



**TO: LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION STANDING COMMITTEE**

**RE: AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT (STRENGTHENING THE COMMITMENTS FOR AUSTRALIAN CITIZENSHIP AND OTHER MEASURES) BILL 2018**

## **PURPOSE**

To provide the Legal and Constitutional Affairs Legislation Standing Committee “the Committee” a written response to the Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018 “the Bill” from Access Community Services Ltd (ACSL).

## **BACKGROUND**

ACSL thanks the Committee for the opportunity to comment on the Bill and appreciates its efforts to strengthen Australia as a multicultural nation, whilst ensuring migrants are committed to social cohesion, democracy, freedom and equality of opportunity. ACSL’s response includes suggested changes to the Bill currently before the Senate and offers solutions that encourage the Committee to apply greater recognition of the prior learning and time spent in Australia, and widen research and consultation processes, when formulating citizenship laws.

ACSL has over 30 years of specialist experience working with refugees and migrants towards successful integration, as active and contributing members of Australian society. As one of the nation’s leading settlement providers, we are recognised for delivering service solutions that promote community development and improve the social and economic wellbeing of vulnerable groups, guiding them towards civic participation in Australia. With a history of providing essential services for Queensland’s most disadvantaged communities, ACSL has successfully established partnerships with key organisations that share our core vision: to support cohesive communities in which everyone is fully enfranchised - socially and economically.

## **CONTEXT OF MIGRATION IN AUSTRALIA**

Since the arrival of the British First Fleet, Australia has been a nation of migrants. In the post-World War II era, numerous migrants from Britain and other European countries filled the acute labour shortage, and worked on vital projects such as the Snowy Mountains Hydro-Electric Scheme<sup>1</sup>. In the process, they reshaped and enhanced Australian culture. Today, there are other conflicts around the globe. In an Australia now facing largely unprecedented difficulties, more recent arrivals have the potential to make new significant contributions.

As Australia’s economy increasingly makes the transition from a labour-intensive to a technologically orientated one, the need for a skilled workforce has become imperative. International comparative education results, and numerous employer concerns, indicate that this vital requirement currently is not met. The obvious solution is to compensate for this shortfall through the imported skills of migrants. While certainly a percentage of migrants are limited in their capacity to contribute in this way, others constitute an enormous resource of knowledge and experiences, and a proven record of industrious success in their home country. For example, according to the 2011 Australian Census, 40% of Syrian-born people in Australia over 15 years of age possessed a higher non-school qualification. In addition, among the 3070 Syria-born individuals who were in employment, 50.4% were either working in a skilled managerial, professional or trade occupation compared to 48.4% of the total Australian population<sup>2</sup>.

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<sup>1</sup> National Archives of Australia – 60 years of the Snowy Mountains Hydro-Electric Scheme:  
<http://www.naa.gov.au/collection/snapshots/power/index.aspx>

<sup>2</sup> Department of Social Services – Community Information Summary:  
[https://www.dss.gov.au/sites/default/files/documents/02\\_2014/syria.pdf](https://www.dss.gov.au/sites/default/files/documents/02_2014/syria.pdf)



A major problem Australia will soon confront is the critical ageing of the population, resulting in an increased health and care burden on taxpayers, but with a decreasing number of working-age people contributing to the national tax revenue. Australia's ageing population is placing pressure on the country's labour supply, with fewer working-age people to support retirees and younger Australians<sup>3</sup>. There is a well-founded economic need to increase labour force participation through migration, to address future labour shortages likely to occur due to the ageing population, while at the same time, reducing fiscal pressures associated with welfare dependency. A ready solution to this problem exists in the nation's immigration policy.

The immense benefit of Australian immigration is endorsed by positive public perceptions. Since 2013, the Scanlon Foundation Mapping Social Cohesion surveys have asked responders to address the proposition that 'multiculturalism has been good for Australia'. Their feedback is consistently in the positive range of 83 - 86%. Significantly, there was also an increase in the proportion of informants who indicated their 'strong agreement' with the proposal in 2017<sup>4</sup>.

## RESPONSE

### ***"Increasing the general residence requirement for citizenship by conferral applicants from four to eight years"***

While we understand that the objective of this amendment is to ensure an aspiring citizen's association in Australia, this amendment may not reflect its intended purpose, being to allow time for applicants to gain an understanding of the shared Australian values required to become an Australian citizen. Many temporary residents (e.g. overseas students and workers) learn all aspects of Australian values and culture through their studies and work. The specific visa type one holds does not determine their level of contribution to Australia, as temporary and permanent residents are subject to the same social and legal obligations. Many migrants have already lived in Australia for at least four years on valid visas and increasing the length of time one must hold permanent residency places an additional burden on people who have entered Australia on temporary work or humanitarian visas. As a settlement provider, our clients have expressed that longer waiting periods cause distress, anxiety, feelings of mistrust and instability for individuals waiting on citizenship<sup>5</sup>. Our local Refugee & Immigration Legal Service has also noted that citizenship applications are favoured for family reunion, thus this Bill amendment would keep families apart for longer.

