

## **Dissenting report by Labor Senators**

1.1 Prior to the commencement of this inquiry, the Australian Labor Party (Labor) indicated it had grave reservations about measures within this proposed legislation—in particular, the delays to citizenship eligibility and the new English language test—and seriously questioned the rationale given by the Government with respect to the need for legislation for national security and integration.

1.2 Throughout the course of this inquiry, the Opposition's position has firmed on all of these issues. In every instance, as more detail has emerged, the seriousness of reasons to oppose this legislation has grown.

1.3 Labor opposes the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the Bill) and the three recommendations of the Senate inquiry into the Bill.

1.4 The hearings and submissions demonstrate that Labor's position is consistent with that of the broader Australian community. It is clear that the Australian community see this Bill for what it is: a snobbish, unfair and unfounded attack on citizenship.

1.5 The committee heard evidence that the Bill undermines rather than enhances a cohesive Australian society by setting arbitrary standards of citizenship that exclude people who are in all respects committed to Australian laws and making a contribution to our nation. Labor finds that the legislation does nothing to enhance, but rather risks fragmentation of the social fabric that holds our nation together.

1.6 There are a series of other issues and measures raised in the Bill which the inquiry has touched on at various points. Some of these other measures may well have merit. But Labor cannot and will not support legislation that contains the extension of the permanent residency requirements and the unreasonable English language test, nor will it countenance amending legislation which has been brought to the Parliament using the false arguments of national security and integration.

1.7 With that in mind, should the Government want to bring forward these other measures in a separate bill Labor would consider the other measures in that bill on their merit, based on a more detailed examination which could be conducted at that point. As it currently stands however, the bill cannot be amended to make it acceptable.

### **Inappropriate English language requirements**

1.8 Labor rejects the Government's proposal to increase English language requirements to university level English, defined by International English Language Testing System (IELTS) scoring as 'competent'.

1.9 The Department of Immigration and Border Protection's (the Department's) submission notes that the current citizenship test requires an English level of IELTS 4. Labor supports migrants having conversational English language skills so they can contribute to Australia and participate in economic and cultural activities. Labor also

notes that the current citizenship test requires this level of English. Professor Elder' made clear in evidence that English competence is already a requirement.

We already have a citizenship test in Australia in English, which operates indirectly as a kind of language screen. You can't pass this test without a reasonable degree of competence in English, and I understand that I think you heard yesterday that there language courses in place to help people with their English at the same time as assisting them with the knowledge required to pass this test. So I think that kind of approach is very useful, and that the current citizenship test is a sufficient language hurdle.<sup>1</sup>

1.10 The Government is proposing in this bill a completely inappropriate measure—that is university level English. It demands an unnecessary standard for testing migrants' ability to participate in everyday community life, and is a level of English that many existing Australian-born citizens might be unable to reach.

1.11 This view is backed by the professional teachers of English to speakers of other languages. Evidence presented by the Australian Council of Teaching English to Speakers of Other Languages (TESOL) Associations (ACTA) stated that over a quarter of the Australian population would not meet university standard English.<sup>2</sup> The university level English test proposal clearly signals the Government's snobbish and out of touch approach. It sends a message to every Australian, not just migrants, that if you don't have university level English you are not valued in Australia. The measure is not only snobbish it also targets the most vulnerable—including women, older migrants, refugees and humanitarian entrants—as well as particular language communities for whom English learning is more challenging.

1.12 ACTA's submission condemned the testing regime in very strong terms.

Making an English proficiency test a pre-requisite for attempting the current (or a modified version of) the citizenship test is to create an arbitrary and unfair barrier to those who would otherwise pass the citizenship test.

In this respect, it is exactly the same as the dictation test once used to enforce the White Australia policy.<sup>3</sup>

1.13 Settlement Council of Australia's submission cited statistics that:

Analysing AMEP results for the period 2004 to 2012, a researcher from the Australian National University recently published findings that indicate that zero per cent of participants scored an equivalent to IELTS 6 after completing their 510 hours of AMEP training.<sup>4</sup>

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1 Professor Catherine Elder, Principal Fellow and Acting Director, Language Testing Research Centre, University of Melbourne, *Proof Committee Hansard*, 25 August 2017, p. 44.

