



New South Wales
Council for
Civil Liberties

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**Submission to the Senate Legal and Constitutional Committee
concerning the Australian Citizenship Test Review and Other Measures
Bill 2009**

The NSW Council for Civil Liberties is grateful to the Senate Committee for its invitation to comment on this bill.

The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a non-government organisation in special consultative status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963, and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive use of power by the State against its people.

Recommendations:

Recommendation 1: That proposed subsection 21(3B) be amended by omitting the words 'outside Australia'.

Recommendation 2: That proposed paragraph 26(1)(ba) be amended by omitting the words 'outside Australia'.

Recommendation 3: That item 6 and proposed paragraph 21(2A)(c) be rejected.

Recommendation 4: That if recommendation 3 is not accepted, that an administrative review be made available of the conditions under which the test is sat.

Recommendation 5: That item 5 be rejected, and a replacement require the Minister to take into account the best interests of applicants under the age of 18.

Recommendation 6: The Senate Committee should recommend that a clause should be added to the bill, limiting the material to be tested to what persons need to know in order to carry out the pledge of commitment.

Recommendation 7. The Senate Committee should recommend that the bill include clauses requiring that there be an alternative path to citizenship for refugees, and disadvantaged or vulnerable migrants, including people who, while they understand English, do not have such a level of literacy in the language as to be able to undertake a computer-based test.

Recommendation 8. The Senate Committee should recommend that the bill provide for a statutory body to design and manage the test and the testing procedures and to develop relevant educational materials.¹

Recommendation 9. The Senate Committee should report that the bill should include a clause requiring that the test questions be made public.

A. Introduction

1. Immigrants enrich Australia both economically and socially.² The award of citizenship recognises their value to society and, more fundamentally, their worth as persons.

Denying citizenship (and hence enfranchisement) is undemocratic. It is also dangerous. The existence of a continuing and growing disenfranchised minority of permanent residents in Australia would be a recipe for discrimination and alienation.

2. CCL opposed the introduction of the Citizenship Test (the test) on the ground that the legislation gives the Minister a broad and uncontrolled discretion in setting it; a discretion which is open to use in the service of discrimination. In particular, the stipulation that prospective citizens must have ‘an adequate knowledge of Australia’ leaves it open to the Minister to require candidates to learn quantities of more or less useless facts, depending on what he or she believes to be important.

There are good examples amongst the sample questions in the (soon to be revised) citizenship booklet.³ The date of Federation, the name of Australia’s first prime minister, the colours on the Australian flag and the floral emblem are of no significance whatever. Applicants for citizenship should not have to memorise such material.

The booklet itself includes sections which have no relation whatever to the obligations of citizens. Citizens have no obligation to know anything about cricket, or to care, and absolutely no obligation to support Australian sports teams. (Many citizens do not.) They have no obligation to know anything whatever about horse racing.

3. It was proposed at the time that that the test would be used to test applicants’ knowledge of something called “Australian values”. There is no general obligation on those who seek citizenship of a country to adopt the

¹ There is a model for such a body in the New South Wales Board of Studies.

² Because those eligible to apply for citizenship are by definition already permanent residents, the test effectively prevents the enfranchisement of people who will be living in Australia anyway. See Costar, Brian and Maares, Peter, ‘Citizenship: a test that will divide, not unite’, *Australian Policy Online*, 14 December 2006.

³ CCL understands that these sample questions are not in fact included in the test. The fact that they could even be suggested is of concern.

values that are widespread in that country. To suppose otherwise is to imply that people who came here in the 1930's should have adopted the racist views common at the time—for example, that intermarriage involved a disgraceful activity called 'miscegenation'.

A free and democratic society recognises and respects the diversity of values held by its citizens. Thus an essential feature of Australia's democratic system of government is that citizens are entitled to differ on matters of political opinion and on matters of values. There is, further, a related democratic entitlement to seek to change the values held by a majority of the citizens of a country. There can, indeed, be an obligation to do so.⁴

B. The changes proposed in the bill

1. Physical and mental incapacity. (Items 1, 2 4 and 7)

CCL welcomes the proposal to grant citizenship to applicants who cannot complete the test because of mental or physical incapacity, and not permanent incapacity, occasioned by torture or trauma. In its submission to the Senate Committee in relation to the Australian Citizenship Amendment (Citizenship Testing) Bill 2007, CCL argued⁵ 'requiring fluency in English discriminates against people whose situations do not allow them to learn English—for example, age, past experience of torture or trauma, intelligence levels, and economic circumstances that make learning English difficult (e.g. long work hours, childbearing responsibilities).

CCL therefore welcomes this change. People should not be denied citizenship because there is a hope that some day their crippling psychological conditions will be cured.

The restriction to trauma that occurred outside Australia appears arbitrary. If disability is a reason for opening a different pathway to citizenship, why is that not a reason if the trauma occurred within Australia?⁶ Many people have been traumatised by their experiences in immigration detention. These people need assistance so that they can integrate into the Australian community. Their being made citizens assists with this process.

Further, a person with an incapacity may not find it easy to prove that the cause lies in trauma that was suffered overseas.

Recommendation 1: That proposed subsection 21(3B) be amended by omitting the words 'outside Australia'.

Recommendation 2: That proposed paragraph 26(1)(ba) be amended by omitting the words 'outside Australia'.

⁵ At 4.4

⁶ In some cases, the trauma may have occurred in an immigration detention centre.

