

CHAPTER 3

PURPOSE AND IMPACT OF THE BILL

3.1 The majority of evidence received by the committee opposed the Bill. However, not all of these submitters were opposed to the notion of citizenship testing itself; some just objected to the particular regime proposed by this Bill.

3.2 Some of the key issues and concerns raised in the course of the committee's inquiry include:

- the purpose of, and need for, the Bill, including whether the Bill will achieve its aims;
- the potential impact of the Bill;
- legal and drafting issues;
- the content and nature of the proposed test; and
- resourcing and alternatives to citizenship testing.

3.3 The first two issues are discussed in this chapter of the report. The remaining issues are discussed in Chapter 4.

Purpose of the Bill

3.4 The Explanatory Memorandum (EM) states that 'the introduction of a citizenship test is a key part of the Government's ongoing commitment to help migrants successfully integrate into the Australian community'.¹

3.5 In his second reading speech, the Minister advanced several reasons for the introduction of a citizenship test. First, he declared that:

The test will encourage prospective citizens to obtain the knowledge they need to support successful integration into Australian society. The citizenship test will provide them with the opportunity to demonstrate in an objective way that they have the required knowledge of Australia, including the responsibilities and privileges of citizenship, and a basic knowledge and comprehension of English.²

3.6 The Minister also noted that citizenship not only confers certain privileges, but also involves certain responsibilities, and that:

1 p. 1.

2 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

We need to make sure that people are not only familiar with Australia and our values, but also able to understand and appreciate the commitment they are required to make.³

3.7 Further, the Minister stated that:

The community also needs to be assured that migrants are able to integrate into Australian society. Maintaining broad community support for our migration and humanitarian program is critical. The ability to pass a formal citizenship test sends a clear signal to the broader community that new citizens know enough about our way of life and commit to it.⁴

Need for the Bill

3.8 However, many submissions queried the need for the Bill and expressed satisfaction with the existing, informal citizenship testing arrangements.⁵ For example, the Victorian Immigrant and Refugee Women's Coalition (VIRWC) argued that there is no evidence to indicate that a change in Australian citizenship law is necessary:

...Australia has been well served by its existing inclusive citizenship laws, to the extent that we now have a culturally diverse and socially cohesive collection of people who are proud to call Australia home.⁶

3.9 Similarly, the Centre for Human Rights Education at the Curtin University of Technology expressed its view that 'the current citizenship ceremony and concomitant pledge are sufficient to indicate a person's commitment to Australia and the community'.⁷

3.10 Indeed, the Castan Centre for Human Rights Law at Monash University (the Castan Centre) argued that there is actually less need for a formal test since the requirement for the period of permanent residence has been increased to 4 years.⁸

3 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, pp 4-5.

4 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 5.

5 See, for example, Federation of Community Legal Centres (Vic), *Submission 28*, p. 2; Ethnic Communities' Council of Western Australia, *Submission 29*, p. 2; Ethnic Communities' Council of Victoria (ECCV), *Submission 31*, p. 3; National Council of the St Vincent de Paul Society, *Submission 35*, p. 1; National Ethnic and Multicultural Broadcasters Council, *Submission 37*, p. 2; Darebin Ethnic Communities Council, *Submission 38*, p. 1; Multicultural Council of the Northern Territory, *Submission 45*, p. 1; B'nai B'rith Anti-Defamation Commission, *Submission 42*, p. 2; Victorian Government, *Submission 53*, p. 2; National Legal Aid, *Submission 57*, p. 5; Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 1; Ms Voula Messimeri-Kianidis, FECCA, *Committee Hansard*, 16 July 2007, p. 1.

6 Ms Depika Sherchan, *Committee Hansard*, 17 July 2007, p. 22; also *Submission 20*, pp 2-3.

7 *Submission 2*, p. 6.

8 *Submission 14*, p. 5.

