

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Australian Citizenship Legislation Amendment  
(Strengthening the Commitments for Australian  
Citizenship and Other Measures) Bill 2018

March 2019

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# Recommendations

## Recommendation 1

**2.85** The committee recommends that the bill be amended to remove subsection 23(3A), that there be no particular limitation placed on attempts to sit a citizenship test, and that – consistent with the committee’s 2017 inquiry – any attempts made following the first three attempts be conducted on a cost-recovery basis.

## Recommendation 2

**2.86** The committee recommends that the English-language standards required under the bill be amended consistent with the committee’s 2017 recommendation of IELTS 5.

## Recommendation 3

**2.87** The committee recommends that the Senate not pass the bill in the current form.



# Chapter 1

## Introduction

1.1 On 15 February 2018, the Senate referred the Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 4 December 2018.<sup>1</sup> On 3 December 2018, the Senate extended the committee's reporting deadline to 15 March 2019.

1.2 In the proposal to the Selection of Bills Committee to refer the bill for inquiry, Senator Pauline Hanson, Leader of Pauline Hanson's One Nation party, noted the following:

On the 22<sup>nd</sup> of June 2017 an almost identical Bill was referred to Committee but most submissions were from the Refugee Industry or individual refugees.

I believe many Australians were unaware of the Government's Bill and the opportunity to make a submission. My Private Senator's Bill only differs from the earlier Government's Bill is the length of time required to be on a permanent visa before applying for Citizenship.

The proposal contained in the Bill is very important. I believe Senators should be given the opportunity to hear form a wider group of Australians.<sup>2</sup>

### Purpose of the bill

1.3 On 7 February 2018, Senator Hanson introduced the bill, noting that the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the 2017 bill) had been removed from the Notice Papers, and that she had amended the original bill and was re-introducing it as a Private Senator's bill to facilitate debate.<sup>3</sup>

1.4 Senator Hanson stated:

Australians want a conversation about the interrelated issues of immigration rate, population size and citizenship. They are deeply concerned about social cohesion, because for many years we have been home to the highest per capita immigration program in the world, taking more than 200,000 migrants annually from over 250 countries.<sup>4</sup>

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1 *Journals of the Senate*, No. 87, 15 February 2018, pp. 2738–2740.

2 Selection of Bills Committee, *Report No. 2 of 2018*, 15 February 2018, Appendix 1.

3 Senator Pauline Hanson, *Senate Hansard*, No. 1 of 2018, 7 February 2018, p. 429.

4 Senator Pauline Hanson, *Senate Hansard*, No. 1 of 2018, 7 February 2018, p. 429.

1.5 Senator Hanson noted that since her maiden speech in 1996 she had been 'talking about the impact of immigration on social cohesion' and that the bill 'represents the views of the majority of Australians.'<sup>5</sup>

1.6 Senator Hanson further stated that the bill asks that prospective citizens 'demonstrate their suitability for citizenship by obeying our laws, respecting our culture and assimilating into broader society'.<sup>6</sup>

### **The 2017 bill**

1.7 As indicated above, a substantially similar bill—the 2017 bill—was previously referred to the Legal and Constitutional Affairs Legislation Committee.

1.8 The government's 2017 bill was introduced in the House of Representatives on 15 June 2017, by the then Minister of Immigration and Border Protection, the Hon. Peter Dutton MP.<sup>7</sup>

1.9 The 2017 bill was passed by the House of Representatives on 14 August 2017 and introduced into the Senate the following day. On 18 October 2017, the bill was discharged from the Senate notice paper.<sup>8</sup>

1.10 Following the inquiry into the 2017 bill, the committee tabled its report on 5 September 2017. The following four recommendations were made:

#### Recommendation 1

That the Government clarify the standard for English-language competency required for citizenship, noting that the required standard should not be so high as to disqualify from citizenship many Australians who, in the past, and with a more basic competency in the English language, have proven to be valuable members of the Australian community.

#### Recommendation 2

That the Government reconsider the imposition of a two-year ban on applications for citizenship following three failed attempts of the citizenship test, and consider other arrangements that allow additional tests on a cost-recovery basis that would deter less-genuine applicants.

#### Recommendation 3

That the Government consider introducing some form of transitional provisions for those people who held permanent residency visas on or before 20 April 2017 so that the current residency requirements apply to this cohort of citizenship applicants.

#### Recommendation 4

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5 Senator Pauline Hanson, *Senate Hansard*, No. 1 of 2018, 7 February 2018, p. 429.

6 Senator Pauline Hanson, *Senate Hansard*, No. 1 of 2018, 7 February 2018, p. 430.

7 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, No. 9, 2017, 15 June 2017, p. 6610.

8 *Senate Hansard*, No. 12, 18 October 2017, pp.7977–7978.

That the Senate pass the bill.<sup>9</sup>

1.11 On 28 March 2018, the government responded to the committee's report into the 2017 bill and specifically addressed the aforementioned recommendations:

- Recommendation 1 – the government noted the recommendation, stating that amendments circulated by the government on 18 October 2017 proposed to set the English language requirement at a 'modest' level of English, rather than the higher 'competent' level of English. A 'modest' level of English is equivalent to an International English Language Testing System (IELTS) score of 5.
- Recommendation 2 – the government noted the recommendation, but provided no further information.
- Recommendation 3 – the government noted the recommendation and stated that amendments circulated by the government on 18 October 2017 proposed to commence the new residency requirement on 1 July 2018, rather than 20 April 2017.
- Recommendation 4 – the government noted the recommendation and also that the bill was discharged from the Senate notice paper on 18 October 2017.<sup>10</sup>

### **Overview of the key provisions of the bill**

1.12 The bill seeks to make changes to the *Australian Citizenship Act 2007* (Citizenship Act) and the *Migration Act 1958* (Migration Act). As noted above, this bill is significantly similar to the 2017 bill. As the 2017 bill was examined in detail in a previous inquiry, the committee has limited its examination in this inquiry to issues that have been the subject of continued debate or concern among submitters.

#### ***General residency requirement***

1.13 The key difference between this bill and the 2017 bill is the increase in the general residency requirement. Currently, a person must be living in Australia for four years, with the last 12 months as a permanent resident, prior to being eligible to apply for Australian citizenship.<sup>11</sup> The 2017 bill proposed to increase the residency period to require a person to have been a permanent resident for four years.<sup>12</sup> The current bill

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9 Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017*, 5 September 2017, p. vii.

10 Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, March 2018, pp. 2–3.

11 Subsection 22(1) of the Act; see also Explanatory Memorandum, p. 28.

12 See subsections 22(1), 22(1A) and 22(1B) of the 2017 bill.

would require a person to have been a permanent resident for eight years to satisfy the residency requirement and become eligible to apply for Australian citizenship.<sup>13</sup>

1.14 Other provisions of the bill are identical to the 2017 bill. The key provisions are outlined below.

### ***Requirements for Australian citizenship***

1.15 In addition to the increase to the general residency requirement, the bill proposes to introduce the following requirements for people seeking to apply for Australian citizenship:

- require applicants to undertake an English language test by a registered provider and achieve a level of 'competent' English as opposed to the current requirement of 'possesses a basic knowledge of the English language';<sup>14</sup>
- allow for the Minister to determine the eligibility criteria for sitting the citizenship test, which may relate to the fact that a person has previously failed the test, did not comply with one or more rules of conduct relating to the test, or was found to have cheated during the test;<sup>15</sup>
- require applicants to sign an Australian Values Statement, which is a determination made by the Minister and is not subject to disallowance;<sup>16</sup>
- require applicants to demonstrate their integration in the Australian community;<sup>17</sup>
- rename the 'pledge of commitment' the 'pledge of allegiance' and require a person over the age of 16 to pledge their allegiance to Australia and its people;<sup>18</sup> and
- allow for the *Australian Citizenship Regulation 2016* or an instrument under the Migration Act, to determine the information or documents that must be provided with a citizenship application.<sup>19</sup>

1.16 In line with the 2017 bill, these requirements would apply retrospectively from 20 April 2017, which was the date the government first announced proposed changes to the requirements for Australian citizenship.

### ***Eligibility requirements for children applying for Australian citizenship***

1.17 The bill also proposes changes to eligibility requirements for children applying for citizenship by:

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13 See paragraph 22(1)(a)(c) and subsections 22(1), 22(1A) and 22(1B) of the bill.

14 Item 41, paragraph 21(2)(e) of the bill.

15 Item 82, paragraph 23A(3)(3A) of the bill.

16 Item 119, subsections 46(5) and (6) of the bill.

17 Item 43, subparagraph 21(2)(f)(fa) and item 53, paragraph 21(9)(e) of the bill.

18 Item 108, proposed sections 32AA, 32AB, 32AC, 32AD of the bill. See also Item 133.

19 Item 118, after subsection 46(1A).

- 
- modifying the rules around the automatic acquisition of Australian citizenship so that, in a number of cases, a child born in Australia will no longer automatically acquire Australian citizenship after residing in Australia for 10 years;<sup>20</sup>
  - requiring all applicants, including applicants under 18 years of age, to pass a character test;<sup>21</sup> and
  - modifying provisions relating to applicants for citizenship by conferral who are under 18 years of age, including provisions relating to access to merits review.<sup>22</sup>

### *Additional powers conferred on the Minister*

1.18 The bill proposes to provide the Minister with the following powers:

- provide for the mandatory cancellation of approval of Australian citizenship if the Minister is satisfied that the person would be subject to prohibitions on approval related to identity, national security or criminal offences;<sup>23</sup>
- provide for the discretionary cancellation of approval of Australian citizenship under certain circumstances;<sup>24</sup>
- provide the Minister with the discretion to delay a person, for up to two years, from making the pledge of allegiance to become an Australian citizen on the basis of the applicant's identity having been assessed as a risk to security, criminal offences, or because the applicant would not meet the requirements for being approved as an Australian citizen;<sup>25</sup>
- provide the Minister with the discretion to revoke a person's Australian citizenship under certain circumstances;<sup>26</sup>
- confer on the Minister the power to make legislative instruments;<sup>27</sup>
- provide the Minister with the power to set aside decisions of the Administrative Appeals Tribunal concerning character and identity;<sup>28</sup>
- provide that certain decisions made by the Minister are not subject to merits review;<sup>29</sup> and

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20 Item 20, subsection 12(7) of the bill.

