



Australian Citizenship Amendment (Citizenship Testing) Bill 2007

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Contents

Purpose.....	1
Background.....	1
Basis of policy commitment	1
Australian Citizenship.....	2
Citizenship tests in other countries	4
Canada.....	4
United Kingdom.....	4
United States of America.....	5
The Netherlands	6
New Zealand.....	7
Position of significant interest groups/press commentary	7
Polls.....	7

Humorists	8
Budget commentary.....	8
Coalition backbench/ALP/Australian Democrat/Greens policy position/commitments	9
Financial implications.....	11
Main provisions	11
Schedule 1 – Amendments to the <i>Australian Citizenship Act 2007</i>	12
Personal identifiers	12
Eligibility.....	12
Test to be decided by Ministerial written determination.....	13
Fees.....	14
Exemptions	15
Concluding comments	15
Endnotes.....	17

Australian Citizenship Amendment (Citizenship Testing) Bill 2007

Date introduced: 30 May 2007

House: House of Representatives

Portfolio: Immigration and Citizenship

Commencement: Sections 1 to 3 commence on Royal Assent. Schedule 1 to the Act will commence on a day or days to be fixed by Proclamation. See comment on item 2 below.

Purpose

The [Australian Citizenship Amendment \(Citizenship Testing\) Bill 2007](#) ('the Bill') amends the *Australian Citizenship Act 2007* ('the Act') to provide for the testing of prospective applicants for Australian citizenship by conferral. The Bill:

- requires certain applicants for Australian citizenship by conferral to have successfully completed a citizenship test prior to making an application
- outlines the general eligibility criteria for Australian citizenship, and
- provides that the fee prescribed for an application to become an Australian citizen may include a component that relates to the test or tests sat by the applicant.

Background¹

Basis of policy commitment

On 11 December 2006, the Australian Government [announced](#) the introduction of a test for certain applicants for Australian citizenship.²

The policy detail had been set out in the September 2006 Discussion Paper, [Australian citizenship: much more than a ceremony](#); 'Considerations of the merits of introducing a formal citizenship test' and confidential submissions were invited.

In all 1 644 submissions were received, 1 486 from individuals and 158 from organisations. Individual submissions were not made public but DIAC has provided a [summary](#) of their positions. Submissions from 116 organisations were made publicly available.³ The submissions are analysed in an article by Katharine Betts and Bob Birrell, '[Making Australian citizenship mean more](#)', *People and Place*, v. 15(1), 2007, pp. 45-61.

The concept of a citizenship test to aid integration is a policy measure increasingly employed in Europe, as discussed below. The debate there is clearly framed around the

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integration of large Muslim communities in European nations, and the notion of ‘home-grown terrorism’ in post-11 September Western societies.⁴

The test itself is not yet public. When introducing the bill to the Parliament, Minister Kevin Andrews stated:

The material which will form the basis of the citizenship test will highlight the common values we share, as well as something of our history and our background. It is currently being drafted and will be released once completed.

The booklet will give migrants to Australia the information they need to better understand what it means to be an Australian, what Australia will do for them, and what they are expected to do in return, for this country. It will give a brief summary of our history, our heritage, our symbols, our institutions and our laws, as well as what migrants need to do to apply for citizenship.⁵

Media reports have stated that the development of the booklet has delayed the introduction of the Bill until now.⁶ The Minister also explained the operational aspects of the test:

The test is expected to be computer based and consist of 20 multiple-choice questions drawn randomly from a large pool of confidential questions. Each test is expected to include three questions on the responsibilities and privileges of Australian citizenship. The pass mark is expected to be 60 per cent including answering the three mandatory questions correctly. A person will be able to take the test as many times as required in order to pass.⁷

On 13 June 2007, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Committee for [inquiry](#) and report by 31 July 2007. Submissions will be available after 6 July.

