

6 July 2007

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Australian Senate
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007

The NSW Council for Civil Liberties (NSWCCL) thanks the Committee for this opportunity to make a submission to the Inquiry.

NSWCCL does not support the introduction of a formal citizenship test.¹

However, even if one accepts that a citizenship test should be introduced, it is difficult to imagine a worse or more dangerous scheme than the one contemplated by this Bill.

1. General objections

The Bill would give an unnecessarily broad and uncontrolled discretion to the Minister which will potentially enable the Minister to create significant practical barriers to obtaining citizenship which will have the effect of creating a class of permanently disenfranchised permanent residents in Australia.

The Bill lacks essential safeguards to ensure that the test for citizenship is consistent with the objectives of promoting knowledge of and respect for the Australian system of government.

The Bill does nothing to ensure that a fair go will be given to people who wish to become Australian citizens.

The Bill adds a new substantive requirement for citizenship – “an adequate knowledge of Australia” in addition to the existing requirement “an adequate knowledge of the responsibilities and privileges of Australian citizenship”. This additional requirement is so broad and open to interpretation as to be dangerous.

Further, s21(2)(f) is inadequate because it fails to acknowledge that Australian citizens have rights, and not just privileges and responsibilities.

¹ See NSWCCL, *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*, 14 November 2006, available at: <<http://www.nswccl.org.au/docs/pdf/citizenship%20test.pdf>>.

2. Testing knowledge of values

2.1 The Minister has stated that the test he would devise under the Bill would cover “common values we share, as well as something of our history and our background”. Plainly, this is an indication that it is intended to test knowledge of Australia, as well as the responsibilities and privileges of Australian citizenship.

2.2 Even accepting that successive Ministers might confine their test of knowledge of Australia as the Minister has proposed, consideration of the implications of his statement still lead to the conclusion that a test which extends beyond knowledge of the responsibilities and privileges of Australian citizenship is inherently unsatisfactory.

2.3 There is no objective way to determine what are the “common values we share”. There are legal values such as freedom in a parliamentary democracy, the rule of law, and freedom of religion, each of which may be derived from the Constitution. However, the expression “common values we share” is apt to stray much wider – into moral territory. In considering whether the legislation appropriately frames the Minister’s power to set the test, consider whether the Minister could set questions that test knowledge of the following:

- Australian values as to the availability of pornography;
- Australian values as to the recognition of same-sex marriages;
- Australian values as to the availability of publicly funded abortions.

These subjects are each dealt with in Commonwealth legislation, and so it might be argued that the legislation reflects shared Australian values. However, the scope plainly exists for such legislation not to reflect currently prevailing community attitudes. What possible justification could there be for the Minister to have the power to test applicants for citizenship on these matters?

2.4 The Minister is not confined to setting a test which seeks to test “common values” that cannot be divined from legislation. The discussion paper mentions as commonly shared values “the spirit of a fair go” and “compassion to those in need”. The discussion paper may as well mention motherhood as a shared value. Invocation of such values is regularly made in support of diametrically opposed positions on concrete proposals. A test cannot fairly test knowledge of these values when they can easily mean different things to different people.

2.5 Many people’s values are informed by religious belief. A test of knowledge of commonly shared values may easily become a test of religious belief or knowledge. The Bill permits such a test. Perhaps this feature will be a ground for constitutional challenge.

2.6 An essential feature of Australia’s democratic system of government is that citizens are entitled to differ on matters of political opinion and on matters of values. Virtually no values could be identified which are universally held by Australian citizens. A Bill which seeks to discriminate against people based on their holding particular values is contrary to the essential democratic nature of Australia’s system of government. The Bill permits such a test.