3.11 The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) also stated its preference for retaining current citizenship arrangements, arguing that:

...over the years we have successfully integrated thousands of migrants and refugees from diverse cultural and linguistic backgrounds into Australian society, without the need for a written citizenship test. We do not believe there have been any significant changes to this situation that would warrant the introduction of a formal test.⁹

3.12 Similarly, Ms Misty Adoniou, President of the Australian Association of TESOL Associations (ACTA) told the committee that 'we seem to be fixing something that is not currently broken'.¹⁰

3.13 However, the Department explained that the Bill will make the citizenship conferral process more objective:

The current method for assessing whether prospective citizenship applicants meet the legal requirements for citizenship that they have a basic knowledge of English, an adequate knowledge of the responsibilities and privileges of citizenship and an understanding of the nature of their application, is via an interview which is arguably a less objective method of assessment.¹¹

3.14 Mr David Yates, National Chief of Staff at the Australian Christian Lobby, in expressing support for the proposed test, agreed that a test would be 'more objective'.¹²

3.15 In further support for the Bill, the Department also submitted that the additional requirement in the Bill for an applicant to have adequate knowledge of Australia would 'ensure that new citizens are familiar with Australia and our values with the aim of helping them to better integrate and participate in Australian society'.¹³ A representative of the Department added that:

It is the proposition of the government that in order to fully participate in the Australian community it is appropriate that you speak the national language or have a knowledge of the national language and that you have some understanding of Australia, its history, its values, its national symbols and its national geography. Therefore, in order to fully participate in our society, a test of this nature is an appropriate way to measure that person's commitment.¹⁴

9 *Submission 8*, p. 1.

10 *Committee Hansard*, 16 July 2007, p. 21.

11 *Submission 30*, p. 4; see also *Committee Hansard*, 16 July 2007, p. 31.

12 *Committee Hansard*, 16 July 2007, p. 9.

13 *Submission 30*, p. 4; see also Dr Stephen Chavura, Festival of Light Australia, *Committee Hansard*, 17 July 2007, pp 28-29.

14 *Committee Hansard*, 16 July 2007, p. 32.

A response to security concerns?

3.16 There was some indication during the inquiry that the recent introduction of citizenship testing in at least some countries had been a legislative response to heightened concerns about terrorism.¹⁵ In particular, one witness suggested that it was important to distinguish what is happening in the United Kingdom from what is happening in Australia and that:

For us just to adopt precedents from the UK without understanding the basic differences between our countries ... would be dangerous.¹⁶

Will the Bill achieve its aims?

3.17 Most submissions and witnesses generally agreed with the aims of the Bill, particularly the objectives of encouraging prospective citizens to acquire English language skills and an understanding of the Australian way of life. However, many queried whether the Bill, if passed, would actually achieve its stated objectives.¹⁷ For example, Professor Kim Rubenstein expressed her belief that:

Engendering a commitment to Australia can be encouraged in ways other than formal citizenship testing. Formal testing would not assist in ensuring a commitment to Australia's way of life and values.¹⁸

3.18 Similarly, Ms Anna Samson of the Refugee Council of Australia described the citizenship test as 'rather a blunt instrument for achieving these goals'.¹⁹ The Refugee Council of Australia submitted that:

...there remains little evidence forwarded as to the practical, positive impact that English language testing beyond that which currently exists within the citizenship process, or a quiz on "the Australian way of life", will have on ensuring a higher "quality" of Australian citizen.²⁰

3.19 Professor George Williams was concerned that 'the test will create extra costs for government and a bureaucratic impediment to becoming a citizen without actually providing the desired benefits'.²¹ In particular, Professor Williams argued that:

15 See, for example, Professor Rubenstein, *Committee Hansard*, 16 July 2007, p. 14 and Ms Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 3.

16 Ms Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 3.

17 See, for example, Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, p. 1; Professor George Williams, *Submission 7*, pp 1-2; Professor Kim Rubenstein, *Submission 18*, p. 1; Canberra Multicultural Community Forum (CMCF), *Submission 46*, p. 1 and Mr Sam Wong, CMCF, *Committee Hansard*, 16 July 2007, p. 2; Ms Misty Adoniou, ACTA, *Committee Hansard*, 16 July 2007, p. 19.

18 *Submission 18*, p. 2; see also *Committee Hansard*, 16 July 2007, p. 14.

19 *Committee Hansard*, 17 July 2007, p. 9.

20 *Submission 49*, p. 2; see also Mr Paul Power, *Committee Hansard*, 17 July 2007, p. 8.

21 *Submission 7*, p. 1.