The Senate Committee for Scrutiny of Bills in the [Alert Digest No. 6 of 2007](#) criticise the commencement provisions of the Bill and stated that it also contains insufficient scrutiny of instruments and excludes proper merits review. These criticisms are dealt with in full under the ‘Main Provisions’ section below under discussion of **subclause 2(1)** and **item 5 of Schedule 1**.

Australian Citizenship

An extensive discussion of citizenship issues and the policy background to *Australian Citizenship Act 2007* can be found in [Bills Digest no. 72](#) 2005–06.

For an analysis of some the historical and legal aspects of citizenship see also Peter Prince, [‘Mate! Citizens, aliens and ‘real Australians’—the High Court and the case of Amos Ame’](#), *Research Brief*, no. 4, Parliamentary Library, Canberra, 2005–06.

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[Section 21](#)(2) of the *Australian Citizenship Act 2007* already contains a range of eligibility requirements for citizenship such the person must be

- aged 18 or over
- a permanent resident
- mental capacity (understands the nature of the application at that time)
- satisfies the residence requirement (now 4 years under section 22)
- possesses a basic knowledge of the English language
- has an adequate knowledge of the responsibilities and privileges of Australian citizenship
- likely to reside, or to continue to reside, in Australia, and
- is of good character.

The official Australian citizenship [website](#) maintained by the Department of Immigration and Citizenship outlines the ‘privileges and responsibilities’ accorded to Australian citizenship and states that citizenship ‘formalises your membership of the Australian community’:

Privileges of Australian Citizens

It entitles you to privileges of Australian citizenship giving you the right to:

- live in Australia
- apply for an Australian passport and to leave and re-enter Australia without applying for a resident return visa
- seek assistance from Australian diplomatic representatives while overseas
- vote to help elect Australia's governments
- stand for Parliament
- work in the public service
- serve in the armed forces
- register as Australian citizens by descent any of your children born overseas after you become an Australian citizen.

Responsibilities of Australian Citizens

Citizenship also brings with it responsibilities. For example, citizens are required to:

- obey Australian laws

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- enrol on Federal and state/territory electoral registers
- vote in elections
- defend Australia should the need arise
- serve on a jury if called to do so.⁸

In fact, all categories of migrant and visa holders have to obey Australian laws when present in the territory (noting those on diplomatic visas may be immune from prosecution).

What the website does not emphasise is that there may be more pragmatic reasons for making citizenship process more of a hurdle than currently exists. Once people take out citizenship they cannot be removed through use of the criminal deportation power. This has been contentious in the context of Ministerial comments about the citizenship history of Sheik Hilali.⁹

This concern is also reflected in the introduction of character tests for permanent residents and resumption of citizenship contained in the Citizenship Act.

Citizenship tests in other countries

Canada

The residency requirement is three years lived in Canada as a permanent resident out of the four years before applying. Applicants must be able to communicate in English or French, must 'know about Canada', and must 'know about the rights and responsibilities of citizenship'.

[Applying for Citizenship](#) has information about the application, residency requirements, [citizenship test](#) (a list of questions based on the booklet [A Look at Canada](#)) and citizenship ceremony.

Further information is available at <http://www.cic.gc.ca/english/citizen/menu-howto.html>

United Kingdom

Residency requirements are: presence in the UK for five years prior to application and no absence from the UK of more than 450 days over the five-year period; 270 days over the 3-year period; and 90 days in the year prior to application.

With effect from 1 November 2005, all new applicants are required to demonstrate knowledge of English and also have to pass a 'Life in the UK' test. Those who have inadequate English (below ESOL level 3) are required to undertake language courses

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which incorporate information about ‘Life in the UK’. See here for detailed information regarding [British Citizenship eligibility](#).

For further information on the Life in the UK test, visit the [Life in the UK test](#) website.