21 Item 51, subsection 21(5) of the bill.

22 Item 52, paragraph 21(6) of the bill.

23 See subsection 17A(1), 19DA(1), 25(1A) or 30A(1) of the bill

24 See subsections 17A(2), 19DA(2), 30A(2) or 25(1) of the bill.

25 Item 108, subsections 32AB(3) and 32AB(4) of the bill.

26 Item 111, section 33A of the bill.

27 Item 130, subsection 54(2) of the bill.

28 Item 127, sections 52A and 52B of the bill.

29 Item 126, at the end of section 52.

- allow the Minister, the Secretary or an officer to use and disclose personal information obtained under the Act.<sup>30</sup>

### ***Amendment to the Migration Act***

1.19 The bill also seeks to amend the Migration Act to allow the Minister, the Secretary or an officer to use personal information obtained under the Act or Regulation for the purposes of the Migration Act or the Migration Regulations. Additionally, subject to a specified exception, the bill allows the Minister, Secretary or an officer to disclose personal information obtained under the Migration Act or Migration Regulations to the Minister, the Secretary or an APS employee in the Department for the purposes of the Act and the Citizenship Regulation.<sup>31</sup>

### **Conduct of the inquiry**

1.20 In accordance with usual practice, details of this inquiry were advertised on the committee's website, including a call for submissions to be received by close of business 27 April 2018.<sup>32</sup> The committee also wrote directly to various individuals and organisations inviting them to make submissions.

1.21 During the 2017 inquiry, the committee received and processed approximately 14 000 submissions. Many of these submissions were either form letters (or 'campaign letters') or so brief as to only provide an indication of whether an individual supported the bill. In order to allow a large number of people to have their voice heard on the bill, and to do so as efficiently and effectively as possible, the committee decided it would be appropriate to conduct a survey to allow people the opportunity to express their views about the bill. The survey question was, 'Do you support the provisions of the Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018?' Survey participants could select 'Yes' or 'No'. The committee received 140 646 responses to the survey; of which 126 322 respondents (89.81 per cent) indicated that they did not support the bill and 14 324 (10.19 per cent) indicated support for the bill.

1.22 On 1 May 2018 the committee received correspondence from Senator Hanson, which the committee agreed to publish, expressing concerns relating to the legitimacy of the poll. Senator Hanson noted that 'a number of organizations, groups and individuals, some international...campaigned heavily to promote the no vote' through the use of 'social media and news websites'.<sup>33</sup> Senator Hanson further stated that she had evidence that certain individuals voted in the survey 'multiple times'.<sup>34</sup> The committee responded to Senator Hanson on 17 May 2018 noting that the Senate Public Information Office (SPIO) had 'advised the secretariat that the survey settings

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30 Item 128, proposed subsection 53A(3).

31 Explanatory Memorandum, p. 6.

32 The committee's website can be found at [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs).

33 Senator Pauline Hanson, correspondence received 1 May 2018.

34 Senator Pauline Hanson, correspondence received 1 May 2018.

were such that a respondent was able to complete the survey only once using a given internet browser and email address'.<sup>35</sup> The committee further noted that it was unable to 'determine exactly what percentage of responses came from outside Australia' and accepted 'evidence that foreign social media and related sites encouraged foreign nationals to access the online survey'.<sup>36</sup>

1.23 The committee also received 110 submissions, a number which were accepted as confidential submissions. A list of submissions is provided at appendix 1 and is available on the committee's webpage.

1.24 The committee held a public hearing in Canberra on 11 February 2019. Witnesses who appeared before the committee are listed at appendix 2. All Hansard transcripts are available on the committee's website.

1.25 In the course of this inquiry the committee had access to all evidence taken by the committee during its inquiry into the 2017 bill. Given the similarity between the two bills the committee intends to focus on the new evidence received during this particular inquiry. Consequently, this report should be read in combination with the report into the previous bill.

### **Financial implications of the proposed measures**

1.26 According to the Explanatory Memorandum, the financial impact of the proposed amendments 'is low'.<sup>37</sup>

### **Reports by other committees**

#### ***Senate Committee for the Scrutiny of Bills***

1.27 The Senate Standing Committee for the Scrutiny of Bills noted the similarity of the current bill to the 2017 bill, and that given 'the bill is substantively the same as the 2017 bill the committee restates its views as outlined in its *Scrutiny Digest No 7 of 2017* and *Scrutiny Digest No 8 of 2017*'.<sup>38</sup> In summary, these concerns included:

- broad discretionary power and broad delegation of legislative power in relation to the Minister being satisfied that a person 'has integrated into the Australian community'. Item 53 of the bill would provide the Minister the power to determine, by legislative instrument, the matters which the Minister may or must have regard to when determining whether a person has integrated into the Australian community;
- broad delegation of legislative power in relation to the Minister being satisfied that an applicant for citizenship 'possesses a basic knowledge of the English

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35 Senator the Hon. Ian Macdonald, Chair, Senate Standing Committee on Legal and Constitutional Affairs, correspondence sent 17 May 2018, pp. 1–2.

36 Senator the Hon. Ian Macdonald, Chair, Senate Standing Committee on Legal and Constitutional Affairs, correspondence sent 17 May 2018, p. 1.

37 Explanatory Memorandum, p. 7.

38 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 13.

language'. Item 53 provides the Minister the power to make a legislative instrument that determines the circumstances in which a person has competent English;

- the Minister's broad discretionary power in relation to proposed section 33A, which gives the Minister the discretion to revoke the citizenship of a person who had been registered as an Australian citizen by descent, under certain circumstances;
- broad discretionary power conferred on the Minister with respect to the revocation of a person's citizenship as a result of fraud or misrepresentation (proposed section 34AA);
- the Minister's determination of the Australian Values Statement and any requirements relating to the statement, being exempt from disallowance (proposed subsections 46(5));
- personal decisions of the Minister relating to citizenship being excluded from merits review (item 126, proposed subsection 52(4));
- the Minister's power (pursuant to proposed section 52A), to set aside certain decisions of the AAT where the Minister is satisfied that it would be in the public interest to do so;
- broad instrument-making power conferred on the Minister, pursuant to proposed subsection 54(2);
- retrospective application in relation to the acquisition of citizenship by birth; and
- retrospective application in relation to applications made on or after 20 April 2017.<sup>39</sup>

### ***Parliamentary Joint Committee on Human Rights***

1.28 The Parliamentary Joint Committee on Human Rights (PJCHR) noted that the bill 'is substantially the same as the 2017 bill'.<sup>40</sup> The PJCHR further noted that the 2017 bill contained a number of reintroduced measures that were 'previously contained in the Australian Citizenship and Other Legislation Amendment Bill 2014'.<sup>41</sup> The 2014 bill lapsed at the prorogation of the 44<sup>th</sup> Parliament and the 2017 bill was removed from the Notice Papers.

1.29 In relation to measures in the 2017 bill also contained in the 2014 bill, the committee drew 'various human rights implications' to the attention of the parliament.<sup>42</sup> These concerns can be found in *Report 8 of 2017*.<sup>43</sup>

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39 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 14 February 2018, 21 June 2017, pp. 2–19.

40 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, p. 101.

41 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, p. 101.

42 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, p. 103.

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1.30 The PJCHR further analysed two measures that were new to the 2017 bill. These measures regarded the requirement that applicants for Australian citizenship have 'competent' English and the requirement that the minister be satisfied that a person 'has integrated into the Australian community' in order for that person to be eligible for citizenship by conferral.<sup>44</sup> The PJCHR examination of these new measures can be found in *Report 10 of 2017*.<sup>45</sup>

1.31 The PJCHR reiterated the human rights concerns raised in relation to the 2017 bill, and further noted the human rights implications of the reintroduced measures in the proposed bill.<sup>46</sup>

### **Structure of this report**

1.32 This report consists of two chapters. In addition to this introductory chapter, chapter 2 discusses the key issues raised by submitters about the proposed amendments, as well as providing the committee's views and recommendation.

### **Acknowledgements**

1.33 The committee thanks all organisations and individuals that made submissions to this inquiry and all witnesses who attended the public hearing.

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43 Parliamentary Joint Committee on Human Rights, *Report 8 of 2017*, 15 August 2017, pp. 12–22.

44 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, pp. 104–105.

45 Parliamentary Joint Committee on Human Rights, *Report 10 of 2017*, 12 September 2017, pp. 35–53.

46 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, p. 105.



# Chapter 2

## Key issues

2.1 The committee acknowledges that this bill largely replicates the government's 2017 bill.<sup>1</sup> Discussion in this chapter will therefore be limited to the key issues that have been the subject of continued debate or concern among submitters and witnesses to this inquiry. The issues raised as part of the committee's inquiry into the 2017 bill are noted below, followed by a discussion of the main issues raised during this inquiry. These issues include:

- the increase to the general residency requirements from one year as a permanent resident to eight years as a permanent resident;
- the increase to the English language requirements from a 'basic' level of English to a 'competent' level of English;
- the introduction of a two-year ban on applicants who fail the citizenship test on three occasions;
- the retrospective application of the bill, operating from 20 April 2017;
- the introduction of an Australian Values Statement to be determined by the Minister by legislative instrument; and
- the additional powers provided to the Minister, particularly in relation the exclusion of certain decisions from merits review and the power to set aside decisions of the AAT.

2.2 This chapter concludes with the committee's views and recommendation on the bill.

### **The 2017 bill**

2.3 In addition to the issues that will be discussed below, the committee reported concerns relating to the following issues in its inquiry into the 2017 bill:

- The pledge of allegiance—the renaming of the 'pledge of commitment' to the 'pledge of allegiance'; the requirement that persons over the age of 16 make the pledge; and the additional powers provided to the Minister to issue a written determination to prevent a person making the pledge for up to two years under certain circumstances.
- Integration within the Australian community—the introduction of a new criterion that the Minister must be satisfied that the person has integrated into the Australian community; and the Minister's power to determine, by legislative instrument, 'the matters to which the Minister may or must have

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1 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, September 2017.

regard to when determining whether a person has integrated into the Australian community'.<sup>2</sup>

- Citizenship by birth—limiting the automatic acquisition of Australian citizenship by birth so that, under certain circumstances, a child born in Australia will not automatically acquire citizenship at 10 years of age.
- Good character test—removing the age limit on those required to pass the good character test so that it is extended to children under the age of 18 years.

2.4 The above concerns are considered in more detail in the committee's report into the 2017 bill.<sup>3</sup>

### **General residence requirements**

2.5 The bill seeks to change the residency requirements a person must satisfy before they are eligible to apply for Australian citizenship. Currently, an individual must live in Australia for four years, with the last 12 months as a permanent resident, before they are eligible to apply for citizenship.<sup>4</sup> The 2017 bill proposed to amend the residency period from one year as a permanent resident to four years. This bill proposes to increase the residency requirement by requiring an individual be a permanent resident for eight years.<sup>5</sup>

2.6 The Explanatory Memorandum (EM) notes that a residence requirement is 'an objective measure of an aspiring citizen's association with Australia'.<sup>6</sup> The EM further states that the extended period:

...allows a person the opportunity to gain an understanding of shared Australian values, and the commitment they must make to become an Australian citizen. It also allows them time to integrate into the Australian community and acquire English language skills required for life in Australia as a successful citizen. Extending the general residency period strengthens the integrity of the citizenship programme by providing more time to examine a person's character as a permanent resident in Australia.<sup>7</sup>

2.7 The National Consultation on Citizenship, as referenced in the EM, recommended that the permanent residency period should be increased to four years to achieve the general residency requirement. The committee notes that this is contrary to the proposed eight year residency period stipulated by this bill.<sup>8</sup>

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2 Schedule 1, part 1, item 53, proposed paragraph 21(9)(e).