...a test of this kind is an ineffective way of instilling values...someone who fundamentally disagreed with Australian values could pass the citizenship test by correctly identifying the answers even if they do not have a personal commitment [to] the values that the answers express.²²

3.20 Many submissions suggested that the proposed citizenship test would not be effective in building 'genuine, long term understanding and knowledge', but would simply encourage rote-learning.²³ For example, the National Ethnic and Multicultural Broadcasters Council suggested that 'cramming' can get people through a test but often the knowledge will be superficial'.²⁴

3.21 In the same vein, the Castan Centre submitted that:

It is difficult to understand how a formal test...will assist migrants to integrate into the Australian community or generate a desire in them to be "good citizens." Such a test merely requires a person to do the required reading and then tick the correct boxes based on what they have prepared. It does nothing to encourage them to participate or connect with the wider community. The test merely reflects a person's ability of rote learning.²⁵

3.22 Some submissions also felt that the test would set double standards. For example, Professor Williams suggested that many Australians have a poor knowledge of Australian history and aspects of governance. He was therefore concerned that the Bill would set the threshold of knowledge for new citizens at a higher level than is the case for current citizens.²⁶

3.23 Several submissions also criticised the proposed test on the basis that it would promote exclusion, rather than encouraging integration into Australian society.²⁷ For example, ACTA observed that:

22 *Submission 7*, pp 1-2; see also FASSTT, *Submission 8*, p. 4; ACTA, *Submission 34*, p. 1.

23 Professor George Williams, *Submission 7*, p. 2; see also FASSTT, *Submission 8*, p. 3; Castan Centre, *Submission 14*, p. 3; VIRWC, *Submission 20*, p. 3; Australia/Israel and Jewish Affairs Council, *Submission 26*, p. 3; ACTA, *Submission 34*, p. 1; National Council of the St Vincent de Paul Society, *Submission 35*, p. 2; Australian Lawyers for Human Rights (ALHR), *Submission 44*, p. 11; Multicultural Council of the Northern Territory, *Submission 45*, p. 4; CMCF, *Submission 46*, p. 2; Dr Ben Saul, Sydney Centre for International and Global Law, *Submission 27*, p. 2; Ms Depika Sherchan, VIRWC, *Committee Hansard*, 17 July 2007, p. 23.

24 *Submission 37*, p. 2.

25 *Submission 14*, p. 3; see also Country Women's Association of New South Wales, *Submission 25*, p. 2; CMCF, *Submission 46*, p. 2.

26 *Submission 7*, p. 2; see also Castan Centre, *Submission 14*, p. 2; Mr David T Bath, *Submission 9*, p. 2; National Ethnic and Multicultural Broadcasters Council, *Submission 37*, p. 4; Ms Anna Samson, National Policy Director, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 9; Professor Kim Rubenstein, *Committee Hansard*, 16 July 2007, p. 12.

27 See, for example, Professor Ingrid Piller, *Submission 19*, p. 2; Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, pp 1 and 3; Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1; Castan Centre, *Submission 14*, p. 5.

A feeling of belonging and acceptance is key to a cohesive, united and loyal society, and tests that by their very nature are exclusionary are not the way to a united society.²⁸

3.24 Indeed, Ms Adoniou of ACTA told the committee :

I can think of nothing more exclusionary than having a test to let you in. If we truly think of ourselves as an inclusive society then why would we use the most exclusive measure? A test is literally designed for you to fail or pass, so it is set up to keep people out.²⁹

3.25 The Parliamentary Library's Bills Digest further observed that:

The test might also suffer from historical perceptions of previous practice in immigration during the 'White Australia' era. The general test requirements, especially the language requirement could be said to resonate with earlier times in Australian history, with government bureaucrats backed by official prejudice deciding which aspiring immigrants had sufficient potential to become Australian/British to be allowed to stay in the country and be naturalised.³⁰

3.26 On the other hand, the Bills Digest suggested that if the government wishes:

...to maintain a large and non-discriminatory immigration program, it has to maintain the support of the general public. The citizenship test in this sense can be seen as having a significant symbolic role in reassuring the public. It is arguably then a pro-immigration gesture...³¹

3.27 Finally, it is noted that, as further justification for the Bill, the Minister also pointed out during his second reading speech that there was 'support from the community for the introduction of a citizenship test'. This statement was based on the response to the Department's consultation process during which, as outlined earlier, sixty percent of respondents supported the introduction of the citizenship test.³² The committee also notes polls that have been conducted by the media indicate considerable public support for the introduction of citizenship test.³³

28 *Submission 34*, p. 3; see also Ms Misty Adoniou, *Committee Hansard*, 16 July 2007, p. 21.

29 *Committee Hansard*, 16 July 2007, p. 21.

