

Dissenting report by the Australian Greens

Introduction

1.1 The Senate inquiry into the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the Bill) received more than 13,500 submissions. The overwhelming number of submissions raised serious concerns regarding this Bill.

1.2 Despite the evidence provided and concerns raised by submitters, the Chair's report has recommended that this Bill be passed, subject to the Government considering three recommendations.

1.3 The Australian Greens are concerned that the Bill will cause hardship and suffering to those seeking citizenship and undermine one of the ways that Australia forges an inclusive and multicultural society. The Australian Multicultural Commission notes the Bill will '...create a growing pool of long-term permanent residents and potentially undermine the high levels of social cohesion we currently enjoy'.¹

1.4 The Federation of Ethnic Communities' Councils of Australia (FECCA) submitted:

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'.²

English language

1.5 The 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.

1.6 As submitted by the Language Testing Research Centre, 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. The requirement that applicants reach Level 6 on the IELTS is unreasonably high.

1.7 Many submissions noted that many Australian citizens who have spent their whole life in Australia would fail this test. Fair Go For Migrants submitted:

The English test will unfairly discriminate against partners of students, workers or citizens who may not have the same language skills, and refugees who may have missed years of education in the process of fleeing

1 Australian Multicultural Council, *Submission 334*, p. 3.

2 Federation of Ethnic Communities' Councils of Australia, *Submission 410*, p. 1.

from danger. If one family member passes but others do not, families could be torn apart.³

1.8 The Launceston Hazara Community submitted that:

The Process of learning English is very difficult considering the problems we have been through. Failure to pass the citizenship test will deny us a sense of belonging to Australia.⁴

1.9 Enforcing this standard of English will present a substantial economic burden on those seeking Australian Citizenship as eligibility for free English classes ceases once immigrants reach Level 4 on IELTS.⁵

1.10 The Greens are concerned that the pressure to pass the English test outlined in the Bill will detract from other activities necessary to successfully migrate to Australia, including prioritising the education of children, participating in the workforce and settling.⁶

1.11 The Greens do not accept that strict, advanced language skills are required to become a contributing Australian citizen. The Language Testing Research Centre noted:

Research has shown that in a multilingual and multicultural society such as ours, people can function adequately within their own multilingual networks, and at the same time contribute effectively to the society with relatively low levels of English.⁷

Increase to four years

1.12 The Bill's Explanatory Memorandum outlined that extending the period of permanent residence that potential citizens needed to fulfil before applying for citizenship was designed to foster better integration into Australian society and to give applicants more time to have their good character tested. However, many submitters challenged whether there was evidence to support such claims. GetUp! submitted that:

There has been no evidence provided to show that forcing people to stay in Australia for an extended period of time improves the likelihood of successful integration into the community. Rather, a sudden increase in residency requirements has plunged thousands into deep uncertainty about their futures.⁸

1.13 At a public hearing Oz Kiwi Association Inc. (Oz Kiwi) described the impact of the proposed increase in residency would have on families and their children's education:

3 Fair Go for Migrants, *Submission 470*, p. 2.

4 The Launceston Hazara Community, *Submission 489*, p. 1.

5 Language Testing Research Centre, University of Melbourne, *Submission 312*, p. 4.

6 Australian Multicultural Council, *Submission 334*, p. 2.

7 Language Testing Research Centre, University of Melbourne, *Submission 312*, p. 3.

8 GetUp!, *Submission 372*, p. 4.

Oz Kiwi has been contacted by hundreds and hundreds of families who are now in between permanent residency and citizenship. Some parents have gained permanent residency, either through a skilled visa or resident return visa or a spousal visa, and have then sponsored their child, or children, with the intention of that child becoming a citizen and then going to university and accessing higher education. With these proposed changes, from a one-year to four-year wait as a permanent resident, that's a very pertinent time in a child's life because they're finishing their high school education and would then like to go onto university. The issue is now that they will not become a citizen as they expected, perhaps, either in 2017 or 2018. They will not become a citizen for some three or four years more, which means their university education is most likely on hold because, despite the government's intention of opening up the higher education loan scheme to all permanent residents, it is out of the question for most families to pay \$30,000 per year for each of their university-age children.⁹

1.14 Oz Kiwi went on to explain:

We have been contacted by families who have withdrawn their application for permanent residence for their child, because it means that child is going to be in limbo.¹⁰

1.15 Fair Go for Migrants submitted that:

The legislation is based on misleading assumptions about the circumstances of people currently applying for citizenship. These persons have already had to live in Australia for at least four years on a valid visa in order to apply. In our experience, most persons have lived in Australia for 4-10 years before they are eligible to apply for citizenship under current law.