3 Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures Bill 2017 [Provisions]*, September 2017.

4 Subsection 22(1) of the Act; see also Explanatory Memorandum, p. 28.

5 See paragraph 22(1)(a)(c) and subsections 22(1), 22(1A) and 22(1B) of the 2017 bill.

6 Explanatory Memorandum, p. 28.

7 Explanatory Memorandum, p. 28.

8 Explanatory Memorandum, p. 28.

2.8 Several submitters reiterated concerns outlined during the 2017 bill inquiry in relation to the residency requirement. These concerns were raised by immigration, refugee and multicultural advocacy groups, as well as individuals concerned by the impact of the increased requirements on their eligibility to apply for Australian citizenship.<sup>9</sup>

2.9 A central concern among submitters was the potential for the increased residency requirement to disenfranchise prospective citizens and hinder their ability to settle into Australian society. Dr Christopher Lemoh, a Melbourne-based physician, stated:

Increasing the duration of required residency for permanent residents to apply for citizenship will delay the political enfranchisement and participation in civic affairs for a substantial number of people who wish to reside in a and contribute to Australian society. This will hinder, rather than build, community cohesion and equality, making Australian civic and political institutions less representative of Australian society.<sup>10</sup>

2.10 Similar views were expressed in other submissions.<sup>11</sup> For example, Settlement Services International submitted that increasing the time to attain citizenship could 'delay [a person's] permanent settlement and sense of belonging to Australia, and potentially impede their long term contribution to their new country'.<sup>12</sup> The Settlement Council of Australia stated that the proposed bill would be 'contrary to research which demonstrates that the sooner a migrant is given access to citizenship in their new home, the sooner, and better, they are able to settle and become contributing members of [the] community to their full potential'.<sup>13</sup>

2.11 Access Community Services Ltd (Access), a settlement provider for displaced individuals, referenced 2016 data from the Australian Bureau of Statistics, which showed a correlation between migrants receiving citizenship and lower unemployment rates. This data indicated that migrants with Australian citizenship had an unemployment rate of 3.3 per cent.<sup>14</sup> This was notably lower than both temporary residents (8.6 per cent) and recent migrants on a permanent visa (8.8 per cent).<sup>15</sup>

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9 See for example, Name withheld, *Submission 1*, p. 4; Name withheld, *Submission 2*, p. 1; Name withheld, *Submission 7*, p. 1; Name withheld, *Submission 9*, p. 1; Mr David Ingram, *Submission 15*, p. 1; Name withheld, *Submission 60*, p. 1; MYAN Australia, *Submission 24*, p. 4; Chinese Australian Services Society Limited, *Submission 27*, pp. 1–2; Refugee Advice and Casework Service, *Submission 34*, pp. 2–3.

10 Dr Christopher Lemoh, *Submission 5*, p. 1.

11 Settlement Services International, *Submission 8*, p. 2; Settlement Council of Australia, *Submission 11*, p. 1; Harmony Alliance, *Submission 13*, p. 2.

12 Settlement Services International, *Submission 8*, p. 3.

13 Settlement Council of Australia, *Submission 11*, p. 1.

14 Access Community Services Ltd, *Submission 23*, p. 2.

15 Access Community Services Ltd, *Submission 23*, p. 2.

2.12 Access further noted that longer waiting periods to receive citizenship caused 'distress, anxiety, feelings of mistrust and instability for individuals waiting on citizenship'.<sup>16</sup>

2.13 Harmony Alliance explained the important role that obtaining citizenship plays in improving settlement outcomes for new migrants and noted the detrimental effects that delaying citizenship may have:

Citizenship plays a key role in boosting the integration of new migrants. Key conditions for positive settlement outcomes include labour market integration, social inclusion, health, civic engagement and host society opinions of immigration. Citizenship has been shown to be positively associated with better labour market outcomes, including employment rates, job profiles and wages, particularly for the most disadvantaged of migrants with the lowest chances of employment. Conferring citizenship invites migrants to invest in their life in Australia, both socially and economically, and improves their engagement in public life. This engagement in public and economic life, increases migrants voice and visibility, which in turn boosts understanding of and positive attitudes towards immigration by the host nation – a virtuous cycle for better integration. The alternative, if this bill is passed, risks creating protracted situations of second-class migrants, disenfranchised and with little incentive to invest in Australian society.<sup>17</sup>

2.14 Some submissions further stated that the increase in the residency requirement from four years to eight years would only make it more difficult for new migrants to integrate into Australian society.<sup>18</sup> Professor Helen Irving, of the Sydney Law School, questioned whether an eight year permanent residency qualifying period would encourage a greater commitment to Australian values:

Social cohesion and a shared commitment to Australian values are more likely to be enhanced by being a citizen than by a long period of exclusion from citizenship. A period of eight years' permanent residency before an individual can even apply for citizenship will leave many immigrants in a 'limbo', excluded, as non-citizens, from full membership and participation. Among them will be many (almost certainly a majority) who are strongly committed to Australia, and who are contributing to Australia through work and community activities. Such a long period has the potential to encourage detachment or even disaffection, as much as, and probably more than, commitment to Australia.<sup>19</sup>

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16 Access Community Services Ltd, *Submission 23*, p. 2.

17 Harmony Alliance, *Submission 13*, p. 2.

18 Name withheld, *Submission 7*, p. 2; Community of South Sudanese and Other Marginalized Areas in NSW, *Submission 26*, p. 1; Chinese Australian Services Society Limited, *Submission 27*, pp. 1–2; Professor Kim Rubenstein, Private Capacity, *Committee Hansard*, 11 February 2019, p. 19; Mrs Kenny Duke, Client Services Manager, Access Community Services Limited, *Committee Hansard*, 11 February 2019, p. 33; Australian Assyrian Lawyers, *Submission 30*, p. 4.

19 Professor Helen Irving, *Submission 14*, pp. 1–2.

2.15 Professor Kim Rubenstein, of the ANU College of Law, similarly questioned the increased residency requirement:

I don't think those extra four years gain any advantage that you don't already have within four years of being an active member [in Australian society]. To that extent you are creating a barrier that may be counterproductive in the sense that you're making those people feel less included by effectively recommending to double the current residence. I don't see any evidence to show that the current requirement is not enabling people to be assessed in terms of their security concerns, and certainly four years is a substantial period of time in any person's life in relation to reflecting on their sense of commitment and their desire to become an Australian citizen'.<sup>20</sup>

2.16 Professor Irving acknowledged that the extended residency period would 'permit deportation of non-citizens who have committed crimes during such a period, but who under the current law might have acquired citizenship'.<sup>21</sup> Professor Irving further posited, however, that this scenario only applies to a 'tiny number of individuals' and that it is irrational 'to amend the law to restrict citizenship opportunities for all immigrants in order to deal with the actions of a handful'.<sup>22</sup>

2.17 Several refugee and multicultural advocacy groups noted their concerns about the effects of the increased residency requirements on refugees and displaced individuals.<sup>23</sup> These included concerns regarding the delay in allowing refugees to start a new life in Australia as well as increasing the period of time before refugees would be allowed to reunite with their families.<sup>24</sup> The Refugee Council of Australia noted that the eight years permanent residency period would have a 'significant impact' on refugees who arrive in Australia by boat who may have to wait up to 18 years to receive citizenship under the proposed bill as they are currently granted a Temporary Protection Visa rather than a permanent visa.<sup>25</sup> The Australian Christian Lobby further noted that 'it is unnecessarily harsh to continue to extend the time for which [refugees] can apply for citizenship'.<sup>26</sup>

2.18 Anglicare Sydney, noted its 'in principle' support for steps to 'strengthen the integrity of Australian citizenship and further promote an inclusive understanding of

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20 Professor Kim Rubenstein, private capacity, *Proof Committee Hansard*, 11 February 2019, p. 19.

21 Professor Helen Irving, *Submission 14*, p. 2.

22 Professor Helen Irving, *Submission 14*, p. 2.

23 Refugee Communities Advocacy Network, *Submission 20*, p. 5; Refugee Council of Australia, *Submission 21*, pp. 3–5; MYAN Australia, *Submission 24*, p. 4; Australian Assyrian Lawyers, *Submission 30*, p. 4; Australian Christian Lobby, *Submission 93*, p. 2.

24 Refugee Communities Advocacy Network, *Submission 20*, p. 5.

25 Refugee Council of Australia, *Submission 21*, p. 1.

26 Australian Christian Lobby, *Submission 93*, p. 2.

citizenship as a common bond, founded on shared values, rights and responsibilities'.<sup>27</sup> However, it similarly raised concerns that 'increasing the residence requirement and the English language threshold will adversely impact new Australians who have arrived from refugee, humanitarian and non-skilled family visa backgrounds'.<sup>28</sup>

2.19 Some submissions expressed support for the eight year permanent residency requirement.<sup>29</sup> A number of other submissions argued that the proposed residency requirements were too lenient and provided alternative arrangements to the eight year requirement proposed by the bill. Mr Phil Hayes, for example, suggested that immigrants should be permanent residents for '10 years before being eligible for citizenship'.<sup>30</sup> Mr Brian Squibb, meanwhile, noted that individuals of 'good character' should only be eligible for citizenship after a period of 'not less than 9 years'.<sup>31</sup> Other suggestions ranged from increasing the requirement from a 'minimum period of five years' to up to 20 years.<sup>32</sup>

2.20 Stricter measures for prospective citizens in regards to criminality were also frequently raised. Some submitters suggested revoking rights to citizenship in situations where permanent residents are found guilty of a criminal offence.<sup>33</sup> Other submitters proposed the revocation of citizenship in situations where recent citizens commit a criminal offence.<sup>34</sup> Mr William Dai noted that the citizenship process should take into account whether an individual is a 'risk to security' or 'a proven [c]riminal', and the Australian government should have the power to revoke citizenship in cases where recent citizens have committed a crime.<sup>35</sup> Ms Sue Barbi similarly noted 'citizenship should be able to be revoked, within reason, if the person disrespects [Australian] laws, commits a criminal offence or engages in conduct unbecoming'.<sup>36</sup>

2.21 At the public hearing in Canberra, the Hon Gary Hardgrave noted that there is a view that prospective citizens should have to wait longer before becoming eligible for citizenship. However, Mr Hardgrave further stated that competence and effort should play a role in the citizenship process, noting that if an applicant is 'not

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27 Anglicare Sydney, *Submission 12*, p. 2.

