



**“Inquiry into the Australian Citizenship Bill 2005
and the Australian Citizenship (Transitionals and
Consequential) Bill 2005”**

**Submission to the
Senate Legal and Constitutional Committee
of the Parliament of Australia**

A submission by the members and National Executive of
The Migration Institute of Australia Limited
January 2006

THE MIGRATION INSTITUTE OF AUSTRALIA LIMITED (“MIA”)

The Migration Institute of Australia Limited (“MIA”) is the peak association providing excellent service advocating the benefits of migration and advancing the standing of the migration profession – leading professionalism in the migration field.

The MIA is the peak body representing the professional interests of its more than 1,400 (registered migration agent and corporate membership) members throughout Australia.

The MIA is perhaps better known to the Parliament for the exercise of its public responsibilities as the Migration Agents Registration Authority (MARA), under an Instrument of appointment by the Minister for Immigration, Multiculturalism and Indigenous Affairs.

This submission is written to the Parliament in MIA’s representation role as the professional body, and in no way is the submission provided in MIA’s capacity as the profession regulator.

This submission has been drafted by MIA members Neil Hitchcock, Helen Duncan, and Mark Webster, on behalf of the MIA.

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Given the short period of time allowed for submissions and the intervention of the Christmas holiday season it has not been possible to prepare a full and detailed submission to this inquiry, as the MIA would have wished. The comments in this submission are therefore brief and in point form. We would be pleased to expand on the submission or discuss its contents further if we are invited to appear before the committee. Following the comments in general and concerning the transitional arrangements, the rest of our submission is presented in relation to specific, numbered clauses in the Explanatory Memorandum to the Australian Citizenship Bill 2005 circulated on 9 November 2005.

1. General

The MIA acknowledges that Australian citizenship is a privilege and a matter of pride in our community. The attainment of citizenship should be the outcome of a person's willingness to commit to being Australian, and as such should be considered a greater achievement than remaining a permanent resident of Australia in the long term.

It follows therefore that the acquisition of citizenship should require a greater commitment to Australia than the requirements for on-going permanent residency. The MIA acknowledges that in some circumstances our citizenship legislation should be suitably generous in its treatment of people who have or intend to have a strong commitment to Australia

The MIA generally supports the passage of this Bill which contains a number of significant changes arising out of reviews of the current citizenship Act over the past several years. The MIA endorses the concept of Australian citizenship as a privilege and not a right, and we feel the new Bill will go some way towards increasing the perceived value of holding the status of an Australian citizen.

We are concerned that Australian citizenship legislation be administered in a manner that is consistent with Australian immigration legislation, and that a positive approach be taken in decision taking. It would be fair to say that the policy and procedural instructions in support of the current legislation (Australian Citizenship Instructions) are complex, cumbersome and in some cases administered in an excessively strict manner. With the passage of this legislation we hope for policy and procedural instructions that are simpler and take a positive approach to decision making.

2. Transitional Arrangements

We believe the transitional arrangements (in the Transitional and Consequential Bill), to be unfair to people who have obtained migrant visas and have either settled in Australia or are in the process of doing so. The proposed transitional arrangements require such people to residentially qualify under the proposed 3 year qualification period. Only those people who have lodged applications under the current legislation will be considered under the current 2 year qualification period in the proposed new Act.

Such people had reasonable expectations that they qualify for citizenship under the legislation that applied at the time they received and validated their migrant visas. They should surely be accorded procedural fairness in the transitional arrangements. We are

already hearing adverse comments about this issue from clients who have recently arrived as permanent residents.

Such an approach would be consistent with the approach taken with other legislative change in the immigration portfolio. A recent example was the treatment of international students undertaking several years of Australian university studies in order to qualify for migration on completion of their studies. These people were accorded procedural fairness by DIMIA when a change in the selection criteria occurred. We strongly recommend a similar approach be taken with the transitional arrangements for the new citizenship Bill.

Clause 10 Personal Identifiers

The MIA is concerned that the proposed legislation does not incorporate a reference to the Privacy Act to ensure that personal identifier information must be collected and maintained under the provisions of that Act. The current wording includes reference to and protection of a person's right not to be required to submit to an "intimate forensic procedure" under the Crimes Act 1914. There should likewise also be reference to a requirement that personal identifier information is subject to the provisions of the Privacy Act. Similarly, the penalties for disclosure of personal information in Clause 42 have no legislated linkage to the provisions in the Privacy Act.

Clause 16 Application and Eligibility for Citizenship

The MIA fully supports these changes which removed much of the inconsistency in the way citizenship by descent has been applied in the past. These changes will enhance and not diminish community perception of the value of being a citizen of Australia.

