Explanatory Memorandum) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, [205].

it difficult to do the same in English. She speaks English well but lacks confidence and gets nervous about the idea of sitting a test.

San dedicates over 30 hours a week volunteering for a market garden and park rejuvenation program. She says that although she has received positive feedback about what does with the market garden, it does not count towards her Centrelink requirements, so she must do other work to fulfil this.

She continues to volunteer her time because, as she says “when I came here, I met with others. At first, I stayed home but then I came here and it feels like we are brothers and sisters working together. Because we are not able to go back to our hometown, when we come here it feels like we’re in our hometown. We plant lots of vegetables here, lots of people come on tours, and we can talk to them and improve our language as well.”

6. Demonstrating ‘integration’

Supporting integration and inclusion

6.1. The Bill also inserts a new criterion before a person is eligible for citizenship by conferral, namely that the Minister be satisfied that the person has ‘integrated into the Australian community’.²⁰ What this means is not specified in the legislation. The Minister is empowered to, but not required to, make a legislative instrument specifying such matters, to which the Minister “may or must have regard”.²¹

6.2. The Explanatory Memorandum indicates that the Minister might set out guidelines that would take into account a person’s employment status, study, involvement with community groups, and their children’s participation in school, as well as “criminality or conduct that is inconsistent with the Australian values to which they committed throughout their application process”.²² This is consistent with the examples set out in the Discussion Paper.

6.3. RCOA and its members are profoundly interested in helping people from refugee backgrounds settle into Australia, and to feel a sense of belonging here. Our members, and others in the sector, are actively supporting people into education and employment, and involved in the daily work of helping people to learn about and navigate through Australian laws and norms.

6.4. Even more so, refugees themselves are often desperate to achieve these things: work, study, a renewed sense of community and educating their children. Time and again, RCOA has heard refugees say that they are desperate to contribute and give back to the Australian community.

6.5. While we strongly endorse measures to support people in achieving these goals, in our view de facto exclusion from citizenship is not a path to integration. Indeed, it is fundamentally counterproductive to integration, because it makes people vulnerable and their situation precarious. For refugees, who already have had to cope with so much vulnerability and uncertainty, the denial of citizenship will only undermine their efforts to rebuild their lives and to connect with the wider community.

6.6. Our successful multicultural society has been built in large part on citizenship as a tool to include and integrate people within our community, and on encouraging people to join our community fully as members. Making more people citizens, and ensuring that they feel invested and belong to the Australian community, improves social cohesion. It is this inclusive aspect of citizenship policy that has marked out not only Australia but other successful multicultural societies such as Canada

²⁰ Sch 1, item 43, inserting new paragraph 21(2)(fa).

²¹ *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, (Explanatory Memorandum) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, [122].

²² *Ibid* [142].

and the US, and which has minimised the tensions apparent in other countries with large migrant populations.

Volunteering

6.7. In our view, these changes also tend to conflate being a citizen with being a ‘model citizen’. If these are the proposed indicators of ‘integration’, there are many Australian-born citizens who are likely to fail these tests. For example, if volunteering is a marker of integration, Australian Bureau of Statistics figures suggest that more than 60% of Australians would fail on this score, with only 36% of Australian adults involved in formal volunteering as at 2010.²³

6.8. Formal volunteering also fails to capture informal volunteering within communities. RCOA has heard often of community members taking phone calls for help at 2am, helping other community members to navigate Australia’s complex health system, negotiating rental agreements and disputes, and providing care and support for people.

6.9. There are also cultural differences in the understanding of volunteering. As a group of Karen women advised:

A lot of communities don't understand what 'volunteers' mean. They think if you go volunteer you will get a job. In our country we don't have volunteer, except forced by military. Because we are from a different country and a different situation, if we are helping each other, we just do it — no one calls each other 'volunteer'.

Conduct ‘inconsistent’ with Australian values

6.10. We also oppose proposals that the applicant will also be assessed for any conduct “that is inconsistent with Australian values, such as domestic or family violence, criminality including procuring or facilitating female genital mutilation and involvement in gangs and organised crime”.²⁴ These are already crimes that can be considered under the existing legislation, and more generally in terms of the very broad ‘character’ test. They are dealt with best under the criminal law, where a person will be accorded due process and where the gravity of such offences can be properly assessed.