30 Bills Digest, p. 16; see also, for example, Refugee Council of Australia, *Submission 49*, p. 5; and Dr Martin Bibby, NSWCCCL, *Committee Hansard*, 17 July 2007, p. 16.

31 Bills Digest, p. 16; see also Katharine Betts and Bob Birrell, 'Making Australian citizenship mean more', *People and Place*, vol. 15 no. 1, pp 46-51.

32 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 5.

33 See Bills Digest, p. 8; and Department, Answers to Questions on Notice, received 27 July 2007, [Question 4 (Hansard)].

3.28 During this inquiry, this committee received some submissions which strongly supported the introduction of the proposed test.³⁴ For example, the Australian Christian Lobby told the committee that it supports the proposed citizenship 'in principle' and that:

It is right and appropriate that immigrants who wish to become Australian citizens should be expected to learn something about our history and culture before citizenship is conferred upon them. Such a process should assist immigrants to understand their new country and therefore help them to play their part in its future.³⁵

3.29 In supporting the test, the Hon. Dr Bob Such MP told the committee he believed that 'Australian citizenship is something that should be highly valued and regarded as a privilege'.³⁶ Dr Such also referred to the practice in other countries such as the United Kingdom, Canada and the United States of America, which already have a form of citizenship testing.³⁷

3.30 However, other submissions queried the success of these overseas experiences.³⁸ Professor Kim Rubenstein argued that 'the fact that other countries have introduced this form of testing does not necessarily mean it is the best way forward'.³⁹

3.31 In support of the introduction of citizenship test, a Departmental witness pointed to not only the public support for the test in Australia, but also the fact that many overseas countries have formal citizenship testing:

...there are a range of counties which believe that, in forming a decision as to whether a newcomer to that country should access the rights and privileges of becoming a citizen, it is appropriate that the person have some understanding of the country, its background and its people. That is clearly seen as a worthwhile policy instrument by a number of other countries.⁴⁰

3.32 The committee queried whether the Department had looked at the effectiveness of citizenship testing in other countries. A representative of the Department responded that 'we have not seen, to my knowledge, any data or research

34 See, for example, Festival of Light Australia, *Submission 4*; Mr Roger Cook, *Submission 10*; The Hon Dr Bob Such MP, *Submission 16*; Australia for Australians, *Submission 17*; Australian Christian Lobby, *Submission 47*, p. 1.

35 *Submission 47*, p. 1; see also Mr David Yates, Australian Christian Lobby, *Committee Hansard*, 16 July 2007, p. 8.

36 *Submission 16*, p. 1.

37 *Submission 16*, p. 1.

38 See, for example, Professor Tim McNamara, *Submission 33*, p. 10; ACTA, *Submission 34*, p. 2; Professor Ingrid Piller, *Submission 19*, p. 1; Ms Misty Adoniou, ACTA, *Committee Hansard*, 16 July 2007, pp 20-21.

39 *Committee Hansard*, 16 July 2007, p. 14.

40 *Committee Hansard*, 16 July 2007, p. 32.

that would lead one to conclude that the tests were a disincentive for people to apply'.⁴¹ The Department further noted that its enquiries indicated that, to date, the United Kingdom and Canadian governments have not conducted any formal evaluations of their citizenship tests.⁴²

Impact of the Bill

3.33 Concerns were also raised in relation to the potential impact of the Bill, including:

- whether the test would act as a disincentive to citizenship; and
- its potential discriminatory impact on disadvantaged groups.

3.34 Several submitters therefore suggested that exemptions or other safeguards should be included in the Bill in order to ameliorate these potential impacts. These issues are discussed further below.

Will the test be a disincentive?

3.35 Some submissions were concerned that the proposed testing regime would be a disincentive and even a barrier to citizenship.⁴³

3.36 Professor Rubenstein, for example, suggested that a test would be likely to discourage some people from applying for citizenship. She expected that there would be a drop in the number of applicants for citizenship once the test is introduced.⁴⁴ The Refugee Council of Australia considered that a test would exclude large numbers of people from being able to participate as full members of Australian society.⁴⁵

3.37 The committee also heard that the intimidating and stressful nature of formal testing could act as a particular deterrent for many people. For example, Ms Voula Messimeri-Kianidis, Chair of the Federation of Ethnic Communities Councils of Australia (FECCA), told the committee that:

41 *Committee Hansard*, 16 July 2007, p. 31.

