The Senate

Legal and Constitutional Affairs Legislation Committee

Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 [Provisions]

September 2017

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Recommendation 1

3.122 That the Government clarify the standard for English-language competency required for citizenship, noting that the required standard should not be so high as to disqualify from citizenship many Australians who, in the past, and with a more basic competency in the English language, have proven to be valuable members of the Australian community.

Recommendation 2

3.123 That the Government reconsider the imposition of a two-year ban on applications for citizenship following three failed attempts of the citizenship test, and consider other arrangements that allow additional tests on a cost-recovery basis that would deter less-genuine applicants.

Recommendation 3

3.124 That the Government consider introducing some form of transitional provisions for those people who held permanent residency visas on or before 20 April 2017 so that the current residency requirements apply to this cohort of citizenship applicants.

Recommendation 4

3.125 That the Senate pass the bill.

Chapter 1

Introduction

1.1 On 22 June 2017 the Senate referred the provisions of the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 4 September 2017.[1] In referring the bill for inquiry, the Selection of Bills Committee noted that the complexity of the bill required investigation.[2]

Purpose of the bill

1.2 On 20 April 2017, the Prime Minister, the Hon Malcom Turnbull MP, and the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, announced a package of measures to reform citizenship.[3] The Prime Minister explained that the changes were informed by feedback received from the National Consultation on Citizenship in 2015 and on the Productivity Commission's 2016 report, *Migrant Intake into Australia,* and would include:

- Requiring all applicants to pass a stand-alone English test, involving reading, writing, listening and speaking;
- Requiring applicants to have lived in Australia as a permanent resident for at least four years (instead of one year at present);
- Strengthening the citizenship test itself with new and more meaningful questions that assess an applicant's understanding of - and commitment to - our shared values and responsibilities;
- Requiring applicants to show the steps they have taken to integrate into and contribute to the Australian community. Examples would include evidence of employment, membership of community organisations and school enrolment for all eligible children.
- Limiting the number of times an applicant can fail the citizenship test to three (at present there is no limit to the number of times an applicant can fail the test);
- Introducing an automatic fail for applicants who cheat during the citizenship test.[4]

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1 *Journals of the Senate*, No. 48, 22 June 2017, p. 1540.

2 Selection of Bills Committee, *Report No.7 of 2017*, 22 June 2017, appendix 2.

3 The Hon Malcom Turnbull, Prime Minister, and the Hon Peter Dutton, Minister for Immigration and Border Protection, 'Strengthening the Integrity of Australian Citizenship', *Media Release,* 20 April 2017.

4 The Hon Malcom Turnbull, Prime Minister, and the Hon Peter Dutton, Minister for Immigration and Border Protection, 'Strengthening the Integrity of Australian Citizenship', *Media Release,* 20 April 2017.

1.3 On 15 June 2017, in his second reading speech, Mr Dutton provided further explanation for the bill:

> As a government, we are committed to maintaining strong public confidence and support for our migration and citizenship programs—through an assurance of integrity to the Australian public.
>
> We are proud of our heritage and our generosity as a nation. We look forward to continuing to welcome new migrants—irrespective of race, of religion, of nationality or of ethnic origin—who embrace our Australian laws and our values and who seek to contribute to, rather than undermine, our society.
>
> The measures in this bill, commencing from 20 April 2017, are the government's response to the 2015 *National consultation on citizenship: your right, your responsibility*, which indicated strong community support for strengthening the test for Australian citizenship. The Australian community expects that aspiring citizens demonstrate their allegiance to our country, their commitment to live in accordance with Australian laws and values, and be willing to integrate into and become contributing members of the Australian community.[5]

Overview of the key provisions of the bill

1.4 The bill seeks to make changes to the *Australian Citizenship Act 2007* (Citizenship Act) and the *Migration Act 1958* (Migration Act). It proposes to introduce the following additional requirements for people seeking to obtain citizenship by conferral:

- increase the general residence requirement to require applicants to have been a permanent resident for at least four years;
- require applicants to undertake an English language test by a registered provider and achieve a level of 'competent';
- require applicants to sign an Australian Values Statement;
- require applicants to demonstrate their integration in the Australian community;
- allow for the Minister to determine the eligibility criteria for sitting the citizenship test that may relate to the fact that a person has previously failed the test, did not comply with one or more rules of conduct relating to the test, or was found to have cheated during the test;
- rename the 'pledge of commitment' the 'pledge of allegiance' and require a person to pledge their allegiance to Australia and its people; and
- allow for the *Australian Citizenship Regulation 2016* or an instrument under the Act, to determine the information or documents that must be provided with a citizenship application.

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5 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard,* No. 9, 15 June 2017, p. 6611.

1.5 These requirements would apply retrospectively from the date of the Government's announcement on 20 April 2017.

1.6 Additionally the bill would confer the following powers so that the Minister may:

- provide for the mandatory cancellation of approval of Australian citizenship if the Minister is satisfied that the person would be subject to prohibitions on approval related to identity, national security or criminal offences;
- provide for the discretionary cancellation of approval of Australian citizenship under certain circumstances;
- provide the Minister with the discretion to delay a person, for up to two years, from making the pledge of allegiance to become an Australian citizen on the basis of the applicant's identity having been assessed as a risk to security, criminal offences, or because the applicant would not meet the requirements for being approved as an Australian citizen;
- provide the Minister with the discretion to revoke a person's Australian citizenship under certain circumstances;
- confer on the Minister the power to make legislative instruments;
- provide the Minister with the power to set aside decisions of the Administrative Appeals Tribunal concerning character and identity;
- provide that certain decisions made by the Minister are not subject to merits review; and
- allow the Minister, the Secretary or an officer to use and disclose personal information obtained under the Act.

1.7 The bill also proposes changes to eligibility requirements for children applying for citizenship by:

- modifying the rules around the automatic acquisition of Australian citizenship so that in a number of cases, a child born in Australia will no longer automatically acquire Australian citizenship after residing in Australia for 10 years;
- requiring all applicants, including applicants under 18 years of age, to pass a character test; and
- modifying provisions relating to applicants for citizenship by conferral who are under 18 years of age, including provisions relating to access to merits review.

1.8 The bill also seeks to amend the Migration Act to allow for the Minister, the Secretary or an officer to use personal information obtained under the Migration Act or Regulation for the purposes of the Migration Act or Migration Regulation. Additionally, subject to a specified exception, the Minister, Secretary or an officer may also disclose personal information obtained under the Migration Act or Migration Regulations to the Minister, the Secretary or an APS employee in the Department for the purposes of the Act and the Citizenship Regulation.

Conduct of the inquiry

1.9 Details of this inquiry were advertised on the committee's website, including a call for submissions to be received by 21 July 2017.[6] The committee also wrote directly to some individuals and organisations inviting them to make submissions. The committee received over 13,000 pieces of correspondence and has published 635 submissions. The submissions are listed at appendix 1 of this report and can be found on the committee's website.

1.10 The committee received a large number of different types of campaign letters. Due to the volume of campaign letters received, the committee decided to publish one example of each type of campaign letter. Some campaign letters used very similar words and were consequently grouped into the same type of campaign letter. Other campaign letters provided an opportunity for people to include information about their particular circumstances or to express additional comments about the bill.

1.11 The table below outlines the number of signatures received for each type of campaign letter and the respective submission number:

Campaign letter	**Number received**	**Submission number**
Campaign letter 1	239	Submission 623
Campaign letter 2	27	Submission 624
Campaign letter 3	25	Submission 625
Campaign letter 4	55	Submission 626
Campaign letter 5	50	Submission 627
Campaign letter 6	15	Submission 628
Campaign letter 7	237	Submission 629
Campaign letter 8	2,627	Submission 630
Campaign letter 9	11	Submission 631
Campaign letter 10	17	Submission 632
Campaign letter 11	28	Submission 633

6 The committee's website can be found at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs.

Campaign letter 12	1,733	Submission 634
Campaign letter 13	8,021	Submission 635

1.12 The committee notes 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.

1.13 The committee held public hearings in Sydney, Canberra, Melbourne and Brisbane on 23, 24, 25, and 31 August 2017, respectively. A list of witnesses who appeared before the committee is listed at appendix 2. All Hansard transcripts of the hearings are available on the committee's website.

Financial implications of the proposed measures

1.14 The Explanatory Memorandum notes that the financial impact on the proposed amendments 'is low'.[7]

Reports by other committees

1.15 The Senate Standing Committee for the Scrutiny of Bills noted a number of concerns with the bill, which will be discussed in more detail in chapter 2 of this report.

1.16 The Explanatory Memorandum addresses the human rights implications of these proposed amendments.[8] It concludes that each schedule is compatible with human rights as, 'to the extent that it may limit human rights, these limitations are reasonable, necessary and proportionate to the objectives'.[9]

Structure of this report

1.17 This report consists of three chapters:

- This chapter provides an overview of the bill, as well as the administrative details of the inquiry.
- Chapter 2 provides a brief background to the bill and other inquiries and consultations relevant to the bill.
- Chapter 3 outlines the provisions of the bill in more detail, and discusses the key issues raised by submitters about the proposed amendments, as well as providing the committee's views and recommendation.

7 Explanatory Memorandum, p. 7.

8 Explanatory Memorandum, pp. 70–88.

9 Explanatory Memorandum, p. 88

Acknowledgements

1.18 The committee thanks all organisations and individuals that made submissions to this inquiry and all witnesses who attended the public hearing.

Chapter 2

Background to the bill

2.1 There has been a significant amount of activity in the citizenship policy arena over recent years. This chapter will outline recent policy development and consultations that have informed the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the bill).

2014 bill

2.2 On 23 October 2014 the Hon Paul Fletcher MP, on behalf of the former Minister for Immigration and Border Protection, the Hon Scott Morrison MP, introduced the Australian Citizenship and Other Legislation Amendment Bill 2014 (2014 bill) into Parliament.[1] Large parts of the 2014 bill are replicated in the current bill. This includes the following provisions:

- Limiting automatic acquisition of citizenship at ten years of age to certain people
- Ministerial power to defer an applicant making the pledge for up to two years
- Ministerial power to cancel approval of citizenship prior to pledge if an applicant is no longer eligible or if the pledge is not made within 12 months
- Extending the good character requirement to applicants under 18 years of age
- Ministerial discretion to revoke citizenship on grounds of fraud or misrepresentation in migration or citizenship processes, without requirement for prior conviction of relevant criminal offences
- Ministerial discretion to revoke citizenship by descent
- Personal decisions made by the Minister in the public interest not being subject to merits review
- The Minister having the power to set aside decisions of the Administrative Appeals Tribunal (AAT) concerning identity and character, in the public interest[2]

2.3 The 2014 bill was referred to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report.[3] The committee made three recommendations—to clarify whether the provision relating to the revocation of citizenship due to fraud could render a child stateless; to clarify the discretionary nature of the Minister's power to revoke citizenship under this provision; and subject

1 Hon Paul Fletcher MP, *House of Representatives Hansard*, No. 17, 23 October 2014, p. 11743.

2 Department of Immigration and Border Protection, *Submission 453,* p. 28.

3 *Journals of the Senate,* No. 63, 30 October 2014, pp. 1689–1691.

to the first two recommendations, that the 2014 bill be passed.[4] In April 2016 the 2014 bill lapsed on prorogation of the Parliament.

National Consultation on Citizenship

2.4 On 26 May 2015 the Government commissioned a National Consultation on Citizenship which was led by the then Parliamentary Secretary for Social Services, Senator the Hon Concetta Fierravanti-Wells, and the Hon Phillip Ruddock MP, Special Envoy for Citizenship and Community Engagement. Feedback was sought over a number of months and held consultations with key stakeholders in Canberra, Melbourne and Sydney; held public consultations in New South Wales, Queensland, Victoria, Northern Territory, South Australia, Western Australia and Tasmania; and received 2,544 responses to an online survey and more than 400 written submissions.[5]

2.5 On 2 May 2016, the final report of the National Consultation, *Australian Citizenship: Your right, your responsibility,* was presented to the Prime Minister and made 15 recommendations, which largely related to strengthening the requirements for citizenship.[6] The recommendations are listed at appendix 3 of this report.

2.6 The committee notes that this survey reflects the views of the wider public as represented by their federal parliamentarians.

Government's response to the National Consultation

2.7 On 20 April 2017, the Prime Minister, the Hon Malcom Turnbull MP, and the Minister for Immigration and Border Protection, the Hon Peter Dutton MP, announced that the Government would be introducing changes to strengthen the integrity of Australian citizenship.[7] The Prime Minister explained that the changes were informed by feedback received from the National Consultation on Citizenship and on the Productivity Commission's 2016 report, *Migrant Intake into Australia*.[8]

2.8 The announcement coincided with the release of a discussion paper, *Strengthening the Test for Australian Citizenship,* which sought submissions by 1 June 2017. The discussion paper noted that the new citizenship-related legislation would be introduced in Parliament by the end of 2017; that the legislation would be

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4 The Senate Legal and Constitutional Affairs Committee, *Australian Citizenship and Other Legislation Amendment Bill 2014 [Provisions],* 1 December 2014, p. 42.

5 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. 6.

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

7 The Hon Malcom Turnbull, Prime Minister, and the Hon Peter Dutton, Minister for Immigration and Border Protection, 'Strengthening the Integrity of Australian Citizenship', *Media Release,* 20 April 2017.

8 The Hon Malcom Turnbull, Prime Minister, and the Hon Peter Dutton, Minister for Immigration and Border Protection, 'Strengthening the Integrity of Australian Citizenship', *Media Release,* 20 April 2017.

informed by responses to the discussion paper; and that the reforms would apply to applications received on or after 20 April 2017.[9] The paper sought submissions in relation to the following areas:

- increasing the general residence requirement to a minimum of four years permanent residence immediately prior to their application for citizenship;
- introducing an English language test to demonstrate competent English language listening, speaking, reading and writing skills prior to being able to sit the citizenship test;
- strengthening the Australian Values Statement to include reference to allegiance to Australia and require applicants to make an undertraining to integrate into and contribute to the Australian community;
- introduction of a new test for Australian citizenship;
- introduce a requirement for applicants to demonstrate their integration into the Australian community;
- strengthening the pledge of commitment and extending the requirement to applicants aged 16 years and extending the requirement for all streams of citizenship application take the pledge.[10]

2.9 The above policy proposals largely form the proposed additional requirements for people seeking to obtain citizenship by conferral. The current bill incorporates elements of the discussion paper, alongside proposed measures made by the 2014 bill, as well as feedback from parliamentary members.