Clause 17 Minister's Decision

We have a serious concern about the "risk to security" aspects of decision making. The proposed legislation makes rejection of an application mandatory where there is an adverse security assessment with the only recourse being to seek a review in the Administrative Appeals Tribunal. We question the procedural fairness of this approach where no discretion is to be given to the Minister or their delegated officers to waive this requirement in a deserving case.

An example might be where an adverse assessment is provided for a person who has been living in Australia for many years with an Australian citizen partner and several children. The interests of those other Australians should be paramount if we value our citizenship highly as a community. Discretion to waive an adverse security assessment at the primary application stage should surely be incorporated in this part of the new Act. If this is agreed, then the reasons for an adverse assessment must surely be made available to the affected person. This would be entirely consistent with the way such information is treated in the Migration Act concerning an adverse assessment of a persons character. Why should citizenship applications be treated differently?

Clause 21 Application and Eligibility for Citizenship

The residential qualification issue in this part of the new Act has strong linkages with Resident Return and other parts of the Migration Regulations under the Migration Act

1958. Members of the MIA will differ in whether the move from 2 to 3 years of residential qualification for the grant of citizenship and there has been insufficient time to canvass all members to ascertain their views on this important change. The Resident Return visa is designed to extend an existing permanent resident visa for a further 5 years, where a person has decided not to take up Australian citizenship or has not yet residentially qualified for same. Many permanent resident visa holders spend considerable periods outside of Australia and the process of settling in Australia is often a much more gradual one than in the past.

There is a 2 year residential qualification for a Resident Return visa and there are concessions available to waive this requirement.

By increasing the residential qualification from 2 to 3 years for Australian citizenship permanent resident visa holders may consider it a greater challenge to accumulate that residence over the 5 year life of a permanent resident visa or subsequent and on going resident return visa. That may mean that numbers applying for citizenship after the new Bill is passed will decline, and many of our members 'clients will prefer to utilize Resident Return Visas. Many migrants in Australia utilize Resident Return visas for many years.

However many of our members would agree that the residential qualification period be moved from 2 to 3 years because it increases one's perception of the privilege and pride attached to Australian citizenship. Many of our members would agree that the 3 year residential qualification will be more readily accepted so long as the concessions available (discussed later in this submission) to waive the residential qualification are administered in a positive and flexible manner and not as strictly as they are administered under the current act.

Concerning a person born to a former Australian citizen the MIA certainly agrees with the proposed new provisions which importantly enable children of people who may have renounced Australian citizenship to better access their heritage.

Clause 22 Residence Requirement (Ministerial Discretion)

Apart from the above discussion of residential qualification. A significant change in the new Act relates to ministerial discretions which go beyond those in the current Act, and we support the introduction of these proposed changes.

Again we would emphasise the importance of fair and balanced guidelines and procedures in the way in which these discretions are administered. The spirit and intent of this part of the new Act will only be as good as the guidance given in the Australian Citizenship Instructions to DIMIA officers charged with the responsibility of administering the new Act.

The only specific part of the discretions we wish to comment on relates to the spouse, widow or widower of an Australian citizen. The new discretion is applied in circumstances where the person (a permanent resident visa holder) is outside of Australia. A great many spouse visa applications are lodged and processed within Australia nowadays. A typical example is an Australian citizen working overseas and having married in the interim, obtained a permanent or temporary visa for their spouse and the couple choose for whatever reason to return to Australia.

Why should that couple not be able to access the discretion available to couples offshore? It appears to us to be an unnecessary discrimination. There may be urgent or unavoidable reasons for a couple to be in Australia rather than offshore. The new citizenship Act has to deal with the realities of on shore visa application processing. A simple amendment to this part of the new Act would remove this disparity. A desire to take advantage of this discretion should surely not be based on the geographical location of the person concerned, nor their Australian citizen spouse.

Clause 29 Application and Eligibility for Resuming Citizenship

The MIA supports the important changes in this part of the new Act, making it easier for people to resume Australian citizenship where they previously and in most cases unavoidably renounced same.

Clause 36 Children of responsible parents who cease to be citizens.

In this and other parts of the old and new Acts there is reference to children of 16 years of age being able to apply in their parent's application and children of 18 years of age they can apply in their own right. There is a discretion to deal with applications by people between these two ages. In the migration Act a child is considered dependent up to the day they reach 18 years of age. Why not remove this anomaly and allow children up to the age of 18 to be included in their parent's application? This would be a further simplification, consistent with directly parallel immigration legislation within the immigration portfolio.

Conclusion

The MIA has a keen interest in the proposed new Australian Citizenship Act. We are readily available to discuss or expand on the above comments and suggestions as appropriate and would be pleased to appear before this Senate Inquiry should we be invited to do so.