The increased permanent residency requirement will affect the economic participation of migrants. According to 2016 ABS data, the unemployment rate for recent migrants and temporary residents was 7.4%, compared with 5.4% for people born in Australia. Migrants with Australian citizenship had an unemployment rate of 3.3%, temporary residents 8.6% and recent migrants on a permanent visa 8.8%<sup>6</sup>, linking citizenship to higher employment rates. Enforcing potential citizens to wait an additional four years for citizenship may affect their employment prospects, and the broader economy, or they may decide not to wait for citizenship and leave the country. In addition, permanent residents are not eligible for the HECS-HELP loans and must pay their financial contribution upfront<sup>7</sup>, further entrenching unemployment in migrant communities.

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<sup>3</sup> The Treasury - 2010 Intergenerational Report: [http://archive.treasury.gov.au/igr/igr2010/Overview/html/overview\\_01.htm](http://archive.treasury.gov.au/igr/igr2010/Overview/html/overview_01.htm)

<sup>4</sup> Scanlon Foundation - Mapping Social Cohesion 2017: [http://scanlonfoundation.org.au/wp-content/uploads/2014/05/ScanlonFoundation\\_MappingSocialCohesion\\_2017.pdf](http://scanlonfoundation.org.au/wp-content/uploads/2014/05/ScanlonFoundation_MappingSocialCohesion_2017.pdf)

<sup>5</sup> Diversity Council Australia Citizenship Bill Submission: [https://www.dca.org.au/sites/default/files/dca\\_citizenship\\_bill\\_submission\\_2017\\_final.pdf](https://www.dca.org.au/sites/default/files/dca_citizenship_bill_submission_2017_final.pdf)

<sup>6</sup> Australian Bureau of Statistics - Characteristics of Recent Migrants, Australia, November 2016: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0>

<sup>7</sup> University of Southern Queensland - Can Australian Permanent Residents defer fees to HECS: [http://usqassist.custhelp.com/app/answers/detail/a\\_id/2430/~can-australian-permanent-residents-defer-fees-to-hecs%3F](http://usqassist.custhelp.com/app/answers/detail/a_id/2430/~can-australian-permanent-residents-defer-fees-to-hecs%3F)



Delaying citizenship creates a second class of Australians; those who live in Australia without the opportunity to become active citizens and are not afforded the additional freedoms and rights that citizenship brings. Without well-timed access to citizenship, migrants cannot run for political office or vote in elections, thus ensuring that local government areas and electorates will not be reflective of their constituencies. Despite living, working and paying taxes towards public services, migrants will be denied the fundamental principle of democracy; being to contribute to decisions that impact their lives. Research demonstrates that access to citizenship is a key measure of integration. A Swiss study conducted in collaboration between University of Zurich and Stanford Business School demonstrates that citizenship strengthens social and political bonds. This 15 year longitudinal study, that interviewed 750 migrant participants, found that those who became citizens were integrated much better socially and politically (e.g. participated in democratic processes, read the newspaper), voted at the same rate as rooted Swiss natives and had the same political knowledge as rooted natives, if not more<sup>8</sup>.

### **Recommendations:**

- 1) Before implementing changes to current residency requirements, we encourage the Committee to note relevant research indicating that citizenship allows migrants to become more socially and politically integrated, and fully consider the unintended consequences of these changes.
- 2) That the Committee consider ensuring citizenship laws reflect a citizenship applicant's entire period residing in Australia, not only their time holding a permanent resident visa.

***“Require most applicants to provide evidence of competent English language proficiency before they can make a valid application for citizenship”***

As settlement specialists, ACSL acknowledges that English language competency contributes to the ability of migrants to participate as active citizens in Australian life; however, the lack of clarity around a measuring tool to determine English competency in the Bill, and linking the language requirements to an increased four years of permanent residency, does not align with international language requirements.

English language skills are advantageous when navigating various public, social and cultural institutions as well as daily life, but there are significant contributions from a vast array of Australian citizens who do not possess “competent” English at the time of citizenship application. ACSL has witnessed many cases of migrants thriving without English language skills, such as business owners, trade workers, factory staff, and other jobs that may be less desirable for Australians.

