

Submission of the

NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES

to the

**Federal Parliamentary Secretary
to the Minister for
Immigration and Multicultural Affairs'**

consideration of the merits of introducing

A Formal Citizenship Test

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All references to 'the discussion paper' refer to the Parliamentary Secretary's discussion paper *Australian Citizenship: much more than a ceremony* (September 2006), <http://www.citizenship.gov.au/news/discussion_paper.htm>.

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1. Executive Summary

1. **The New South Wales Council for Civil Liberties ('CCL') does not support the introduction of a formal citizenship test.** CCL does not believe that anything is to be gained from testing an applicant's English language proficiency or knowledge of Australia and 'Australian values'. *Educating* new citizens about Australian democracy and law, as well as the English language, is important. But *testing* applicants opens the process to discrimination on the basis of language ability and testing competence. This may lead to frustration and disenchantment with the process of applying for Australian citizenship and might even devalue citizenship in the eyes of some.
2. **CCL is opposed to the introduction of a formal English proficiency test.** While it is important that non-English speakers are encouraged to learn English and are provided with free English lessons if they want them, it is simply wrong to assume that only English speakers can contribute to the Australian community in a meaningful way. In a free and democratic society, all citizens should be free to express themselves and communicate in any language they choose.
3. **CCL is also emphatically opposed to the notion that 'Australian values' can be quantified and tested.** In a free and democratic society, we only ask of all citizens that they respect the rule of law and our democratic principles. Beyond these duties all citizens are free to conduct their lives in any way they choose.
4. **CCL is concerned that the proposal to test 'Australian values' will require the nomination of an arbiter of 'Australian values'.** If anything is, then surely this proposal is 'un-Australian'. The ideal of liberty requires that we are free to define our own values and that no government, or government-appointed committee, may dictate to us what we should think, say, worship, feel or value. All Australians should be free to choose their own values, subject to respect for the rule of law and democratic principles.
5. **CCL does not support the extension of English language or 'values' testing to permanent or long-term temporary residents.** It is abhorrent to suggest that a resident who obeys the law should have their visa cancelled because they are not proficient in English or because they do not know when the Melbourne Cup is held.
6. CCL also notes that the Australian Citizenship Bill 2005 is again before Parliament. While proposed amendments to conform to Australia's international human rights obligations are welcome, CCL is extremely concerned about the retention of the 'ASIO veto' and other proposals in the Bill. **Given the significant number of amendments, CCL recommends that the Australian Citizenship Bill be referred again to the Senate Legal and Constitutional Legislation Committee.**

2. Education is more effective than testing

2.1 citizenship test

7. The discussion paper proposes that applicants for Australian citizenship undergo formal testing in the areas of English language and knowledge of Australia and Australian values.
8. CCL does not believe that the discussion paper has presented a sufficiently convincing argument supporting the need to introduce a formal citizenship test. Applicants might be more willing to further their English skills or knowledge of Australia if they knew they would not need to sit through a stressful testing procedure.
9. Instead of spending money on creating elaborate testing procedures, it would more effective to investment in education about Australia and its democratic system of government through seminars, brochures, etc. Such education could be subject to satisfactory attendance, in a way similar to the obtaining of an Australian Citizenship Language Record after participation in the Adult English Migrant Programme.¹
10. In short, *education* about Australian law and democracy is important, but *testing* for such knowledge does not help to distinguish between those applicants who will make good citizens and those who will not.

2.2 permanent and long-term temporary residents

11. CCL notes that the discussion paper also floats the idea of extending tests for knowledge of Australia, 'Australian values' and the English language for permanent and long-term temporary residents.
12. CCL does not support the idea that that a resident who obeys the law should have their visa cancelled because they are not proficient in English or because they do not know when the Melbourne Cup is held or that the federal Parliament is bicameral.
13. The discussion paper is about *citizenship* and CCL is concerned that changes to permanent and long-term residency visas have been raised in this context. It is unlikely that permanent or long-term residents are aware of these proposals because they appear in a paper on *citizenship*.
14. Significantly, the discussion paper fails to make any case at all for introducing these tests for resident visa holders. This proposal should be rejected until a more considered proposal is offered for public consultation.

¹ Citizenship Task Force, *Australian Citizenship: much more than a ceremony* ('the discussion paper'), September 2006, [13]. A copy of this discussion paper is available at: <http://www.citizenship.gov.au/news/discussion_paper.htm>.

