

Dissenting report by the Nick Xenophon Team

1.1 The Australian Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the bill) is a concerning piece of legislation. It contains a number of measures that are unfair, unnecessary, and risk undermining Australia's reputation as a welcoming and inclusive multicultural society. What is more, the Government has not adequately made its case for many of these reforms.

1.2 In its majority report, the committee makes the extraordinary and illogical assertion that 'as a percentage of the overall adult population of Australia the number of those objecting to the proposed bill is very low and that this can lead to the assumption that most Australians support tightening and strengthening the citizenship regime'. We do not accept this proposition, as the number and content of submissions cannot be extrapolated as representing the views of the greater population.

1.3 Most Australians are fair-minded and would not support putting additional and unwarranted hurdles in front of aspiring Australian citizens who are law abiding members of our society and who make a valuable contribution.

1.4 The bill shifts the goalposts for tens of thousands of permanent residents who thought they were on track for Australian citizenship. According to the Department of Immigration and Border Protection (the Department), between 20 April 2017 and 31 July 2017, 50,940 citizenship applications were lodged for processing.¹ As at 16 July 2017, 47,328 people who had lodged an application (on or after 20 April) would be affected by the retrospective nature of the proposed changes.²

1.5 The Nick Xenophon Team (NXT) does not support the retrospective nature of the government's citizenship reforms. It notes the committee's recommendation that the bill ought to contain transitional provisions for people who held permanent residency visas on or before 20 April 2017 so that the current residency requirements continue to apply to this cohort of citizenship applicants. However, NXT is of the view that any changes proposed through this bill should operate prospectively only.

1.6 Based on the evidence provided, the Department has not been able to determine the number of people likely to be affected by the proposed English language competency test. In addition, the Government has not been able to justify how it determined that the International English Language Testing System (IELTS) Band 6 was the most appropriate measure of an applicant's English competency skills nor has it been able to satisfy concerns around the adverse impacts the changes will have on existing permanent residents.

1.7 The committee has expressed concern at the prospect of would-be Australians being excluded from citizenship as a result of the high benchmark the Government has

1 Mr Damien Kilner, Assistant Secretary, Family and Citizenship Programme, Department of Immigration and Border Protection, *Proof Committee Hansard*, 24 August 2017, p. 48.

2 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.

set via the English language test requirements. It is particularly noteworthy that in one of its three recommendations it has cautioned against the adoption of a standard of English that many current citizens could not reach.

1.8 NXT considers that if an English language test is to be incorporated in citizenship applications then it should not set the bar any higher than currently exists in the citizenship test, as it already requires a functional level of English to understand and complete.

1.9 The bill also proposes to provide the Minister for Immigration and Border Protection with unprecedented and unfettered discretionary powers which could be used to override decisions of the Administrative Appeals Tribunal (AAT) and overturn grants of citizenship. NXT is extremely concerned that these measures could deny applicants due process.

1.10 In its report, the committee supports the government's view that Ministers are ultimately responsible to the Australian people whereas the AAT, along with the Australian Human Rights Commission, are 'accountable to no one'. This view undermines the integrity of the tribunal process. It also ignores the fact that decisions of the AAT are subject to judicial review and the inherent protection that process provides.

1.11 Additionally, the bill proposes to remove automatic citizenship rights for children who were born in Australia and have lived here until their 10th birthday. Children captured by the changes will remain stateless and be denied the most basic rights and protections despite having been born and raised in Australia.

1.12 The bill proposes limiting the citizenship test to three attempts and those who fail their third attempt are barred from sitting the test again for two years. The committee suggests it would be worth considering allowing additional tests on a cost-recovery basis. NXT considers there should be no cap on the number of times an applicant can sit the test.

1.13 Proposed subsection 46(5) of the bill provides that the Minister may determine an Australian Values Statement and any requirements relating to that Statement. A determination made under that subsection will be a legislative instrument however it will not be subject to disallowance.

1.14 NXT agrees that an Australian Values Statement that underpins Australia's core multicultural values could prove a beneficial tool in the citizenship process. However, the development of any such Statement needs to be the subject of considered and measured parliamentary debate. It is not appropriate that this function be exercised by the Executive without appropriate parliamentary approval.

1.15 By the same token, the criteria for the proposed integration assessment, to weigh whether an applicant has sufficiently 'integrated into the Australian community', should also be properly debated and determined by Parliament.

Recommendation 1

1.16 That, for the reasons stated above, the bill not be passed in its present form.

**Senator Stirling Griff
Senator for South Australia**