The UK measures have been controversial. Supporters of the test make the following contentions:

- it is important that people should have an understanding of the democratic society they are entering¹⁰
- an ‘understanding of the British language and our way of life is vital. We must maintain and further develop a society in which new citizens feel welcome and where there is a clear understanding of the expectations of all residents—new and old’¹¹
- the test was not about assimilation but integration of minority communities, some of whose lack of English, particularly among women, meant they were living isolated lives.¹²

Those against the test in the UK hold that:

- a ‘rounded knowledge of history’ and of Britain’s institutions, rather than ‘hot air about supposed British values’ would better equip young adults to play a full role in society¹³ (the test has been much criticised for its neglect of history)
- the test gives no insight into how to mix socially or in the workplace, focusing instead on ‘ivory tower’ issues such as the courts, the church and the queen¹⁴
- it will be seen as a way of excluding people from British citizenship.¹⁵

The initial proposal in 2002 was welcomed by the Conservatives, the Liberal Democrats, the Commission for Racial Equality and the Refugee Council, but some raised fears that the new requirement could amount to an attempt to impose cultural and religious values on new migrants.¹⁶

In the first nine months of its operation in the UK (November 2005–July 2006), 68.7 per cent of candidates passed the test.¹⁷

Readers should note however, that unlike Australia, the UK has a Human Rights Act, and is a signatory to the European Convention on Human Rights which allows appeals to the Strasbourg court on issues of discrimination and asylum from UK courts.

United States of America

Residency requirements are: presence in the US continuously for five years as a lawful permanent resident with no single absence from the US of more than one year; physical presence in the US for at least 30 months out of the previous five years; and has resided within a state or district for at least three months.

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Applicants must show that they are a person 'of good moral character' for the five year period; that they can read, write, speak and understand words in ordinary usage in the English language, and must demonstrate a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the US (exceptions apply).

Further information is at <http://uscis.gov/graphics/services/natz/index.htm> which includes:

- [A Guide to Naturalization](#): A comprehensive booklet which provides information on the benefits and responsibilities of citizenship, an overview of the naturalization process and eligibility requirements.
- [Eligibility Requirements and Testing](#): This page details general and special requirements for becoming a naturalized US citizen, and includes an interactive eligibility worksheet. Additionally, the page provides links to study guides and an interactive self test for U.S. history and government.

Reactions to the test have been polarised, as was reported by the London newspaper *The Guardian* in late 2006 when a revision of the test was piloted for the first time since 1986:

"Our main concern is that the test does not become even more daunting an obstacle to citizenship than it is right now," said Fred Tsao, of the Illinois Coalition for Immigrant and Refugee Rights.

Mr Tsao pointed out that in addition to the stress of having to pass the exam, there is the financial hurdle: naturalisation currently costs \$400 (pounds 203) to complete, and may rise to \$800 under current proposals.

His group and other immigration organisations like it have taken to calling the citizenship test "the second wall". The first wall is the physical structure being erected along 700 miles of Mexican border, to keep out illegal immigrants. This second wall, the groups contend, is a barrier to full participation by legal immigrants who have lived and worked in America for at least five years.

But the phrase is disputed by the US citizenship and immigration service. "I absolutely hate that term," said Chris Ratigan, an official within the service. "We are trying to build a wider bridge to citizenship. When someone decides to become an American citizen - and what a wonderful decision that is - we want them to feel that after they raise their hand and take the oath to America they are fully ready to participate in this country."¹⁸

The Netherlands

The Netherlands has required since 2003 that candidate citizens undertake a four-hour test on the Dutch language and national knowledge. The naturalisation test is designed to assess whether someone has integrated sufficiently into Dutch society.

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The test consists of two parts. The first part of the test focuses on the individual's knowledge of Dutch society. The candidate is given 45 minutes to answer 40 multiple choice questions on subjects such as form of government, work, money, housing, healthcare, traffic and transport. The second part focuses entirely on four language components: listening, speaking, reading and writing. The level of the test is equal to KSE2-NT2 (Dutch as a second language). This entails that an individual must be able to make him or herself understood in Dutch and be able to write at a level that makes him understandable for others.