6.11. In particular, referring to domestic violence within the citizenship test is likely to be deeply counterproductive. RCOA has already heard in its community consultations of the counterproductive effects of imposing a Code of Conduct on people seeking asylum. Social workers have reported to us that this has made women more reluctant to report concerns, because of the fear that their partners will be detained and their children left destitute. Fear of exclusion from a community, especially when such a community is a critical source of support for new arrivals, is also a powerful influence. Increasing sanctions for domestic violence, therefore, is likely to make people less likely to report their concerns and to seek help for them.

Breadth of delegated power

6.12. As well, we express strong concerns that such significant matters are to be delegated to the Minister’s power to make legislative instruments. As the Senate Committee on the Scrutiny of Bills stated:

²³ Australian Bureau of Statistics, *Voluntary Work, Australia, 2010* (Catalogue, No 4441.0, 1 December 2011)

<<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4441.0Main%20Features22010?opendocument&tabname=Summary&prodno=4441.0&issue=2010&num=&view=>>.

²⁴ Department of Immigration and Border Protection, *Strengthening the Test for Australian Citizenship* (Discussion Paper, April 2017) <<https://www.border.gov.au/ReportsandPublications/Documents/discussion-papers/citizenship-paper.pdf>>, 15.

The question of whether a person has integrated into the Australian community is a matter about which there may be reasonable disagreement. The concept of integration in this context is imprecise and matters relevant to understanding integration (even if these are agreed) will inevitably raise questions of degree. The combined effect of these provisions is to delegate to the Minister a large discretionary power to determine whether or not the proposed new criterion has been met by an applicant.²⁵

6.13. As we discuss below, such proposed amendments convert the process of obtaining citizenship from one that is governed by the rule of law to one governed by the caprice of a Minister.

7. Extension of residence requirement

People who came by boat

7.1. The Bill would amend the general residence requirement so that a person must be a permanent resident for the past four years before becoming a citizen. Currently, a person must reside in Australia for four years and be a permanent resident for at least a year.

7.2. This will have a significant impact on people who have come by boat and are found to be refugees. The process of determining refugee status can be very prolonged, and now that time will no longer count towards residence.

7.3. The change will be especially draconian for those who are now currently only given temporary protection. Current legislation and policy would allow only a small number of these people ever to become citizens, but this change would extend this time even further. Many of these people had to wait years even to have their claims for protection heard, and will have to complete a five-year visa before becoming eligible for any kind of permanent visa.

7.4. These visas have only started to be granted in significant numbers since late 2016. This means that people in this group who may have arrived in Australia in 2012 and are granted protection in 2017 will not become eligible for permanent residence until 2022. They will now have to complete another four years of permanent residence after that before becoming eligible for citizenship in 2026.

7.5. This means that these people could be living for 14 years in the country before they become eligible for citizenship, and for 10 of those years they cannot even visit their families overseas other than in exceptional circumstances, and under current law could not effectively reunite with them until they became citizens.

7.6. Article 34 of the Refugee Convention obliges states to 'as far as possible facilitate the assimilation and naturalization of refugees'. It specifies that parties 'shall in particular make every effort to expedite naturalization'. The effect of this extension does the opposite.

Victims of family violence

7.7. The extension of the permanent residence requirement is also likely to undermine the protection of victims of domestic violence. People who enter Australia temporarily on some visas, for example, may need to apply for protection within Australia. As our members have reported to us, a common experience of victims of family violence in this situation is that they have not been allowed to apply for permanent residence during this time, so requiring them to obtain permanent residence for four years may compel them to stay longer in violent relationships before they gain citizenship and feel safe to leave.

7.8. While there are provisions to protect victims of family violence in the *Migration Act 1958*, these apply only to people on partner visas and our members report that there are significant delays and challenges in using those provisions.

²⁵ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest* (No 7, 21 June 2017)
<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest>, [1.5].