2 Australian Council of TESOL Associations, *Submission 292*, p. 5.

3 Australian Council of TESOL Associations, *Submission 292*, p. 24.

4 Settlement Council of Australia, *Submission 368*, p. 3.

1.14 Evidence before the committee also highlighted that an IELTS test is also inappropriate because it, and other competing tests, is controlled by a private company, for making a profit, and that it includes a focus on International English rather than allowing for common differences with Australian English.<sup>5</sup> It is a testing system that the Australian Government or Parliament has no oversight or control of.<sup>6</sup>

The IELTS "world view" is a Cambridge view of what suits the international education and training industry. The growing use of the test for migration purposes is a windfall for the test owners and is directed to a purpose for which it was not and is not designed, and in which the owners have no interest other than a commercial one.

ACTA contends that English proficiency tests designed to screen entry to education and training institutions world-wide is quite inappropriate for determining citizenship in Australia. This lack of appropriateness applies to *any* level of these tests.

The IELTS owners (like the TOEFL owners) are legitimately self-interested in promoting their test, which requires meeting certain professional, technical and other standards. However, the IELTS, like all the other tests against which it competes, is not open to public or government scrutiny in how it is devised, maintained, administered, how raters are trained, and how tests are marked.

The complete lack of public transparency regarding the organisations that own the IELTS, together with the test's intense promotion on all their websites, is a source of concern to ACTA. Our concern applies equally to all the tests that compete with IELTS.<sup>7</sup>

1.15 Labor Senators support the view expressed by ACTA that Australian standards for citizenship should never be outsourced to majority foreign interests.

...the Australian Government should *never* surrender control of crucial requirements for Australian citizenship to any international, overseas and/or commercially driven body or consortium.<sup>8</sup>

1.16 Labor also refutes the Minister for Immigration and Border Protection's claim that IELTS has two streams that result in different tests. The Department has argued that the IELTS test is general in nature and not academic, and that there is a difference in the reading and writing modules.<sup>9</sup> However, the Government's own majority report cites the evidence of Professor Catherine Elder of the Language Testing Research Centre at the University of Melbourne who stated that the academic IELTS test and the general IELTS test both report performance on the same scale.<sup>10</sup> The majority

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5 Australian Council of TESOL Associations, *Submission 292*, p. 23.

6 Australian Council of TESOL Associations, *Submission 292*, p. 2.

7 Australian Council of TESOL Associations, *Submission 292*, p. 23.

8 Australian Council of TESOL Associations, *Submission 292*, p. 24.

9 Department of Immigration and Border Protection, *Submission 453*, p. 49.

10 Professor Catherine Elder, Principal Fellow and Acting Director, Language Testing Research Centre, University of Melbourne, *Proof Committee Hansard*, 25 August 2017, pp. 44–45.

report also quotes Professor McNamara, a linguistic expert at Melbourne University also said 'the tasks are different but the standard required is the same'.<sup>11</sup>

### ***Impacts of the English test on vulnerable migrants***

1.17 The proposals also disproportionately impact women, including from refugee backgrounds and those with stay at home parenting responsibilities. Recent research of 43 refugee women from Western Australia, who desired to be proficient in English, but found that the 510 hours of AMEP was not sufficient nor appropriate to their circumstances, because of their pre-Australian education levels, family responsibilities, health, age, and isolation. Labor Senators are concerned at the significant extent to which the changes will exclude refugees, and disproportionately women refugees, from citizenship. Concerns about these issues have been highlighted in interviews conducted by Curtin University and the Ishar Multicultural Women's Health Centre who found that 'family responsibilities, health issues, being older in age, limited education prior to Australia and isolation were some of the issues which impacted access to full participation in the Adult Migrant English Program made available to new refugees'.<sup>12</sup>

1.18 Labor Senators note that many generations of women who have had little English because often because of their family responsibilities have made significant contributions to our nation, the current generation of migrants are not different, as argued by Mr Achiek, who spoke of his South Sudanese mother.