28 Anglicare Sydney, *Submission 12*, p. 2.

29 Ms Angela Walker, *Submission 53*, p. 1; Mr Dan Gill, *Submission 63*, p. 1; Mr Michael Taylor, *Submission 75*, p. 1.

30 Mr Phil Hayes, *Submission 82*, p. 1.

31 Mr Brian Squibb, *Submission 48*, p. 1.

32 See for examples: Mr Wayne Neilson, *Submission 50*, p. 1; Mr William Dai, *Submission 83*, p. 1; Imam Mohammad Tawhidi, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 2.

33 See for example: Mr Vern Hughes, *Submission 96*, p. 3.

34 See for example: Mr Phil Hayes, *Submission 82*, p. 1; Mr Ange Kenos, *Submission 94*, p. 1.

35 Mr William Dai, *Submission 83*, p. 1.

36 Ms Sue Barbi, *Submission 85*, p. 1.

competent after they've been here for eight years, if they're not competent after they've been here for two years, we still have the same problem'.<sup>37</sup> Instead, Mr Hardgrave suggested that Australians should look towards Canada as a possible public policy comparison, noting that 'Canada demands of its new citizens that they undertake a citizenship course.... That can take anything up to five years to complete'.<sup>38</sup> He further noted that it is essential that citizenship be viewed as a reward for effort rather than an entitlement. If this consideration is central to the citizenship process, Mr Hardgrave noted, 'we can impose whatever [residency requirement] rule we like: two, five, seven, nine [years]—whatever'.<sup>39</sup>

2.22 The committee notes that the proposed bill does not implement the government's amendments circulated on 18 October 2017, which proposed to commence the new residency requirements from 1 July 2018, rather than 20 April 2017.<sup>40</sup> The committee is also concerned that to apply the proposed residency requirement retrospectively, from 20 April 2017, would result in a group of applications having been decided based on the current citizenship requirements. It is not clear the effect of the bill would have on this group of applications.

2.23 The committee reiterates the importance of Recommendation 3 from the 2017 bill report, that the government 'consider introducing some form of transactional provisions for those people who held permanent residency visas on or before 20 April 2017 so that the current residency requirements apply to this cohort of citizenship applicants'.<sup>41</sup>

### **English language requirements**

2.24 The bill seeks to amend the English language requirements so that most applicants must provide evidence of 'competent' English language proficiency before they can make a valid application for citizenship.<sup>42</sup> As noted in the 2017 bill report, 'competent English' is not defined in the Act. Additionally, the EM notes that the Minister may make a legislative instrument that determines the circumstances by

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37 The Hon Gary Hardgrave, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 9.

38 The Hon Gary Hardgrave, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 9.

39 The Hon Gary Hardgrave, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 9.

40 Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, March 2018, p. 3.

41 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, p.vii.

42 Explanatory Memorandum, p. 2. Exemptions to the English language requirement may apply where a person has a permanent or enduring physical or mental incapacity (see item 44, subparagraph 21(3)(d)(ii), and pp. 24–25 of the EM).

which a person has competent English. The EM further states that '[t]his determination will enable the Minister to determine, for example, that a person has competent English where the person has sat an examination administered by a particular entity and the person has achieved at least a particular score'.<sup>43</sup>

2.25 The current English language requirement states that an applicant must 'possess a basic knowledge of the English language'.<sup>44</sup> During the 2017 inquiry, officials from the Department of Immigration and Border Protection explained that this is the equivalent on an International English Language Testing System (IELTS) 4 test score.<sup>45</sup> The proposed competent English language requirement, by contrast, is the equivalent of an IELTS 6 test score.<sup>46</sup>

2.26 The committee noted in the 2017 report that English-language competency should 'not be so high as to disqualify from citizenship many Australians who...have proven to be valuable members of the Australian community'.<sup>47</sup> In response, amendments to the bill, circulated on 18 October 2017, proposed to set the English language requirement to 'modest', the equivalent of an IELTS 5 test score.<sup>48</sup>

2.27 At the hearing, Mr Richard Johnson, First Assistant Secretary of the Department of Home Affairs, clarified the differences between an IELTS 5 and IELTS 6 test score. He noted that IELTS 5 is generally described as a modest user. This entails that:

The test taker has a partial command of the language and copes with overall meaning in most situations, although they are likely to make many mistakes. They should be able to handle basic communication in their own field.<sup>49</sup>

2.28 By contrast, an IELTS 6 test score is the equivalent to university level English and indicates that the individual:

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43 Explanatory Memorandum, p. 26.

44 Item 41, paragraph 21(2)(e) of the bill.

45 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, p. 19.

46 Explanatory Memorandum, p. 2.

47 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, p. 46.

48 Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, March 2018, p. 2.

49 Mr Richard Johnson, First Assistant Secretary, Department of Home Affairs, *Proof Committee Hansard*, 11 February 2019, p. 37.

...has an effective command of the language despite some inaccuracies, inappropriate usage and misunderstandings. They can use and understand fairly complex language, particularly in familiar situations.<sup>50</sup>

2.29 An IELTS 4 test score states that:

The test taker's basic competence is limited to familiar situations. They frequently show problems in understanding and expression. They are not able to use complex language.<sup>51</sup>

2.30 The committee, as it did in its inquiry into the 2017 bill, agrees that the required language standard should be higher than IELTS 4. The committee is conscious, however, that a standard of IELTS 6 may be unrealistic.

### ***Opposition to the bill***

2.31 The 2017 bill report raised concerns that the proposed IELTS 6 proficiency was higher than the literacy rates of many Australians. Evidence from the Australian Council of TESOL Associations noted that 'more than one quarter of the general Australian population...were below the [proposed] IELTS 6 level'.<sup>52</sup>

2.32 Similar concerns were reiterated during this inquiry, with some submissions highlighting the perceived unfairness of having an English test that some long-term Australian citizens would struggle to meet.<sup>53</sup> As Professor Rubenstein noted, 'we just have to be wary that the standard is not one that most Australian born and educated individuals may not necessarily pass themselves'.<sup>54</sup> The Australian Christian Lobby recommended that a functioning understanding of English is important for immigrants, however 'the tests should not be so difficult that many Australian born and educated people would fail it'.<sup>55</sup>

2.33 The Victorian Foundation for Survivors of Torture Inc. questioned whether 'competent' English requirements were necessary, stating that the proposed language requirements are significantly stricter than comparable countries such as Canada, the United Kingdom, the United States of America and New Zealand.<sup>56</sup>

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50 Mr Richard Johnson, First Assistant Secretary, Department of Home Affairs, *Proof Committee Hansard*, 11 February 2019, p. 37.

51 International English Language Testing System, *How is IELTS scored*, <https://www.ielts.org/about-the-test/how-ielts-is-scored> (accessed 6 March 2019).

52 Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, March 2018, p. 21.

53 Refugee Council of Australia, *Submission 21*, p. 6, Professor Kim Rubenstein, Private Capacity, *Committee Hansard*, 11 February 2019, p. 18; Asylum Seeker Research Centre, *Submission 36*, p. 7.

54 Professor Kim Rubenstein, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 18.

55 Australian Christian Lobby, *Submission 93*, p. 3.

56 Victorian Foundation for Survivors of Torture Inc, *Submission 37*, p. 2.

2.34 The provision of quality English language education services was further discussed during the inquiry process. The Multicultural Youth Advocacy Network (MYAN) noted that increased English language proficiency standards should be matched by adequate language support for prospective citizens.<sup>57</sup> To ensure this infrastructure exists, MYAN recommended 'the development of nationally consistent definitions, measurements and costs structures for English language provision to newly arrived people'.<sup>58</sup> Access recommended that a 'panel of linguistic, academic and migration experts' should 'develop a language proficiency test or any [future] language measurement tools'.<sup>59</sup> Professor Rubenstein further discussed the importance of English language training, noting:

...perhaps more attention should be put, as a matter of settlement expenditure, into ensuring that those individuals have better access to English language training.<sup>60</sup>

2.35 The committee also received a significant body of evidence regarding whether tertiary level English was important for an individual to fully participate and integrate into the Australian community. Professor Helen Irving argued that a 'lack of mastery of English' does not necessarily result in an inability to contribute to Australia.<sup>61</sup>

2.36 Some submissions noted that proficiency in English may be an important indicator in the successful settlement and integration of migrants.<sup>62</sup> Settlement Services International (SSI), for example, noted that:

English language skills are an advantage for economic and social engagement, and newly arrived migrants consistently nominate a desire to improve their English as one of their first priorities for starting a new life in Australia.

2.37 However, SSI went on to state that;

...in addition to English skills, migrants' opportunities and support in their new country are also strong predictors of success, and migrants who do not have strong English language skills in the initial years after arrival can and do achieve strong settlement outcomes and contributions to Australia. English language proficiency can be acquired, and the bilingual capacity of prospective citizens is a national asset.<sup>63</sup>

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57 MYAN Australia, *Submission 24*, p. 6.

58 MYAN Australia, *Submission 24*, p. 6.

59 Access Community Services Ltd., *Submission 23*, p. 4.

60 Professor Kim Rubenstein, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 17.

61 Professor Helen Irving, *Submission 14*, p. 2. Dr Peter Kim, *Submission 17*, reiterated these concerns.

62 See for examples: Settlement Services International, *Submission 8*, p. 3; The Victorian Foundation for Survivors of Torture Inc, *Submission 37*, p. 2

63 Settlement Services International, *Submission 8*, p. 3.

2.38 The committee received extensive evidence regarding whether obtaining tertiary level (IELTS 6) English would be achievable for many migrants. The Refugee Communities Advocacy Network NSW (RCAN) opposed the proposed English proficiency requirements, noting that 'tertiary English language level is both unrealistic and unnecessary and is based on an assumption that English proficiency level is the benchmark for Australian-ness'.<sup>64</sup> Numerous other submissions made similar arguments.<sup>65</sup>

2.39 Access further stated that whilst English is 'advantageous when navigating public, social and cultural institutions as well as daily life' there are 'significant contributions from a vast array of Australian citizens who do not possess "competent" English at the time of citizenship application'.<sup>66</sup> This includes 'business owners, trade workers, factory staff, and other jobs that may be less desirable for Australians'.<sup>67</sup>

2.40 Evidence from witnesses also raised concerns that increasing English language requirements to an IELTS 6 level risked creating societal divides and a 'new class of people who would never be able to become an Australian citizen'.<sup>68</sup> The Refugee Council of Australia stated that 'such exclusion undermines rather than fosters social cohesion'.<sup>69</sup> Professor Rubenstein noted that the proposed language requirements make 'a particular group less likely to become full citizens' and 'can have a disruptive effect in terms of social cohesion in the sense of membership and identity of connection'.<sup>70</sup>

2.41 The ability of recent migrants with low-level English to understand English news sources and thereby understand and fully participate in the democratic process was discussed during the hearing.<sup>71</sup> Mr Al-Khafaji, from the Federation of Ethnic Communities' Councils of Australia, noted that news and other materials are regularly translated into different languages through broadcasters such as SBS.<sup>72</sup> Professor Rubenstein also noted the widespread availability of foreign language newspapers.<sup>73</sup>

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64 Refugee Communities Advocacy Network, *Submission 20*, p. 1.