A mistaken rationale

More broadly, this requirement is counterproductive to the goal of ensuring people's commitment to Australia. If people are already permanent residents and will spend the remainder of their life in Australia, they should be encouraged to seek citizenship as soon as practical. By demonstrating a commitment to Australia by seeking citizenship, both the individual and Australia as a nation benefits, as the aspiring citizen can truly settle into Australian society and life.

8. Changes to the 'ten-year rule'

8.1. This Bill also re-introduces provisions from the Australian Citizenship and Other Legislation Amendment Bill 2014. One of these re-introduced changes is the provision to make certain people born in Australia no longer eligible to automatically acquire citizenship after ten years (the 'ten-year rule'). The Bill would remove the benefit of this rule for children born in Australia whose parents entered without a valid visa and who did not have a substantive visa at the time of the birth, as well as children who did not have a valid visa at any time during those years.²⁶

8.2. Those mainly affected by these changes would be children born in Australia to parents found to be refugees. Under these proposed amendments, these children would be ineligible for Australian citizenship by birth, solely on the basis of their parents' migration status. These provisions effectively penalise children who "were born in Australia, have spent their formative years here and have their established home here" because of actions over which they had no control.

8.3. As the Human Rights Commission submission to the 2014 Bill noted, these provisions breach international human rights law, which provides for the right of children to have a nationality without discrimination, including on the basis of their parent's migration status.²⁷

8.4. Further, the changes to the 'ten-year rule' would permanently disenfranchise some refugee children. The re-introduction of temporary protection visas for people who came by boat seeking protection in 2014 means that many people who have been found to be refugees will never be permanent residents or, therefore, eligible for citizenship. The only exception, as noted above, will be those few who meet the restrictive criteria for the Safe Haven Enterprise Visa pathways and who also meet the criteria for another substantive permanent visa.

8.5. The change to the 'ten-year rule' means that children born to those holding temporary protection visas may have no other means of acquiring Australian citizenship. Passing the Bill in its current form could mean these children will never be eligible for Australian citizenship. Unable to return to the country of their parents' origin due to fear of persecution and barred from obtaining citizenship in the country where they have lived for their entire lives, they may never have the opportunity to enjoy the rights associated with citizenship.

9. Revocation of citizenship on the basis of fraud or misrepresentation

The breadth of the provisions

9.1. The Bill also re-introduces provisions from in the 2014 Bill that would greatly extend the power of the Minister to revoke a person's citizenship on the basis of fraud or misrepresentation. Currently, the law provides that citizenship can only be revoked on this basis in relation to the citizenship application itself, and after an applicant or a third party has been convicted in a court.

9.2. The Bill would insert a new power that would:

²⁶ Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, (Explanatory Memorandum) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, [75].

²⁷ Australian Human Rights Commission, *Australian Citizenship and Other Legislation Amendment Bill 2014* (6 November 2014), [70].

- Lower the threshold so that citizenship could be revoked simply because the Minister was satisfied of fraud or misrepresentation, without any process for receiving notice or responding to that evidence or any procedural safeguards
- Enable revocation on the basis of fraud or misrepresentation by a third party, even where the applicant for citizenship was unaware of such fraud or misrepresentation
- Extend the power to apply to fraud or misrepresentation in relation to a person's entry or other visa applications for the period of ten years before revocation
- Extend the meaning of 'fraud or misrepresentation' to include concealment of material circumstances, and
- Enable the Minister to revoke the citizenship of any children of the affected person.

9.3. In effect, the changes would allow a single person, the Minister, to revoke a person's citizenship, without any legislative procedural safeguards, even in circumstances where it may render a person stateless and where a person is unaware of the fraud or misrepresentation. While the Explanatory Memorandum states that the Minister could consider arguments that a person was unaware of the fraud or would be rendered stateless,²⁸ the Minister is not required to do so by the Bill. As has become all too common, the Government has provided no evidence as to why such a drastic change is needed.