...I again take you back to my mum, who today still has basic conversational English, however basic that is. If you say four words at a time, she won't understand. That doesn't stop her being a committed Australian and being part of the community and it hasn't stopped her from producing great Australians like myself and my siblings. If you look at my family, there is me working to support other young people and I have a masters degree, which I wouldn't have dreamed of while I was in a refugee camp. My brother has a law degree and my sister has an accounting degree. It's not because we were smart kids; it's because we had support from our mother, who doesn't speak English and at the moment only has conversational language.<sup>13</sup>

1.19 In addition, Labor Senators are concerned that the migrant spouses of Australian citizens may in some cases never be able to become citizens if they are unable to meet English language tests, again we note that this is likely to affect those with full time caring responsibilities. It is of great concern that this means many Australian families will have to suffer the inconvenience of never being able to travel as a family on Australian passports, as well as experiencing a range of other

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11 Professor Tim McNamara, quoted in ABC Fact Check, 'Fact check: Will the Government's new citizenship test demand a university-level standard of English?', *ABC News Online*, 28 June 2017.

12 Research published online at: <http://refugeereseachblog.org/exploring-refugee-womens-settlement-experiences-in-australia-through-photovoice/>

13 Mr Dor Akech Achiek, Coordinator, Youth Projects, Settlement Services International, *Proof Committee Hansard*, Wednesday, 23 August 2017, p. 22.

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difficulties that arise as a parent when you do not have Australian identity documentation.

1.20 Requiring university level English to become a citizen is clearly elitist and risks creating an entire class of people who may live in Australia their whole working lives but not be permitted citizenship. The reasons people do not reach university level language qualifications can be many. In some cases people have not been university trained and would not be able to achieve university level language standards in their first language so it would be extremely difficult to achieve this level in their second or third language. In other cases people could be working full time or looking after their family, meaning they do not have the spare time or financial resources to devote to the intensive study required passing a university level test that many Australian citizens themselves would not pass.

### **General residence requirements**

1.21 Labor rejects the increase to the general residence requirement. Delaying people making a pledge of commitment to Australia and our laws and values, does not benefit Australia. This inquiry has shown that the Government's divisive citizenship changes are driving away potential citizens. During hearings Senators heard from a range of people with different skills and qualifications. Concerns around the bill are not limited to sections of the community or certain visa holders. Submitters noted they have jobs (both skilled and unskilled), pay taxes, have children born in Australia and are buying houses; that they are film makers, students, social workers, businesspeople and refugees.

1.22 The measures proposed are unfair to people who have been a permanent resident or living in Australia for years, often over a decade, and are almost eligible for permanent residency and then citizenship.

1.23 The Government has provided no basis that this proposal in any way measures or supports a migrant's effective integration into the community. Rather, this proposal will completely disregard the valuable economic and cultural contributions often made by migrants while on temporary visas, and their commitment to the Australian way of life, in assessing their eligibility for citizenship. This is notwithstanding the extended period of time often spent by migrants on temporary visas before being granted a permanent visa. The average time spent on a temporary visa has been estimated by the Productivity Commission as 6.4 years<sup>14</sup>.

1.24 The increase in the general residence requirement also causes significant 'visa stress' to people who have been a permanent resident or living in Australia for many years and who are almost eligible for permanent residency or citizenship.

1.25 The impact of these changes has been detailed in countless submissions and in verbal evidence before the committee:

I cannot emphasise enough how all-encompassing those factors are, and I think that's really reflected by the fact that you've got—I think I was told—

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14 Productivity Commission, *Migrant Intake into Australia*, 13 April 2016, p. 418.

something like 14,000 submissions from people, because when these things change, they affect people's lives so profoundly.