42 Answers to Questions on Notice, received 27 July 2007, [Question 3 (Hansard)].

43 See, for example, Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, p. 3; FASSTT, *Submission 8*, p. 2; Castan Centre, *Submission 14*, p. 4; VIRWC, *Submission 20*, p. 3; Australia/Israel and Jewish Affairs Council, *Submission 26*, p. 1; ECCV, *Submission 31*, p. 3; B'nai B'rith Anti-Defamation Commission, *Submission 42*, p. 3; Premier Paul Lennon, MHA, *Submission 52*, pp 1-2.

44 Professor Kim Rubenstein, *Committee Hansard*, 16 July 2007, p. 15.

45 Ms Anna Samson, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 9.

Our concern is that a lot of people who would feel uncomfortable about any testing at all, particularly if they have a low level of literacy, will not apply for citizenship but will self-select out.⁴⁶

3.38 Some submissions also expressed concern that the test would be computer-based.⁴⁷ For example, the NSW Council for Civil Liberties (NSWCCL) suggested that special arrangements should be made for computer-illiterate applicants.⁴⁸

3.39 Although the citizenship test was seen as a potential barrier to some, the committee notes that a person may sit the citizenship test as many times as they want until they pass the test.⁴⁹ As the Parliamentary Library's Bills Digest points out:

...the current test will not be hard to pass, with the given concessions for age and disability, the study booklets, and AMEP [Adult Migrant English Program] and other assistance, sample questions on the internet, plus unlimited attempts.⁵⁰

Impact on disadvantaged groups

3.40 A key concern with the proposed test was its potentially discriminatory impact on disadvantaged groups.⁵¹ For example, the Centre for Human Rights Education at the Curtin University of Technology was concerned that the proposed testing regime would have a disproportionately negative impact on already disadvantaged and marginalised groups within society, including refugees, women,

46 *Committee Hansard*, 16 July 2007, p. 4; see also RACS, *Submission 39*, p. 4; Ms Zoe Anderson, RACS, *Committee Hansard*, 17 July 2007, p. 26; Professor Kim Rubenstein, *Committee Hansard*, 16 July 2007, p. 16.

47 ECCV, *Submission 31*, p. 3; NSWCCL, *Submission 32*, p. 3; Professor Tim McNamara, *Submission 33*, p. 4; FECCA, *Submission 51*, p. 4.

48 *Submission 32*, p. 5.

49 The Hon. Kevin Andrews MP, Minister for Immigration and Citizenship, *House Hansard*, 30 May 2007, p. 4.

50 p. 16.

51 See, for example, Centre for Human Rights Education at the Curtin University of Technology; *Submission 2*, pp 4-5; Castan Centre, *Submission 14*, p. 3; Liquor Hospitality and Miscellaneous Union Victoria Branch (LHMU), *Submission 40*, p. 3; VIRWC, *Submission 20*, p. 3; Federation of Community Legal Centres (Vic), *Submission 28*, p. 2; ECCV, *Submission 31*, p. 3; ACTA, *Submission 34*, p. 2; Darebin Ethnic Communities Council, *Submission 38*, p. 1; Multicultural Council of the Northern Territory, *Submission 45*, pp 2-3; ALHR, *Submission 44*, p. 5; Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1; Refugee Council of Australia, *Submission 49*, p. 2; FECCA, *Submission 51*, pp 3-4; National Legal Aid, *Submission 57*, pp 2-3.

people with disabilities, people living in rural areas, people from non-English speaking backgrounds, and people from lower socio-economic groups.⁵²

3.41 In relation to women, several submissions pointed out that family and care obligations of women make it difficult for them to make use of government language assistance programs. For example, the VIRWC argued that:

...the imposition of a test places a particularly onerous burden on immigrant and refugee women...their primary duties often revolve around childcare and housekeeping obligations, which severely restrict their ability to attend classes, read examination materials and booklets, practise English, and spend time revising for a test.⁵³

3.42 In response to the committee's questioning as to the implementation of the testing regime in rural and regional areas, a Department witness responded that:

The test will be available in 47 locations around the country. Thirteen of those locations will be the DIAC [Department of Immigration and Citizenship] offices, which are in the capital cities, Torres Strait, Southport and Cairns I think. The other locations will be in Medicare and/or Centrelink offices and we are currently in negotiations with those two organisations. We estimate, on past business levels, that the DIAC network will account for some 90 per cent of business, so the balance, 10 per cent, will have access via Centrelink and Medicare. In the short to medium term it will be DIAC staff who travel to those locations to administer the test using the facilities of our colleagues in those two organisations. The 47, as I think I mentioned, were mapped according to business levels. Clearly the current spread of Australia Post offices is much wider than that, but some of those offices may not have seen a citizenship interview for some years, a decade or more.⁵⁴

3.43 In relation to impacts on refugee and humanitarian entrants, Ms Katie Wrigley of the Refugee Advice and Casework Service (RACS) told the committee that:

A significant number of refugees are survivors of torture and trauma, and many continue to suffer from debilitating after-effects, including those associated with post-traumatic stress disorder as well as many other psychological conditions, for years to come.