9.4. These provisions both undermine the rule of law, and undermine the security and protection that is the hallmark of citizenship. It would be contrary to the rule of law to allow a member of the executive to deprive a person of rights as fundamental as Australian citizenship, on the basis of information that cannot be properly contested before an impartial tribunal. Further, by making it so much easier for a person to lose citizenship, the provisions undermine the purpose of citizenship, which is intended to confer a permanent and final status.

The likely impact on refugees

9.5. The effect of these amendments is likely to be felt disproportionately by people who come by boat. It is a well-documented fact that people fleeing danger and suffering will often misremember or fail to remember the details of their flight or persecution; will often mistrust government authorities; and will commonly need to obtain false documents or use the services of smugglers so they can find safety. The process of obtaining visas is often complex and prolonged, making it harder for people to remember all the details provided in multiple applications to the Department. This is compounded by the need to rely on translators and interpreters to communicate key details in stressful interactions. There is also the stress of trying to learn how to live in Australia at the same time where their right to live and work lawfully is often precarious, and the significant mental health consequences arising from their persecution and, too often, their experiences of torture and trauma.

9.6. In these circumstances, it is all too easy for discrepancies, inconsistencies and misunderstandings to arise, and for decision-makers to disbelieve their accounts of persecution and flight. Similarly, it is easy to see how the Minister could readily perceive such discrepancies, inconsistencies, or misunderstandings to constitute 'misrepresentation' in the broad sense envisaged in this Bill, but very difficult to see how a refugee could be expected to explain or contest such findings of the Minister.

Risk of leaving children stateless

9.7. RCOA is particularly concerned by provisions of the Bill which would allow a child's citizenship to be revoked if the fraud or misrepresentation arises in respect of a child's own

²⁸ Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, (Explanatory Memorandum) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, [79].

application, even if that would render the child stateless. This is made expressly clear by the Statement of Compatibility, which indicates that potential statelessness would simply be a factor for the Minister to consider in determining revocation.²⁹ We believe that these amendments are fundamentally incompatible with Australia's international legal obligations, including under the 1961 Convention on the Reduction of Statelessness, which stipulates that states should not deprive a person of their nationality if doing so would render them stateless.

9.8. Further, we do not accept that a child should be held to the same standards as an adult in relation to culpability for (alleged) acts of fraud — particularly where the consequences for the child concerned could be so serious.

9.9. RCOA is also greatly concerned that the Bill fails to outline a process or mechanism whereby children rendered stateless by the revocation of citizenship could resolve their status. Merely granting a stateless child an ex-citizen visa will do nothing to address their statelessness, nor will it provide them with the rights and protections associated with citizenship. In the absence of a clear status resolution process for stateless people, the passing of this Bill could result in some children being permanently disenfranchised.

10. Other changes undermining the rule of law

Limits to merits review

10.1. This Bill also re-introduces provisions in the 2014 Bill that empower the Minister to set aside findings of the Administrative Appeals Tribunal (AAT) and to exclude merits reviews of decisions personally made by the Minister in the public interest. We believe that these provisions would grant the Minister an inappropriate level of discretion in decisions relating to citizenship and would thereby significantly undermine the rule of law and the purpose of independent merits review.

10.2. The main justification for the provision empowering the Minister to set aside AAT decisions is that the AAT is considered to have made three decisions “outside community standards and expectations”. It provides no information as to why the AAT chose to overturn the Minister's decision in these cases. It would appear that the scale of the problem is very small even by the Government's own admission, which raises questions as to why such broad and potentially far-reaching powers are needed.

10.3. The provision to immunise personal decisions of the Minister from merits review is justified on the basis that the “as an elected Member of Parliament, the Minister represents the Australian community and has a particular insight into Australian community standards and values and what is in Australia's public interest.”³⁰

10.4. The purpose of independent merits review is to ensure that individuals subject to the decisions of government officials are able to receive a fair hearing, in accordance with Australian law. Administrative tribunals are intentionally ‘unelected’ and independent to ensure that their decision-making will not be influenced by political considerations or the vagaries of public opinion. Allowing the Minister to overturn the findings of the AAT and limiting the AAT's remit in the manner proposed in this Bill would essentially defeat the purpose of independent merits review.