...Part of what this all means for us is that we never know, on any day, if the Minister might decide to change the conditions of our visa, of the pathway to permanent residency and citizenship that we have carefully mapped out. I haven't heard anyone describe this comprehensively before, but I just call it visa stress. You lie awake at night worrying about the next steps and the awful possibility that perhaps this time your application will be rejected and your life will be turned, suddenly, upside down: your work, your family, your house, all those commitments and plans that you've made.<sup>15</sup>

1.26 Labor Senators also agree with concerns raised, by the Andrew & Renata Kaldor Centre of International Refugee Law and the Gilbert + Tobin Centre of Public Law, about the perverse outcomes in the new residency requirement for people who have been already resident in Australia for many years.

...a non-citizen could apply offshore (i.e. from another country) to enter and reside in Australia on a permanent skilled independent visa (Subclass 189). This is a permanent visa, which would see the person meet the general residence requirement after 4 years of living in Australia. Another person could apply onshore for the same Subclass 189 visa after many years living in Australia on a series of temporary visas (visitor, student, temporary skilled), yet, if the proposed changes are passed, their years living in Australia on those temporary visas would not count towards their residence periods. The result is a perverse outcome whereby a person who has been in Australia *longer*—and who potentially has built a stronger association to Australia and made a significant contribution to our society—is penalised when it comes to accessing citizenship.<sup>16</sup>

1.27 The practical implications in day to day life of these changes were made clear to the committee in the many personal stories of both inspiration and hardship that we heard. One young woman who has migrated from India as a student and who has studied and worked in Australia for many years said:

I keep on trying to find words that would do justice to my journey here in Australia for the past four years. The truth is this: no words could describe the hardship I went through, the love I received and continue to receive from my fellow Australians, and the sense of home I feel today.

On 8 August 2017 I finally became eligible to call this country home. It was a mere 110 days after the announcement made in April. That number may not seem much, but for me it has felt like an eternity. The retrospective aspect that has been inserted into this bill means that my struggle and my story mean very little.

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15 Dr Penny McCall Howard, Member, Fair Go for Migrants, *Proof Committee Hansard*, 23 August 2017, p. 10.

16 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378*, pp. 11–12.

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It deeply saddens me to know that if this bill as it stands to date becomes part of legislation I'll have to wait another three years—a total of approximately seven years—before I call this beautiful country home. I feel demotivated and feel as though all the hard work I've put in and all the challenges I've faced since I landed here are going to be prolonged. For me, citizenship is more than a piece of paper.<sup>17</sup>

1.28 The residence requirements in the bill not only delay people from making a pledge of allegiance to Australia they can reduce their contribution to the nation. It can be seen to impact on people's capacity to travel in a wide variety of ways, both because of the inability to access an Australian passport, and the extended residency requirements.

...involved in our group is a PhD researcher in electrical engineering...at the University of Wollongong. She has an Iranian passport, so it's very difficult for her to participate in academic conferences on an Iranian passport. As soon as she applies, there's this extremely long process that she needs to go through, for example, to attend some of the main academic conferences held in the United States. So she is, obviously, very keen to get an Australian passport, because that means that she would then be able to actually to a better job on her research and disseminate that from an Australian university.<sup>18</sup>

1.29 Mr Kon presented evidence to the committee that highlighted the detrimental impact that the increased residency requirement have on his ability to leave the country for any meaningful period of time as it would cause a delay in his accrual of his residency. Labor Senators note that the requirement of one year is achievable but that the introduction of four years has significant personal consequences for people who are in all respects committed to becoming good citizens.