65 See for examples: Refugee Legal, *Submission 32*, pp. 9–10; Name Withheld, *Submission 4*, p. 1.

66 Access Community Services Ltd., *Submission 23*, p. 3.

67 Access Community Services Ltd., *Submission 23*, p. 3.

68 Name Withheld, *Submission 1*, p. 1.

69 Refugee Council of Australia, *Submission 21*, p. 6.

70 Professor Kim Rubenstein, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 15.

71 Senator the Hon. Ian Macdonald, *Proof Committee Hansard*, 11 February 2019, pp. 16–17 and p. 28.

72 Mr Mohammad Al-Khafaji, Federation of Ethnic Communities' Councils of Australia, *Proof Committee Hansard*, 11 February 2019, p. 28.

73 Professor Kim Rubenstein, Private Capacity, *Proof Committee Hansard*, 11 February 2019, pp. 16–17.

2.42 A number of inquiry participants also highlighted the effects of the proposed English requirements on women and refugees. Harmony Alliance noted that the increased requirements would have an undue impact on female migrants, stating that women often delay learning English in order to assist their children or family settle in Australia.<sup>74</sup> Furthermore, they noted that the Adult Migrant English Program (AMEP) does not sufficiently account for competing priorities for newly arrived migrants such as caring for family members, which disproportionately affects women.<sup>75</sup> This view was supported by Access who further noted that women often 'face additional barriers to learning' including 'laws against women obtaining education, prioritising children and pre-arrival torture and trauma, including surviving sexual violence'.<sup>76</sup>

2.43 Numerous submissions noted that the English requirements would unduly discriminate against refugees and humanitarian visa entrants.<sup>77</sup> Some submitters argued that a 'competent' English standard would lead to some refugees and humanitarian visa applicants never being eligible for Australian citizenship.<sup>78</sup> Refugee Legal noted an ANU study which showed that 'zero percent of AMEP attendees who completed 500 hours of [English language] training between 2004 and 2012 reached the equivalent of IELTS 6'.<sup>79</sup> The study further noted that a significant number of these people would never satisfy the English language requirements of IELTS 6 and therefore never receive citizenship under the proposed requirements.

2.44 The RCAN also expressed opposition to the proposed language requirements:

Our community members have been forcibly displaced from their homes due to unrest and conflict...Barring them from getting their citizenship by way of high level English testing is in fact alienating them and moving them further away from embracing Australia.<sup>80</sup>

2.45 The Community of South Sudanese and Other Marginalized Areas in NSW similarly noted:

This requirement is likely to impact adversely on many refugees from the from the South Sudanese community. Many refugees can find it difficult to attain even a basic level of English due to a complex interaction of factors. South Sudanese refugees have experienced limited and disrupted formal

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74 Harmony Alliance: Migrant & Refugee Women for Change, *Submission 13*, p. 1.

75 Harmony Alliance: Migrant & Refugee Women for Change, *Submission 13*, p. 1.

76 Access Community Services Ltd., *Submission 23*, p. 4.

77 See for examples: Australian Assyrian Lawyers, *Submission 30*, pp. 4–5, Refugee Communities Advocacy Network, *Submission 20*; Refugee Council of Australia, *Submission 21*, p. 4; Community of South Sudanese and Other Marginalized Areas in NSW, *Submission 26*, p. 2; Refugee Legal, *Submission 32*, pp. 9–11.

78 Refugee Communities Advocacy Network, *Submission 20*, p. 3; Community of South Sudanese and Other Marginalized Areas in NSW, *Submission 26*, p. 2.

79 Refugee Legal, *Submission 32*, p. 10

80 Refugee Communities Advocacy Network, *Submission 20*, p. 1.

education due to the effects of war and dislocation, and as a result may struggle to learn English.<sup>81</sup>

### ***Support for the bill***

2.46 Numerous submissions noted that a competent understanding of the English language is an important prerequisite for integration into the Australian community.<sup>82</sup> Mr Marcus Foo, an immigrant to Australia, expressed his support for the bill, particularly noting the important role learning English played in his integration into Australia.<sup>83</sup> Imam Mohammad Tawhidi posited that the length of time to acquire citizenship be a 'minimum period of five years' and that applicants should undergo tests throughout the application process 'at least annually' in English language proficiency as well as 'legal and citizenship duties of an Australian'.<sup>84</sup> Imam Tawhidi suggested these language and citizenship tests would 'be more than adequate' for a migrant to demonstrate their intention to assimilate into Australian society.<sup>85</sup>

2.47 When questioned about the time taken to attain English-language proficiency, Imam Tawhidi stated that with teaching services, tutors and the internet he believed it would take 'a maximum of six months to be able to construct at least a few sentences' and 'a whole year to be able to speak freely'.<sup>86</sup>

2.48 Other submissions noted their concerns that low English proficiency may impact on the ability of prospective citizens to contribute to Australian society. Central amongst these concerns was that immigrants with basic levels of English may struggle to become employable.<sup>87</sup> One submission noted that potential citizens must have English of a 'sufficiently high standard to enable accurate, proficient communication and proper employment in a normal English speaking environment'.<sup>88</sup>

2.49 Other issues raised by supporters of the bill included concerns that individuals without work may become reliant on the welfare system<sup>89</sup>, low English skills

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81 Community of South Sudanese and Other Marginalized Areas in NSW, *Submission 26*, p. 2.

82 See for example: Mr Marcus Foo, *Submission 38*; Mr William de Vries, *Submission 39*; Ms Barbara Lane, *Submission 43*, p. 1; Mr Phil Miles, *Submission 89*; Ms Angela Walker, *Submission 53*, p. 1; Ms Daniela Ruegg, *Submission 57*, p. 1; Mr Dan Gill, *Submission 63*, p. 1; Mr Ben Vanderschaaf, *Submission 74*, p. 1.

83 Mr Marcus Foo, *Submission 38*, p. 1.

84 Imam Mohammad Tawhidi, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 2.

85 Imam Mohammad Tawhidi, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 2.

86 Imam Mohammad Tawhidi, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 3.

87 Name withheld, *Submission 69*, p. 1; Mr Desley Brown, *Submission 42*, p. 1; Mr Seraphim Larin, *Submission 46*, p. 1; Mr Dan Gill, *Submission 63*, p. 1.

88 Mr Phil Hayes, *Submission 82*, p. 1.

89 See for example: Mr Damien Mason, *Submission 45*, p. 1; Mr Dean Godfrey, *Submission 47*, p. 1.

increased the likelihood of racial 'enclaves'<sup>90</sup>, and that stricter citizenship measures would be a means of reducing the current immigration intake and alleviating pressures on national infrastructure.<sup>91</sup>

2.50 The committee reiterates its concern that the proposed bill would continue to disqualify many residents from Australian citizenship. It further notes that this bill does not take into consideration either the original recommendation or subsequent government response from the 2017 bill inquiry.

### **Citizenship Test**

2.51 In addition to the proposed English language requirements, the bill proposes to introduce a new citizenship test. Currently, the Minister can make a determination as to the eligibility criteria for sitting the test. Proposed subsection 23(3A) provides some examples of what this determination may cover, including that the eligibility criteria may relate to the fact that a person has previously failed the test, did not comply with one or more rules of conduct relating to the test, or was found to have cheated on the test.<sup>92</sup> Proposed subsection 23(3A) further notes that 'a person who fails the citizenship test three times is not eligible to re-sit the citizenship test'.<sup>93</sup> During the 2017 inquiry, the Department of Immigration and Border Protection confirmed that in a situation where an individual fails the test three times, they would be barred for two years from making a further citizenship application.<sup>94</sup>

2.52 Access expressed concern with the test generally, stating that 'using test scores to represent indicators of Australian allegiance is problematic'.<sup>95</sup>

2.53 Australian Assyrian Lawyers similarly noted their concern about the proposed changes to the citizenship test stating that individuals with limited access to education and training would find it hard to 'acquire and retain information required for the new difficult citizenship test'.<sup>96</sup> They further noted that the two-year bar on retaking the test would 'cause further disadvantage...anxiety and stress that will not help them integrate into society'.<sup>97</sup>

2.54 The committee notes recommendation 2 of the 2017 bill report which states, 'That the Government reconsider the imposition of a two-year ban on applications for

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90 See for example: Mr Dudley Roberts, *Submission 41*, p. 1 and Mr William de Vries, *Submission 39*, p. 1.

91 See for example: Mr Damien Mason, *Submission 45*, p. 1 and Mr Vern Hughes, *Submission 96*, p. 1.

92 Item 82, paragraph 23A(3)(3A) of the bill.

93 Explanatory Memorandum, p. 36.

94 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, September 2017, p. 24.

95 Access Community Services Ltd., *Submission 23*, p. 6.

96 Australian Assyrian Lawyers, *Submission 30*, p. 5.

97 Australian Assyrian Lawyers, *Submission 30*, p. 5.

citizenship following three failed attempts of the citizenship test, and consider other arrangements that allow additional tests on a cost-recovery basis that would deter less-genuine applicants'.<sup>98</sup>

### **Retrospectivity**

2.55 Identical to the 2017 bill, items 136, 137 and 139 of the bill outline that provisions are to apply retrospectively from 20 April 2017.<sup>99</sup>

2.56 During the 2017 bill inquiry concerns were raised over the retrospectivity of the bill. The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bill Committee) noted that provisions that apply retrospectively run contrary to basic values of the rule of law and that the proposed legislation 'may have a detrimental impact on individuals'.<sup>100</sup> The Scrutiny of Bills Committee subsequently sought further information from the Minister regarding the number of persons likely to be affected by these provisions and whether applications made on or after 20 April 2017, but before the passage of the bill, would not meet the criteria for eligibility for citizenship.<sup>101</sup>

2.57 The Minister, in his response, noted that as of 16 July 2017, over 47 000 people had lodged an application on or after 20 April 2017 and that nearly 26 000 (54 per cent) would not meet the new residence requirements.<sup>102</sup> The Minister further noted that in relation to the competent English requirement and integration requirement that the Department was unable to determine the number of people likely to be affected.<sup>103</sup>

2.58 Responding to the Minister, the Scrutiny of Bills Committee reiterated its concerns and noted that it did not believe that the retrospective application of the bill was justified considering the detrimental effect it would have on a large number of individuals.<sup>104</sup>

2.59 In response to these concerns, the committee made the following recommendation:

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98 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, September 2017, p. 46.