Such after-effects ... impact on an individual's ability to learn or process new material and, most relevantly in this context, to learn a new language.

52 *Submission 2*, pp 1, 4-5; see also Ms Anna Samson, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 9; Ms Depika Sherchan, VIRWC, *Committee Hansard*, 17 July 2007, p. 23; FASSTT, *Submission 8*, p. 4; and Ms Voula Messimeri-Kianidis, FECCA, *Committee Hansard*, 16 July 2007, p. 1.

53 *Submission 20*, p. 4; also Professor Ingrid Piller, *Submission 19*, pp 8-9; FASST, *Submission 8*, p. 3; Refugee Council of Australia, *Submission 49*, p. 4; FECCA, *Submission 51*, p. 8; see also Department, Answers to Questions on Notice, received 27 July 2007, [Questions 4 and 5 (written)].

54 *Committee Hansard*, 16 July 2007, p. 36.

Some refugees may have had a very limited education in their home country, possibly due to a denial of access to basic education on the basis of their race, ethnicity or religion. Others may have had their education interrupted by civil war or internal armed conflict, or may have simply been unable to access education due to poverty. In addition, some refugees are illiterate in their native language. All of these categories of people will struggle to learn English with the ease of other migrants.⁵⁵

3.44 Mr Paul Power, Chief Executive Officer of the Refugee Council of Australia, further told the committee that:

For refugees, arguably more so than any other category of migrants, obtaining citizenship in the country of their resettlement is crucial to ensuring good resettlement outcomes. That is demonstrated by the fact that there are much higher levels of citizenship uptake among refugees and humanitarian entrants than for any other category of migrant in Australia. As such, it must be recognised that any efforts to change citizenship requirements—in particular, any efforts to make citizenship more restrictive—will have a disproportionately adverse impact on this group of migrants.⁵⁶

Importance of citizenship

3.45 In this context, several submissions and witnesses pointed out the importance of citizenship in terms of access to certain basic rights, including rights to vote, to apply for an Australian passport, to access certain financial assistance from the government and employment opportunities, and freedom from deportation under the *Migration Act 1958* (Cth).⁵⁷ For example, for refugee and humanitarian entrants, the right to apply for a passport can be one of the most important practical benefits of citizenship, as it can assist in reunification with family members.⁵⁸

3.46 The Castan Centre warned that 'any measure which will prevent people from acquiring citizenship and thereby place them in a disadvantaged position must be carefully considered from a human rights perspective'.⁵⁹

3.47 Several submissions noted that citizenship may also have other important benefits, including 'a sense of inclusion and acceptance into their adopted

55 *Committee Hansard*, 17 July 2007, p. 21.

56 *Committee Hansard*, 17 July 2007, p. 8.

57 Castan Centre, *Submission 14*, p. 4; ECCV, *Submission 31*, p. 4; ALHR, *Submission 44*, p. 2; National Legal Aid, *Submission 57*, p. 2; Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 1; Dr Martin Bibby, NSWCCCL, *Committee Hansard*, 17 July 2007, p. 19.

58 Centre for Human Rights Education, Curtin University of Technology, *Submission 2*, pp 2-3; Ms Anna Samson and Mr Paul Power, Refugee Council of Australia, *Committee Hansard*, 17 July 2007, p. 12.