...at the end of the day I will personally get to become a citizen, I will get to do my postgrad and I will go on to live a decent Aussie life. However, there is a watch which is ticking backwards, because I do not know what might happen to my grandparents. For instance, what if I receive a call today to say one of my grandparents was severely ill? In order for me to visit them or even, if I can make it out, to make the memorial service, I would have to apply for a resident return visa, which takes at least a week, and pay \$365 and, at the same time, find the money to buy aeroplane tickets. By definition, if something bad happens to one of my relatives overseas, I will not get the chance to spend a couple of days with them.<sup>19</sup>

### **A lack of evidence to justify the changes**

1.30 Labor notes concern about the lack of detail and evidence presented by the Government in support of its proposals in submissions and throughout the Senate inquiry. Justification for changes relies on a Government process led by Phillip Ruddock and Conncetta Fierravanti-Wells in 2015 which received 2,544 responses

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17 Ms Shruti, *Proof Committee Hansard*, 23 August 2017, p. 15.

18 Dr Howard, Member, Fair Go for Migrants, *Proof Committee Hansard*, 23 August 2017, p. 10.

19 Mr Kon, *Proof Committee Hansard*, 23 August 2017, p. 16.

and 400 submissions. This Senate inquiry received over 13,500 submissions. Only a small amount of submissions, less than 0.001 percent, were in favour of the changes. The main one being from the Government itself.

1.31 A number of academics questioned the evidence base provided by the Government. Professor Reilly, Director, Public Law and Policy Unit, University of Adelaide noted that the department uses a report from the Migration Policy Institute, *In Search of Common Values Amid Large-Scale Immigrant Integration Pressures* as a key part of its justification.<sup>20</sup> Professor Reilly highlighted that the Department wrongly uses the report to justify 'integration requirements' at an early stage in migration. What the Department did not say in use of this material is that the report concluded that while some countries are using such measures, they risk alienating communities.<sup>21</sup>

### **The Government's claims around National Security**

1.32 Labor has for over a century demonstrated our understanding that it is the paramount responsibility of all parliamentarians, whether in Government or in Opposition, to keep our community safe and our nation secure.

1.33 Labor does not believe that national security should ever be used for partisan political purposes, and we will never seek to politicise any disagreements that we may have with the Government on national security matters.

1.34 The Government has claimed that this bill has been developed because of national security. There was no evidence received from national security agencies such as the Australian Security Intelligence Organisation or the Australian Federal Police—the evidence is from a process run by two ex-members of parliament in 2015. The strongest evidence of the lack of evidence to increase English language requirements and extend resident requirements for national security reasons is the Department's submission itself which lists existing arrangements, provides no additional evidence and vaguely states, '[t]he measures outlined in the Bill build on these earlier developments and reinforce the integrity of Australia's citizenship programme.'<sup>22</sup> The Department offers no clear evidence or rationale for changes proposed in the bill.

1.35 If the Government wishes to bring forward measures that benefit national security there is an established process for doing so. Labor is committed to bipartisan action on national security to keep Australia safe. Some measures in the bill may benefit national security but they have been lost in what the Government itself admits in the majority Government report on this issue is 'legislation by media release'.

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20 Professor Alexander Reilly, Director, Public Law and Policy Unit, University of Adelaide, *Proof Committee Hansard*, 23 August 2017, pp. 25–26.

21 Professor Alexander Reilly, Director, Public Law and Policy Unit, University of Adelaide, *Proof Committee Hansard*, 23 August 2017, pp. 25–26.

22 Department of Immigration and Border Protection, *Submission 453*, p. 17.

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## Integration

1.36 The Government has claimed the proposed changes will improve integration. All of the evidence heard by the committee was to the contrary. The English language requirements could create a class of people who go their entire working lives without the opportunity to become citizens. The fact that someone fails the citizenship test three times they have to wait two years before they get an opportunity to take it again means people are waiting years before pledging allegiance to Australia.

1.37 The bill will also further disadvantage vulnerable classes of migrants, including humanitarian entrants, without adequate resources and support for passing the exam.

1.38 The Government has not indicated any intention to provide additional, improved, more accessible programs to support English language training—even though this was recommended by the Fierravanti-Wells/Ruddock report.