10.5. It is also important to note in this context the recent public statements by Ministers including the Minister for Immigration attacking the AAT's decisions, followed by a very public failure to

²⁹ *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, (Statement of Compatibility) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, [77].

³⁰ *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, (Explanatory Memorandum) <http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5914_ems_93402f76-ce95-4678-928f-9d18e6de4fda/upload_pdf/636073.pdf;fileType=application%2Fpdf>, [325], [330].

reappoint many AAT members.³¹ Such attacks undermine the integrity of, and the public's trust in, the merits review system.

10.6. RCOA rejects the assertion that judicial review is an adequate substitute for administrative merits review. The role of judicial review is to assess whether a legal error was made in the handling of a particular case, not whether the case itself has merit. As such judicial review must be seen as a complement to (not a substitute for) merits review, as its purpose is fundamentally different. It is not acceptable, in RCOA's review, to justify the denial of merits review on the basis that a person would have the opportunity to seek judicial review.

Retrospectivity

10.7. As the Senate Committee on the Scrutiny of Bills noted, "a basic value of the rule of law that, in general, laws should only operate prospectively (not retrospectively)."³² This Bill offends this basic value in two ways.

10.8. First, the changes to the 'ten-year rule', discussed above, means that children who have grown up in Australia may have reasonably relied on the existing rule, assuming that any changes would not apply to those born before any changes commenced. The effect of this change is that children will be deprived of citizenship even if they would have reached the 10 years required mere days after the Bill is passed. As the Senate Committee on the Scrutiny of Bills rightly observed, "this raises questions of fairness similar to those which may arise when laws retrospectively alter rights and obligations".³³

10.9. Second, the Bill is intended to apply to citizenship applications made on or after 20 April 2017, the date the government announced its intention to pass the Bill. No justification is provided in the Explanatory Memorandum for why this Bill should be applied retrospectively, or how many people it would affect. In the meantime, citizenship applications are no longer being processed according to the current law.³⁴

10.10. This is a flagrant breach of the principle of the rule of law. People are entitled to rely on the current law, and not have their existing legal rights suspended through executive action. It is also a breach of our constitutional arrangements. The Australian Constitution is founded on a separation of powers under which Parliament, and not the executive, makes the laws of the land. It is extremely troubling that the Australian Government thinks that, by merely announcing a prospective Bill, it can thereby suspend the existing rights of people in this country.

11. Strengthening 'Australian values'

11.1. The Bill empowers the Minister to require as part of a citizenship application an Australian Values Statement. The Bill would also require applicants for citizenship to have an 'adequate knowledge of Australia's values'.³⁵ The relationship between this requirement and the Australian Values Statement is unclear.

11.2. The content of the Statement is to be prescribed by a legislative instrument, which is not disallowable. The legislation and the Explanatory Memorandum do not indicate what kind of values will be included. In effect, the Australian Values Statement will be defined entirely by the Minister of

³¹ Michael Koziol, 'George Brandis Clears out 'Infuriating' Administrative Appeals Tribunal', *Sydney Morning Herald* (28 June 2017) <<http://www.smh.com.au/federal-politics/political-news/george-brandis-clears-out-infuriating-tribunal-20170628-gx0711.html>>.

³² Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest* (No 7, 21 June 2017) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest>, [1.75].

³³ *Ibid* [1.72].

³⁴ Shamsheer Kainth, 'Over 81,000 Citizenship Applications Awaiting Processing', *SBS Your Language* (27 June 2017) <<http://www.sbs.com.au/yourlanguage/punjabi/en/article/2017/06/27/over-81000-citizenship-applications-awaiting-processing>>.

³⁵ Sch 1 Item 42, amending s 21 of the *Australian Citizenship Act*.

Immigration, with no parliamentary oversight. As the Senate Committee on the Scrutiny of Bills noted:

Australian values are matters that go 'directly to the substance of citizenship policy'. The committee considers that matters that go directly to the substance of a policy would appear to be matters that are appropriate for parliamentary oversight.³⁶

11.3. That Committee indicated a range of ways in which parliamentary oversight could be improved, such as: including some core values in the legislation; requiring positive approval of each House of Parliament before the instrument came into effect; providing that the instrument did not come into effect until the disallowance period had expired; or a combination of these approaches.