9 The Hon Malcom Turnbull, Prime Minister, and the Hon Peter Dutton, Minister for Immigration and Border Protection, *Strengthening the test for Australian citizenship,* April 2017, p. 19.

10 The Hon Malcom Turnbull, Prime Minister, and the Hon Peter Dutton, Minister for Immigration and Border Protection, *Strengthening the test for Australian citizenship,* April 2017, pp. 6–7.

Chapter 3

Key issues

3.1 A number of issues were raised by submitters about the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the bill) during the inquiry. This chapter will outline the main issues as raised by submitters and witnesses, which will be grouped into three key areas.

1. Additional requirements for people seeking to obtain citizenship by conferral:

- retrospectivity;
- four years permanent residence requirement;
- English language skills test;
- citizenship test;
- integration within the Australian community;
- Australian Values Statement; and
- pledge of allegiance.

2. Additional powers provided to the Minister:

- power to cancel approval for citizenship;
- power to revoke a person's citizenship;
- personal decisions of the Minister being excluded from merits review;
- power of the Minister to set aside decisions of the Administrative Appeals Tribunal (AAT); and
- instrument making power.

3. Additional requirements impacting children:

- changes to the 10 year rule and citizenship by birth; and
- good character requirement.

3.2 Finally, the committee's views will be discussed as well as its recommendations on the bill.

Additional requirements for citizenship by conferral

3.3 On 20 April 2017 the Australian Government announced a package of reforms to 'strengthen citizenship' which would take effect from the date of the

announcement.[1] These reforms would apply to people who apply for citizenship by conferral and includes:

- increasing the general residence requirement;
- introducing an English language test;
- introducing the requirement for applicants to demonstrate their integration into the Australian community;
- strengthening the Australian Values Statement;
- strengthening the test for Australian citizenship; and
- strengthening the pledge of allegiance.[2]

Retrospectivity

3.4 In accordance with the announcement, items 136, 137 and 139 of the bill outlines that the provisions are to apply retrospectively—from 20 April 2017. The Explanatory Memorandum (EM) confirms that these provisions 'reflect the announcement made by the Prime Minister and the Minister'.[3]

3.5 The retrospective application of these provisions was raised as an area of concern by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) as well as a number of submitters.[4] The Scrutiny of Bills Committee explained that provisions that apply retrospectively challenge a basic value of the rule of law and that it was particularly concerned that the legislation may have a detrimental impact on individuals. It sought further information from the Minister about the number of persons likely to be affected by these provisions and whether it was likely that applications had been made on or after 20 April 2017, but before the passage of the bill, would not meet the criteria for eligibility for citizenship as a result of the retrospective application of these amendments.[5]

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1 Australian Government, *Strengthening the Test for Australian Citizenship,* 20 April 2017, p. 18; see also the Hon Malcom Turnbull, Prime Minister, and the Hon Peter Dutton, Minister for Immigration and Border Protection, 'Strengthening the Integrity of Australian Citizenship', *Media Release,* 20 April 2017.

2 Australian Government, *Strengthening the Test for Australian Citizenship,* 20 April 2017, pp. 6–7.

3 Explanatory Memorandum, p. 65.

4 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017; Oz Kiwi, *Submission 339,* p. 8; Get Up, *Submission 372,* p. 14; Legal Aid NSW, *Submission 385,* pp. 9–10; Refugee Legal, *Submission 439,* p. 19; Refugee Council of Australia, *Submission 449,* p. 15; Australian Lawyers Alliance, *Submission 454,* p. 7; Law Council of Australia, *Submission 464,* p. 8; Labor for Refugees NSW, *Submission 469,* p. 1; The American Chamber of Commerce in Australia, *Submission 369,* p. 3; Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* pp. 16–17; Federation of Ethnic Communities' Councils of Australia, *Submission 410,* p. 4; Australian Human Rights Commission, *Submission 447,* p. 9 and 11.

5 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 19.

3.6 In response, the Minister noted that as of 16 July 2017, 47,328 people had lodged an application on or after 20 April 2017 who would be affected by these provisions.[6] Of these, it was estimated that 25,788 (54 per cent) would not meet the new residence requirement.[7] In relation to the competent English requirement, and the integration requirement, the Minister advised that this would be a new requirement and as such, the Department was not able to determine the number of people likely to be affected.[8] In relation to the new pledge of allegiance, the Minister stated:

> An additional 429 applicants who have applied for citizenship by application (conferral, descent, adoption and resumption) on or after 20 April 2017 over 16 years of age will be required to make the pledge of allegiance who would not have been required to under the previous arrangements.
>
> Whilst the additional requirement may increase the time it takes these applicants to acquire citizenship it is not known how many of these applicants would fail to make the pledge and therefore not meet the eligibility requirements to become a citizen.[9]

3.7 The Scrutiny of Bills Committee reiterated its concerns and noted that it did not consider the retrospective application of the bill was adequately justified given the detrimental effect it would have on a large number of individuals.[10]

3.8 The committee notes that, regrettable as it is, this action of 'legislation by media release' is all too common in recent decades but for many valid reasons has become a fact of life.

3.9 At a public hearing the committee heard of the effect that the announcement had on individuals.[11] Dr Howard, of Fair Go for Migrants, noted that because applications have been placed on hold, even if they bill did not pass, individuals have already been directly affected. Another individual noted that applicants' lives were in a state of limbo as they do not know which set of criteria will apply to them.[12] In addition, a number of submitters raised concerns that they had submitted their

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6 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.

7 Mr Dutton, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 5.

8 Mr Dutton, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 5.

9 Mr Dutton, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 6.

10 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 8 of 2017,* 9 August 2017, p. 60.

11 Dr Penny McCall Howard, Member, Fair Go For Migrants, *Proof Committee Hansard,* 23 August 2017, pp. 1–3. See also statements made by Ms Sara, Miss Shruti, and Mr Kon, *Proof Committee Hansard,* 23 August 2017, pp. 12–16.

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

application for citizenship after 20 April 2017 and paid a 'non-refundable' application fee, only to be told that their application was on hold.[13]

3.10 The Department of Immigration and Border Protection (the Department) confirmed that since 20 April 2017 to 31 July 2017, it had received 50,940 applications.[14] These applications are currently not being processed but applications received before 20 April 2017 are continuing to be processed. The Department also noted that the average processing time for 90 per cent of citizenship applications is 13 months from the date of lodgement.

Permanent resident for four years

3.11 The proposed change to the residency requirement was raised by many submitters. Currently, a person must be living in Australia for four years, with the last 12 months as a permanent resident, prior to being eligible to apply for Australian citizenship.[15] The bill proposes to increase the residency period to require a person to have been a permanent resident for four years to satisfy the residency requirement.[16]

3.12 The EM sets out the reason for the proposed amendment:

> A residence requirement is an objective measure of an aspiring citizen's association with Australia. This period allows a person the opportunity to gain an understanding of shared Australian values, and the commitment they must make to become an Australian citizen. It also allows them time to integrate into the Australian community and acquire English language skills required for life in Australia as a successful citizen. Extending the general residency period strengthens the integrity of the citizenship programme by providing more time to examine a person's character as a permanent resident in Australia. For these reasons the National Consultation Report on citizenship recommended increasing the permanent residency period to 4 years for the general residence requirement.[17]

3.13 The Department provided an international comparison of other countries' residency requirements before being eligible to obtain citizenship.[18] In summary, the Department noted the following residency requirements:

- New Zealand–five years;
- Canada–three out of five previous years (where up to one year under a temporary residence visa can be counted);

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13 Name withheld, *Submission 143,* p. 1; Name withheld, *Submission 97,* p. 1; and Name withheld, *Submission 376,* p. 1.

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

15 Subsection 22(1) of the Act; see also Explanatory Memorandum, p. 28.

16 See paragraph 22(1)(a)(c) and subsections 22(1), 22(1A) and 22(1B) of the bill.

17 Explanatory Memorandum, p. 28.

18 Department of Immigration and Border Protection, *Submission 453,* pp. 35–38.

- United Kingdom–five years plus one year (usually after the five years) of being 'settled';
- United States of America–five years;
- France–five years;
- Germany–eight years in general, however lesser periods apply under certain circumstances;
- Netherlands–five years; and
- Denmark–nine years.[19]

3.14 The Department concluded that the new residency requirements 'are comparable with the low end of the scale of international standards'.[20] It also noted that the proposed requirement of residing in Australia as a permanent resident 'is unlikely to have an impact on these humanitarian migrants who first arrive in Australia as a permanent resident'.[21]

3.15 A number of organisational submitters raised concerns that the proposed amendment would not change the length of the residency requirement, but rather that it would change '*the visa status* required during residency'.[22] A joint submission from the Andrew & Renata Kaldor Centre of International Refugee Law and the Gilbert + Tobin Centre of Public Law (Kaldor and Gilbert + Tobin Centres) argued that while the stated reason for the proposed amendment was to allow more time to assess a person's character, it would not necessarily achieve this outcome.[23] This is because under the current framework, a person is required to be a resident in Australia for at least four years before being eligible to apply for citizenship, whereas the proposed provision would require a person to be a resident in Australia for four years, albeit as a permanent resident.[24] The following case study was provided as an example of the difference in time a person might spend in Australia prior to meeting the proposed residency requirement, based on the individual's visa status:

> …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

19 Department of Immigration and Border Protection, *Submission 453,* pp. 35–38.

20 Department of Immigration and Border Protection, *Submission 453,* p. 42.

21 Department of Immigration and Border Protection, *Submission 453,* p. 46.

22 University of Adelaide, Public Law and Policy Research Unit, *Submission 398*, p. 5; Legal Aid NSW, *Submission 385,* p. 4; and Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 11.

23 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 11.

24 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 11.

> 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.[25]

3.16 The Department noted that:

> The Australian Government contends that the Australian community has higher expectations of permanent residents than temporary residents, in terms of their integration into and contribution to the Australian community. The Government considers that the increased length of the qualifying period of permanent residency will enable it to make a thorough examination of aspiring citizens' experience of integrating into life in Australia, before granting citizenship.[26]

3.17 The University of Adelaide's Public Law and Policy Research Unit pointed out that the visa status of a person does not affect their opportunity to integrate into Australian society, but rather, placed people who have entered Australia on a temporary or humanitarian visa at a significant disadvantage due to their visa status.[27]

3.18 The Kaldor and Gilbert + Tobin Centres also raised concerns that the bill was contrary to the spirit of Article 34 of the UN Convention Relating to the Status of Refugees which 'requires state parties to facilitate assimilation and expedite naturalisation proceedings for refugees as far as possible' and consequently, citizenship is often the first effective and durable form of protection for refugees and humanitarian entrants.[28] The submission concluded that, under the best of circumstances, a refugee would be entitled to apply for Australian citizenship after residing in Australia for seven-and-a-half years and that this period was 'well beyond what would be considered best practice when it comes to facilitating naturalisation of refugees and humanitarian entrants'.[29] Having said that, the committee notes the proposed rules are less strict than in many other countries as set out in paragraph 3.13.

3.19 Most submissions from individuals also expressed concern about the proposed changes to the residency requirements, and in particular that this provision would apply retrospectively. Many accounts from individual submitters noted the time they

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

26 Department of Immigration and Border Protection, *Submission 453,* p. 44.

27 University of Adelaide, Public Law and Policy Research Unit, *Submission 398*, p. 5. See also Diversity Council Australia, *Submission 141,* p. 7. Australian Human Rights Commission, *Submission 447,* p. 5.

28 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 12.

29 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 12.

had spent in Australia, how they had integrated into Australian society and that the proposed change would only prolong their citizenship application while also placing them in a state of uncertainty about their future. Many submitters asked that this particular section of the bill not be passed, or alternatively, that the provision have a transitional period. Below is an example of one such submission.

> My wife and I have been proud to call Australia home since moving to Sydney from the UK in 2011. I helped to set-up a successful business advisory firm, helping Australian businesses to succeed locally and internationally and providing employment to Australians. My wife, [redacted], is a filmmaker and charity sector worker. Recent initiatives include working with the team at [redacted], a charity that supports the most vulnerable Australians. For my sins, I'm a paid up Sydney Swans member.
>
> Having lived in Australia for over 5 years and as Permanent Residents, we were entitled to apply for citizenship on 15th December 2016. At the time that our entitlement date came around, my wife was 5 months pregnant. We decided to focus our time and energy on ensuring all was set-up for our baby. After all, we were certain in the fact that we would be able to apply when our baby was safely home.
>
> On April [redacted] 2017, my daughter [redacted] was born at The Royal Hospital for Women, Randwick. Our beautiful, Australian, daughter. Advance Australia Fair.
>
> Two short weeks of paternity leave and I find myself back in the office. Two short weeks. I am greeted with the news that despite being fully entitled to apply for citizenship just a day ago, despite having an Australian daughter, despite employing Australians, despite helping Australian business to succeed to a global scale, despite advocating for friends and family to visit Australia, despite being upstanding members of the community, despite starting our application months earlier… Despite all of this we are told that Australia must be tougher on us. That we are to be watched. That we must prove ourselves further. That whilst our tax dollars count, our voices do not. That we are not even entitled to be second class citizens.[30]

Impact on tertiary students

3.20 Another issue raised by a number of submitters and witnesses was the effect the increased residency period would have on tertiary students.[31] The Law Council of Australia (Law Council) explained that the Higher Education Support Legislation Amendment (A More Sustainable, Responsive and Transparent Higher Education System) Bill 2017 (the Higher Education Bill) was currently before the House of

30 Name withheld, *Submission 386,* p. 1.

31 Oz Kiwi, *Submission 339,* pp. 5–6; Law Council of Australia, *Submission 464,* pp. 11–12; University of Melbourne Student Union, *Submission 417,* p. 1. See also Matthew, *Proof Committee Hansard,* 25 August 2017, pp. 12–15; and Mr Kevin Balshaw, *Proof Committee Hansard,* 31 August 2017, pp. 16–17.