ACSL contends that an English test with the minimum requirement being “competency” will not improve integration or social cohesion. Last year this Bill proposed that an IELTS 6 English level be required which received a great deal of criticism during public consultation. ACSL understands that the current Bill proposes a test comparable to an IELTS 5 English level and is concerned this test will deny many humanitarian entrants citizenship, especially those who have had interrupted education. Since this Bill was proposed last year, no substantive evidence has been identified to verify the level of English required to be “integrated” into Australian society. Humanitarian entrants have a much higher failure rate of the citizenship test than other visa classes<sup>9</sup> and any form of testing, specifically in a roman script language, has capacity to discriminate against individuals who have experienced trauma, torture or other barriers to learning and performing under pressure, or who have low levels

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<sup>8</sup> Stanford Business School - How Citizenship for Immigrants Leads to Better Integration: <https://www.gsb.stanford.edu/insights/how-citizenship-immigrants-leads-better-integration>

<sup>9</sup> Department of Immigration and Border Protection – Australian Citizenship Test Snapshot Report: <https://www.homeaffairs.gov.au/Citizenship/Documents/2014-15-snapshot-report.pdf>



of literacy<sup>10</sup>. This combined with evidence that an additional language is a skill highly difficult to master in adulthood, promotes that alternative accommodations be made for such cases to ensure equality and fairness<sup>11</sup>.

In ACSL's experience, migrants have a strong desire to integrate into Australian society quickly; however, systemic barriers (e.g. location, cost and childcare) prevent integration processes from reaching their full potential, specifically regarding adequate access to English. ACSL encounters individuals who have lived in Australia for over 10 years, but due to isolation and prioritising children, have not learned English. More flexible service delivery options that support the most vulnerable groups are required to improve current language programs.

This test will have a disproportionate impact on women, as they often face additional barriers to learning. These can include laws against women obtaining education, prioritising children and pre-arrival torture and trauma, including surviving sexual violence. If Australia is committed to accepting vulnerable women as humanitarian entrants, as seen in the introduction of Women at Risk visas, pathways to citizenship must be established for this group to encourage their empowerment and ability to become active Australian citizens.

### **Recommendations:**

- 1) Rather than exclusively testing language, other previous learning, education and life experience be considered for competent English (e.g. year 12 completion, certifications, education and employment history).
- 2) That the Committee establish a panel of linguistic, academic and migration experts to develop a language proficiency test or any language measurement tools.
- 3) That more flexible service delivery options be explored to ensure those living in isolation have adequate access to English education.

***"Applicants must demonstrate their integration into the Australian community, including by behaving in a manner consistent with the Australian Values Statement"***

ACSL has concerns with some integration measures proposed for citizenship applicants. Providing evidence of seeking or being engaged in employment, education or community contributions are not the only measures of one's level of commitment to integration in Australia. Many ACSL clients have experienced trauma, torture or persecution, thus making education and employment difficult to prioritise over mental health and wellbeing. Some Australian government resources that aim to assist migrants with integration (e.g. settlement programs, AMEP, Job Actives) must exclude individuals based on visa status and geographical location. In these cases, levels of integration could be measured from their seeking aid through supportive programs such as Women of Worth (WOW). ACSL's innovative WOW program builds capacity of women from diverse backgrounds to interact and build lasting relationships, empowering them to lead future community based projects and events. This program is a strong example of how dedicated individuals from vulnerable groups integrate into Australia, despite barriers.

ACSL is particularly concerned with the emphasis on employment as a measure of integration into Australian society. Many migrants arrive with high levels of motivation and future aspirations, but a combination of unrecognised qualifications, language and cultural barriers, workforce discrimination and past trauma create obstacles to achieve these goals.

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<sup>10</sup> Monash University Citizenship Bill Submission 2017:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/CitizenshipBill2017/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CitizenshipBill2017/Submissions)

<sup>11</sup> Heather Finn. "Overcoming Barriers: Adult refugee trauma survivors in a learning community." *TESOL Quarterly* 44, 3 (December 2011): 586.