2.3 exempting people from testing

15. As Question 16 of the discussion paper suggests,² formal testing procedures would require an extensive list of people to be exempted from these tests. CCL believes that this presents a number of problems.
16. One serious problem with such a list of exempted persons is that there would be many 'borderline' cases. Such cases would be decided at the discretion of a government official. CCL fears that this discretion might mean that some people, unaware of their right to appeal such administrative decisions, would be forced to complete the test to attain citizenship.
17. However, if such an exemption list is to be compiled, then CCL believes that permanent and long-term temporary residents, children, people over the age of fifty³ and those with intellectual learning disabilities should definitely be exempted from a formal test. CCL also believes that there ought to be exemptions for people suffering from torture and trauma or immigrants who have received inadequate or no education who would find learning academic material difficult.
18. CCL notes that the discussion paper acknowledges that some refugee and humanitarian settlers and some younger migrants might need expanded learning opportunities to assist them to pass the formal test.⁴ However, the process of learning might be daunting enough, and the prospect of being tested might deter these applicants from applying for citizenship.

² "If a formal citizenship test were to be introduced, should certain groups (for example, older people or long term residents) be exempt?"

³ which is the current age limit: *Australian Citizenship Act 1948* (Cth) s.13(7). CCL notes that the Australian Citizenship Bill 2005 proposes raising this age to 60.

⁴ discussion paper, n 1, [86].

3. English language test

19. CCL does not believe that there should be an English proficiency test for citizenship. While it is important that non-English speakers are encouraged to learn English and are provided with free English lessons if they want them, it is simply wrong to assume that only English speakers can contribute to the Australian community in a meaningful way. Such a test amounts to discrimination on the basis of language ability and testing competence. This may lead to frustration and disenchantment with the process of applying for Australian citizenship and might even devalue citizenship in the eyes of some.
20. While international law does not prescribe how a country should define citizenship,⁵ discrimination on the grounds of language is prohibited under articles 2, 25 and 26 of the *International Covenant of Civil and Political Rights*. However, differential treatment is permitted where criteria are reasonable and objective and the aim is to achieve a legitimate purpose.⁶
21. CCL does not believe it is reasonable to expect every Australian to speak English. There are many reasons why a person might not be able to learn English. The Australian Citizenship Council ('ACC') acknowledges that older people might find it more difficult to learn a new language and that humanitarian entrants might find it difficult to learn a new language if they are suffering from torture and trauma.⁷ Furthermore, some immigrants might have come from countries where they received inadequate or no education in the first place and might barely even be able to read and write their native language.
22. Nor is it reasonable to assume that only English-speaking citizens can make a meaningful contribution to the Australian community. Non-English speaking residents and citizens can quite effectively, for example, raise families, work, volunteer their time to help others and remain informed through the non-English speaking media.
23. It makes no sense to maintain that a person cannot be Australian if they do not speak English. Indeed there are, for example, Indigenous Australians who do not speak English.
24. In its 2002 report, the ACC concluded that:⁸

...it is the desire to be 'Australian' that underlies Australian Citizenship and that, while English is one indication of how one can be Australian, it is not the only one.

⁵ see *Singh v Cth* (2004) 209 ALR 355, [257] (Kirby J).

⁶ UN Human Rights Committee, *General Comment 18 (non-discrimination)*, 10 November 1989, [13], <<http://www.ohchr.org/english/bodies/hrc/comments.htm>>.

⁷ Australian Citizenship Council, *Australian Citizenship for a New Century* (18 February 2002) 51, <<http://www.citizenship.gov.au/info/report.htm>>.

⁸ Australian Citizenship Council (2002), n 7, 51.

25. Furthermore, like the ACC,⁹ CCL believes that all non-English speaking citizens and residents should be encouraged to take advantage of the free-of-charge Adult Migrant English Program. But this should never be compulsory or a pre-requisite to citizenship.
26. Currently, the maximum age at which applicants are required to demonstrate a basic knowledge of the English language is 50.¹⁰ CCL notes that the Australian Citizenship Bill 2005 proposes to increase this age to 60.¹¹ While this is apparently a recommendation of the 1994 report of the Joint Standing Committee on Migration,¹² the more recent report (in 2002) of the Australian Citizenship Council ('ACC') rejected this proposal.¹³ The ACC acknowledged that older people find it more difficult to learn a new language.¹⁴ CCL does not support the proposed increase in the maximum age.