99 Explanatory Memorandum, pp. 65, 66–67 and 68.

100 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, p. 12.

101 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, 21 June 2017, p. 19.

102 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 4.

103 Mr Dutton, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 5.

104 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 8 of 2017*, 9 August 2017, p. 60.

That the Government consider introducing some form of transitional provisions for those people who held permanent residency visas on or before 20 April 2017 so that the current residency requirements apply to this cohort of citizenship applicants.<sup>105</sup>

2.60 On 28 March 2018 the government responded to the committee's report addressing the above recommendation. The government noted:

Amendments circulated by the Government on 18 October 2017 propose to commence the new residency requirement on 1 July 2018. A person who makes an application for citizenship before 1 July 2018 would be subject to the current residency requirement.<sup>106</sup>

2.61 The committee notes that the current bill does not take into account the recommendation from the 2017 report or the subsequent government proposal to commence new residency requirements on 1 July 2018.

2.62 Several submissions raised concerns about retrospectivity.<sup>107</sup> For example, the Bar Association noted that, in regards to the number of applicants adversely affected by the retrospective provisions, the figure is likely to have significantly increased since the Minister provided the aforementioned statistics. This is due to the significant time that has elapsed since the figures were released, as well as the proposal to increase the residency requirement to eight years.<sup>108</sup> The Kaldor Centre echoed these concerns.<sup>109</sup>

2.63 The committee also shares the concerns of the Bar Association and the Kaldor Centre regarding the likelihood that the number of individuals likely to be affected by the proposed retrospectivity measures is far greater than it was during the 2017 inquiry.

2.64 The committee further notes that retrospectivity may affect individuals who have applied for citizenship on, or after 20 April 2017, and have subsequently been granted citizenship based on the current citizenship requirements.

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105 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, p. 46.

106 Australian Government, *Australian Government response to the Senate Legal and Constitutional Affairs Legislation Committee report: Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, March 2018, p. 3.

107 Name withheld, *Submission 2*, p. 1; Name withheld, *Submission 9*, p. 1; Bar Association of Queensland, *Submission 18*, pp. 4–5; Refugee Council of Australia, *Submission 21*, pp. 15–16; Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law, *Submission 23*, p. 16.

108 Bar Association of Queensland, *Submission 18*, p. 5.

109 Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law, *Submission 23*, pp. 16–17.

## Australian Values Statement

2.65 Proposed subsection 46(5) of the bill provides for the Minister 'to determine, by legislative instrument, an Australian Values Statement and any requirements relating to an Australian Values Statement'.<sup>110</sup> The EM states that the Minister may 'determine the text of the Australian Values Statement and determine that the statement must be read, understood and signed by an applicant'.<sup>111</sup> Furthermore, the EM noted that the policy intention of the Australian Values Statement 'is to underscore the significance of Australian citizenship and require applicants to acknowledge their understanding of the rights and privileges of Australian citizenship and of Australian values'.<sup>112</sup>

2.66 Some submitters emphasised what they considered the importance of migrants accepting core Australian values in order to be eligible for citizenship.<sup>113</sup> Mr Hardgrave noted this would bring Australia in line with similar Western nations with high immigrant rates such as Canada and the United States.<sup>114</sup> The Australian Christian Lobby noted that an Australian Values Statement is important for prospective citizens and that 'all immigrants should agree to [abide] by democratic principles and the rule of law'.<sup>115</sup> Imam Tawhidi recommended an annual test for citizenship applicants in Australian values to show they're 'on the same page' as Australian citizens.<sup>116</sup>

2.67 Other submitters, however, noted clarification was required regarding what constitutes 'Australian values'.<sup>117</sup> The Refugee Council of Australia stated that several frequently touted Australian values such as 'democratic beliefs, freedoms, equality and integration' are 'not values peculiar to Australians, but rather universal values'.<sup>118</sup> Further concerns were raised that the selected Australian values may not be truly representative of the values held within Australian society. Dr Christopher Lemoh stated that the Australian Values Statement 'runs the risk of limiting "Australian values" to a set of ideals formulated by a minority of people socially positioned to impose their views...upon the rest of the population'.<sup>119</sup> Access similarly posited that

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110 Explanatory Memorandum, p. 53.

111 Explanatory Memorandum, p. 53.

112 Explanatory Memorandum, p. 53.

113 Name withheld, *Submission 1*, p. 1; Mr Brian Young, *Submission 40*, p. 1; The Hon Gary Hardgrave, *Proof Committee Hansard*, 11 February 2019, p. 12.

114 The Hon Gary Hardgrave, *Proof Committee Hansard*, 11 February 2019, p. 12.

115 Australian Christian Lobby, *Submission 93*, p. 3.

116 Imam Mohammad Tawhidi, Private Capacity, *Proof Committee Hansard*, 11 February 2019, p. 4.

117 Refugee Council of Australia, *Submission 21*, p. 16; Access Community Services Ltd, *Submission 23*, p. 15.

118 Refugee Council of Australia, *Submission 21*, p. 16.

119 Dr Christopher Lemoh, *Submission 5*, p.1.

although they agree that aspiring citizens should have 'an understanding of, and commitment to shared Australian values' they were concerned at the broad discretion given to the Minister and lack of parliamentary involvement and oversight in determining what constitutes 'Australian values'.<sup>120</sup>

2.68 The RCAN further recommended that 'consideration should be given to the refugee or Humanitarian entrants' whole circumstances when considering their ties to Australia in their Value Statement'.<sup>121</sup>

### **Additional powers of the Minister**

2.69 The bill proposes to provide the Minister with additional powers. These include:

- the power to cancel the approval for citizenship by conferral under two circumstances: where the Minister is satisfied that approval should not be granted due to identity or national security grounds (proposed subsection 25(1A)); and where the person otherwise fails to meet the eligibility criteria for citizenship (proposed subsections 25(1) and 25(2));
- the power to revoke a person's citizenship based on two grounds: where the Minister is satisfied that the approval should not have been given to a person because the requirements of the Act have not been met (proposed section 33A); or where the Minister is satisfied that the person became an Australian citizen as a result of fraud or misrepresentation (proposed section 34AA);
- the power to exclude certain decisions from merits review which are made in the public interest (proposed new subsection 52(4)). Under proposed subsection 52B(1) of the bill, where the Minister makes a decision that is not reviewable by the Administrative Appeals Tribunal (AAT), the Minister is required to table in each House of Parliament, within 15 sitting days, the Minister's decision and the reasons for the decision;
- the power to set aside decisions of the AAT under new section 52A where the Minister is satisfied that is in the public interest to do so. This power would not apply to decisions to revoke citizenship, but can apply to decisions to refuse to approve citizenship, or to cancel an approval for citizenship where the delegate was satisfied that the person was not of good character, or of the identity of the person, where the AAT set aside the delegate's decision; and
- the power to make legislative instruments under new subsection 54(2) under the Regulations relating to, for example, the payment of citizenship application fees in foreign countries and currencies.

2.70 Concerns were raised over many of the proposed increases in ministerial powers.<sup>122</sup> Dr Lemoh voiced concern that the proposed bill would allow the

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120 Access Community Services Ltd, *Submission 23*, p. 15.

121 Refugee Communities Advocacy Network, *Submission 20*, p. 4.

incumbent Minister to 'exert undue influence on the makeup of Australian civic society', as well as undermine the rule of law and bypass the independent merits review.<sup>123</sup> These concerns are covered in greater detail in the 2017 bill report.<sup>124</sup>

2.71 The Bar Association in particular noted its reservations over certain proposed ministerial powers. In regards to the proposed Ministerial power to override an independent decision of the AAT in favour of a decision, initially, made by their delegate, the association argued would be 'anathema to a true separation of powers'.<sup>125</sup> The Bar Association added that the proposed power 'has the potential to mock the administrative tribunal processes'.<sup>126</sup> Refugee Advice and Casework Service were similarly concerned that the 'personal power to overturn tribunal decisions with which one disagrees has serious implications for the rule of law, for which the independence of the judiciary and respect of the role of courts and tribunals is fundamental'.<sup>127</sup>

2.72 The Bar Association similarly voiced concerns regarding the Minister's power to exclude certain decisions from merits review which are made in the public interest. The association submitted that:

...as a consequence of the proposal in clause 126, an applicant will be unable, solely due to a decision made at the Minister's personal discretion, to access merits review for a decision which will have a significant impact on their livelihood and well-being.<sup>128</sup>

2.73 The Kaldor Centre also raised concerns about this proposed power, stating that the 'proposed provision is anathema to the rule of law'.<sup>129</sup>

2.74 As in the 2017 bill report, concern was also raised about the lack of clarity around the term 'public interest'. For example, the Kaldor Centre contended that public interest discretions threaten the rule of law, and offer 'little guidance to the individual

122 Name withheld, *Submission 1*, p. 1; Dr Christopher Lemoh, *Submission 5*, p. 2; Refugee Council of Australia, *Submission 21*, pp. 14–15; Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law, *Submission 25*, pp. 20–36; Refugee Legal, *Submission 32*, pp. 2–7; Federation of Ethnic Communities' Councils of Australia, *Submission 33*, p. 4; Asylum Seeker Research Centre, *Submission 36*, pp. 3–4.

123 Dr Christopher Lemoh, *Submission 5*, p. 2.

124 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, pp. 29–36.

125 Bar Association of Queensland, *Submission 18*, p. 4.

126 Mr Stephen Keim SC, Bar Association of Queensland, *Proof Committee Hansard*, 11 February 2019, p. 21.

127 Refugee Advice and Casework Service, *Submission 34*, p. 3.

128 Bar Association of Queensland, *Submission 18*, p. 2.

129 Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law, *Submission 23*, pp. 25–26.

affected by the power as to how it is likely to be exercised'.<sup>130</sup> The Bar Association additionally noted that these items could result in people's rights being determined by public opinion.<sup>131</sup>

2.75 When queried about whether the Minister or AAT members would be the preferable arbiter of a final decision on citizenship in terms of accountability, Mr Stephen Keim, from the Bar Association, responded:

The Tribunal, because it discusses the evidence in great detail and because it has to apply all the principles in detail, is likely to be much more accountable to judicial review than the minister, who does have to provide some reasons to the parliament but whose reasons going to the issue of public interest are likely to be much less detail.<sup>132</sup>

2.76 In contrast, Ms Pamela Parker, who made a submission in a private capacity, argued in favour of stronger ministerial powers to determine whether candidates are suitable for citizenship.<sup>133</sup> Ms Parker argued that the Minister would be well placed to evaluate security assessments of prospective citizens.<sup>134</sup>

### **Committee view**

2.77 The committee has some sympathy with the view expressed in the bill that, in a democracy, policy decisions are generally within the jurisdiction of the government of the day and that – provided there is openness about the basis of the Minister's decisions and that these decisions are made in accordance with the law adopted by the parliament – it is appropriate for elected accountable Ministers to make decisions rather than unelected, non-judicial agencies like the Administrative Appeals Tribunal.