Representatives.[32] Currently, permanent residents are entitled to a Commonwealth supported place for their university education. However, if the Higher Education Bill passes, most permanent residents will no longer be entitled to a Commonwealth supported place, which will mean substantially higher fees for these students.[33] The combined effect of extending the residency requirement with the Higher Education Bill will mean that students who may have thought that they would soon be eligible for a Commonwealth supported place would no longer qualify as Australian citizens, however, in the fullness of time they would clearly be eligible for all the benefits available to an Australian citizen.

3.21 While the Law Council acknowledged that the Higher Education Bill would also allow permanent residents to access student loans, it concluded:

> …the combination of the proposed reforms in the Higher Education Bill and the increased residence requirement may operate to reduce the opportunities for migrants to pursue tertiary education and, having done so, make a valuable contribution to the Australian community.[34]

3.22 The committee acknowledges the compelling evidence from submitters and witnesses who have made plans for the future, including significant financial commitments, based on the current residency requirements and other legislative frameworks. The committee is of the view that the Government should consider introducing transitional provisions for those people who held permanent residency visas on or before 20 April 2017, so that the current residency requirements apply to this cohort of citizenship applicants.

English language test

3.23 The bill seeks to amend the English language requirement so that the Minister must be satisfied that an applicant has 'competent English' as opposed to the current requirement of 'possesses a basic knowledge of the English language'.[35] 'Competent English' is not defined in the Act, however, proposed paragraph 21(9)(a) of the bill provides that the Minister may make a legislative instrument that determines the circumstances in which a person has 'competent English'. The EM provides an indication of what the Minister's determination might include:

> This determination will enable the Minister to determine, for example, that a person has competent English where the person has sat an examination administered by a particular entity and the person achieved at least a particular score. The Minister could determine that the person must have completed this examination within, for example, three years ending on the day the person made an application for citizenship. The determination could specify other circumstances in which a person has competent English, for example, if they are a passport holder of the United Kingdom, the Republic

32 Law Council of Australia, *Submission 464,* p. 11.

33 Law Council of Australia, *Submission 464,* p. 11.

34 Law Council of Australia, *Submission 464,* pp. 11–12.

35 Item 41, paragraph 21(2)(e) of the bill.

> of Ireland, Canada, the United States of America or New Zealand or through specified English language studies at a recognised Australian education provider.[36]

3.24 The EM also sets out the rationale for this amendment:

> This amendment reflects the Government's position that English language proficiency is essential for economic participation and promotes integration into the Australian community. It is an important creator of social cohesion and is essential to experiencing economic and social success in Australia.[37]

3.25 The Department explained that the current English language requirement is for 'basic' English which is the equivalent of an International English Language Testing System (IELTS) 4 test score.[38] Further, the English language is currently assessed by applicants passing the multiple choice citizenship test.[39]

3.26 A number of submitters and witnesses questioned the evidence relied upon by the Government as the basis for the change as proposed by the bill.[40] For example, Professor Alexander Reilly from the Public Law and Policy Unit from the University of Adelaide questioned the impartiality of the consultations and consequently the legitimacy of relying on the results of the consultation as the basis for the proposed changes to citizenship legislation.[41] The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) noted that the recommendation in the final report of the National Consultation on Australian Citizenship was for the Government to improve the Adult Migrant English Program (AMEP) and for new citizens to have 'adequate' English language ability.[42] However, it was submitted that the bill requires 'competent', as opposed to 'adequate' English, and that no justification for the change had been put forward.[43]

3.27 The Scrutiny of Bills Committee raised concerns that 'competent English' was not defined in the Act or the proposed bill, and sought further clarification from the

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36 Explanatory Memorandum, pp. 26–27.

37 Explanatory Memorandum, p. 27.

38 Department of Immigration and Border Protection, *Submission 453,* p. 52.

39 Department of Immigration and Border Protection, *Submission 453,* p. 52.

40 See for example the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT), *Submission 451,* p. 7; and Professor Alexander Reilly, Director, Public Law and Policy Unit, University of Adelaide, *Proof Committee Hansard,* 23 August 2017, pp. 24–25.

41 Professor Alexander Reilly, Director, Public Law and Policy Research Unit, University of Adelaide, *Proof Committee Hansard,* 23 August 2017, pp. 24–25.

42 Forum of Australian Services for Survivors of Torture and Trauma (FASSTT), *Submission 451,* pp. 7–8. See also Senator the Hon. Concetta Fierravanti-Wells and the Hon. Philip Ruddock, *Australian Citizenship—Your right, your responsibility*, National Consultation on Citizenship, Final Report, 2015, Recommendation 15, p. 22.

43 Forum of Australian Services for Survivors of Torture and Trauma (FASSTT), *Submission 451,* pp. 8. See also Centre for Human Rights Education, *Submission 377,* p. 3; and White Ribbon Australia, *Submission 388,* p. 2.

Minister about the level of English that an applicant would be required to demonstrate to satisfy the new requirement.[44] In response, the Minister provided the following explanation:

> The Government announced that applicants must provide results of an approved English language test at competent level in listening, speaking, reading, and writing skills. This is comparable to an International English Language Testing System score of 6 or the equivalent score from a test accepted by the Department. This is consistent with the current 'competent English' test score requirement in the *Migration Regulations 1994* (the Migration Regulations).[45]

3.28 In relation to the Scrutiny of Bills Committee's concerns that competent English was not defined in primary legislation, the Minister stated:

> The Government considers it appropriate to set out the technical details of the level of English language required in a legislative instrument. This gives the Minister the opportunity to determine particular circumstances such as the approved test providers and test scores. It also provides the Minister flexibility to update the instrument in instances where, for example, there is a change in the approved test providers, without going through the legislative amendment process.
>
> This instrument that will be made to set out the detail of the English language requirement will be subject to scrutiny and disallowance when it is tabled in the Parliament. This approach mirrors the definition of 'competent English' in regulation 1.15C and the 'Language Tests, Score and Passports 2015' instrument in the Migration Regulations.[46]

3.29 During public hearings there was some discussion about what 'competent' English would equate to. As outlined above, the Minister has indicated that it will be comparable to an IELTS 6 score.[47] The Department notes that the IELTS offer a general or academic test, and that there is a difference in the reading and writing modules.[48] However, at a public hearing Professor Catherine Elder of the Language Testing Research Centre at the University of Melbourne stated that the academic IELTS test and the general IELTS test both report performance on the same scale.[49]

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44 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 5.

45 Mr Dutton, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 2.

46 Mr Dutton, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 2.

47 Mr Dutton, Minister for Immigration and Border Protection, Response to Scrutiny Digest No 7 of 2017 from the Senate Scrutiny of Bills Committee, p. 2.

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

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

Professor McNamara, a linguistic expert at Melbourne University, said 'the tasks are different but the standard required is the same'.[50]

3.30 The Australian Council of TESOL Associations (ACTA) noted that the proposed level of IELTS 6 was higher than the literacy levels of more than one quarter of the general Australian population and that according to figures obtained in 2012–13, at least seven million Australians were below the IELTS 6 level.[51] It concluded that for a migrant to move from the basic level of IELTS 4 to the IELTS 6 'is virtually impossible without extensive English tuition' and '[f]or adults with limited educational backgrounds, it is generally impossible'.[52] The University of Melbourne's Language Testing Research Centre referred to the proposed level as 'unreasonably high'.[53]

3.31 Evidence from witnesses also noted that competence should be considered in light of the purpose of the skill. As explained by ACTA:

> Competent English in the famous Victoria markets in Melbourne or the Sydney Fish Market is quite different from what counts as competent for a lawyer in an Australian courtroom, a real estate agent auctioning a property or a politician in Parliament. Many nursing staff in retirement communities are quite competent in spoken English, reading medicine labels, completing hand-over reports and maintaining patient records. However, their reading and writing in English may easily not be what is labelled "competent" in the IELTS.[54]

3.32 Most submitters and witnesses agreed that achieving adequate English language skills was important for integration. For example, the Kaldor and Gilbert + Tobin Centres agreed that English proficiency is something which aspiring citizens should strive for and that it is a necessary skill in order to become part of the wider community.[55] However, it argued that the language test should not be used as a tool to exclude people and that the proposed English language test would be unfair and unreasonable, especially for the humanitarian and refugee cohort.[56]

3.33 As explained by Mr Peter Mares at a public hearing, the majority of migrants arriving in Australia are skilled migrants and international students whose level of

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50 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.

51 Australian Council of TESOL Associations, *submission 292*, p. 5.

52 Australian Council of TESOL Associations, *submission 292*, p. 8.

53 University of Melbourne Language Testing Research Centre, *Submission 398*, p. 7.

54 Australian Council of TESOL Associations, *submission 292*, p. 22. See also Jesuit Refugee Service Australia, *Submission 387,* 4; Refugee & Immigration Legal Service, *Submission 415,* p. 2; Refugee Council of Australia, *Submission 449,* p. 7.

55 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 13.

56 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 13.

English is already tested.[57] However, the cohort of migrants that this provision would affect includes individuals arriving in Australian on a humanitarian program, partners of Australia citizens or partners of permanent residents, or secondary visa holders such as the partner of a primary applicant for skilled migration.[58]

3.34 However, the Department noted that applicants would have at least four years to develop their English ability and noted the services available to humanitarian entrants:

> The Government recognises the particular challenges for refugees and humanitarian entrants. There is a range of Settlement Services and English language, literacy and numeracy programmes available for such vulnerable migrants to access. Technical colleges and other English language courses and programmes are also widely available.[59]

3.35 Additionally, the Department stated that in July 2017 the Government had introduced a new business model for AMEP whereby people who had not attained functional English after completing the legislated entitlement of 510 hours, may be able to access an additional 490 hours of tuition.[60]

3.36 A number of witnesses endorsed education-based methods to assess a person's English skills, rather than having a stand-alone English language test.[61] Dr Michelle Kohler from the Applied Linguistics Association of Australia noted that there were two alternatives—an achievement oriented test or an achievement oriented assessment.[62] Dr Kohler explained the difference between the two tests:

> The achievement based test is one that attempts to capture performance based on a clearly defined language learning program that precedes the test. The test is designed in close relation to a specific learning program that recognises the authentic and real-world contexts and purposes for learners' language use. For the current purpose that we're talking about here, the current context, such a program would focus on communication demands in the workplace and in community settings. In this way, the test has greater validity, as it would be designed to capture everyday communication experiences and would integrate the four skills—listening, speaking, reading and writing—in more authentic ways, rather than disaggregate them as some commercial tests do. In my view, it is also fairer in that the content is somewhat known to the test takers and is not too distant from the

57 Mr Peter Mares, *Proof Committee Hansard,* 25 August 2017, p. 32.

58 Mr Peter Mares, *Proof Committee Hansard,* 25 August 2017, p. 32. See for example Edmund Rice Centre, *Submission 303,* p. 5 and St Vincent de Paul Society, *Submission 419,* p. 3.

59 Department of Immigration and Border Protection, *Submission 453,* p. 60.

60 Department of Immigration and Border Protection, *Submission 453,* p. 54.

61 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 40; and Dr Helen Moore, Spokesperson, Australian Council of TESOL Associations, *Proof Committee Hansard,* 24 August 2017, pp. 39–40.

62 Dr Michelle Kohler, President, Applied Linguistics Association of Australia, *Proof Committee Hansard,* 25 August 2017, pp. 45–46.

> preparation course. So there are no…surprises for them that might trip them up.
>
> At the end of the day, a test is a one-off performance. It may not adequately represented what a person can do both in a range of contexts and over time. Hence, another possibility is an achievement-oriented assessment that does not have a test as the end point but aims to capture performance on a range of tasks. Examples of this include portfolios, where a number of tasks may be set and completed over time.[63]

3.37 Ms Annie Brent from ACTA noted that an example of such a course, which is now no longer being used, was a course developed in 2000 called 'Let's Participate'.[64] The course was designed as a 20 hour module to be taught within the AMEP; consisted of workbooks, videos, CD-ROMS as well as fact sheets in 26 languages.[65]

3.38 Some submitters explained that English language is currently tested in the Citizenship test and indicated that while the current legislation only requires the applicant to possess a 'basic' level of English, completion of the Citizenship test requires more than basic ability.[66] Professor Rubenstein noted that the current level of English being tested is equivalent to year 12 English and argued that the current arrangement works well and should not be changed.[67] Professor Helen Moore from ACTA explained the reasons why the current test is 'fair enough':

> The reason the current test is fair enough, as it were, is that it allows what's known in the trade as accommodations. So, if you don't have good literacy skills and if you don't have good computer skills, there are ways in which you can take that test orally, so someone will read the question to you. The other reason that test is good enough is that people can study for it. You can read the book, you can do the trial test.[68]

3.39 The committee notes the evidence provided to the inquiry, and notes that much of it is based in witness expectations of what the test might be, which the committee does not necessarily accept. However, the committee does believe that there is a need for greater certainty in either the legislation, the EM or the relevant regulations. The committee does not necessarily expect that the English language standard should be at university entrance level.

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63 Dr Michelle Kohler, President, Applied Linguistics Association of Australia, *Proof Committee Hansard,* 25 August 2017, pp. 45–46.

64 Ms Annie Brent, Teacher, Australian Council of TESOL Associations, *Proof Committee Hansard,* 24 August 2017, pp. 39–40.

65 Ms Annie Brent, Teacher, Australian Council of TESOL Associations, *Proof Committee Hansard,* 24 August 2017, pp. 39–40.

66 Professor Kim Rubenstein, *Proof Committee Hansard,* 24 August 2017, pp 2–3; and Dr Helen Moore, Spokesperson, Australian Council of TESOL Associations, *Proof Committee Hansard,* 24 August 2017, p.37.

67 Professor Kim Rubenstein, *Proof Committee Hansard,* 24 August 2017, p. 3.

68 Dr Helen Moore, Spokesperson, Australian Council of TESOL Associations, *Proof Committee Hansard,* 24 August 2017, p. 37.