- **Skills Recognition, Downward Occupational Mobility and Deskilling** - A common reason for limited access to employment for migrants is their lack of Australian work experience and qualifications recognition. Many employers do not recognise work experience gained overseas and new arrivals struggle to obtain jobs that allow them to gain local experience<sup>12</sup>. This requires expensive and time-consuming further study to raise their credentials, often in areas where they already have significant knowledge and experience<sup>13</sup>.
- **Language Barriers** - English comprehension and speaking ability is regularly identified as a barrier to employment. However, some research demonstrates that English language proficiency and overseas skills recognition were not predictors of employment, because working migrants are in low status roles where strong English skills are not necessary. This point speaks to the downward mobility experienced by some migrants coming from skilled backgrounds<sup>14</sup>.
- **Discrimination and Cultural Capacity of Employers** - In Australia, bridging visas restrict some migrants from working and studies suggest that immigration policies have created barriers to employment. Public attitudes are influenced by political discourses and can negatively affect migrants' access to employment<sup>15</sup>. Discrimination is difficult to measure because it is often based on how individuals perceive they are treated. However, in acknowledging complexities of discrimination, it can also be structural or institutional, and it has been identified as a problem faced by migrants in Australia. Employers' perceptions of migrants can be influenced by public opinions, leading to discrimination, based on an employer wanting to keep the status quo. Cultural differences can also be misinterpreted by employers (e.g. a cultural display of respect may be seen by a supervisor as a lack of confidence i.e. avoiding eye contact). This distortion in employer perspectives then raises further perceived doubts based on the potential costs of training<sup>16</sup>.
- **Gender Specific Barriers** - Some studies highlight that migrant women experience additional barriers to employment due to family constraints, including access to affordable childcare or family commitments. Migrants identify this process of transition as a significant challenge, particularly in terms of adapting to changed gender roles within the family where women are encouraged both structurally and interpersonally to be independent of their male partners, producing gender conflict. In addition, children are not only encouraged to be independent, but also frequently have more opportunities for rapid integration in terms of language learning, schooling, and the development of social networks, resulting in intergenerational conflict. This causes significant stress, particularly to men, and is identified as the reason for some of the interactions migrants have with the Australian legal system, as it sometimes manifests as violence<sup>17</sup>.
- **Mental Health** - In terms of mental health, two consistent risk factors are linked to mental disorders in migrants and refugees: past trauma and post-migration stress. Communities see settlement difficulties as compounding and contributing to mental health issues. In a study of understandings of depression among a number of refugee communities, it was found that settlement issues such as employment, language, housing, loneliness, culture shock,

<sup>12</sup> Caroline Fleay, Anita Lumbus, Lisa Hartley. "People Seeking Asylum in Australia and their Access to Employment: Just what do we know?" *Cosmopolitan Societies: an Interdisciplinary Journal* 8, 2 (2016): 4969.

<sup>13</sup> Andrew Butcher, Paul Spoonley, Andrew Trlin. "Being Accepted: The Experience of Discrimination and Social Exclusion by Immigrants and Refugees in New Zealand." *Occasional Publication No. 13*. New Massey University (2006): VI.

<sup>14</sup> Caroline Fleay, Anita Lumbus, Lisa Hartley. "People Seeking Asylum in Australia and their Access to Employment: Just what do we know?" *Cosmopolitan Societies: an Interdisciplinary Journal* 8, 2 (2016): 4969.

<sup>15</sup> Ibid

<sup>16</sup> London Metropolitan University – Challenging Barriers to Employment for Refugees and Asylum Seekers in London: [https://www.researchgate.net/publication/268058096\\_Challenging\\_Barriers\\_to\\_Employment\\_for\\_Refugees\\_and\\_Asylum\\_Seekers\\_in\\_London](https://www.researchgate.net/publication/268058096_Challenging_Barriers_to_Employment_for_Refugees_and_Asylum_Seekers_in_London)

<sup>17</sup> Farida Fozdar, Lisa Hartley. "Refugee Resettlement in Australia: What we know and need to know." *Refugee Survey Quarterly* 32, 3 (September 2013): 23.



intergenerational and gender role issues, and racism were identified as causes of depression, in many cases to the exclusion of pre-arrival traumatic experiences<sup>18</sup>.

Certain activities listed in this Bill amendment that are considered a measure of integration are above and beyond what is expected from the Australian born population. For example, volunteering is often considered an indicator of integration (i.e. contributing to the community) yet ABS reports reveal that in 2014, only 31% of Australians volunteered their time for other people, compared to 36% four years earlier. It is important not to create further inequality through such measures of integration, which many Australian born citizens would fall short of demonstrating<sup>19</sup>.

#### **Recommendations:**

- 1) That the Committee consider broadening the measures for integration to include participation in support groups.
- 2) Provide more support for migrants to link aspirations to employment outcomes, through education and work placement pathways (e.g., employer subsidised work placements).
- 3) That no criteria for citizenship exceed the expectations placed on existing citizens or the Australian born population.