The Netherlands is considered a European leader in this area. The recent rise in perceptions of insecurity and deep social divides between immigrant and existing populations are prompting immigrant integration reform in most European states. Germany, the Netherlands, Norway, Austria, Denmark, Switzerland and parts of Belgium now all mandate integration. While tailored to the individual state, these programs generally require the immigrant to be able to speak a basic level of the host-country language and to learn the country's culture and customs. Such programs are enforced by a range of measures, from fines (Austria, Netherlands) to the suspension of social benefits (Belgium, Denmark) to the removal of residency rights (Germany), to expulsion (Austria).

In March 2006, the then French Interior Minister, now President, Nicolas Sarkozy proposed at a G-6 meeting that the adoption of an integration contract should be considered. This contract would require immigrants to learn the language of their adopted country and accept relevant social norms or risk expulsion.¹⁹

New Zealand

Residency requirement is three years permanent residence. Applicants must be able to understand and speak English, be of 'good character', and understand the 'responsibilities and privileges of NZ citizens'. These terms and conditions are expanded on and explained in more detail [here](#).

Position of significant interest groups/press commentary

Polls

Public opinion is generally supportive of the citizenship test, as shown by this [Newspoll](#).²⁰ Katharine Betts has therefore identified a schism between the general public and those she terms 'left-wing elites' who dismiss it.²¹

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THE AUSTRALIAN

Citizenship test

Percentage support	December 15-17, 2006									
	Total	Sex		Age			Five major cities	Non-capital cities	Political support	
		Male	Female	18-34	35-49	50+			Coalition	Labor
Strongly in favour		62	66	53	64	72	60	71	77	55
Partly in favour		20	21	29	22	14	22	19	16	24
Total in favour	85	82	87	82	86	86	82	90	93	79
Partly against		6	6	8	4	6	7	4	4	7
Strongly against		8	5	6	6	7	7	5	1	11
Total against	12	14	11	14	10	13	14	9	5	18
Uncommitted		4	2	4	4	1	4	1	2	3

Question: The federal Government recently announced plans to introduce a test for migrants who apply for citizenship, which they can do after being in Australia for four years. The citizenship test will include questions about Australia and must be completed in English, making knowledge of English a requirement to become an Australian citizen. Are you in favour or against knowledge of English being a requirement to become an Australian citizen?

The latest survey was conducted on December 15-17, 2006, on the telephone by trained interviewers in all states of Australia and in both city and country areas among 1200 people aged 18 years and over. Telephone numbers and the person within the household were selected at random. The data has been weighted to reflect the population distribution. The maximum margin of sampling error on the total sample is plus or minus 3 percentage points. Copyright at all times remains with Newspoll. More poll information is available at www.newspoll.com.au

Humorists

Several media outlets have released 'leaked' [questions](#) which the Minister derided as made up.²² The 'test' was taken by various politicians and there was a strong debate about the correct answers to some of them, for example who exactly is Australia's head of state,²³ is the Judeo-Christian tradition still the basis for the nation's values system,²⁴ and even, is ping pong really Australia's favourite sport?²⁵

The idea of a test has also lent itself to humour such as questions like the following (a favourite of the author):²⁶

28. Is it best to take a sick day on:

- a) When the cricket's on
- b) When the cricket's on
- c) When the cricket's on?

Budget commentary

More serious community reaction came in relation to the release of the Budget 2007 figures. Federation of Ethnic Communities' Councils chairwoman Voula Messimeri said the \$123.6 million funding for the citizenship test was a large investment in a potentially divisive policy:

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Too much emphasis has been placed on citizenship rather than support services and community initiatives that are critical to building an inclusive society.²⁷

Media

A sample of recent media reaction follows:

- Sophie Morris, '[Citizenship bill to put party room to the test](#)', *Australian Financial Review*, 30 May 2007, p. 13.
- Cath Hart, '[Citizen test easier for some](#)', *The Australian*, 30 May 2007, p. 4.
- Patricia Karvelas, '[Lowitja sees return of White Australia](#)', *The Australian*, 30 May 2007.
- Ben Packham, '[Test to quiz on history](#)', *Herald Sun*, 30 May 2007.
- Peter Van Vliet, '[Opinion: Coherence not division](#)', *The Age*, 11 June 2007, p. 15.
- Janet Albrechtson, '[Opinion: Value in values talk is getting grievances into the open](#)', *The Australian*, 23 May 2007, p. 14.