3.40 The committee accepts evidence that many worthwhile would-be Australian citizens would be excluded by these rules, and committee members know from their own experience that many current Australian citizens would never have passed a higher standard English language test such as the one some witnesses are suggesting will be applied. The committee agrees that a good understanding and use of the English language is essential in order to enjoy the benefits, and fulfil the obligations, of Australian citizenship. The committee cautions, however, against the adoption of a standard that many current citizens could not reach.

Citizenship test

3.41 In addition to the new English language test, the bill also proposes to introduce a new citizenship test. Currently, the Minister can make a determination as to the eligibility criteria for sitting the citizenship test. Proposed subsection 23(3A) provides examples of what the determination may cover, including that the eligibility criteria may relate to the fact that a person has previously failed the test, did not comply with one or more rules of conduct relating to the test, or was found to have cheated during the test. The EM provides the further details in relation to the proposed change:

> At present applicants are able to sit the citizenship test an unlimited number of times. Not only does this reduce the integrity of the testing arrangements but is also administratively and financially burdensome for the Government. A person who repeatedly fails the test does not meet the eligibility requirements and should have their application refused. This amendment will better support decision makers. Limiting the number of times a person can take a test and imposing penalties for cheating on the test was a recommendation from the National Consultation on Citizenship and had strong community support. New subsection 23A(3A) makes clear that the Minister may determine, for example, that a person who fails the citizenship test three times is not eligible to re-sit the citizenship test. Another example would be where a person is found to have cheated during the test. In this circumstance, the Minister is empowered to determine that the person is not eligible to re-sit the test.[69]

3.42 The Department noted that the number of people who pass the current citizenship test on first attempt is high because many applicants are skilled migrants.[70] The Department confirmed that a limit of three tests would be imposed whereby applicants who fail the test three times would be barred for two years from making a further application for citizenship.[71] The Department provided the following figures in relation to attempts to pass the citizenship test:

> Over the past three programme years (2013-2016), the highest number of test attempts by a single applicant was 47 times. Over the same period, 1830 applicants attempted the test 11 or more times and 15,401 applicants

69 Explanatory Memorandum, p. 36.

70 Department of Immigration and Border Protection, *Submission 453,* p. 68.

71 Department of Immigration and Border Protection, *Submission 453,* p. 68.

> attempted the test three or more times. In 2015-2016, 102,029 people sat the citizenship test and 3447 people failed the citizenship test more than three times.[72]

3.43 The Law Council argued that there should not be a limit imposed on the number of times a person can sit the citizenship test noting that it was 'not clear how these proposed limitations could advance any of Australia's objectives under its migration and citizenship programs'.[73] In relation to the Department's comments about the administrative and financial burden on the Government to allow a person to repeatedly re-sit a test, the Law Council suggested that the Department could potentially consider additional fees provided the cost is not prohibitive and still includes a concession rate.[74] Finally, if the concern was in relation to keeping a citizenship application open indefinitely, the Law Council suggested that the order could be reversed so that a person could be required to pass the citizenship test before they are able to lodge an application for citizenship.[75]

3.44 Other submitters such as the Australian Lawyers Alliance referred to the proposed three-test limit as 'unduly harsh'.[76] The University of Melbourne's Language Testing Research Centre noted that 'repeated attempts to pass the test…are more likely to be a measure of determination to become a full voting member of Australian society, than an indication of any fundamental incapacity or unsuitability'.[77]

3.45 However, the Department made the important point that:

> A person who fails to meet the requirements for citizenship will remain a permanent resident unless their conduct results in the cancellation of their visa under the *Migration Act 1958.*[78]

3.46 Notwithstanding this the committee feels that there is some merit in the suggestions of the Law Council, the Australian Lawyers Alliance, and the University of Melbourne's Language Testing Research Centre, and suggests to the Government that it would be worth considering allowing additional tests on a cost-recovery basis for applicants who are not able to pass the citizenship test in three attempts.

Integration within the Australian community

3.47 Proposed paragraph 21(2)(fa) introduces a new criterion to the general eligibility for Australian citizenship by conferral—that the Minister is satisfied that the person 'has integrated into the Australian community'. Proposed paragraph

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72 Department of Immigration and Border Protection, *Submission 453,* p. 68.

73 Law Council of Australia, *Submission 464,* p.16.

74 Law Council of Australia, *Submission 464,* p.16.

75 Mr David Prince, Chair, Migration Law Committee, Law Council of Australia, *Proof Committee Hansard,* 24 August 2017, p. 17.

76 Australian Lawyers Alliance, *Submission 454,* p. 18.

77 University of Melbourne, Language Testing Research Centre, *Submission 312,* p. 6.

78 Department of Immigration and Border Protection, *Submission 453,* p. 69.

21(9)(e) states that the Minister may determine by legislative instrument the matters to which the Minister may or must have regard when determining whether a person has integrated into the Australian community. The EM outlines that such a legislative instrument could have regard to a person's employment status, study being undertaken by the person or the person's children, involvement with community groups, or, conversely, that the person's conduct that is inconsistent with the Australian values, including criminal conduct.[79]

3.48 The Scrutiny of Bills Committee noted that the question of whether a person has integrated into the Australian community is not a technical question but rather one of substantive policy and therefore should not be broadly delegated to the executive branch of Government.[80] The Scrutiny of Bills Committee suggested that it would be more appropriate for the bill to be amended to provide guidance in the primary legislation as to what is meant by 'has integrated into the Australian community' and how this criterion should be applied.[81]

3.49 The committee tends to agree with this approach. The committee notes that the current Minister may not always be the decision-maker and believes that some legislative guidance may be necessary.

3.50 A number of organisational submitters raised similar concerns—that the discretion vested in the Minister to determine matters by legislative instrument was too broad.[82] Some submitters objected to the Government placing too much emphasis on linking integration with employment. The Law Council warned that refugee or humanitarian entrants may be disadvantaged for a variety of reasons and concluded that this requirement 'may further discourage migrants from applying for citizenship by making the criteria administratively overwhelming and uncertain, with potentially negative consequences'.[83] Anglicare Sydney provided the following explanation:

> We have particular concerns for vulnerable migrants and refugees who may not be able to demonstrate this defined type of community integration across their period of residence in Australia. We refer to those people who have experienced one or more of the following pre-arrival factors: disrupted or no formal education; trauma or torture through persecution and war or conflict; periods of time in refugee camps and in transit fleeing war and conflict; family unit separation; and loss of immediate family members. Further, significant post-arrival factors which should be considered in a person's capacity to integrate in these ways include: primary caregiving roles in the family unit; language barriers; physical and mental health

79 Explanatory Memorandum, p. 27.

80 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 3.

81 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 3.

82 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 15; University of Adelaide, Public Law and Policy Research Unit, *Submission 398*, p. 8; Legal Aid NSW, *Submission 385,* p. 7; and Law Council of Australia, *Submission 464,* p. 16.

83 Law Council of Australia, *Submission 464,* pp. 16–17.

> issues, especially for refugees; long periods of separation from immediate family members; protracted and complex visa processes; periods of time in immigration detention; and difficulty in having previous qualifications and employment experience recognised in the Australian context. As previously discussed, each individual and family's trajectory in their settlement years in Australia is unique and dynamic.[84]

Australian Values Statement

3.51 Proposed subsection 46(5) provides that the Minister may determine an Australian Values Statement and any requirements relating to the Statement. The EM states that the Minister may, for example, 'determine the text of the Australian Values Statement and determine that the statement must be read, understood and signed by an applicant'.[85] Proposed subsection 46(6) of the bill notes that a determination under proposed subsection 46(5) is a legislative instrument, however, it will not be subject to disallowance. The justification for the Australian Values Statement to be exempt from disallowance was outlined in the EM:

> The instrument provides the wording of the Australian Values Statement that an applicant must sign to make a valid application for citizenship. This aligns with the process for a visa application under the Migration Act which many applicants will have already signed as part of their visa application process. Australian citizenship is core Government policy and aligns with national identity and as such matters going directly to the substance of citizenship policy such as Australian Values should be under Executive control, to provide certainty for applicants and to ensure that the Government's intended policy is upheld in its application.[86]

3.52 The Scrutiny of Bills Committee argued that matters that go 'directly to the substance of citizenship and policy' would appear to be matters that are appropriate for parliamentary oversight.[87] Also, while the EM argues that by putting the determination of the Australian Values Statement under executive control provides certainty to applicants, certainty could equally be provided by increasing parliamentary oversight of this matter rather than including it in a legislative instrument that was not subject to disallowance.[88]

3.53 These concerns were also shared by a number of submitters.[89] The Australian Multicultural Council supported the inclusion of an Australian Values Statement provided it was consistent with the core values articulated in the Australian

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84 Anglicare Sydney, *Submission 308,* p. 9.

85 Explanatory Memorandum, p. 53

86 Explanatory Memorandum, p. 53.

87 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 10.

88 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, pp. 10–11.

89 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 14 and p. 28; NSW Council for Civil Liberties, *Submission 436,* pp. 8–9

Government's new multicultural statement, *Multicultural Australia: united, strong, successful.*[90] These values include 'equality of opportunity, equality between men and women, rule of law, support of parliamentary democracy, and acknowledgement of basic freedoms and civil liberties, including protection of minority rights'.[91] While the Multicultural Council supported the proposed new requirement for an Australian Values Statement, it suggested that 'sensible guidelines and supports are developed' and that 'new requirements are not onerous to the point of becoming a deterrent'.[92]

Pledge of allegiance

3.54 Proposed section 32AB requires a person over the age of 16 to make a pledge of allegiance (currently referred to as the pledge of commitment) to become an Australian citizen. Exemptions apply where the person has a permanent or enduring physical or mental incapacity that makes them incapable of taking the pledge (proposed paragraph 32AB(1)(b)). Additionally, proposed section 32AB provides the Minister the power to issue a written determination preventing a person making the pledge of allegiance for up to two years under three circumstances:

- where the Minister is satisfied that the person's visa may be cancelled;
- where the Minister is satisfied that the person has been or may be charged with an offence under Australian law; or
- where the Minister is considering cancelling a person's visa under specified sections of the Act.

3.55 A number of submitters noted their support for the proposed changes relating to the pledge of allegiance.[93] For example, the Australian Multicultural Council stated that it 'supports this amendment as it makes explicit the expectation that aspiring citizens make a strong commitment of allegiance to Australia'.[94]

3.56 In relation to potential delays to an applicant taking the pledge, the Kaldor and Gilbert + Tobin Centres reflected on research conducted by the Refugee Council of Australia which concluded that refugees subject to citizenship delays experience 'high levels of stress and anxiety', 'suffer extreme helplessness and despair', and that the delay caused 'acute and severe mental distress'.[95]

3.57 The Kaldor and Gilbert + Tobin Centres concluded:

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

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

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

93 Australian Multicultural Council, *Submission 334,* p. 3;

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

95 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 19. See also Refugee Council of Australia, *Delays in Citizenship Applications for Permanent Refugee Visa Holders*, October 2015, p. 9; University of Adelaide, Public Law and Policy Research Unit, *Submission 398,* pp. 9–10; Muslim Legal Network (NSW), *Submission 413,* p. 9; and Queenscliff Rural Australians for Refugees, *Submission 320,* p. 1.

> In light of these impacts, stronger justification for the need to increase the maximum length of delays is required, as well as some mechanism via which to ensure that the ministerial power to impose delays is exercised in a manner that is proportionate to the circumstances that trigger it.
>
> It is our recommendation that before any increase to the maximum length of delays is enacted, the Minister should provide to the Parliament a detailed explanation about how often, and in what circumstances, the current maximum period of 12 months is insufficient. Based on this evidence, the Bill should enumerate and limit the circumstances in which delay of more than 12 months will be permitted under the Act, and require that any delay imposed is proportionate to the circumstances that trigger it.[96]

3.58 Other concerns raised by submitters relating to the pledge include:

- the term 'allegiance' being an outdated concept and that terms currently used such as 'loyalty' and 'commitment' are more accessible and more widely understood terms, as such, the pledge should not be amended;[97]
- that Australian-born citizens are not required to make the same pledge of allegiance which suggests there was 'considerable room for improving the civic literacy of Australian-born citizens';[98] and
- that the pledge should be to 'Australia's sovereign head of state', the Queen of Australia.[99]

3.59 The committee makes no comment on most of these submissions, but is not persuaded that the Government's proposal is wrong. The committee does, however, agree with the view provided at dot point two that the civic literacy of many existing Australian citizens could do with some improvement.

Additional powers of the Minister

Minister's power to cancel approval for citizenship

3.60 The bill proposes to provide the Minister with additional powers to cancel the approval for citizenship by conferral under two circumstances: where the Minister is satisfied that approval should not be granted due to identity or national security grounds (proposed subsection 25(1A)); and where the person otherwise fails to meet the eligibility criteria for citizenship (proposed subsections 25(1) and 25(2)).

3.61 A number of submitters raised concern with the second area of cancelation—where the person otherwise fails to meet the eligibility criteria. The Kaldor and Gilbert + Tobin Centres noted that the proposed provision, in combination with the proposed

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96 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 19.

97 Professor Kim Rubenstein, *Submission 404,* p. 5; see also Australian Monarchist League, *Submission 462,* p. 1.

98 Lutheran Church of Australia, *Submission 364,* p. 4.

99 Australian Monarchist League, *Submission 462,* p. 1

expansion of ministerial discretion in respect of the eligibility criteria for those who apply for citizenship by conferral, was particularly concerning:

> As an example of how these discretions interact, the Minister, under proposed s 21(2)(fa), may look holistically at the question of whether an applicant has 'integrated' into the Australian community. The Bill provides no guidance about how this ministerial power will be exercised, and, indeed, the Minister is not required to develop guidelines that clarify this. Where the Minister determines that the applicant has integrated into the community, and that all other eligibility requirements have also been met, there still remains a ministerial discretion to refuse to approve the person for citizenship. The effect of the proposed ss 25(1) and 25(2) is that, even after the Minister decides to approve a person's application for citizenship, they may continue to monitor the person up until the day of their citizenship ceremony, and may retract approval for citizenship if they form the view that integration is no longer present.[100]

Minister's discretion to revoke citizenship

3.62 In addition to the Minister's proposed power to cancel approval of a person's citizenship, the bill also proposes to provide the Minister with the discretion to revoke a person's citizenship based on two grounds: where the Minister is satisfied that the approval should not have been given to the person because the requirements of the Act had not been met (proposed section 33A); or where the Minister is satisfied that the person became an Australian citizen as a result of fraud or misrepresentation (proposed section 34AA).