3. The symbolic significance of the test

- 3.1 The content of the test will send a message to potential citizens. If the test contains Euro-centric questions based on Judeo-Christian values of some settlers, for example, it might only serve to alienate and exclude applicants, not benefiting them with respect to living in Australia today. The Bill permits such an outcome.
- 3.2 By giving the Minister total discretion as to the content of the test, the Bill sends a message that will be interpreted as Parliament permitting the executive arm of government to alienate and exclude potential citizens. The Bill should not send the message that Australia is an exclusive club, but rather, an inclusive nation proud of its diversity.
- 3.3 As Liberal MP Petro Georgiou pointed out, "The plain fact is that hundreds of thousands of native-born and immigrant Australians would not be able to pass the test."² If current citizens do not have the relevant knowledge to pass the test, why should we require future citizens to know this material?
- 3.4 The idea that a test will help new Australians gain the respect of the community is ridiculous. Respect of the community is gained through the positive practical contributions to Australia by immigrants, not through a demonstration of knowledge.
- 3.5 If there is to be a test (and we do not believe there should be), the legislation should determine the message to be sent to potential citizens, and not leave this to successive Ministers.
- 3.6 Parliament should at the very least be able to question and amend the test. For this reason, section 23A(7) stating that the approval of the test is not a legislative instrument should be removed and replaced with a provision guaranteeing a right to review.
- 3.7 The Bill should also at the very least require that the test questions should be published for public comment prior to finalisation to insure objectivity and value-neutrality.
- 3.8 The Bill should also require that education opportunities with respect to Australian law and democracy should be easily accessible to all who are required to sit the test. The legislation should require a clear resource book be available in various languages.
- 3.9 Furthermore, the Bill should require the provision of educational materials in other media such as seminars and websites. In the UK for example, a comprehensive website provides sample questions and test preparation, including tutorials on mouse and keyboard usage.³ While providing easy access to test materials, this resource would also familiarize future citizens with the technology used for testing.
- 3.10 In addition, the Bill should require that the test is submitted to a consultative committee set up under the Bill. A model for a consultative group is the legislation constituting the Board of Studies.

² See Metherell, Mark, "Few support citizenship test: MP," *Sydney Morning Herald*, 15 March 2007, available at < <http://www.smh.com.au/news/national/few-support-citizenship-test-mp/2007/03/14/1173722560446.html>>.

³ See *Life in the UK Test website*, available at: <<http://www.lifeintheuktest.gov.uk/index.html>>.

4. Accessibility

- 4.1 CCL supports making English language education freely available to potential citizens and residents of Australia.
- 4.2 However, we are concerned about the Bill's *requirement* that the citizenship test be taken in English. Citizenship already requires that the applicant possesses a basic knowledge of the English language.⁴ The level of English proficiency required to sit a formal test is most likely more than basic. This feature of the test increases the barriers to citizenship by not preventing applicants from passing the test and also deterring people from applying for citizenship in the first place.
- 4.3 The convenience of day-to-day life already provides a sufficiently strong incentive for residents to learn English. It is unnecessary and only divisive to provide an additional negative reinforcement to learn English.
- 4.4 Requiring fluency in English discriminates against people whose situations do not allow them to learn English—for example age, past experience of torture or trauma, intelligence levels, and economic circumstances that make learning English difficult (e.g. long work hours, childrearing responsibilities). Because those eligible are by definition permanent residents, the test effectively prevents the enfranchisement of people who will be living in Australia anyway.⁵
- 4.5 It is insulting to many Australians that some Australians consider only near fluent English-speakers can contribute meaningfully to Australian society. While English language fluency can certainly be an advantage, it is not a prerequisite for becoming a productive member of Australian society, as has been proven by the many diverse immigrants that have contributed to making our nation what it is today.⁶ For example, Prime Minister Howard praises the Australian Greek community for their contribution to society although their English proficiency levels are relatively low.⁷
- 4.6 The language requirement is unfair in light of a current lack of governmental resources dedicated to English language education for non-native speakers. For example, the English as a second language program for school students is already underfunded by \$60 million.⁸

⁴ See *Citizenship Act 2007*, at 21(2)(3).

⁵ See Costar, Brian and Peter Mares, "Citizenship: A test that will divide, not unite," *Australian Policy Online*, 14 Dec 2006, available at: <http://www.apo.org.au/webboard/results.chtml?filename_num=127508>.

⁶ See Cica, Natasha, "Who are the Australians?" *The Age*, 19 Sept 2006, available at: <<http://www.theage.com.au/news/opinion/who-are-the-australians/2006/09/18/1158431641203.html>>.

⁷ See Vliet, Peter van, "Australian citizenship: removing the welcome mat?" *On Line Opinion*, 5 Dec 2006, available at: <<http://www.onlineopinion.com.au/view.asp?article=5227>>.