Coalition backbench/ALP/Australian Democrat/Greens policy position/commitments

Coalition backbencher Petro Georgiou MP has been vocal in opposition to the test. He sees the measures contained in the bill as a threat to inclusiveness:

What is involved – even if it is not intended – is a fundamental political and social regression that will erect unreasonable and unnecessary barriers to citizenship that are unprecedented in this country.²⁸

In a recent speech, he analyses six reasons put forward in support of the test:

- Reason #1: Increased immigration of people from cultures vastly different from our own
- Reason #2: The present test is too easy, resulting in citizenship not being valued
- Reason #3: A real incentive to learn English
- Reason #4: We should follow other countries
- Reason #5: There is overwhelming public support for the proposed test
- Reason #6: It will reassure the Australian people

Georgiou goes on to refute the empirical basis and premise of each of these reasons and concludes:

the fact that Australia's citizenship laws have been made progressively more inclusive has provided a basis of trust, confidence and achievement. The fact that we accepted people with modest English as citizens has broken down barriers, not maintained

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them. The establishment of a new test that would exclude people who are committed to Australia and could pass the present test will create barriers, restrict opportunities, and impede participation. It would not be apparent immediately but it would happen, and it would diminish Australia.²⁹

However, media reports state that Georgiou has not received widespread support from other backbenchers, in contrast to the position on the [Migration Amendment \(Designated Unauthorised Arrivals\) Bill 2006](#) in May 2006.³⁰

The ALP has focused on lack of access to the questions in the test. As Tony Burke stated in March 2007:

On the day John Howard and Andrew Robb held their press conference back in December announcing that they had a 30 question test drawn randomly from 200 listed questions, Kevin Rudd asked me to write to Andrew Robb to get a copy of the 200 questions.

We got a letter back some days later saying that they hadn't designed a 30 question test yet. Not a single one of the 200 questions had been written. Nor had they even concluded the source document on which that test would be based. There already is a citizenship test. Exactly how different the new test is to the current one is something we don't know the answer to until we actually see it. The concept of a test is something we already have. Labor has no problems with that. Whether the new test will be reasonable or unreasonable depends on what's in it and so far even the government doesn't seem to know.

... We want to see just how different the new test is. The current test has a high degree of flexibility. It's conducted over the counter. There may be ways that you could formalise it and make it run slightly more smoothly. Until we actually see the test though, it's difficult to give any conclusion to those questions.³¹

Democrats' Deputy Leader, Senator Andrew Bartlett, says the government's new citizenship test is a 'waste of money that does little more than inflict double-standards on migrants'.

The Budget revealed that one hundred and twenty-three million dollars is being spent on this citizenship test, including ten million dollars for 'Australian values statements' and over six million for an 'Australian way of life booklet... If the government was genuine about encouraging migrants to integrate and participate fully in Australian society, it would be spending this money on widening settlement assistance and support for migrants, rather than wasting it on jingoistic propaganda.³²

In December 2006, Greens Senator Kerry Nettle criticised the new citizenship testing regime announced by the Prime Minister as 'nothing more than cynical wedge politics':

If the Australian value of celebrating multiculturalism were part of this new test I think John Howard would fail it... These tests will prove nothing, and achieve nothing beyond wedging the Labor Party in a cynical use of race politics.³³

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Financial implications

The Explanatory Memorandum puts the estimated costs associated with this Bill at \$123.6 million over 5 years from 2006-07, of which \$107.4 million is the estimated cost for the citizenship test. This amount has been included in the 2006-07 Additional Estimates and 2007-08 Budget and forward year estimates.³⁴

For further information see: Budget 2007 media release [\\$123.6 million for Australia's New Citizenship Test](#) and [Fact Sheet: Citizenship Test](#).