11.4. While the legislation and the Explanatory Memorandum do not indicate what kind of values will be included, several 'Australian values' are identified in the Discussion Paper, including democratic beliefs, freedoms, equality and integration.

11.5. These are, of course, not values peculiar to Australians, but rather universal values. For many refugees, these are the values they cherish most, having fled countries which have suppressed democracy and freedom, and which have divided rather than united communities. By singling out these values as Australian, however, a signal is clearly being sent that some of our newer communities do not accept these values.

11.6. At the same time, these proposals themselves are inconsistent with some of those stated values. For example, as discussed above, the fact that these proposals have not yet passed Parliament, but that citizenship applications are no longer being accepted on the basis of existing law, is a clear breach of the fundamental principle of the rule of law, and misunderstands that this is a parliamentary democracy, in which Parliament must decide what the new rules are.

11.7. Similarly, the impacts of these proposals on women, and the counterproductive effects noted above in relation to domestic violence, are inconsistent with the stated Australian value of rejecting family violence. Most importantly, in their racially discriminatory impact these proposals do not reflect the Australian values of 'equality of opportunity for all', and 'respect of all individuals regardless of background'.

12. Unfair, unnecessary and divisive

Contrary to Australian and international values

12.1. This Bill talks of Australian values, but does not respect them. The Bill would effectively make Australian citizenship the gift of the Minister, converting the rule of law to the caprice of the Minister. It allows the Minister to unilaterally determine whether a person is 'integrated', possesses 'Australian values', and has sufficient English to become a member of the Australian community. It allows the Minister to set aside independent decisions, exclude his own decisions from independent review, and to revoke citizenship without proof and on the broadest of grounds. Its retrospective application would allow the executive, not the Parliament, to decide the legal rights of people lawfully resident in this country.

12.2. The Bill also does not respect Australia's international legal obligations, and the values inherent in them. The Bill allows the Minister to deprive children of citizenship, even where those children have nowhere else to go and even if they are entirely innocent themselves of any fraud or misrepresentation. The Bill enables the Minister to deprive people of citizenship, even if it makes them stateless. The Bill also clearly does not respect the obligation under Article 34 of the Refugee Convention to facilitate naturalisation of refugees.

³⁶ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest* (No 7, 21 June 2017) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Scrutiny_Digest>, [1.38].

Asking more from the most vulnerable

12.3. As we have outlined above, this Bill would exclude, both in fact and in law, citizenship for the most vulnerable. The Bill requires much more of new migrants than it does for those born in Australia, demanding that they be not just citizens, but model citizens. In doing so, they disproportionately impact those who already face barriers to inclusion in Australia, further isolating and excluding them from the Australian community.

12.4. Yet so far there has been no evidence or justification for these proposed changes. There is no evidence to suggest that requiring university-level English testing will improve the quality of our citizens, for example. It is also unclear how a formal citizenship test makes any kind of “substantive difference to the civic behaviour of migrants”.³⁷ There is no evidence that preventing children of refugees from becoming citizens will discourage (lawful) claims of protection, or that the Minister requires sweeping new powers which will undermine our constitutional arrangements, including the rule of law.

Reinforcing exclusion, undermining cohesion

12.5. Far from improving our social cohesion, this Bill would actively undermine it by fostering a sense of exclusion. As former Deputy Secretary of the Department of Immigration Peter Hughes put it, “An ‘over the top’ testing regime may simply have the impact of shutting a growing pool of people out of Australian citizenship and alienating them from society.”³⁸