2.78 The committee supports the intention of the bill to strengthen the framework for obtaining Australian citizenship. The committee recognises the similarities between this bill and the 2017 bill and reiterates its in-principle support for many of the measures proposed in this bill. However, the committee considers that this bill moves in the opposite direction to the recommendations made in the committee's report on the 2017 bill. The committee further notes that the bill does not incorporate the subsequent government responses to committee's recommendations or the government amendments to the original bill. Despite the government's amendments in light of concerns raised regarding the 2017 bill, the committee recognises that the government was unable to receive a parliamentary consensus on the bill and that it was subsequently removed from the Notice Papers.

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130 Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law, *Submission 23*, p. 28.

131 Mr Stephen Keim SC, Bar Association of Queensland, *Proof Committee Hansard*, 11 February 2019, pp. 20–21.

132 Mr Stephen Keim SC, Bar Association of Queensland, *Proof Committee Hansard*, 11 February 2019, p. 22.

133 Ms Pamela Parker, *Submission 92*, p. 2.

134 Ms Pamela Parker, *Submission 92*, p. 2.

2.79 Of particular concern is the proposal to increase the residency requirements to require a person to be a permanent resident for at least eight years. This proposal, coupled with the retrospective operation of the bill (noting that this provision would apply from 20 April 2017) would unduly affect a significant number of citizenship applications. According to information provided by the former Minister of Immigration and Border Protection, as of 16 July 2017, over 47 000 people had lodged an application on or after 20 April 2017 and that nearly 26 000 (54 per cent) would not meet the four-year permanent residency requirements, as proposed in the 2017 bill.<sup>135</sup> While the committee is not aware of the specific number of people that would be adversely affected by the proposed residency requirements in this bill, the committee considers that, due to the length of time that has passed since the aforementioned figures were obtained, as well as the increase in the permanent residency requirements from four to eight years, the number would be considerably higher.

2.80 The committee notes that the bill should be amended to remove subsection 23(3A), which proposes a limitation on the number of attempts to sit a citizenship test. The committee instead suggests a more fair and reasonable approach, whereby the proposed bill should allow additional tests on a cost-recovery basis for applicants who are not able to pass the citizenship test within three attempts. This is consistent with the findings and, subsequent committee view, in the 2017 bill report.<sup>136</sup>

2.81 The committee was also convinced by the evidence it received during its inquiry into the 2017 bill, as well as the evidence received in this bill, that to impose an English language requirement equivalent to a university entrance level was placing too high a bar on prospective citizenship applicants. The committee instead favours a requirement that applicants meet a standard of 'modest' English proficiency or higher, as established in the amendments to the 2017 bill circulated on 18 October 2017.

2.82 While the committee is not opposed in-principle to the objectives of the bill, and agrees with some of the specific measures contemplated by the bill, the committee does not support any form of legislative or regulatory retrospectivity. This view was expressed in the committee's 2017 inquiry report.

2.83 The committee was also persuaded by the evidence it received in relation to potential inequities that could arise from the proposed two-year ban on applicants who fail the citizenship test on three occasions, and reaffirms its recommendation (recommendation 2) made in the 2017 bill report in this regard.

2.84 The committee reiterates its in-principle support for the objectives of the bill and considers that many of the proposed measures will contribute to strengthening the

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135 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 4.

136 Senate Legal and Constitutional Affairs Legislation Committee, *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]*, p. 25.

integrity of Australia's citizenship framework. However, in light of the concerns outlined above, the committee recommends that the Senate not pass the bill.

### **Recommendation 1**

**2.85** The committee recommends that the bill be amended to remove subsection 23(3A), that there be no particular limitation placed on attempts to sit a citizenship test, and that – consistent with the committee's 2017 inquiry – any attempts made following the first three attempts be conducted on a cost-recovery basis.

### **Recommendation 2**

**2.86** The committee recommends that the English-language standards required under the bill be amended consistent with the committee's 2017 recommendation of IELTS 5.

### **Recommendation 3**

**2.87** The committee recommends that the Senate not pass the bill in the current form.

**Senator the Hon Ian Macdonald**  
**Chair**

## **Dissenting report by Labor Senators**

1.1 On 15 February 2018, the Senate referred the Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report.

1.2 A substantially similar bill—the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017—was previously referred to the Legal and Constitutional Affairs Legislation Committee.

1.3 The government's 2017 bill was introduced in the House of Representatives on 15 June 2017, by the then Minister of Immigration and Border Protection, the Hon. Peter Dutton MP.

1.4 Labor senators stand by the concerns raised in their 2017 dissenting report. This report highlights Labor's grave reservations about measures within both versions of the legislation – in particular, the delays to citizenship eligibility and the new English language test.

1.5 Labor's dissenting report from the previous inquiry can be found here: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/CitizenshipBill2017/Report/d01](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CitizenshipBill2017/Report/d01)

### **Recommendation 1**

**1.6 Labor Senators oppose the Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018 and recommend the bill not be passed.**

**Senator Louise Pratt  
Deputy Chair**



# Dissenting report by the Australian Greens

## Introduction

1.1 The Greens thank everyone who made a public submission, gave evidence at the public hearing, or participated in the survey for the Senate inquiry into the Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018 (the Hanson Bill).

1.2 As acknowledged in the Chair's report, the Hanson Bill is not materially different, in name or content, to one tabled by the Government in 2017: the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the Government Bill).

1.3 The Government Bill received approximately 14 000 submissions, the vast majority of which raised serious concerns. The Hanson Bill received 110 submissions, including 22 from community groups and Non-Government Organisations. Again, most of these submissions were in opposition to the bill.

1.4 Correspondingly, 89.81 per cent of respondents to the Committee's online survey (126,322 of 140,646 respondents) opposed the Hanson Bill.

1.5 Despite significant concerns raised regarding the Government Bill, both in number and substance, the Chair's report recommended the bill be passed, subject to consideration of a further three recommendations.

1.6 For the Hanson Bill, the Chair's report recommends 'that the Senate not pass the bill in the current form', based on two preceding recommendations: one on the limitation placed on attempts to sit a citizenship test, and the other its English-language standards.

1.7 The Australian Greens believe this recommendation – that the Senate not pass the bill in the current form – does not go nearly far enough.

1.8 As submitted by The Federation of Ethnic Communities' Councils of Australia (FECCA):

FECCA believes that this Bill will create a permanent underclass of Australian residents who will be denied the rights and opportunities of being welcomed and included as Australian citizens. Such exclusion undermines the ideal described in the Preamble to the Australian Citizenship Act 2007, 'that citizenship is a 'common bond' that unit[es] all Australians.'<sup>1</sup>

## Advanced English language requirement

1.9 The Australian Greens are concerned that the English Test mandated by the Bill is unfairly prohibitive, by expecting a level of competency and comprehension that is grossly unreasonable.

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1 Federation of Ethnic Communities Councils of Australia, *Submission 33*, pp. 1–2.

1.10 The Language Testing Research Centre has previously submitted that the International English Language Testing System (IELTS) was not designed as a test to ascertain citizenship readiness. It was developed as an academic skills test. As such it is not fit for the purpose for which the government intends to use it.

1.11 The Australian Greens also share the view of the Asylum Seeker Resource Centre (ASRC), which submitted:

While English language skills clearly assist with integration into the community, there is no evidence to suggest that university-level English language skills are necessary to fulfil the generic responsibilities of citizenship. In our view, the current level of ‘basic knowledge’ of English is more than a sufficient footing to enable new citizens to successfully integrate and participate in their communities while they continue to improve their English language skills.<sup>2</sup>

1.12 FECCA submitted that not only does this devalue current culturally and linguistically diverse (CALD) migrants, but also:

sends a strong message to previous generations of migrants from Europe and elsewhere, who came to Australia with little or no English, and who became citizens while they were still developing their English language skills: *that they should not have been accepted because they did not have high levels of English language proficiency.*<sup>3</sup>

1.13 The Greens remain concerned that the pressure to pass the English test outlined in the Hanson Bill, as with the Government Bill, will detract from other activities necessary to support migrants to Australia, including prioritising the education of children, participating in the workforce and settling.

1.14 Furthermore, as the Refugee Advice & Casework Service (RACS) submitted, the English test, as prescribed in the Hanson Bill, will

have a particularly adverse impact on women. Women from refugee backgrounds are both less likely to have had English language education and less likely to have the opportunity to learn if they have domestic responsibilities in their households. Accordingly, the [Hanson] Bill threatens to have the effect of isolating and alienating refugee women in particular.<sup>4</sup>

1.15 Given the evidence and expert submissions, the Australian Greens do not accept that strict, advanced language skills are required to become a contributing Australian citizen.

### **Extended residence requirement**

1.16 The Australian Greens opposed the Government Bill’s requirement that the general residency be increased from four years, with the last 12 months as a

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2 Asylum Seeker Resource Centre, *Submission 36*, p. 7.

3 Federation of Ethnic Communities Councils of Australia, *Submission 33*, pp. 2–3.

4 Refugee Advice & Casework Service, *Submission 34*, p. 3.

permanent resident, to four years as a permanent resident. As such, the Australian Greens strongly oppose the Hanson Bill's requirement that a person must be a permanent resident for eight years to become eligible for Australian citizenship.

1.17 The Refugee Council of Australia (the Refugee Council) noted that this requirement would be particularly unfair on people who arrived by boat and were found to be refugees, as the process of determining refugee status can be very prolonged, and under the Hanson Bill, would not count towards residence. A perverse outcome of this requirement would be people, they could be:

living for 18 years in the country before they become eligible for citizenship, and for 14 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.<sup>5</sup>

1.18 The Australian Greens agree with FECCA when it submits:

permanent residents should be encouraged to seek citizenship as soon as practically possible to foster a sense of inclusion and encourage integration. Citizenship is not only an offer of welcome by a host nation; it is also an expression of commitment by an arriving migrant and a compact between the two. Anything which delays or deters this should be resisted.<sup>6</sup>

### **Children born to non-citizens**

1.19 The Australian Greens are concerned that the Bill increases the risk that children born to non-citizens will be unfairly punished for the actions or circumstances of their parent(s).