Main provisions

Item 2 in the table of **proposed subclause 2(1)** of the Bill provides that the amendments proposed in Schedule 1 will commence on Proclamation, with no time being specified within which the amendments must commence in any event. The Scrutiny of Bills Committee makes adverse comment on this item:

The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will generally not comment where the period of delayed commencement is six months or less. Where the delay is longer the Committee expects that the explanatory memorandum to the bill will provide an explanation, in accordance with Paragraph 19 of Drafting Direction No. 1.3.

In this instance the explanatory memorandum indicates that the Minister needs to have this broad discretion to determine the date of commencement of the amendments proposed by the bill on the basis that 'an unspecified period of time is required prior to commencement to implement arrangements for the test and any computer systems required to conduct the test and to ensure that applicants for Australian citizenship who will be required to complete the test have reasonable access to necessary information and testing facilities.' The Committee seeks the Minister's advice whether it would be possible to make the necessary arrangements within a fixed period after Assent and thereby limit the currently unfettered discretion granted to the Minister.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.³⁵

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Schedule 1 – Amendments to the *Australian Citizenship Act 2007*

Personal identifiers

Proposed subparagraph 10(2)(c)(i) provides that obtaining the personal identifier is necessary for assisting in the identification of, and to authenticate the identity of, a person in relation to an citizenship application or seeking to sit a citizenship test.

The term ‘personal identifier’ is currently defined in section 10 of the Act to include:

- fingerprints or handprints of a person
- a measurement of a person’s height and weight
- a photograph or other image of a person’s face and shoulders
- an iris scan
- a person’s signature, or
- any other personal identifier prescribed by the regulations (in accordance with subsection 10(2) of the Act).

Eligibility

Item 4 repeals existing subsection 21(2) and substitutes it with **proposed subsection 21(2)** and **proposed subsection 21(2A)**.

Proposed subsection 21(2) provides that a person applying to become an Australian citizen by conferral may be eligible if he or she satisfies the general eligibility provisions in paragraphs 21(2)(a) to (h).

The main change is to **proposed paragraph 21(2)(f)** – it will now include the requirement that an applicant has an adequate knowledge of Australia, in addition to the requirement that an applicant has an adequate knowledge of the ‘responsibilities and privileges’ of Australian citizenship.

Proposed subsection 21(2A) provides that paragraphs 21(2)(d), (e) and (f) are taken to be satisfied only if the Minister is satisfied that the person has, before making the application, sat a test approved by the Minister under proposed section 23A and has successfully completed that test.

The Explanatory Memorandum underlines the mandatory nature of the test as drafted:

There is no other way for these criteria to be satisfied, other than by successfully completing a test. A person applying under subsection 21(2) will not be eligible to become an Australian citizen unless he or she has successfully completed a test prior to applying for citizenship.³⁶

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This amendment should be read in conjunction with **item 11**, which inserts **proposed subsection 53(2)**, which requires the Minister to personally approve a test by a determination in writing under **proposed subsection 23A(1)**.

Test to be decided by Ministerial written determination

Item 5 inserts **proposed section 23A**.

Proposed subsection 23A(1) provides that the Minister must approve, by written determination, one or more tests for the purposes of **proposed subsection 21(2A)**.

The Explanatory Memorandum states that the requirement for multiple tests:

...allows for the possibility that the Minister may consider that some people, for example those with low levels of literacy, may need to be given the opportunity to demonstrate that they meet the criteria in paragraphs 21(2)(d), (e) and (f) in a different way to the majority of prospective citizenship applicants.³⁷

Proposed subsection 23A(2) provides that the written determination must also specify what amounts to the successful completion of the test.