12.6. This Bill would reinforce the exclusion fostered by existing policies and political discourse, for example:

- The denial of permanent residency and access to key settlement services to refugees who arrived in Australia without a valid visa, which undermines their ability to settle successfully in Australia and contributes to poor mental health outcomes.
- Limited access to family reunion opportunities to people from refugee backgrounds (including restrictions on access to family reunion for refugees who arrived without valid visas), which is likely to make it more difficult for people to recover from pre-arrival trauma, move on with their lives and fully engage with the settlement process (such as through learning English and securing sustainable employment).
- The serious negative impacts of prolonged indefinite immigration detention on health and wellbeing, which in turn undermine positive settlement outcomes for people who were formerly detained (particularly children).
- Negative political rhetoric (such as labelling asylum seekers who arrive by boat as “illegal arrivals” and describing refugees as a “burden”), which can weaken community support for the Refugee and Humanitarian Program, fuel negative attitudes towards people from refugee backgrounds, and contribute to feelings of isolation and exclusion among refugee and humanitarian entrants settling in Australia.

Respecting multiculturalism and Australian values

12.7. RCOA has repeatedly expressed its increasing concern at the tenor of the public and political debate on refugees and, more recently, particular communities of new migrants. We have done so this year in respect of changes to section 18C of the *Racial Discrimination Act*, on an inquiry into migrant settlement outcomes, and on strengthening multiculturalism.

12.8. The current Bill can only be properly understood as part of this wider political context. Quite apart from the flaws in the proposed Bill, its existence itself clearly sends a message both to migrant

³⁷ Peter Hughes, ‘Citizenship Test Mark II – How Much Juice Can You Squeeze out of an Orange?’, *John Menadue - Pearls and Irritations* (24 April 2017) <<http://johnmenadue.com/peter-hughes-citizenship-test-mark-ii-how-much-juice-can-you-squeeze-out-of-an-orange/>>.

³⁸ Ibid.

communities and to the wider Australian community. It is a message that comes at a critical time in our ongoing national debate about what it means to be Australian.

12.9. For the past four decades, Australia has transformed itself successfully and peacefully from an almost exclusively white society to one of the world's most diverse nations. It has done so in part through strong political leadership and a commitment to an inclusive multicultural agenda. Indeed, as our current Prime Minister said earlier this year at the release of the Multicultural Statement:

The glue that holds us together is mutual respect. A deep recognition that each of us is entitled to the same respect, the same dignity, the same opportunities. The mutuality of that respect is of critical importance.

Our achievement in creating this harmonious nation is not an accident. It has been carefully crafted and we must not take it for granted. You have to continue nurturing it.³⁹

12.10. We strongly affirm this view. If people are made to feel unwelcome, if racism is not only tolerated but implicitly encouraged, and if the focus of government policies shifts to exclusion from inclusion, we are setting people up to fail. At the same time, we risk undermining the cohesive and largely harmonious nation we have fought so hard to build.

13. Recommendations

Recommendation 1

The Committee should recommend that the provisions requiring an English language test should not be passed.

Recommendation 2

This Committee should recommend that the course-based citizenship test should be maintained for those who face difficulties completing a formal computerised test.

Recommendation 3

This Committee should recommend that the new provision inserting s 23A(3A), which enables the Minister to exclude a person from sitting a citizenship test, should not be passed.

Recommendation 4

This Committee should reject the proposed requirement to demonstrate 'integration'.

Recommendation 5

There should be no change to existing residence requirements for Australian citizenship.

If this recommendation is not accepted, concessions should be made for people from refugee backgrounds, stateless people and victims of family violence.

Recommendation 6

This Committee should recommend that the proposed amendments to section 12 of the Citizenship Act, relating to the 'ten-year rule', should not be passed.

³⁹ Hon Malcolm Turnbull MP (Prime Minister), 'Remarks at the Release of the Multicultural Statement 2017' (Parliament House, Canberra, 20 March 2017).

Recommendation 7

This Committee should recommend that the provisions to extend revocation of citizenship in cases of fraud or misrepresentation should not be passed.

Recommendation 8

The Committee should recommend that the changes to merits review of decisions related to citizenship should not be passed.

Recommendation 9

The Committee should reject the proposal to confer on the Minister power to prescribe an Australian Values Statement.

If this recommendation is not accepted, this Committee should recommend increased parliamentary scrutiny of the Australian Values Statement in line with the proposals suggested by the Senate Committee on the Scrutiny of Bills.