1.20 ASRC submitted that the Hanson Bill takes no account of Australia's primary and unequivocal obligation under the Convention on the Rights of the Child to:

prioritise all children's 'best interests' as the primary consideration in 'all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'.<sup>7</sup>

1.21 Regarding children and their families, the Refugee Council submitted that the Hanson Bill could:

contribute to the perverse outcome of leaving families in Australia in limbo, with children becoming Australian citizens while their parent/s are not.<sup>8</sup>

### **A disproportionate effect on women**

1.22 The Hanson Bill would also have a disproportionate effect on women, who are often responsible for raising children, and therefore often excluded from education,

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5 Refugee Council of Australia, *Submission 21*, pp. 11–12.

6 Federation of Ethnic Communities Councils of Australia, *Submission 33*, p. 3.

7 Asylum Seeker Resource Centre, *Submission 36*, p. 5.

8 Refugee Council of Australia, *Submission 21*, p. 5.

work, and social networks. The Refugee Council submitted that the Hanson Bill would:

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.<sup>9</sup>

### **Increase in ministerial discretion**

1.23 The Australian Greens agree with ASRC's summation that the Hanson Bill 'proposes to vastly expand the grounds on which citizenship can be revoked, without putting forward any evidentiary basis for a need for such wide ranging powers'.<sup>10</sup> We also share a concern that should this discretionary power be wielded by an executive government in the same way that similar powers have been exercised by the current minister to cancel visas, then it too will "raise many human rights and legal concerns, including regarding protection against non-refoulement, indefinite detention, lack of procedural fairness and unavailability of merits review of Ministerial discretions".<sup>11</sup>

1.24 Of particular concern to the Australian Greens is that the Hanson Bill, as with the Government Bill, seeks to further politicise immigration decision-making in individual cases which, as FECCA submitted:

threatens the fundamentals of our immigration system which has a long-standing reputation for being impartial, fair and transparent.<sup>12</sup>

1.25 That the Hanson Bill will also allow the Minister to override determinations of the Administrative Appeals Tribunal (AAT) in the 'public interest', when the AAT already considers public interest during its deliberations, and, furthermore, will exclude merits reviews of decisions personally made by the Minister in the public interest is particularly concerning.

1.26 Regarding this power of discretion, the Refugee Council submitted 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.<sup>13</sup>

1.27 The Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law (UNSW Law) argued:

the purpose of the AAT is for an *independent* tribunal member to review such decisions and check that it is correct or preferable in all of the

9 Refugee Council of Australia, *Submission 21*, p. 5.

10 Asylum Seeker Resource Centre, *Submission 36*, p. 3.

11 Asylum Seeker Resource Centre, *Submission 36*, p. 3.

12 Federation of Ethnic Communities Councils of Australia, *Submission 33*, p. 4.

13 Refugee Council of Australia, *Submission 21*, p. 14.

circumstances. The AAT, being created with legislative safeguards of independence, separated from the political branches, is better placed to make independent decisions about community standards. The role of Tribunal members is to assess all the relevant facts, alongside the legislation and any relevant policy, in an independent and apolitical manner. The reasons provided ... are insufficient to justify the Minister not being subject to AAT review in this particular circumstance.<sup>14</sup>

1.28 As stated above, the Australian Greens share UNSW Law's concern that this is yet another example of 'a wider, concerning trend in which governments over a period of several decades have sought to limit review of executive decisions'.<sup>15</sup>

### **Strengthening 'Australian values'**

1.29 The Hanson Bill provides requirement that people seeking citizenship have an 'adequate knowledge of Australia's values', and can demonstrate to the Minister that they have 'integrated into the Australian community'. Although, as the Refugee Council noted, 'the relationship between this requirement and the Australian Values Statement is unclear', the Australian Greens believe the best demonstration a person can make, to commit to a country and its people, is through citizenship.<sup>16</sup> This commitment to Australia should not be discouraged.

1.30 ASRC have also noted that where the Explanatory Memorandum states that 'the Minister may determine that regard may be had to, for example, a person's employment status, study being undertaken by the person, the person's involvement with community groups, the school participation of the person's children ... or conduct that is inconsistent with the Australian values to which they committed throughout their application process'<sup>17</sup>, that these provisions:

could in essence provide the Minister with powers to create his or her criteria for citizenship, not based on law, and also provide no procedural safeguards or accountability mechanism to ensure that the Minister does not exercise these powers unlawfully or arbitrarily.<sup>18</sup>

### **Conclusion**

1.31 The Australian Greens agree with FECCA in its conclusion that:

The proposed amendments to the legislation threaten to undermine the decades of successful migration, community harmony and cultural diversity that Australia has worked so hard to build. In the best interests of the broader Australian community, as well as the many migrants that have

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14 Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law, *Submission 25*, p. 32.

15 Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law, *Submission 25*, p. 32.

16 Refugee Council of Australia, *Submission 21*, p. 16.

17 Asylum Seeker Resource Centre, *Submission 36*, p. 7.

18 Asylum Seeker Resource Centre, *Submission 36*, p. 8.

contributed so much to the social, economic and cultural fabric of this nation, FECCA strongly opposes this legislation.<sup>19</sup>

### **Recommendation 1**

**1.32 The Australian Greens recommend that the Bill is not passed.**

**Senator Nick McKim**  
**Senator for Tasmania**

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<sup>19</sup> Federation of Ethnic Communities Councils of Australia, *Submission 33*, p. 5.

## **Additional comments by Senator Hanson**

1.1 Section 34 of the Constitution requires, *inter alia*, a person to be "for three years at the least a resident within the limits of the Commonwealth" as well as "either natural-born or for at least five years naturalised" before being eligible to stand as a Senator or a Member of the House of Representatives.

1.2 By allowing a permanent resident to become a citizen after two years residency and therefore eligible to be on the electoral role creates two classes of eligible voter - one class which can nominate to be a Senator or Member and another which cannot until a further period of time is served.

1.3 I consider that having two classes of citizens' rights is counter to the intention of the Constitution.

**Senator Pauline Hanson**  
**Pauline Hanson's One Nation**



# Appendix 1

## Submissions

### Submissions

1. Name Withheld
2. Name Withheld
3. Name Withheld
4. Name Withheld
5. Dr Christopher Lemoh
6. Mr Ganesh Koramannil
7. Name Withheld
8. Settlement Services International
9. Name Withheld
10. City of Ryde
11. Settlement Council of Australia
12. Anglicare Sydney
13. Harmony Alliance: Migrant and Refugee Women for Change
14. Professor Helen Irving
15. Mr David Ingram
16. Name Withheld
17. Dr Peter Kim
18. Bar Association of Queensland
19. Oz Kiwi
20. Refugee Communities Advocacy Network NSW
21. Refugee Council of Australia
22. Name Withheld
23. Access Community Services Limited
24. MYAN Australia
25. Kaldor Centre for International Refugee Law & Gilbert + Tobin Centre of Public Law
26. Community of South Sudanese and Other Marginalized Areas in NSW
27. Chinese Australian Services Society Limited
28. Ms Jacqui Malins
29. Confidential

30. Assyrian Australian Lawyers
31. Name Withheld
32. Refugee Legal
33. Federation of Ethnic Communities' Councils Australia
34. Refugee Advice and Casework Service
35. Heather Neil
36. Asylum Seeker Research Centre
37. The Victorian Foundation for Survivors of Torture Inc
38. Marcus Foo
39. William De Vries
40. Brian Young
41. Dudley Roberts
42. Desley Brown
43. Barbara Lane
44. Sonia Spicer
45. Damien Mason
46. Seraphim Larin
47. Dean Godfrey
48. Brian Squibb
49. Theresa Annette
50. Wayne Neilson
51. Janine Worth
52. David Bailey
53. Angela Walker
54. Llewellyn Jones
55. Bienne Tam
56. Jeffrey Woods
57. Daniela Rugg
58. Benjamin Bosworth
59. Samreen Saba
60. Name Withheld
61. Name Withheld
62. Bronwyn Schell
63. Dan Gill

- 
64. Robert Withers
  65. Linda Stucki
  66. John and Lynn Johnston
  67. Kerry Spollen
  68. Fiona Duong
  69. Name Withheld
  70. Paula Clarke
  71. Name Withheld
  72. Simon Styles
  73. Maria Fargher
  74. Ben Vanderschaaf
  75. Michael Taylor
  76. Graeme Wells
  77. Lesleigh Everitt
  78. Matthew Tester
  79. Stephen Shaw
  80. Pamela Curtin and Robyn Martin
  81. Sue Tasman
  82. Phil Hayes
  83. William Dai
  84. Maria Matthews
  85. Sue Barbi
  86. Mary Scruse
  87. George Pinniger
  88. Anna Maria Alba
  89. Paul Miles
  90. Robert Yabsley
  91. Name Withheld
  92. Pamela Parker
  93. Australian Christian Lobby
  94. Ange Kenos
  95. Liza Sekulich
  96. Vern Hughes
  97. Ian Moore

98. Margaret Valenta

99. Jeff Lee

100. Lesley Beards

101. Janet Tuft

102. Effie Billias

103. David Nolan

104. Frances McDonald

105. Michele Burley-Jones

106. Judith Lorient

107. Confidential

108. Confidential

109. Confidential

110. Zoe Palmer

## **Appendix 2**

### **Public hearings and witnesses**

**Monday 11 February 2019—Canberra**

AL-KHAFAJI, Mr Mohammad, Acting Chief Executive Officer, Federation of Ethnic Communities' Councils of Australia

DUKE, Ms Kenny, Client Services Manager, Access Community Services Limited

HARDGRAVE, the Hon. Gary, Private Capacity

JOHNSON, Dr Richard, First Assistant Secretary, Department of Home Affairs

KEIM, Mr Stephen SC, Bar Association of Queensland

KILNER, Mr Damien, Assistant Secretary, Citizenship and Multicultural Affairs Programs Branch, Department of Home Affairs

LING, Ms Alice, Assistant Secretary, Integration, Citizenship and Social Cohesion Policy Branch, Home Affairs, Department of Home Affairs

RINGI, Ms Heimura, Assistant Secretary, Legislation Branch, Department of Home Affairs

RUBENSTEIN, Professor Kim, Private Capacity

STARK, Ms Lauren, Policy and Projects Officer, Federation of Ethnic Communities' Councils of Australia

TAWHIDI, Mr Mohammad, Imam, The Office of Imam Shaikh M. Tawhidi

WARD, Mrs Lisa, Director, Social Services, Access Community Services Limited



## **Appendix 3**

### **Tabled documents, answers to questions on notice and additional information**

#### **Answers to questions on notice**

1. Answer to a question on notice received 22 February from the Department of Home Affairs from a public hearing on 11 February 2019.