The Explanatory Memorandum states:

What constitutes successful completion of the test may be more than correctly answering 50% of the questions asked. For example, in the United Kingdom, applicants must correctly answer 75% of questions asked. In Canada, applicants must correctly answer 60% of random questions asked, and a further three mandatory questions on the responsibilities and privileges of citizenship must all be answered correctly.³⁸

Further, the Minister may decide that certain mandatory questions must be answered correctly, such as questions relating to the responsibilities and privileges of Australian citizenship.

Proposed subsections 23A(3), (4) and (5) relate to eligibility criteria for sitting a citizenship test which must include permanent residency and satisfactory identification, but may include other issues to be decided by the Minister.

Proposed subsection 23A(6) allows the determination to cover any other matter related to the test that the Minister considers appropriate. The Explanatory Memorandum states:

The determination could include provision for special arrangements for people with special needs, such as those whose literacy skills make it difficult for them to undertake a test without assistance. The determination could also specify that a test would be conducted using a computer program under the control of the Minister which randomly selects a number of questions from a larger collection of approved questions. This method is currently used in a number of countries. For example, the

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United Kingdom uses a computer program which randomly selects 24 multiple choice questions from a collection of 200 questions.³⁹

In other words, the written determination may contain essential information for the operation of the test and is very widely drafted. Finally **proposed subsection 23A(7)** provides that a written determination made under new subsection 23A(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instrument Act 2003*. The Explanatory Memorandum states that '[t]his provision is declaratory of the law, and is only included to assist readers'.⁴⁰

This aspect of the Bill attracted the attention of the Senate Scrutiny of Bills Committee who set out section 5 of the *Legislative Instruments Act 2003*:

If the determination of a proposed citizenship test is not of a legislative character, then it may be considered not to apply generally to a group of people, but is more of an administrative decision, tailored to a particular applicant for Australian citizenship. This view may be supported by the provision in new subsection 23A(6), that a determination may cover 'any ... matter related to the test that the Minister thinks appropriate.' If the determination is taken to be an administrative decision to approve a test for a particular applicant, then there does not appear to be any provision in the bill for the determination to be subject to any form of merits review under the *Administrative Appeals Tribunal Act 1975*. The Committee consistently draws attention to provisions that exclude review by relevant appeal bodies or otherwise fail to provide for administrative review.

The Committee seeks the Minister's advice as to the reasons for deciding that a determination under new subsection 23A(1) is not a legislative instrument and, if the determination is administrative in nature, whether the exercise of the power granted by proposed new subsection 23A(1) should be subject to review.

*Pending the Minister's advice, the Committee draws Senators' attention to these provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference, and to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.*⁴¹

The right in question is presumably the eligibility for citizenship, which in turn contains a bundle of rights such as the right to vote. This might also be an issue that should be properly considered by the Senate Regulations and Ordinances Committee under their guiding principles if a written determination is voluntarily tabled.

Fees

Item 9 inserts **proposed subsection 46(1A)** to provide that the fee prescribed by the regulations for applications made under section 21 of the Act, may include a component that relates to the sitting of a test or tests under new section 23A.

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Items 12 and 13 deal with application and transitional arrangements raised by the Bill, which are made complex by the lack of a commencement date, as discussed under subclause 2(1).

Exemptions

The Minister states in the second reading speech that people under the age of 18 or over the age of 60, and those with a permanent physical or mental incapacity which prevents them from understanding the nature of the application, will not be required to sit the test. However, these exemptions are not set out in the current Bill. Presumably they would be included in the written determination.

The exemptions could mirror the old Act's exemptions in section 13(1) of the *Australian Citizenship Act 1948* (Cth).

There is no provision discussed for exemptions for refugees as a category. Refugees who arrive under the offshore humanitarian program do receive language training. However, onshore asylum seekers who have been given Temporary Protection Visas have not received the same assistance and have also already had to wait at least 3 years, (usually many more) to be granted permanent residency. They will now have to wait 4 more years to apply for citizenship and will have to pass this test. Permanence about their situation can be a significant factor for the successful integration of refugees, especially those with torture/trauma issues. Some of the general integration concerns about migrants are often particularly directed at newly arrived refugee communities, especially those from Africa or the Middle East.