⁸ See "Citizenship test prompts call for more English classes," *ABC News*, 12 Dec. 2006, available at: <<http://www.abc.net.au/news/stories/2006/12/12/1809599.htm>>.

- 4.7 Therefore, if non-English-speaking applicants are required to take a citizenship test, the Bill should require the Minister to make it available in a language of their choice.
- 4.8 Of related concern is the computerized format of the test. While training should of course be provided, in reality this mode of testing may not be practical for some people. The statute should ensure that, as Mr. Andrews suggested, there are special provisions for assistance for illiterate or computer-illiterate test-takers.
- 4.9 Furthermore, the bill should provide alternatives to the test. For example, in the UK, citizenship applicants who have not attained a certain level of proficiency in English can satisfy the citizenship test requirement by attending an English for Speakers of Other Languages course which covers citizenship materials. In this system, the focus is on educating instead of screening future citizens.

5. Exemptions

- 5.1 The *Australian Citizenship Act 2007* would not apply the test requirement to the aged (60 or over), young (under 18), stateless, or those with certain disabilities.⁹
- 5.2 However, there may be other circumstances which would make sitting for the test prohibitively difficult.
- 5.3 Potential applicants with special circumstances should have a means to gain exemption from the test based on individualized consideration. The Bill should provide a process for administrative review of exemption decisions and unfair testing conditions.

6. Fee

- 6.1 The doubling of the citizenship application fee might cause financial hardship or even preclude some applicants from applying for citizenship, especially considering that this fee would only enable them to sit for a test and does not guarantee conferral of citizenship.
- 6.2 If the fee is raised, perhaps applicants who can demonstrate earning less than a minimum income should have the ability to apply for a waiver, and charges can be conditional on receiving citizenship.
- 6.3 The Bill should ensure that the fee is generally affordable.

7. Net Impact

- 7.1 Any new laws should have the effect of improving the *status quo*, especially at such great cost to the nation (\$123.6 million).
- 7.2 Immigrants enrich Australian both economically and socially. The test should not have the effect of diminishing incentives to apply for citizenship.
- 7.3 While the Government boasts high popular support of a formal citizenship test, CCL is concerned that the opinions not captured by these statistics are the very ones who would be affected most by the bill. For example, 70% of

⁹ See s21.

submissions by organizations, as opposed to individuals, were against the citizenship test.¹⁰

- 7.4 The Bill should contain a sunset clause, ensuring that it is reviewed by Parliament in 3 years' time. At that time, the following matters should be addressed: impacts related to cost, citizenship conferral rates, and protected classes.
- 7.5 Any additional legislation potentially limiting citizenship should actually serve a purpose of integration and not be a way of disguising a filter to certain groups of people.

8. Summary of specific recommended amendments

- 8.1 Amend s21(2)(f) to read:
 - “has an adequate knowledge of the rights conferred by and responsibilities and privileges of Australian citizenship”
- 8.2 Section 23A(7) should be removed and replaced with a provision guaranteeing a right to parliamentary review of the test contents.
- 8.3 The Bill should require that the test questions should be published for public comment prior to finalisation to ensure objectivity and value-neutrality, and be approved by a consultative committee broadly representative of the community.
- 8.4 The Bill should require that education opportunities with respect to Australian law and democracy should be easily accessible to all who are required to sit the test.
- 8.5 The Bill should require clear resources be available and accessible in various languages, both in book form and via other media such as seminars and websites.
- 8.6 The Bill should provide alternatives to a citizenship test, such as attending an approved course of study.
- 8.7 The Bill should provide a process for administrative review of exemption decisions and unfair testing conditions.
- 8.8 The Bill should ensure that the fee for Australian citizenship is generally affordable.
- 8.9 The Bill should contain a sunset clause and requirement for a review of its effect after, say, 3 years of operation.
- 8.10 Proposed section 23A(6) is an unacceptably broad delegation as it fails to define the subject matter of the delegation. It should be deleted.

¹⁰ See Minister for Immigration and Citizenship, *Summary Report on the Outcomes of the Public Consultation on the Merits of Introducing a Formal Citizenship Test*, available at: <http://www.minister.immi.gov.au/media/responses/citizenship-test/summary_report_citizen_test_paper.pdf>.