Revocation if requirements of Act not met

3.63 Section 16 of the Act covers citizenship by descent and allows a person to make an application for citizenship if they were born outside of Australia but a parent was an Australian citizen at the time of the person's birth and the Minister is satisfied that the applicant meets a number of requirements outlined in the Act. The Minister's decision to approve or refuse an application under section 16 is made under section 17 of the Act.

3.64 Proposed section 33A of the bill provides the Minister with the discretion to revoke a person's citizenship if it was acquired by virtue of section 17 of the Act and if the Minister is satisfied that the approval should not have been given. Proposed subsection 33A(2) provides that the Minister cannot revoke a person's citizenship if the revocation would result in the person being stateless. Proposed subsection 33A(3) notes that the person ceases to be an Australian citizen at the time of the revocation.

3.65 The EM notes that the purpose of the amendment is to allow the Minister to take into account the circumstances of a particular case, such as the length of time that the person has been a citizen and the seriousness of any character concerns.[101]

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100 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 20.

101 Explanatory Memorandum, p. 49.

3.66 In response to concerns raised by the Scrutiny of Bills Committee in relation to an identical provision in the 2014 bill, the Minister stated:

> It is not necessary to place a time limit on the exercise of the power because the discretionary nature of the decision means that issues such as the length of time that the person has been a citizen, and the seriousness of any character concerns, would be taken into account. In addition, the revocation would take effect from the time of decision on revocation rather than from the date of the decision to approve the person becoming an Australian citizen. This means that the person's status in the intervening period will not alter.[102]

3.67 A number of submitters were also concerned that the Minister was provided a broad discretionary power with no legislative guidance on the circumstances in which the Minister may decide that approval should not have been given.[103] The Kaldor and Gilbert + Tobin Centres explained how lack of legislative guidance could potentially create uncertainty:

> The possibility that the provision may be read in a way that empowers the Minister to change what constitutes a person of good character retrospectively also raises the prospect that persons who gain citizenship by descent may be subject to changing standards. Further, while the Minister may exercise his or her discretion not to exercise this power if a long time has passed since the person attained citizenship, there are no time limits imposed on the Minister's power to exercise his power under proposed s 33A. This exacerbates the potential uncertainty faced by persons who gain citizenship by descent.
>
> … We do not believe that a person's right to citizenship by descent should be disturbed because the Minister subsequently believes they 'got it wrong'. Grounds for revocation on such broad terms may potentially give rise to a situation where a citizen or class of citizens is under ongoing scrutiny.[104]

3.68 The committee does not share these concerns and appreciates that in these times of heightened security environments, situations may arise that would not previously have been apprehended.

Revocation due to fraud or misrepresentation

3.69 New section 34AA of the bill provides that the Minister may revoke a person's citizenship if the Minister is satisfied that the citizenship was approved as a result of fraud or misrepresentation. The fraud or misrepresentation must have been connected with the person's Australian citizenship approval, the person's entry to Australia prior to citizenship approval, or the grant of a visa or permission to enter and

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102 Standing Committee for the Scrutiny of Bills, *Seventeenth Report of 2014,* pp. 1031–1032.

103 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 21; and Australian Human Rights Commission, *Submission 47,* p. 22.

104 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 21.

remain in Australia prior to the citizenship approval (proposed paragraph 34AA(b)). Additionally, the Minister must be satisfied that it would be contrary to the public interest for the person to remain an Australian citizen (proposed paragraph 34AA(c)). The fraud or misrepresentation may have been committed by 'any person' and need not have constituted an offence (proposed subsection 34AA(2)), however it must have occurred during the 10 year period prior to the day of revocation (proposed subsection 34AA(3)). Subsection 34AA(4) notes that 'the concealment of material circumstances constitutes a misrepresentation', and subsection 34AA(5) specifies that the person ceases to be an Australian citizen from the time of the revocation. The EM also outlines that a note to the new section, which provides that a child of the person who has had their citizenship revoked, would also cease to be an Australian citizen at the time of their parent's citizenship being revoked.

3.70 The Department stated:

> Currently, a conviction for a specified offence is required before a person's citizenship can be revoked. In light of competing priorities, there are often limited resources to prosecute all but the most serious cases relating to migration and citizenship fraud. In addition, the conviction must be under Australian law, which in turn requires the person's presence in Australia. Because of these considerations and the time it can take to establish a conviction, the power to revoke a person's citizenship on the basis of a conviction for a fraud-related offence has only been used ten times since 1949, even where the evidence of fraud is strong.[105]

3.71 Some submissions from legal organisations raised concerns with this proposed section. The Law Council argued that, given the serious consequences, revocation of citizenship should be subject to independent review.[106] Further, that revocation due to fraud or misrepresentation should require a criminal conviction and that the suspicion or belief of the Minister or their delegate should not be sufficient.[107] Legal Aid NSW noted that the proposed provision placed too much power with the executive and that the precondition of a conviction prior to the revocation of citizenship would ensure that the decision is made on objective grounds.[108] Refugee Legal (formerly the Refugee and Immigration Legal Centre) referred to the proposed provision as 'a significantly lower standard premised on a "more likely that not" level of satisfaction by a public servant is deeply concerning'.[109]

3.72 Refugee Advice and Casework Service (RACS), argued that the proposed provision 'degrades the value of Australian citizenship by treating it like a visa, even for Australian citizens born in Australia'.[110] It noted that the bill would have the effect

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105 Department of Immigration and Border Protection, *Submission 453,* p. 84.

106 Law Council of Australia, *Submission 464,* p. 20.

107 Law Council of Australia, *Submission 464,* p. 20. See also Australian Lawyers Alliance, *Submission 454,* p. 11 and Refugee Legal, *Submission 439,* p. 7.

108 Legal Aid NSW, *Submission 385,* p. 8.

109 Refugee Legal, *Submission 439,* p. 9.

110 Refugee Advice and Casework Service, *Submission 441,* p. 4.

of entrenching citizenship by conferral as a second class of Australian citizenship, which is less secure than that of other Australian citizens and perpetually subject to the risk of revocation by the Minister.[111]

3.73 Another potential consequence of the proposed provision, as noted by a number of submitters, was the possibility that it may result in children being made stateless.[112] While the Australian Human Rights Commission (AHRC) acknowledged that the EM noted the potential for a child to be rendered stateless would be a factor to be considered, the AHRC pointed out that the proposed provision does not contain a legislative provision against statelessness.[113]

Minister's decision excluded from merits review

3.74 Item 126 of the bill seeks to add new subsection 52(4) providing that certain decisions of the Minister, which are made in the public interest, would be excluded from merits review.[114]

3.75 The EM sets out the following reasons for this proposed changed:

> As an elected Member of Parliament, the Minister represents the Australian community and has a particular insight into Australian community standards and values and what is in Australia's public interest. As such, it is not appropriate for an unelected administrative tribunal to review such a personal decision of a Minister on the basis of merit, when that decision is made in the public interest. As a matter of practice it is expected that only appropriate cases will be brought to the Minister's personal attention, so that merits review is not excluded as a matter of course.[115]

3.76 The committee agrees with and supports this statement.

3.77 Proposed subsection 52B(1) of the bill outlines that where the Minister makes a decision that is not reviewable by the Administrative Appeals Tribunal (AAT), the Minister is required to table in each House of the Parliament, within 15 sitting days, the Minister's decision and the reasons for the decision. The EM notes that the proposed subsection 52B(1) of the bill 'provides transparency and accountability measures concerning personal decisions of the Minister which are not reviewable by the Administrative Appeals Tribunal'.[116] The EM also notes that it remains open to a person to seek judicial review of these decisions and that the exclusion of the

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111 Refugee Advice and Casework Service, *Submission 441,* pp. 4–5. See also Australian Human Rights Commission, *Submission 447,* p. 20.

112 Australian Human Rights Commission, *Submission 447,* p. 20. See also Multicultural Youth Advocacy Network, *Submission 443,* pp. 3–4.

113 Australian Human Rights Commission, *Submission 447,* p. 21.

114 These decisions relate to the refusal to approve or cancel the approval of citizenship, or to revoke a person's citizenship under sections 17, 19D, 24, 25, and 30 of the Act and proposed sections 17A, 19DA, 30A, 33A and 34AA of the bill.

115 Explanatory Memorandum, p. 55.

116 Explanatory Memorandum, p. 55.

Minister's personal decisions from merits review was more in line with similar provisions under the *Migration Act 1958.*[117]

3.78 Submitters also questioned the ambiguity of the term 'public interest'. Refugee Legal outlined that the term 'public interest' has been determined by the High Court to be a term which was 'difficult to give a precise content', and as such, it noted that the Minister would be liable to exercise his powers in accordance to his personal or political whim.[118]

3.79 The Public Law and Policy Research Unit argued that Ministerial decisions 'in the public interest' should be confined to discretionary exercises of power that are beneficial to the person concerned, for example, waiving the general residency requirement, not revoking citizenship, or setting aside adverse AAT decisions.[119] The Australian Lawyers Alliance expressed the same view and argued that Ministerial discretion should be limited to circumstances where merits and judicial review options have been exhausted and the outcome remains unjust in the view of the Minister.[120]

3.80 The use of proposed section 52B, which requires the Minister to table a statement setting out the Minister's decision within 15 sitting days, was criticised as a deficient accountability mechanism for a number of reasons.[121] The Kaldor and Gilbert + Tobin Centres explained that proposed section 52B may assist with transparency, but not with accountability as the consequence may be that the Minister has to answer questions in Parliament, but not to review the decision.[122] Secondly, the time period of 15 sitting days could mean that a significant period of time elapses from the date of the decision to the date of the Minister's statement being tabled in Parliament, which would result in the immediacy of the consequence of the decision being lost.[123] The committee suggests that this approach ignores the realities of the Parliamentary process.

Minister's power to set aside decisions of the AAT

3.81 New section 52A of the bill would provide the Minister the power to set aside certain decisions of the AAT where the Minister is satisfied that it is in the public interest to do so. The power would not apply to decisions to revoke citizenship but can apply to decisions to refuse to approve citizenship, or to cancel an approval for

117 Explanatory Memorandum, p. 55.

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

119 University of Adelaide, Public Law and Policy Research Unit, *Submission 398,* p. 11

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

121 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 34.

122 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 34.

123 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 34.

citizenship, where the delegate was satisfied that the person was not of good character, or of the identity of the person, where the AAT set aside the delegate's decision.

3.82 Where the Minister has set aside an AAT decision under the new section 52A, proposed subsection 52B(3) would require the Minister to table a statement in both Houses of Parliament within 15 sitting days, which sets out the AAT's decision, the decision made by the Minister, and the reasons for the decision.[124] The EM notes that this 'ensure[s] that such decisions remain transparent, accountable and open to public comment'.[125]

3.83 In setting out the reasons for the proposed amendment, the EM notes three decisions of the AAT which were 'outside community standards' because the AAT had found that people were of good character despite one having been convicted of child sexual offences, another of manslaughter and the third of people smuggling.[126] The EM notes a further three cases where the AAT found people to have been of good character despite having committed domestic violence offences.[127] Finally, the EM states that there is potential for some of the AAT's decisions on identity grounds 'to pose a risk to the integrity of the citizenship programme'.[128]

3.84 Concerns in relation to this proposed power were raised by a significant number of organisational submitters, for largely the same reasons as put forward by submitters opposed to proposed section 52(4).[129] The Committee however supports the Government's view that Ministers are ultimately responsible to the Australian people whereas both the AAT and the AHRC are accountable to no one.

Broad instrument making power of the Minister

3.85 New subsection 54(2) provides that 'the regulations may confer on the Minister the power to make legislative instruments'. The EM states that this will enable the Minister to make legislative instruments under the Regulations relating to,

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124 Explanatory Memorandum, p. 56.

125 Explanatory Memorandum, p. 57.

126 Explanatory Memorandum, p. 55.

127 Explanatory Memorandum, p. 55.

128 Explanatory Memorandum, p. 55.

129 Oz Kiwi, *Submission 339,* p. 8; Curtain University, Centre for Human Rights Education, *Submission 377,* pp. 2–3; Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* pp. 33–34; Legal Aid NSW, *Submission 385,* pp. 8–9; University of Adelaide, Public Law and Policy Research Unit, *Submission 398,* pp. 11–13; Muslim Legal Network, *Submission 413*, pp. 22–24; St Vincent de Paul Society National Council, *Submission 419,* p. 5; NSW Council for Civil Liberties, *Submission 436,* pp. 7–8; Castan Centre for Human Rights Law, *Submission 437,* pp. 6–7; Refugee Legal, *Submission 439,* p. 2–4; Refugee Advice & Casework Service, *Submission 441,* pp. 3–4; Asylum Seeker Resource Centre, *Submission 444,* p. 2; National Ethnic Disability Alliance, *Submission 446,* p. 4; Australian Human Rights Commission, *Submission 447,* pp. 14–16; Refugee Council of Australia, *Submission 449,* pp. 14–15; Australian Lawyers Alliance, *Submission 454,* p. 6; Law Council of Australia, *Submission 464,* pp. 7–8; and Queensland Council for Civil Liberties, *Submission 481,* p. 1.

for example, the payment of citizenship application fees in foreign countries and currencies. The rationale for the proposed amendment was explained as follows:

> It is appropriate for this instrument making power to be in the Regulation because it is the Regulation which address issues such as setting the fees to accompany citizenship applications (see Regulation 16). Parliamentary scrutiny would be maintained because the legislative instrument would be disallowable.[130]

3.86 The Scrutiny of Bills Committee acknowledged that, while it was not controversial to use delegated legislation in technical and established circumstances such as the payment of fees, 'it is unusual for primary legislation to provide for the making of a regulation which, in turn, provides a Minister with a wide power to make further delegated legislation for unspecified purposes'.[131] It was the view of the Scrutiny of Bills Committee that the primary Act, rather than the regulations, should provide a power to make delegated legislation.[132] The Scrutiny of Bills Committee explained that the effect of the regulations conferring a power to delegate legislation would be to provide the Minister with a wide power for unspecified purposes.[133] This concern was also shared by the Kaldor and Gilbert + Tobin Centres.[134]

3.87 The Scrutiny of Bills Committee noted that it raised these same concerns in relation to an identical provision within the 2014 bill and that the following explanation was provided in response:

> …while it would be possible to limit the Minister's power to make further delegated legislation to specified matters in the Citizenship Act, it was not necessary to do so as the (now) *Legislation Act 2003* provides that any instrument made under the Regulations would be read so as not to exceed the authorising powers in the Act and the Regulations.[135]

Additional requirements impacting children

Citizenship by birth

3.88 Currently, a child born in Australia will automatically become an Australian citizen once they turn 10, provided they are ordinarily resident in Australia.[136] This provision applies regardless of whether the child's parents are Australian citizens. The bill proposes to limit the automatic acquisition of Australian citizenship by birth so that the 10 year rule will no longer apply under the following circumstances:

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130 Explanatory Memorandum, p. 59.