Recommendation 15: In view of the strong emphasis the community places on English language, the Government should improve the Adult Migration English Program (AMEP) and ensure new citizens have adequate (not just basic) language ability, taking into account particular circumstances.<sup>23</sup>

1.39 Labor does agree with the Government that integration is a crucial element for promoting and fostering a cohesive Australian multicultural society. For this reason, Labor proudly supports integration programs such as settlement services, the Adult Migrant English Program, the National Community Hubs Program, the Translating and Interpreting Service, as well as the range of State and Territory services and programs aimed at increasing social cohesion and celebrating modern multicultural Australia. These programs include the ACT Work Experience and Support Program, NSW COMPACT, NSW and Victoria's Multicultural Youth Network, Queensland's Community Action for a Multicultural Society program, Victoria's Settlement Coordination Unit, WA's Multicultural Partnerships Program.

1.40 Labor Senators agree with views that find that setting arbitrary standards of citizenship that exclude people who are committed to Australian laws and making a contribution to our nation does nothing to enhance but rather places at risk our social fabric.

We're concerned that Australia's inclusiveness and social cohesion will be adversely impacted by the proposed changes to the citizenship laws that will effectively exclude significant portions of the resident populations from citizenship. We think that extended alienation from the rights, privileges and belonging that come with citizenship risks increased social fragmentation and disintegration of Australia's largely harmonious social fabric. The settlement process, we think, ought to advance integration by being as welcoming as possible, with migrant support, resettlement and naturalisation to operate within an atmosphere of cooperation. Several

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23 Senator the Hon. Concetta Fierravanti-Wells and the Hon. Philip Ruddock, *Australian Citizenship—Your right, your responsibility*, National Consultation on Citizenship, Final Report, 2015, p. 22.

proposed citizenship reforms risk undermining this, putting Australia's vibrant cultural diversity, success as an immigrant nation, and world leadership in multicultural policy at risk. Countless waves of refugees in Australia have demonstrated that arbitrary judgements of English or the initial integration levels of individuals are not good predictors of future contribution or commitment to the nation.<sup>24</sup>

1.41 The Government has provided no convincing basis that this proposal in any way measures or supports a migrant's effective integration into the community. Rather, it proposes to disregard the valuable economic and cultural contributions often made by migrants while on temporary visas, and their commitment to the Australian way of life, in assessing their eligibility for citizenship.

### **Conclusion**

1.42 Labor thanks the very large number of people who made submissions to this inquiry and we are particularly grateful to the many submitters and witnesses for their time and for sharing their expertise and most importantly personal concerns and experiences.

1.43 The submissions and testimony provided during committee hearings overwhelmingly show that:

- the university level English test is unreasonable and snobbish;
- the delay in people making a pledge of allegiance to Australia from increased residency requirements is unfair and will not benefit Australia;
- the claims by government that the proposal is about national security and integration are not evidence based; and
- prior to the commencement of this inquiry, Labor indicated it had grave reservations about measures within this proposed legislation—in particular, the delays to citizenship eligibility and the new English language test—and seriously questioned the rationale given by the Government with respect to the need for legislation for national security and integration. The proposal is 'legislation by media release'.

1.44 Labor shares the concerns of the community in regard to the Government's proposal and we remain committed to doing our utmost to ensure that this legislation does not pass the Parliament.

1.45 As noted above, there are a series of other issues and measures raised in the Bill which the inquiry has touched on at various points. Some of these other measures may well have merit. With that in mind, should the Government want to bring forward these other measures in a separate Bill, Labor would consider the other measures in that Bill on their merit, based on a more detailed examination which could be conducted at that point. As it currently stands however, the Bill cannot be amended to make it acceptable.

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24 Ms Hutch Hussein, Senior Manager, Refugees, Immigration & Multiculturalism, Brotherhood of St Laurence, *Proof Committee Hansard*, 25 August 2017, p. 16.

**Recommendation 1**

**1.46 That the Bill not be passed in its present form.**

**Senator Louise Pratt  
Deputy Chair**