***“Allow for the Minister to determine eligibility criteria for sitting the citizenship test that may relate to the fact that a person has previously failed the test”***

ACSL is concerned about the Minister’s discretionary power to determine the eligibility criteria for a person seeking to re-sit the citizenship test; in particular, the Bill amendment suggests that the Minister may choose to reject an applicant who fails the citizenship test three times. This disproportionately affects migrants from various visa and country groups, particularly humanitarian entrants, as they are more likely to fail the citizenship test<sup>20</sup>.

Using test scores to represent indicators of Australian allegiance is problematic – someone can score poorly while still having appropriate skills in their daily life. In contrast, someone may be well prepared in test techniques and achieve a reasonable score while having great difficulty in communicating in everyday English and integrating into the Australian community. The challenges migrants encounter when communicating or integrating often has little to do with the types of skills measured in language or citizenship tests. Furthermore, ACSL has concerns regarding the merits of a citizenship test to determine one’s commitment to shared values. A more reliable test lies in one’s actions, not their ability to pass a multiple-choice test, which can be compromised by insufficient language skills<sup>21</sup>.

#### **Recommendations:**

- 1) Preparation measures (i.e. practice tests) and an awareness campaign to be introduced to ensure applicants are informed of the testing requirements, penalties and appeal processes.
- 2) Rather than restricting citizenship applicants from applying after three test fails, the Committee could consider introducing a timeframe (one year before reapplying) and mandatory preparation requirements to unburden the citizenship processing staff.

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<sup>18</sup> Farida Fozdar, Lisa Hartley. “Refugee Resettlement in Australia: What we know and need to know.” Refugee Survey Quarterly 32, 3 (September 2013): 23.

<sup>19</sup> Pro Bono Australia – Australians Abandoning Volunteering: <https://probonoaustralia.com.au/news/2015/06/australians-abandoning-volunteering/>

<sup>20</sup> Department of Immigration and Border Protection – Australian Citizenship Test Snapshot Report: <https://www.homeaffairs.gov.au/Citizenship/Documents/2014-15-snapshot-report.pdf>

<sup>21</sup> Monash University Citizenship Bill Submission 2017:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/CitizenshipBill2017/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CitizenshipBill2017/Submissions)





***“Clarify, for the purposes of automatic acquisition of Australian citizenship, the circumstances in which a person is found abandoned as a child in Australia”***

ACSL endorses this Bill amendment, as it will clarify Australia’s obligation to prevent and reduce statelessness. Under Article 15 of the Universal Declaration of Human Rights, each individual has a right to a nationality. This right is important not only because it provides a sense of identity and inclusion in society, but also because those without a nationality are generally excluded from political processes, the right to entry, the right to work and the right to reside in any country. Australia has an obligation to take measures to avoid statelessness, in particular, among children<sup>22</sup>. Citizenship is at the core of a person’s basic human rights, and given the additional vulnerabilities of children, we encourage the Committee to clarify the following:

- How the Committee consults with child safety and settlement specialists regarding best practice in the support of abandoned children
- How a child will be accompanied by an advocate during any travel or immigration processes
- When abandoned children will be entitled to citizenship.

**Recommendation:**

- 1) That the Committee facilitate constructive consultations that include multicultural youth prior to any decision making regarding changes to citizenship requirements<sup>23</sup>.

**CONCLUSION**

ACSL supports the Committee’s endeavour to maintain the integrity of Australian citizenship, and as advocates of this process, have provided feedback on some amendments that may disproportionately affect humanitarian entrants. Several of the proposed Bill amendments appear to grant the Minister with a high level of discretionary powers, while limiting access to review processes for citizenship applicants. In decision-making of this magnitude, there is always some risk of administrative error, thus, it is essential to implement safeguards that allow for legal review and appeal of decisions to address these risks.

ASCL agrees that more efficient and timely citizenship processing is required - there have been long delays in processing applications, further delaying integration - but any attempt to quicken this process should not oblige new citizens to exceed the expectations of the Australian born population. We understand that strengthening Australian citizenship by introducing new questions about Australian values is responding to concerns about the level of understanding of Australian citizenship and integration; however, addressing such concerns requires a consultative approach engaging all Australians, not only potential citizens.

We thank you for the opportunity to provide feedback to the Committee’s Bill amendments and welcome the occasion to continue this key discussion.

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<sup>22</sup> Multicultural Youth Advocacy Network Response to Discussion Paper:

[http://www.myan.org.au/file/file/MYAN%20Response%20to%20Citizenship%20Discussion%20Paper%20-%202017\\_6\\_17.pdf](http://www.myan.org.au/file/file/MYAN%20Response%20to%20Citizenship%20Discussion%20Paper%20-%202017_6_17.pdf)

<sup>23</sup> Ibid



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