... This bill requires people to wait another 4 years after becoming permanent residents, discounting the years and the effort and money people have spent while on temporary visas, and throwing the lives and plans of thousands of people into disarray.¹¹

1.16 The Greens are also concerned that refugees will be disproportionately affected by this change. Refugees who arrive in Australia without a valid visa are only offered a Temporary Protection visa or a Safe Haven Enterprise visa. These visas present a longer road to permanent residency, which means refugees who fulfil all the requirements mandated to them by their visa status and who are working towards citizenship may take in excess of ten years to achieve citizenship.¹²

9 Ms Joanne Cox, Deputy Chair, Oz Kiwi Association Inc., *Proof Committee Hansard*, 25 August 2017, p. 4.

10 Ms Cox, Deputy Chair, Oz Kiwi Association Inc., *Proof Committee Hansard*, 25 August 2017, p. 4.

11 Fair Go for Migrants, *Submission 470*, pp. 1–2.

12 Refugee Legal, *Submission 439*, pp. 12–13.

Increase in Ministerial discretion

1.17 The Greens share Refugee Legal's concern relating to the increase in the Minister's powers:

The proposed changes are extensive in reach and would amount to a radical erosion of fundamental legal protections that would in practice ultimately deny many people due process, in the important matter of whether they can become an Australian citizen. No compelling case has been made out to warrant such a radical erosion of fundamental legal protections.¹³

1.18 While the Bill allows the for the Minister to override determinations of the Administrative Appeals Tribunal (AAT) in the 'public interest', the AAT already considers public interest during their deliberations.¹⁴

1.19 The Greens endorse Australian Lawyers Alliance submission that allowing the Minister to reverse AAT decisions '...is contrary to the public interest in the broader sense, and the separation of powers that ensures that power is not exercised unchecked where it can have negative impacts on people's lives'.¹⁵

1.20 Australian Lawyers Alliance submitted that:

Centralising power in this way also foments suspicion of, and facilitates, corruption that could persist unchecked and uncorrected.¹⁶

1.21 The Greens are highly concerned by the dramatic expansion of Ministerial power to revoke citizenship. And share the concerns of Australian Lawyers Alliance who submitted:

Rather than founding the revocation on a finding of criminal guilt, proposed s34AA requires only that the Minister be satisfied. Proposed s34AA(2)(b) specifies that the fraud need not constitute an offence or part of an offence. Particularly alarmingly, it appears the provision would have retrospective operation, as revocations can take place on the basis of frauds or misrepresentations that occurred up to ten years prior to the revocation, as discussed above.¹⁷

1.22 The Greens strongly agree with the following statement of Refugee Legal:

Ultimately, denying a person a fair hearing heightens the risk of an incorrect and unjust outcome. Increasing the risk of an incorrect and/or unjust outcome is significant, particularly given the consequences that would follow - that is, that a person is denied citizenship, or has their citizenship revoked.¹⁸

13 Refugee Legal, *Submission 439*, p. 4.

14 Law Council of Australia, *Submission 464*, p. 7.

15 Australian Lawyers Alliance, *Submission 454*, p. 6.

16 Australian Lawyers Alliance, *Submission 454*, p. 6.

17 Australian Lawyers Alliance, *Submission 454*, p. 12.

18 Refugee Legal, *Submission 439*, p. 4.

Children born to non-citizens

1.23 The 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).

1.24 UNICEF Australia in their submission stated:

The Explanatory Memorandum states, that in exercising discretion to revoke a child's citizenship the Minister can take into consideration relevant circumstances, including the best interests of the child. However, there is no specific obligation for the Minister to do so. As such there is a risk that the Minister may not take the best interests of the child into consideration at all as required by the CRC [Convention on the Rights of the Child].¹⁹

1.25 The Greens share the concerns of Australian Lawyers Alliance that the Bill:

... has the potential to give rise to statelessness, in contravention with Australia's obligations as a party to the *Convention Relating to the Status of Stateless Persons* (1954), and the *Convention on the Reduction of Statelessness* (1961).²⁰

1.26 The Greens share the Law Council of Australia's concern that by extending a test of good character to children under the age of 10 years contradicts the doctrine of *doli incapax*, that children under ten should not be held criminally responsible for what in an older person would be considered a criminal offence.²¹

Recommendation 1

1.27 The Greens recommend that the Bill is not passed.

**Senator Nick Mckim
Senator for Tasmania**

19 UNICEF Australia, *Submission 455*, p. 2.

20 Australian Lawyers Alliance, *Submission 454*, p. 15.

21 Law Council of Australia, *Submission 464*, p. 18.

