



Refugee and Immigration Legal Service Inc

"A Free Community Legal Service"

Formerly known as

South Brisbane Immigration and Community Legal Service Inc

www.rails.org.au

16 January 2005

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

By Email legcon.sen@aph.gov.au

Dear Committee

Inquiry into the provisions of the Australian Citizenship Bill 2005 and the Australian Citizenship (Transitionals and Consequentials) Bill 2005

Thank you for the opportunity to make a submission to this Inquiry.

The Refugee and Immigration Legal Service (formerly the South Brisbane Immigration and Community Legal Service) is an independent not-for-profit organization specializing in refugee and immigration law. It is the only agency in Queensland that provides free legal assistance in this area and has a significant volunteer base. Legal Aid Queensland does not provide immigration legal assistance.

RAILS takes on genuine cases of people most disadvantaged and in need, and provides legal representation before the Department of Immigration, the Migration and Refugee Review Tribunals, and works with pro bono lawyers to take cases of public interest to judicial review. RAILS holds phone and drop-in advice sessions and undertakes community legal education and law reform projects where resources permit.

Given the huge demand for our services we do not have resources to provide a comprehensive submission to this inquiry and have concentrated only on one issue outlined below.

Thank you for considering our submission.

Signed (email)

Robert Lachowicz
Coordinator/Principal Solicitor

**Inquiry into the provisions of the Australian Citizenship Bill 2005
Submission by the Refugee and Immigration Legal Service (RAILS)**

Refugees are a special group who perhaps most require the security of citizenship. The Refugee and Immigration Legal Service submits that the proposed changes requiring at least 3 years residence, instead of the current 2 years, for conferral of citizenship (new section 21 (1)(b)) should not apply to refugees who have already spent at least 3 years resident in Australia under the temporary protection visa (TPV) regime.

The stated policy for the change to add an additional year is to:

“strengthen the integrity of the citizenship process by enabling more time for new arrivals to become familiar with the Australian way of life and the values which they will need to commit to as Australian citizens; and the identification of people who may represent a security risk to Australia”.

We submit these policy reasons do not apply for this group of permanent residents and that leaving the period as 2 years permanent residence for this group will strengthen the protection of refugees and the integrity of the refugee protection system.

To obtain permanent residence, TPV holders must have been lawfully in Australia as genuine refugees for greater than three years. Under Regs. 866.228, 866.228A, 866.229 *Migration Regulations 1994* they must have held a temporary protection visa for at least 30 months (or 54 months in case of subclass 451 visa) to obtain a permanent protection visa (subclass 866) unless the Minister allows a shorter time. In the five years we have dealt with TPV cases we have not had any cases of the Minister shortening the 30 months before permanent protection is allowed. (In any event, if this was to occur it would mean that the Minister saw this as a special case deserving of special consideration). Our experience is that every one of the applicants who have obtained their permanent resident visas has been in the community for no less than four years once all the processing has been completed.

During the 30 plus months TPV holders have Medicare, work and some social security rights. Their experience is overwhelmingly that they form strong connections, obtain work and become valued members of the Australian community even prior to them gaining their permanent protection visas. They start to fit in – becoming very aware of the values and ways of mainstream Australian life.

TPV holders undergo enormous scrutiny. People who apply for a TPV have had to undertake security checks before they are released from detention and granted their first TPV (this occurs in year 1). Then before any grant of a permanent protection visa they must again clear further security checks (in year 3, 4 or more

after arrival). This all occurs before permanent residence is granted. These security checks include not only the Australian Federal Police but also ASIO and other overseas security agencies we believe. Overseas penal clearances are also required from other countries where applicants have resided after fleeing persecution.

The TPV regime was introduced to deter people from arriving in an unauthorized way and applying for refugee status. The deterrence part of this policy is achieved through not granting permanent protection immediately that refugee status is proved (other onshore refugee applicants who arrived with valid visas get permanent visas immediately their cases are proved). There is no need to further penalize TPV holders through delaying their citizenship for a further year.

Further, a passport means security in travel and assists people in their attempts to connect with their family. Travel documents do not provide this same security. While many protection visa holders do travel on travel documents it does not hold the same security as a passport. We have had a case where a permanent protection visa holder was questioned at an overseas airport as to why they held a travel document rather than a passport.

Refugees, particularly from some countries (such as the 'Middle East') are feeling a sense of added fear from perceptions that the Australian government is not serious in its claim to offer safe haven to refugees. Some in fact have recently felt so intimidated they have changed their names into Anglo ones as they fear harassment through official and other sources if they have a middle eastern name.

Our TPV clients who obtain their permanent visas generally all indicate a strong desire to get citizenship. Adding a further year to the insecurity of refugees who seek a safe haven is a further burden not justified under the policy reason stated in the Bill. There is clear international law that each person has a right to seek freedom from persecution and Australia has committed to this principle as one of the first countries in the world to adopt the Refugee Convention. Australia should stand strong in its protection of refugees.

Having citizenship cements the sense of security refugees so desperately need to bring stability to their shattered lives. Whilst we consider that all refugees should be given security as soon as possible and should only have to wait two years after permanent residence before being eligible for citizenship, we submit there are even stronger arguments to give special consideration to TPV holders who have gained permanent refugee status.

Refugee and Immigration Legal Service
16 January 2006