131 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 15.

132 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 15.

133 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 15.

134 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* pp. 30–31;

135 Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017,* 21 June 2017, p. 16.

136 Paragraph 12(1)(b) of the *Australian Citizenship Act 2007.*

- if during the 10 year period a parent of the person had diplomatic privileges or immunities under relevant legislation (proposed subsection 12(3));
- if at any time during the 10 year period the person was an unlawful non-citizen (proposed subsection 12(4));
- if at any time during the 10 year period, the person did not hold a valid visa permitting them to travel to, enter and remain in Australia (proposed subsection 12(5)), unless the person was a New Zealand citizen (proposed subsection 12(6));
- if the parent of the person did not hold a substantive visa at the time of the person's birth and was an unlawful non-citizen at any time between that parent's last entry into Australia and the person's birth (proposed subsection 12(7)); or
- if the person was found abandoned in Australia and it is proved that the person was physically outside Australia before they were found abandoned in Australia, or born in Australia to a parent who is not a citizen or permanent citizen at the time of the person's birth (proposed subsection 12(9)).

3.89 Sub-item 135(2) of the bill provides that these amendments would apply in relation to a 10 year period that ends on or after the commencement of the item, whether the birth occurred before the commencement. Sub-item 135(3) of the bill clarifies that in relation to a birth that occurred before the commencement of the bill, the amendments would apply to any part of the 10 year period. As such, this provision would operate retrospectively. It is noted that an identical provision was proposed in the 2014 bill.

3.90 The EM outlines the rationale for these proposed amendments:

> Collectively, the amendments made by this item seek to encourage the use of lawful pathways to migration and citizenship by making citizenship under the '10 year rule' available only to those who had a right to lawfully enter, re-enter and reside in Australia throughout the 10 years.[137]

3.91 In relation to these provisions the Department noted that:

> The changes to the 10-year rule do not prevent a person applying for citizenship by a conferral process. Also, a stateless person may apply for citizenship at any time. Consequently, this measure does not trespass unduly on personal rights, nor does it impact on the individual's liberty or obligations.[138]

3.92 A number of submitters raised concerns with how this provision would affect three particular categories of children, namely children of asylum seekers and refugees, children of parents who overstayed their visas, and children found abandoned.

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137 Explanatory Memorandum, p. 13.

138 Department of Immigration and Border Protection, *Submission 453*, p. 82.

Children of asylum seekers and refugees

3.93 The AHRC submitted that, by virtue of proposed subsection 12(4), children of parents who are in immigration detention or community detention when the child is born would no longer automatically qualify for citizenship when the child turns 10.[139] This would also be the case for a child of parents who arrived in Australia as unlawful non-citizens, were released from immigration detention into community detention on bridging visas, and the child was born while the parents held a bridging visa.[140]

3.94 The AHRC noted that in both cases, even if the parents of the child had been found to be refugees and granted protection visas, and the child had been lawfully in Australia for their entire life up to the age of 10, the child would not be entitled to citizenship under the 10 year rule.[141] In other words, under the proposed sections the child's eligibility for the automatic acquisition of citizenship would be denied on the basis of the parents' immigration status.[142]

3.95 These concerns were shared by the Kaldor and Gilbert + Tobin Centres which noted that the proposed amendments 'present a particular risk for children of asylum seekers'.[143] The Kaldor and Gilbert + Tobin Centres explained that the combined effect of this proposed amendment with the reintroduction of temporary protection visas in 2014 would make it very difficult for children of asylum seekers who arrived in Australia by boat to obtain citizenship.[144]

3.96 The Public Law and Policy Research Unit also expressed their concern and reiterated the comments they made in relation to this provision of the 2014 bill:

> It is wrong in principle to deny automatic citizenship to a child who was born in Australia and spent their first 10 years living in Australia, regardless of their immigration status. There is no ground to deny full membership in the Australian community to a person who speaks Australian English, has only Australian and Australian-based friends, has lived only in the Australian landscape, is steeped in Australian culture, and has experienced all of their education in Australia. Young people in this position should have the full security of residence and other rights and duties of an Australian citizen, whether or not they have citizenship status in another country. Their immigration status, or that of their parents, is irrelevant to the depth of their connection to Australia.[145]

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139 Australian Human Rights Commission, *Submission 447,* p. 23.

140 Australian Human Rights Commission, *Submission 447,* p. 23. This would be by virtue of proposed section 12(7) of the bill as a bridging visa is not a substantive visa.

141 Australian Human Rights Commission, *Submission 447,* pp. 23–24.

142 Australian Human Rights Commission, *Submission 447,* p. 24.

143 Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 6.

144 Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 6.

145 Adelaide University, Public Law and Policy Research Unit, *Submission 398,* p. 3.

3.97 Both the Law Council and the AHRC expressed the view that these provisions may be in contravention of the Convention on the Rights of the Child (CRC).[146] Article 7(1) of the CRC, as well as article 24(3) of the International Covenant on Civil and Political Rights (ICCPR), states that every child has 'the right to acquire a nationality'. The AHRC acknowledged the comments made by the UN Human Rights Committee that the provision 'does not necessarily make it an obligation for States to give their nationality to every child born in their territory'.[147] However, the UN Human Rights Committee also state that:

> …there should be no discrimination in accessing citizenship, for example, based on whether children are legitimate or based on the nationality status of one or both of the parents.[148]

Children of parents who overstayed their visa

3.98 The second category of children identified by the AHRC who would be negatively affected by the proposed changes to the 10 year rule are children of parents who arrived in Australia lawfully but subsequently overstayed their visas and became unlawful non-citizens at any time prior to the child's tenth birthday.[149]

3.99 The Kaldor and Gilbert + Tobin Centres argued that these proposed amendments were inconsistent with the rationale underpinning the 10 year rule:

> Regardless of their immigration status or the immigration status of their parents, any child who has resided in Australia for the first 10 years of their life is immersed in Australian culture, shaped by Australian relationships and education, and likely to have little to no substantive connection with any country besides Australia.[150]

3.100 The Kaldor and Gilbert + Tobin Centres noted the motivation provided for these amendments as outlined in the EM, is to address concerns that the 10 year rule encouraged temporary residents and unlawful non-citizens to have children in Australia and keep their child in Australia whether lawfully or unlawfully, until at least their tenth birthday.[151] However, a number of submitters noted that there appeared to be insufficient evidence that the 10 year rule was being abused.[152] The Law Council went further and stated the following:

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146 Law Council of Australia, *Submission 464,* p. 18; and Australian Human Rights Commission, *Submission 447,* p. 24.

147 Australian Human Rights Commission, *Submission 447,* p. 24.

148 Australian Human Rights Commission, *Submission 447,* p. 24.

149 Australian Human Rights Commission, *Submission 447,* p. 24.

150 Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 7.

151 Explanatory Memorandum, p. 75.

152 Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 7; Law Council of Australia, *Submission 464,* p. 18; and Australian Human Rights Commission, *Submission 447,* p. 24.

> It is the experience of our members that this deemed grant of citizenship arises in only a modest number of situations per year and almost without exception in the situation where the child has been unlawful for all or most of their short lives. It is the opinion of the Law Council that this very long standing provision serves a very important public policy objective in protecting the interests of vulnerable children. As currently drafted, the Bill would remove the benefit of this provision from the children in actual need of this legislative protection and instead in essence only leave the provision open to children who in effect have little need of it.[153]

Children found abandoned in Australia

3.101 Currently, a person who is found abandoned in Australia as a child is an Australian citizen unless the contrary is proved.[154] The bill proposes to repeal this section and amend it to clarify that a child found abandoned in Australia is presumed to be born in Australia to a parent who is an Australian citizen or a permanent resident at the time the child is born (proposed subsection 12(8)). This presumption applies unless and until it is proved that the child was physically outside Australia before being found abandoned in Australia, or born in Australia to a parent who is not a citizen or permanent citizen at the time of birth (proposed subsection 12(9)).

3.102 The United Nations High Commissioner for Refugees (UNHCR) raised concerns with proposed paragraph 12(9)(a) of the bill noting that it may result in a child being stateless.[155] The UNHCR explain that under article 15 of the Universal Declaration of Human Rights, each individual has a right to nationality.[156] Furthermore, that the purpose of the 1961 Statelessness Convention, to which Australia is a State Party, is to prevent and reduce statelessness.[157] The UNHCR noted that articles 1 to 4 of the Convention specifically concerns the acquisition of nationality by children who would otherwise be stateless, and who have ties to the Contracting state either by birth or descent.[158] The UNHCR provided the following example to illustrate how proposed paragraph 12(9)(a) may be contrary to Australia's obligations under the 1961 Statelessness Convention:

> …a child may have been born in Australia, to an Australian parent, lawfully taken overseas, returned and then abandoned without any documentation at such an age that the child would not be able to communicate its own nationality or that of its parents.[159]

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

154 *Australian Citizenship Act 2007,* section 14.

155 United Nations High Commissioner for Refugees, *Submission 438,* p. 8.

156 United Nations High Commissioner for Refugees, *Submission 438,* p. 8.

157 United Nations High Commissioner for Refugees, *Submission 438,* p. 8.

158 United Nations High Commissioner for Refugees, *Submission 438,* p. 8. These concerns were also raised by the Australian Human Rights Commission, see *Submission 447,* pp. 28–29.

159 United Nations High Commissioner for Refugees, *Submission 438,* pp. 9–10.

3.103 As noted above, the Department argued that these provisions do not trespass unduly on personal rights as a stateless person may apply for citizenship at any time.[160]

Good character test

3.104 Currently, adults are required to pass a 'good character' test. The bill proposes to remove the age limits in relevant sections of the Act so that children will need to satisfy the Minister that they are of 'good character'. The EM reflects the justification for the amendments:

> The amendment recognises the fact that people under the age of 18 sometimes have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen...
>
> The Department is aware of children aged under 18 with serious character concerns. The amendment would not have a significant impact on children overall, but will capture those young people who are of character concern and that the Australian community reasonably expects should not be extended the privilege of Australian citizenship at that time.[161]

3.105 In relation to its compatibility with human rights obligations, the EM provided the following explanation:

> In the context of engaging with Article 3(1) of the CRC, while it may be in the best interests of the child to obtain citizenship the best interests of the child must be weighed against other competing interests. The proposed change is similar to provisions which currently exist in the Migration Act, which does not have an age limit for "good character". Similarly, in order to preserve the integrity of the citizenship programme, being the final stage of assessment of a person's rights to reside in Australia and to access the rights and privileges of citizenship, it is appropriate that the assessment of the character of applicants for citizenship is at least as thorough as the assessment of character in the migration context. The amendment therefore aims to ensure the safety of the Australian community by upholding the value of citizenship and ensuring uniformity and integrity across the citizenship and migration programmes.
>
> Finally, the Australian Citizenship Instructions (ACIs) will ensure the good character amendment will positively engage with Article 3(1) of the CRC. The Australian Citizenship Instructions (ACIs) set out the policy considerations to be taken into account by decision makers when assessing whether an applicant meets the good character requirements. After the amendment comes into force, the ACIs will set out instructions to ensure that decision makers relevantly consider Australia's obligations under the

160 Department of Immigration and Border Protection, *Submission 453*, p. 82.

161 Explanatory Memorandum, pp. 16, 20 and 26.

> Convention on the Reduction of Statelessness, and the best interest of the child as a primary consideration, amongst other things.[162]

3.106 A number of submitters also noted that the term 'good character' was not defined in the Act.[163] The Kaldor and Gilbert + Tobin Centres noted that the Citizenship Policy states that the question of whether a person is of good character includes:

- characteristics which have been demonstrated over a very long period of time;
- distinguishing right from wrong; and
- behaving in an ethical manner, conforming to the rules and values of Australian society.[164]

3.107 It argued that it may be difficult, if not impossible, to judge whether a minor, particularly a young minor, possesses these qualities. The Kaldor and Gilbert + Tobin Centres also explained that a person's criminal conduct is usually weighed against other factors such as the person's contribution to society or steps to rehabilitate. However, due to the age of the minor, they may lack the life opportunity to demonstrate such mitigating factors.[165]

3.108 The AHRC also outlined that article 40 of the CRC requires that the focus be placed on promoting 'the child's rehabilitation, reintegration and assuming a constructive role in society'.[166] The AHRC argue that the proposed provision is inconsistent with article 40 of the CRC.[167]

3.109 Further, the AHRC questioned whether the proposed amendment was reasonably justified or proportionate given that:

> According to the latest statistics from the Australian Bureau of Statistics, the predominant principal offence committed by youth offenders (i.e. children aged 10 to 17 years) was theft, which comprised 35% of all youth offenders. Approximately half of those offenders were proceeded against for public transport fare evasion. Furthermore, over the period 2008–09 to 2015–16, the number of youth offenders declined across most offence

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162 Explanatory Memorandum, pp. 80–81.

163 Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 9; Adelaide University, Public Law and Policy Research Unit, *Submission 398,* p. 4.

164 Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 10. The Citizenship Policy is guidance document published by the Department which is non-binding.

165 Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 10.