Concluding comments

The Bill raises legal, operational and moral issues, which will be considered in turn.

The legal issue deals with whether the use of a Ministerial written determination is appropriate in terms of transparency and ability to be subject to judicial review.⁴² The exact nature of the questions of the test has been a significant area of public and political interest. In such a case, Parliament may wish to consider whether at least draft questions should be tabled in order to aid debate. The practice of introducing Bills where the substantive content of the policy is yet to be decided, as was also the case with the Access Card,⁴³ is less than ideal Parliamentary practice and increases the likelihood of Bills requiring subsequent amendment.

The operational question is whether the test will have the effect of diverting resources that should instead be used to fulfil other important needs within the portfolio. However, the resource issue has to be considered along with DIAC outlay on Palmer reforms, the Pacific

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solution, Christmas Island, Indonesian cooperation, settlement services, ethnic community grants and so forth.

The issue of citizenship is an increasingly contested moral concept globally. In their 2000 report, [*Australian Citizenship for a New Century*](#) the Australian Citizenship Council, headed by Sir Ninian Stephen, asked: ‘How can concepts of citizenship best serve Australia and Australians?’⁴⁴

Examining the Bill in the light of that question, a valid question raised in debates around this Bill is whether we are expecting higher standards of migrants to Australia than those born here.⁴⁵ Is successful integration into the Australian community best achieved by a mandatory test with the risk of not achieving citizenship status attached?

Moreover, does formal testing really assist in ensuring a commitment to Australia’s way of life and values? As Professor Kim Rubenstein has written:

Knowledge of Australia is a valuable aspect of Australian citizenship, but it is not the only or paramount way of evidencing a commitment to Australia. It is also important and valuable for Australian born citizens. Knowledge of civics is not strong in many Australians by birth, raising questions about the fairness involved in distinguishing citizens by grant with citizens by birth, given citizens are obliged to vote.⁴⁶

Perhaps a useful analogy is that of a driving test. Passing the multiple choice test for a learners permit driving licence does not make a person a good driver. However, it does highlight awareness of the road rules.

The test might also suffer from historical perceptions of previous practice in immigration during the ‘White Australia’ era. The general test requirements, especially the language requirement could be said to resonate with earlier times in Australian history, with government bureaucrats backed by official prejudice deciding which aspiring immigrants had sufficient potential to become Australian/British to be allowed to stay in the country and be naturalised.⁴⁷

On the other hand, the current test will not be hard to pass, with the given concessions for age and disability, the study booklets, and AMEP and other assistance, sample questions on the internet, plus unlimited attempts. Concerns could be alleviated by the application of exemptions in practice.

If Governments wish to maintain a large and non-discriminatory immigration program, it has to maintain the support of the general public. The citizenship test in this sense can be seen as having a significant symbolic role in reassuring the public. It is arguably then a pro-immigration gesture, and Betts and Birrell posit.⁴⁸

The final questions therefore are whether the test will promote inclusive debate and a feeling of belonging or exclusive, intimidating rhetoric about race/religion/ethnicity issues especially pertaining to Australian Muslims (although one person’s ‘rhetoric’ is perhaps

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another person's 'debate'); and whether it will encourage or discourage people to become Australian citizens.

The test may have the benefit of increasing debate around Australian values and identity, in the same manner as debates around the republic issue or a Bill of Rights. The Minister's second reading speech is redolent in language about Australian values. National identity issues and 'multiculturalism' are being rethought and revisited in a serious manner, both here and overseas.⁴⁹

These are important questions for the Australian Parliament to consider and warrant extensive and measured examination.

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36. Explanatory Memorandum, p. 3.
37. Explanatory Memorandum, p. 4.
38. Explanatory Memorandum, p. 4.
39. Explanatory Memorandum, p. 5.
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42. Note the March 2004 report of the [Senate Committee on Ministerial Discretion in Migration Matters](#).
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