⁹ Australian Citizenship Council (2002), n 7, 51.

¹⁰ *Australian Citizenship Act 1948* (Cth) s.13(7).

¹¹ Australian Citizenship Bill 2005 (Cth) s.21(4)(a)(i).

¹² Explanatory Memorandum, Australian Citizenship Bill 2005 (Cth), 23.

¹³ Australian Citizenship Council (2002), n 7, 51.

¹⁴ Australian Citizenship Council (2002), n 7, 50.

4. Australian values test: an 'un-Australian' test

27. CCL is emphatically opposed to the notion that 'Australian values' can and should be tested.
28. In a free and democratic society, we only ask of all citizens that they respect the rule of law and our democratic principles, beyond these duties all citizens are free to conduct their lives in any way they choose. Values are unique to individuals and cultures, but they are also fluid, non-discrete and evolving. A free and democratic society recognises and respects the diversity of values held by individuals and groups. CCL submits it is not possible for a country at any moment in time to create an exhaustive list of the values held by its citizens. Nor is it possible to create an exclusive list of 'Australian values' - indeed many of the values identified by politicians or popular culture as 'Australian' are simply universal values.
29. CCL submits that it is impossible to list the values of *all* Australians at any particular point in time. CCL notes that the discussion paper suggests otherwise: that, by using 'state-of-the-art technologies', "...[t]he test and preparation materials could easily be refreshed to keep abreast with life in today's society".¹⁵ The problem with this suggestion is that it assumes that the values of all Australians are homogenous to begin with and that they evolve and change at a similar pace. But this is simply not true. For example, CCL would submit that equality for same-sex couples *ought* to be recognised as an essential value embodied by Australian government institutions and laws. If a citizenship test, which purported to identify Australian values, did not include this value it would fail to accurately represent the values of a significant portion of the Australian community.
30. CCL is concerned that the proposal to test 'Australian values' will require the nomination of an arbiter of 'Australian values'. If anything is, then surely this proposal is 'un-Australian'. The ideal of liberty requires that we are free to define our own values and that no government, or government-appointed committee, may dictate to us what we should think, say, worship, feel or value. All Australians should be free to choose their own values, subject to respect for the rule of law and democratic principles.
31. CCL is also concerned that the rhetoric surrounding the "values debate" in Australia is a knee-jerk reaction to the political climate in the 'war on terror'. Attempts to make Australian citizenship harder to attain and the political rhetoric characterising what is 'Australian' and 'un-Australian' will divide, rather than unite, the community.

¹⁵ discussion paper, n 1, [70].

5. Australian Citizenship Bill 2005

32. CCL notes that the Australian Citizenship Bill 2005, which has languished in the Parliament since a comprehensive Senate Committee report identified many problems with it,¹⁶ is again being debated with amendments in the House.¹⁷
33. While proposed amendments to accommodate Australia's international human rights obligations are welcome, **CCL maintains its grave concerns about the 'ASIO veto' and many other proposals.**¹⁸
34. CCL also notes that one of the amendments increases the waiting period before a citizenship application from two to four years. When the Senate Committee examined the Bill, the proposal was for a three-year waiting period.

CCL strongly recommends that the Australian Citizenship Bill (with amendments) be referred to the Senate Legal and Constitutional Legislation Committee again to determine whether further amendments are required and to allow for a period of community consultation.

¹⁶ Senate Legal and Constitutional Legislation Committee, *Provisions of Australian Citizenship Bill 2005 and Australian Citizenship (Transitional and Consequential) Bill 2005* (February 2006), <http://www.aph.gov.au/senate/committee/legcon_ctte/citizenship/index.htm>.

¹⁷ Parliamentary Debates, House of Representatives, 31 October 2006, 1.

¹⁸ see NSWCCCL, *Submission to Senate Legal and Constitutional Committee's Inquiry into the Provisions of the Australian Citizenship Bill 2005 and the Australian Citizenship (Transitional and Consequential) Bill 2005* (16 January 2006), <<http://www.nswccl.org.au/docs/pdf/citizenship%20submission.pdf>>.