166 Australian Human Rights Commission, *Submission 447,* p. 30.

167 Australian Human Rights Commission, *Submission 447,* p. 30. See also Muslim Legal Network, *Submission 413,* pp. 10–11; and Multicultural Youth Advocacy Network, *Submission 443,* pp. 1–3.

> categories. Without strong evidence that there is a need to protect the Australian community from children who have committed 'particularly serious crimes' and that this measure would be proportionate to achieving this objective, the Commission queries the justification for extending this generalised 'good character' requirement to children.[168]

3.110 As such, a number of submitters suggested that the provisions be amended so that they applied only to 'serious character concerns' or 'particularly serious crimes'.[169]

3.111 The Law Council also questioned the utility of this section applying to all minors, regardless of their age given that children under 10 years of age are deemed to not be criminally responsible for conduct that would otherwise amount to a criminal offence.[170] Consequently, the Law Council suggested that if good character requirements are introduced for minors, that the provision be amended to apply to applicants who are 10 years of age or older.[171] It is noted that the EM acknowledges that children under 10 years of age are not held criminally responsible:

> …the Department will not seek criminal history records of children under the age of ten, as this is below the age of criminal responsibility in Australia.[172]

Committee views

3.112 The committee believes that an important role of Government is to review Commonwealth laws to ensure that they continue to serve their intended purpose. Governments are formed by elected parliamentarians who, in a representative democracy, reflect and represent the views and beliefs of Australians. Such a Government is, therefore, responding to broad community concerns in relation to the integrity and effectiveness of the current Australian citizenship framework. As well, the Government conducted extensive consultation in 2015 and sought further comment in 2016 in response to the discussion paper *Strengthening the Test for Australian Citizenship*. The results of the consultation indicate that the Australian community believes that requirements for Australian citizenship should be strengthened. It is fundamentally for this reason that the committee recommends that the bill be passed.

Strengthening citizenship requirements

3.113 The committee acknowledges that it has received a very large number of submissions to this inquiry and thanks all submitters and witnesses for their time and

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168 Australian Human Rights Commission, *Submission 447,* pp. 30–31.

169 Australian Human Rights Commission, *Submission 447,* p. 31; Andrew & Renata Kaldor Centre for International Refugee Law and Gilbert + Tobin Centre of Public Law, *Submission 378,* p. 11; and Adelaide University, Public Law and Policy Research Unit, *Submission 398,* p. 5.

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

171 Law Council of Australia, *Submission 464,* p. 19.

172 Explanatory Memorandum, p. 73.

for sharing their personal stories. In particular, the committee notes the concerns raised by submitters and witnesses in relation to the proposal to amend general residency requirements, the new English language test, the limitation on sitting the citizenship test, the requirement to integrate into the Australian community, the Australian Values Statement, and the new pledge of allegiance. The committee notes, with no reflection on the sincerity of submitters, that most submissions (apart from campaign letters) were from groups, organisations, lawyers, and those directly or personally impacted by the proposed changes, and very little active response from 'ordinary individual' Australians who expect the Government to action their views. However, the committee also notes that consultations were conducted in relation to these provisions in 2015 and 2016 and that 2,544 responses were received to the National Consultation on Citizenship's on-line survey, the results of which were as follows:

- 64 per cent of people felt that Australian citizenship is not sufficiently valued;[173]
- 88 per cent of people believed that areas for the citizenship test and the pledge should be examined, as well as the qualification criteria including English language, more rigorous entry processes, identity, and criminal history;[174]
- 91 per cent supported examining the role of the existing citizenship test and pledge to ensure the integrity of the citizenship program;[175] and
- widespread recognition of the importance of English language for full integration in Australian society and support for raising the minimum standard of English from 'basic' to 'adequate'.[176]

3.114 The results of the consultation show strong support for the Government to implement changes to encourage greater integration and participation within the Australian community, as well as promote greater understanding of the rights, responsibilities and privileges attached to Australian citizenship. The committee is of the view that the bill achieves these objectives and indeed enhances the value of Australian citizenship.

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173 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. 11.

174 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. 14.

175 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. 17.

176 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. 18.

Additional powers of the Minister

3.115 While the committee acknowledges that concerns raised by submitters in relation to additional powers the bill proposes for the Minister, the committee considers that these powers are necessary and proportionate to ensure the integrity of the Australian citizenship program. The committee also notes that an overwhelming majority of participants to the National Consultation on Citizenship (91 per cent) supported more rigorous migration and border entry processes.[177]

3.116 The committee notes that where the Minister has personally made a decision, which he determines to be in the public interest, to refuse to approve, or cancel the approval for citizenship pursuant to proposed section 52(4), the Minister must table his decision, including the reasons for the decision, within 15 sitting days of Parliament. The committee is satisfied that this provides a sufficient level of transparency. Ultimately the Minister is accountable to the Australian public for his actions over three years.

3.117 This same requirement also applies for decisions the Minister makes under proposed section 52A of the bill to overturn a decision of the AAT. The decisions of the AAT which were referred to in the EM are concerning and clearly fall well outside community standards. Where the Minister exercises his discretion to overturn a decision of the AAT, the applicant will still have access to judicial review, and the committee considers this to be appropriate. As well, the committee notes that the Minister is accountable to the Parliament and ultimately the Australian public whereas AAT members are not 'judiciary' and may not necessarily have any better learning, appreciation or ability to make a decision than the Minister and are generally accountable to no one on the merits or otherwise.

3.118 The committee considers that the additional powers of the Minister are necessary to ensure integrity and confidence in the citizenship program as well as bringing the Minister's powers closer in line with similar provisions under the Migration Act.

Additional requirements for children

3.119 In relation to the proposed limitation to the 10 year rule, the committee is satisfied that children who may be rendered stateless because of the provision will have an opportunity to apply for citizenship through the conferral process. The committee is of the view that it is important to encourage lawful pathways to migration and citizenship and that the restrictions to the 10 year rule would assist to achieve this objective.

3.120 In relation to the proposed amendment to require applicants under the age of 18 years to pass a character test, the committee again reflects on the views of the community as reported through the National Consultation—that a more rigorous entry

177 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. 16.

process is conducted including consideration of a person's criminal history.[178] Accordingly, the committee considers that this aligns with community expectations.

3.121 For the reasons outlined above, the committee is satisfied that the bill is reasonable and justified, and therefore recommends that the Senate pass the bill. However the committee makes a number of other recommendations to the Government to consider some of the concerns raised during public hearings of the committee, which also reflect the experiences of committee members as Parliamentary representatives in a representative democracy.

Recommendation 1

3.122 That the Government clarify the standard for English-language competency required for citizenship, noting that the required standard should not be so high as to disqualify from citizenship many Australians who, in the past, and with a more basic competency in the English language, have proven to be valuable members of the Australian community.

Recommendation 2

3.123 That the Government reconsider the imposition of a two-year ban on applications for citizenship following three failed attempts of the citizenship test, and consider other arrangements that allow additional tests on a cost-recovery basis that would deter less-genuine applicants.

Recommendation 3

3.124 That the Government consider introducing some form of transitional provisions for those people who held permanent residency visas on or before 20 April 2017 so that the current residency requirements apply to this cohort of citizenship applicants.

Recommendation 4

3.125 That the Senate pass the bill.

Senator the Hon Ian Macdonald
Chair

178 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. 14.

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.[1]

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.[2] 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.[3]

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.[4]

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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.[5] It is a testing system that the Australian Government or Parliament has no oversight or control of. [6]

> 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.[7]

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.[8]

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.[9] 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.[10] 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'.[11]

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.[12]

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.[13]

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://refugeeresearchblog.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.

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[14].

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—

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.[15]

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.[16]

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.

> 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.[17]

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. [18]

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.[19]

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

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.[20] 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.[21]

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.'[22] 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.

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.[23]

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

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.[24]

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

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

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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:

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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]

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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]

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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.

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

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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 Minsters 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

Appendix 1

Public submissions

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29 Monash University, School of Languages, Literatures, Cultures and Linguistics
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86 Ms Shelley Brown
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92 Ms Eliza Medina
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102 Mr Yu-Ting Chiang

103 Mr Ali Guvenkaya

104 Dr Anton Pulvirenti

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109 Mr Daniel Meza

110 Mr Qaisar Gul

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138 Mr David Robinson
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140 Name Withheld
141 Diversity Council Australia
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184 Mr Satyam Arora

185 Mr Kim Tan

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228 Mr Kieren Crossland
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232 Dr Ezieddin Elmahjub
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239 Mr Peter Mares
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241 Dr Aileen Crowe
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244 Mrs Jean John
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249 Prof Andrew Jakubowicz
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252 Ms Jennifer Powers
253 Mr Viet Truong
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257 Mr Adam Mujaj
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259 Tasmanian Catholic Justice and Peace Commission
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263 Federation of Telugu Association of Australia
264 Federation of Indian Associations of ACT Inc
265 BICG
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269 Mrs Anne Monk
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271 Name Withheld
272 Name Withheld
273 Mrs Asha Mazzella
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276 Name Withheld
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278 Ms Anne Coombs

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280 Mr Yashar Toopchi

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282 Ms Jessica Luter

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285 Applied Linguistics Association of Australia

286 Name Withheld

287 Name Withheld

288 Name Withheld

289 Name Withheld

290 Name Withheld

291 Name Withheld

292 Australian Council of TESOL Associations

293 Mr Christopher Gordon

294 Ms Bridget Harilaou

295 Name Withheld

296 Name Withheld

297 Name Withheld

298 Name Withheld

299 Name Withheld

300 Dr Phuong Duong

301 Australian Psychological Society

302 The Council of Australian Postgraduate Associations

303 Edmund Rice Centre

304 Name Withheld

305 Name Withheld

306 Migrant Resource Centre

307 Name Withheld

308 Anglicare Sydney

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310 Name Withheld

311 Multicultural Council of Tasmania

312 Language Testing Research Centre, University of Melbourne

313 Name Withheld

314 Office of the Premier of South Australia

315 Name Withheld

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317 Bonnyrigg Turkish Cultural Association

318 Centre for Asylum Seekers, Refugees, and Detainees (CARAD)

319 Name Withheld

320 Queenscliff Rural Australians for Refugees

321 Name Withheld

322 Mr Andrew Davis

323 Joint Submission: Brotherhood of St Laurence and Whittlesea Community Connections

324 Name Withheld

325 Mr Peter Conlon

326 Name Withheld

327 Name Withheld

328 Name Withheld

329 Dr Niko Leka

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334 Australian Multicultural Council

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339 Oz Kiwi Association Inc
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341 Access Community Services
342 Ms Marie Rosewarne
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344 Dr Sheknaz Graham
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346 Mr Martin Burrell
347 Australian Linguistic Society
348 Australian Jewish Democratic Society
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361 Ms Lili Calitz
362 Challenging Racism Project, Western Sydney University
363 The Bayside Refugee Advocacy and Support Association
364 Lutheran Church of Australia
365 Name Withheld
366 Ms Jacqueline Hughes
367 Name Withheld

368 Settlement Council of Australia

369 American Chamber of Commerce in Australia

370 Name Withheld

371 Ms Julia Finn MP

372 GetUp

373 Name Withheld

374 Name Withheld

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376 Name Withheld

377 Centre for Human Rights Education

378 Andrew & Renata Kaldor Centre of International Refugee Law and Gilbert + Tobin Centre of Public Law

379 Name Withheld

380 Name Withheld

381 Name Withheld

382 Mr Saqib Sharif

383 Name Withheld

384 Multicultural Council of the Northern Territory Inc

385 Legal Aid NSW

386 Name Withheld

387 Jesuit Refugee Service Australia

388 White Ribbon Australia

389 Kommonground Inc.

390 The Humanitarian Group

391 Name Withheld

392 Name Withheld

393 Name Withheld

394 Name Withheld

395 The Ethnic Communities Council of Queensland

396 Vietnamese Community in Australia-NSW chapter

397 Name Withheld

398 University of Adelaide, Public Law and Policy Research Unit

399 Name Withheld

400 Mr Hao Gu

401 Population, Migration and Social Inclusion Focus Program/TheBorder Crossing Observatory, Monash Uni

402 Name Withheld

403 Name Withheld

404 Professor Kim Rubenstein

405 Grandmothers Against Detention of Refugee Children NSW

406 Refugee Education Special Interest Group

407 Ms Heather Marr

408 Name Withheld

409 Settlement Services International

410 Federation of Ethnic Communities' Councils of Australia

411 Name Withheld

412 Name Withheld

413 Muslim Legal Network (NSW)

414 Hon. Tung Ngo MLC

415 Refugee & Immigration Legal Service Inc.

416 Name Withheld

417 University of Melbourne Student Union

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419 St Vincent de Paul Society National Council

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427 Name Withheld

428 Name Withheld

429 Mr Colin Bridges

430 Name Withheld

431 Name Withheld

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434 Immigration Advice and Rights Centre (iarc)

435 Australian National University Students' Association (ANUSA) and Postgraduate and Research Students Association (PARSA)