2. Starting the test. Items 2, and 6.

These two items introduce a period within which the test must be started. No explanation is given for this change. CCL is concerned about applicants who are prevented from sitting for the test within the granted time period for beginning the test through no fault of their own. If an applicant develops a serious illness, or must care for a child with such an illness, or has sudden and unavoidable demands in their work, or any other of life's vicissitudes prevents him or her completing the process, will a fresh application be countenanced? And if it will, what is the point of setting the limit in the first place?

It is one thing to streamline the process to make it easier (and less distressing in some cases) for applicants to complete it, and quite another to add to the stress and possibly the inequity for the convenience of the Government or the Department.

Recommendation 3: That item 6 and proposed paragraph 21(2A)(c) be rejected.

Recommendation 4: That if recommendation 3 is not accepted, that an administrative review be made available of the conditions under which the test is sat.

3. Persons aged under 18. (Item 5)

Proposed new subsection 21(5) would remove a discretion the Minister has to grant citizenship to a child or young person who is not a resident. CCL is concerned about cases where a minor's lack of resident status is caused through the faults of his or her parents, or other matters beyond her or his control.

Two reasons are given for the change in the Explanatory Memorandum. The first is that the change preserves the integrity of the citizenship and migration programmes by preventing an applicant for citizenship by conferral who is under 18 from being eligible for citizenship if they are not eligible for a permanent visa.

But a migration programme which prevents appeals on the merits to a court is so severely lacking in integrity that permitting a fresh consideration of the cases of minors should not diminish it.

In any case, the integrity of the citizenship programme is not preserved if there are exceptional cases where citizenship ought to be granted and the Minister is prevented from doing so. Nor is the integrity of the migration arrangements harmed by applications for citizenship from young people who have exhausted their other options. At worst, it will take a little longer to resolve the cases.

The second argument is that the change makes the arrangements for children consistent with those for applicants with incapacities and elderly applicants with disabilities. That is the weakest of weak administrative arguments.

Recommendation 5: That item 5 be rejected, and a replacement require the Minister to take into account the best interests of applicants under the age of 18.

C. Changes that ought to be in the bill.

4. The Minister's Announced Changes.

CCL welcomes also other recent changes announced by the Minister in response to some of the recommendations made in the report of the Australian Citizenship Test Review Committee⁷, (the Review Committee) including:

- i. There will be an alternative path to citizenship for refugees, and disadvantaged or vulnerable migrants, including people who, while they understand English, do not have such a level of literacy in the language as to be able to undertake a computer-based test.
- ii. The objectives of the test will be linked to the legal requirements of citizenship, and specifically to the Pledge of Commitment.
- iii. The testing and assessment framework will be developed by educational testing professionals.
- iv. A panel of professional educators with experience in civics and citizenship education will devise the resource book for new citizens. (The resource book.)
- v. The resource book will be in two parts: material covering concepts related to the test, and other material about Australia, with only the first part being tested.
- vi. No question will be mandatory.⁸

Of these, the first three could have been entrenched in the law, and it is disappointing that they have not been. Already there are reports of questions with no single correct answer—like the question ‘Who is the head of the Australian Government?’, and of a question on sport.

Recommendation 6: The Senate Committee should recommend that a clause should be added to the bill, limiting the material to be tested to what persons need to know in order to carry out the pledge of commitment.

⁷Australian Citizenship Test Review Committee, *Moving Forward...Improving Pathways to Citizenship (The Woolcott Report)* Commonwealth of Australia, 2009.

⁸Government response to the Report by the Australian Citizenship Test Review Committee, November 2008.

Recommendation 7: The Senate Committee should recommend that the bill include clauses requiring that there be an alternative path to citizenship for refugees, and disadvantaged or vulnerable migrants, including people who, while they understand English, do not have such a level of literacy in the language as to be able to undertake a computer-based test.

Recommendation 8: The Senate Committee should recommend that the bill provide for a statutory body to design and manage the test and the testing procedures and to develop relevant educational materials.⁹

5. Publicity and the legitimacy of the test questions.

The Review Committee recommended in *Recommendation 18*: ‘All citizenship test questions, regardless of the pathway, be made publicly available and educational experts be consulted on the number of questions to be in the bank’. CCL argued for this when the test was first introduced, and continues to support it.

The Government response has been that ‘keeping the set of questions secret will ensure that the integrity and rigour of the test is not diminished’.¹⁰ It is not clear on what arguments the Government is relying here. Presumably what is really meant is that candidates who do not know what the questions may be will read and learn the complete testable section of the resource book; but if the complete set of questions is published, they will learn only the questions and their correct answers. The importance of this depends on how extensive the bank of questions is.

By contrast, the Review Committee argued ‘While there is little practical research in this area, the suggestion was made that publishing the questions, but not the answers, would promote learning and understanding. Knowing the questions would show the scope of the tested material to the candidate but they would then need to research the answers from the published resources, thereby increasing the learning outcomes’.

A further cost of not making the questions public is that an important source of validity is excluded. While it remains within the power of a Minister to determine what material is to be covered and what questions must or must not be included, only publicity can give confidence that the test is testing what it should.

Recommendation 9: The Senate Committee should report that the bill should include a clause requiring that the test questions be made public.

Martin Bibby
Co-Convenor, Civil and Indigenous Rights Subcommittee.

⁹ There is a model for such a body in the New South Wales Board of Studies.

¹⁰ Government Response p.4.