436 NSW Council for Civil Liberties

437 Castan Centre for Human Rights Law

438 United Nations High Commission for Refugees

439 Refugee Legal

440 Migration Council Australia

441 Refugee Advice & Casework Service (Aust) Inc

442 Mr Jihad Dib MP

443 Multicultural Youth Advocacy Network (Australia) MYAN

444 Asylum Seeker Resource Centre (ASRC)

445 Name Withheld

446 National Ethnic Disability Alliance (NEDA)

447 Australian Human Rights Commission

448 World Vision Australia

449 Refugee Council of Australia

450 Community of South Sudanese and Other Marginalized Areas in NSW (CSSOMA)

451 Forum of Australian Services for Survivors of Torture and Trauma (FASSTT)

452 Australian Association of Social Workers (AASW)

453 Department of Immigration and Border Protection

454 Australian Lawyers Alliance

455 UNICEF Australia

456 Estrin Saul Lawyers & Migration Specialists

457 Name Withheld

458 Dr Jaqueline Haupt

459 Dr Lydia Wells, Murdoch University School of Law

460 Ms Marie Hapke, Refugee Advocacy Network

461 Name Withheld

462 he Australian Monarchist League

463 Metropolitan Migrant Resource Centre

464 Law Council of Australia

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468 Name Withheld

469 Labor for Refugees NSW

470 Fair Go for Migrants

471 Jesuit Social Services

472 Jenny Barnett

473 Community Action for a Multicultural Society

474 Sisters of Mercy Parramatta

475 B rigidine Asylum Seekers Project

476 Dr Miriam Faine, Monash University

477 Federation of Chinese Associations of ACT

478 United Indian Association

479 Mr Andrew Giles MP

480 SydWest Multicultural Services

481 Queensland Council for Civil Liberties

482 Victorian Multicultural Commission

483 Migration Solutions

484 Multicultural Communities Council of NSW and Chinese Community Council of Australia

485 Combined Refugee Action Group

486 We Australians Are Creative Inc.

487 Darebin City Council
488 Knox Multicultural Advisory Committee
489 Launceston Hazara Community
490 Confidential
491 Confidential
492 Confidential
493 Confidential
494 Mr Martin Prescott
495 Mr John Rogers
496 Name Withheld
497 Name Withheld
498 Mr Steve Shackel
499 Ms Daniela Doliakova
500 Name Withheld
501 Name Withheld
502 Mr Jon Walsh
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510 Mr Joseph Castley
511 Ms Jessie Scott
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518 Lesley Wilkins
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520 Lisa Fisher
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524 Mr Anthony Lupi
525 Mr Peter Stanley
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531 Mr Peter Lesch
532 Ms Katie Bennett
533 Ms Gillian Wells
534 Ms Pam Rowley
535 Name Withheld
536 Mr Phil Roberts
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538 Mr William Nicholson
539 Mr Park Joseph
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541 Name Withheld
542 Mr Alexander Harrington
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548 Ms Sue Longmore
549 Name Withheld
550 Name Withheld
551 Mr Bernie O'Donnell
552 Dr Kate Jackson
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558 Confidential
559 Mr David White
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563 Name Withheld
564 Mr Greg O’Donnell
565 Ms Helen Bernard
566 Ms Gabrielle Smith
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570 Name Withheld
571 Mr Philip Duncan
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573 Asian Women at Work
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586 Ms Patricia Bell
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590 Ms Valerie Mayer
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595 Ms Turkan Ozturk
596 Name Withheld
597 Ms Rosalind Berry
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615 Name Withheld

617 Ms Amanda King

618 Ms Martha Ansara

619 Name Withheld

620 Ms Margaret Pickup

621 Mr Edward Calaby

622 Name Withheld

623 Campaign letter 1

624 Campaign letter 2

625 Campaign letter 3

626 Campaign letter 4

627 Campaign letter 5

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630 Campaign letter 8

631 Campaign letter 9

632 Campaign letter 10

633 Campaign letter 11

634 Campaign letter 12

635 Campaign letter 13

Tabled documents, answers to questions on notice and additional information

Answers to questions on notice

1 Answer to question provided to Department of Immigration and Border Protection by Professor Alexander Reilly, Public Law and Policy Research unit, University of Adelaide received 23 August 2017.

2 Answer to questions on notice (Q1-7) received 30 August 2017 from Department of Immigration and Border Protection from a public hearing on 25 August 2017.

Additional Information

1 Additional information provided by Dr Helen Moore, Australian Council of TESOL Association from a public hearing on 24 August 2017.

2 Additional information provided by the Australian Psychological Society from a public hearing on 25 August 2017.

3 Additional Information provided by Mr Graeme Edgerton, Australian Human Rights Commission from a public hearing on 23 August 2017 - Clarification of Evidence.

Tabled Documents

1. Opening statement by Dr Sangeetha Pillai and Mr Khanh Hoang from a public hearing on 23 August 2017.

2. Opening statement by Mr Peter Thang Ha from a public hearing on 23 August 2017.

3. Opening statement by Ms Penny Howard from Fair Go Australia from a public hearing on 23 August 2017.

4. Opening statement by Ms Sue King Anglicare Diocese of Sydney from a public hearing on 23 August 2017.

5. Document tabled - Mr Philip Benwell, National Chair, Australian Monarchist League from hearing on 24 August 2017

6. Opening statement by Oz Kiwi Association from a public hearing on 25 August 2017.

7. Document tabled by Ms Joanne Cox, Oz Kiwi Association Inc. from a public hearing on 25 August 2017.

8. Opening Statement by Ms Heather Gridley, Australian Psychological Society from a public hearing on 25 August 2017.

9. Opening statement by Peter Mares from a public hearing on 25 August 2017.

10. Opening statement by Refugee Council from a public hearing on 25 August 2017.

Appendix 2

Public hearings and witnesses

Wednesday 23 AUGUST 2017 — Sydney

ACHIEK, Mr Dor Akech, Coordinator, Youth Projects, Settlement Services International

CROUCHER, Professor Rosalind AM, President, Australian Human Rights Commission

EDGERTON, Mr Graeme, Acting Deputy Director, Australian Human Rights Commission

HA, Dr Peter, Vice-Chair, Multicultural Communities Council of NSW

HOANG, Mr Khanh, Private capacity

HOWARD, Dr Penny McCall, Member, Fair Go for Migrants

KING, Ms Sue, Manager of Advocacy and Research, Anglicare Diocese of Sydney

MANSOOR, Mr Syed Saif, Member, Fair Go for Migrants

Miss Shruti, Private capacity

MOJTAHEDI, Mr Ali, Principal Solicitor, Immigration Advice and Rights Centre 17

MORRISON, Dr Andrew Stewart, RFD, SC, Spokesperson, Australian Lawyers Alliance

Mr Kon, Private capacity

Ms Sara, Private capacity

PASCHALIDIS-CHILAS, Mrs Esta, Manager, Government and Member Relations, Settlement Services International

PILLAI, Dr Sangeetha, Private capacity

PUN, Dr Anthony, National President, Chinese Community Council of Australia Inc.

REILLY, Professor Alexander, Director, Public Law and Policy Unit, University of Adelaide

SANTOW, Mr Edward, Human Rights Commissioner, Australian Human Rights Commission

SOUTPHOMMASANE, Dr Tim, Race Discrimination Commissioner, Australian Human Rights Commission

TALBOT, Ms Anna, Legal and Policy Advisor, Australian Lawyers Alliance

WEBSTER, Ms Cheryl, Manager of Migrant and Refugee Services, Anglicare Diocese of Sydney

Thursday 24 AUGUST 2017 — Canberra

BENWELL, Mr Philip, National Chair, Australian Monarchist League

BRENT, Ms Annie, Teacher, Adult Migrant English Program, Australian Council of TESOL Associations

CAMPBELL, Dr Emma, Director, Federation of Ethnic Communities' Councils of Australia

FORD, Ms Carina, Vice-Chair, Migration Law Committee, Law Council of Australia

GEDDES, Ms Linda, Acting Deputy Secretary, Policy Group, Department of Immigration and Border Protection

IMTOUAL, Dr Alia, Senior Policy and Project Officer, Federation of Ethnic Communities' Councils of Australia

KILNER, Mr Damien, Assistant Secretary, Family and Citizenship Programme, Department of Immigration and Border Protection

LING, Ms Alice, Assistant Secretary, Humanitarian, Family and Citizenship Policy, Department of Immigration and Border Protection

McGLYNN, Mr Steve, Assistant Secretary, Legal Advice and Operational Support Branch, Department of Immigration and Border Protection

McLEOD, Ms Fiona, SC, President, Law Council of Australia

MOORE, Dr Helen, Spokesperson, Australian Council of TESOL Associations

NADIMPALLI, Dr Krishna, President, Federation of Indian Associations of ACT Inc.

PRINCE, Mr David, Chair, Migration Law Committee, Law Council of Australia

RUBENSTEIN, Professor Kim, Private capacity

TEBBEY, Mr Nicholas, Chief Executive Officer, Settlement Council of Australia

WILDEN, Mr David, First Assistant Secretary, Immigration and Citizenship Policy Division, Department of Immigration and Border Protection

WONG, Mr Samson Shu Leung (Sam), Patron and Spokesperson, ACT Chinese Association Inc., Federation of Chinese Associations of ACT

YAN, Mr Andrew, Coordinator General, Federation of Chinese Associations of ACT

Friday 25 AUGUST 2017 — Melbourne

ARISTOTLE, Mr Paris, Executive Committee Member, Forum of Australian Services for Survivors of Torture and Trauma

Mr Bwe, Private capacity

CHIA, Dr Joyce, Director of Policy, Refugee Council of Australia

COX, Ms Joanne Elizabeth, Deputy Chair, Oz Kiwi Association Inc .

ELDER, Professor Catherine, Principal Fellow and Acting Director, Language Testing Research Centre, University of Melbourne

FORBES-MEWETT, Dr Helen, Senior Lecturer and Researcher, Monash University

GASSIN, Dr Timothy, President, Oz Kiwi Association Inc.

GRIDLEY, Ms Heather, Manager, Public Interest, Australian Psychological Society

HANSON, Mr Greg, Senior Lawyer, Policy Officer and Accredited Specialist In Immigration Law, Refugee Legal (Refugee and Immigration Legal Centre)

HUSSEIN, Ms Hutch, Senior Manager, Refugees, Immigration & Multiculturalism, Brotherhood of St Laurence

KOHLER, Dr Michelle, President, Applied Linguistics Association of Australia

LOUIS, Dr Winnifred, Social Cohesion Sub-Committee, Australian Psychological Society

MANNE, Mr David, Executive Director and Principal Solicitor, Refugee Legal (Refugee and Immigration Legal Centre)

MARES, Mr Peter, Private capacity

Mr Matthew, Private capacity

MAYNARD, Miss Natasha, Secretary, Oz Kiwi Association Inc.

MUSGRAVE, Dr Simon, Lecturer, School of Languages, Literatures, Cultures and Linguistics, Monash University

O'SULLIVAN, Dr Maria, Deputy Director, Castan Centre for Human Rights Law, Monash University

O'SULLIVAN, Ms Kate, Settlement Services Manager, Whittlesea Community Connections

SAMPSON, Ms Emma, Research and Policy Officer, Public Interest, Australian Psychological Society

SZWARC, Mr Josef, Manager, Research and Policy, Victorian Foundation for Survivors of Torture

WICKES, Associate Professor Rebecca, Program Coordinator for the Population, Migration and Social Inclusion Focus Program, School of Social Sciences, Monash University

WILLOUGHBY, Dr Louisa, Senior Lecturer, School of Languages, Literatures, Cultures and Linguistics, Monash University

Thursday 31 AUGUST 2017 — Brisbane

BALSHAW, Mr Kevin, Private capacity

DUKE, Ms Kenny, Client Services Manager, Access Community Services Ltd

GEDDES, Ms Linda, Acting Deputy Secretary, Policy Group, Department of Immigration and Border Protection

KILNER, Mr Damien, Assistant Secretary, Family and Citizenship Program,

Department of Immigration and Border Protection

LACHOWICZ, Mr Robert, Community Legal Education Officer, Refugee and Immigration Legal Service Inc.

McGLYNN, Mr Steve, Assistant Secretary, Legal Advice and Operational Support Branch, Department of Immigration and Border Protection

MURRAY, Mr Angus, Vice-President, Queensland Council for Civil Liberties

NYE, Ms Isobel Louisa, Research and Evaluation Manager, Access Community Services Ltd

PAGE, Mr Garry, Chief Executive Officer, Ethnic Communities Council of Queensland

WELLS, Mr Bruce, Principal Solicitor, Refugee and Immigration Legal Service Inc.

WILDEN, Mr David, First Assistant Secretary, Immigration and Citizenship Policy Division, Department of Immigration and Border Protection

Appendix 3

Australian Citizenship: Your right, your responsibility—National Consultation on Citizenship: Final Report

Recommendations

1. The Government should promote an inclusive understanding of Australian citizenship as a 'common bond', founded on shared values, rights and responsibilities and encourage expression of these values in everyday life.

2. Information on citizenship should be prominently displayed in Government shopfronts, at the border, in overseas posts and as part of the Australian Electoral Commission's enrolment processes.

3. The Civics and Citizenship component of the National Curriculum should be updated to include material on allegiance to Australia.

4. Online and other programmes should be developed to provide civics and citizenship education to newly arrived migrants and the wider community, drawing on the Civics and Citizenship curriculum as appropriate. The promotion of civics and citizenship should be a condition of contracts with settlement services providers.

5. The Citizenship Pledge should be updated to include language on allegiance to Australia.

6. Consideration should be given to expanding the usage of the Pledge to the broader community, for example, through school and community events.

7. Citizenship should remain a desirable and obtainable goal for those legal migrants and permanent residents who wish to become fully fledged members of Australian society, committed to its values and its interests. On balance, dual citizenship benefits Australia and should remain an option available to Australians.

8. The Government should continue to strengthen the integrity of the citizenship process, including through elements proposed in the Australian Citizenship and Other Legislation Amendment Bill 2014.

9. In recognition of the role permanent residency plays as a qualifying step towards becoming a citizen, the Government should consider measures to strengthen the integrity of the permanent residency programme, including through appropriate civics education and other processes, such as testing.

10. The general residence requirement should be increased to a minimum of four years permanent residence immediately prior to the application for citizenship, during which time applicants may be absent from Australia for no more than 12 months in total. Applicants for citizenship should be physically in Australia to lodge their application and to acquire Australian citizenship at a ceremony.

11. The Citizenship Test should be retained, revised and updated to include questions about allegiance and more questions about the rule of law, values and democratic rights and responsibilities in the Citizenship Test. This should include questions pertinent to existing revocation of citizenship provisions.

12. The integrity of the Citizenship Test should be strengthened through limits on the number of times a person can sit but fail to pass the test before their application is refused. A person can make a new application for citizenship once he or she has gained a sufficient understanding to enable them to pass the test. Cheating on the Citizenship Test should incur appropriate penalties.

13. The Government should ensure more individuals formally make the Pledge by reducing the exemptions from participation in citizenship ceremonies and by including the Pledge in processes whereby citizenship is gained by descent, adoption or resumption.

14. The Government should consider clarifying public understanding that all Australian-born citizens and those who have citizenship by descent are bound by the responsibilities and privileges of citizenship as set out in the Preamble.

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.