59 *Submission 14*, p. 4.

community'.⁶⁰ The Refugee Council of Australia also told the committee that 'for many refugees and humanitarian entrants, citizenship is closely connected to their sense of security and safety in a new country'.⁶¹ FASSTT similarly observed that:

Citizenship offers our clients an important contribution to healing and recovery from their past experiences as it provides a sense of security and settlement that is important in rebuilding their lives.⁶²

Exemptions and other safeguards

Possible exemptions from the test

3.48 As a result of the concerns about the impact of the Bill discussed above, several submissions suggested that the Bill should contain specific exemptions for certain groups of people. As outlined earlier, there are already separate eligibility criteria in the Act for people over the age of 60, under the age of 18 and for persons with a physical or mental disability. Under the Bill, it is proposed that special arrangements may also be made for people who have literacy problems.⁶³

3.49 Most submissions supported these exemptions. However, many suggested that these exemptions should be broadened, particularly to include an exemption for refugee and humanitarian entrants.⁶⁴ For example, FASSTT suggested that many refugee and humanitarian entrants:

...have limited education and/or interrupted schooling. Many do not have literacy in their first language. For many the impact of torture and/or trauma means that they experience learning difficulties. As such, they would be significantly disadvantaged in a formal test.⁶⁵

3.50 The Australian Christian Lobby, who supported the Bill, in response to the committee's questioning, agreed that such an exemption should be considered:

We share some of the concerns that have been raised. There should be some exemptions for people, especially those from the humanitarian side, who

60 Centre for Human Rights Education at the Curtin University of Technology *Submission 2*, p. 3; see also, for example, National Legal Aid, *Submission 57*, p. 2.

61 *Submission 49*, p. 4.

62 *Submission 8*, p. 2.

63 See subsections 23(3), (4) and (5) of the Act; and also EM, p. 22.

64 See, for example, Centre for Human Rights Education at the Curtin University of Technology, *Submission 2*, p. 6; FASSTT, *Submission 8*, p. 4; Mr David T Bath, *Submission 9*, p. 4; Federation of Community Legal Centres (Vic), *Submission 28*, p. 2; LHMU, *Submission 40*, p. 3; ECCV, *Submission 31*, p. 5; NSWCCCL, *Submission 32*, p. 5; RACS, *Submission 39*, pp 2 and 6; Australian Catholic Migrant and Refugee Office, *Submission 48*, p. 1; Refugee Council of Australia, *Submission 49*, p. 4; National Legal Aid, *Submission 57*, p. 3; UNHCR, *Submission 50*; Ms Depika Sherchan, VIRWC, *Committee Hansard*, 17 July 2007, p. 23; cf Festival of Light Australia, *Submission 4*, p. 2.

65 *Submission 8*, p. 4.

have a poor understanding of English—for instance, they may have been in the country working a lot and have not necessarily had the chance to learn English to a proficient level...We agree with the test, and the minister should have some discretion, we believe, for special exemptions for those people who may not necessarily be able to complete in the normal way.⁶⁶

3.51 However, Dr Stephen Chavura from the Festival of Light Australia felt that an exemption for refugee and humanitarian entrants would send the wrong signal:

...in the long run that [the proposed exemption for refugees] will actually have a detrimental effect, because it does not really show that we are interested in them participating in our democracy. If we tell them, 'You must learn English if you can,' that shows that we are actually interested in their input. We are not just excluding them immediately; we are actually giving them a sign that we want their opinions, we want their voice...⁶⁷

3.52 In answers to the committee's questioning on this issue, a Departmental representative responded that:

Ultimately it becomes a philosophical question as to whether you see the test as a bar or as an incentive. Certainly it is the government's view that the test is an incentive for people to learn about Australia and to be able to communicate in English given that citizenship is not a tokenistic thing.⁶⁸

3.53 The witness from the Department acknowledged that refugee and humanitarian entrants may have low levels of education and literacy, but also pointed out that the government is spending 'hundreds of millions of dollars' on English language training and English language services which are accessed by many refugee and humanitarian entrants.⁶⁹ The witness also informed the committee that:

The introduction of formal testing will be carefully monitored to identify those prospective citizens for whom an alternative test or tests may be appropriate. This approach will enable the development of an alternative test or tests designed on the basis of identified need rather than on conjecture.⁷⁰

Other safeguards

3.54 The Human Rights and Equal Opportunity Commission (HREOC) argued that the Bill contains no adequate safeguards to ensure that the creation of different tests does not operate unfairly against particular categories of applicants. HREOC therefore proposed that the Bill should provide a mechanism to allow for exemptions or an

66 *Committee Hansard*, 16 July 2007, p. 9.

67 *Committee Hansard*, 17 July 2007, p. 29.

68 *Committee Hansard*, 16 July 2007, p. 29.

69 *Committee Hansard*, 16 July 2007, p. 30.

70 *Committee Hansard*. 16 July 2007, p. 26; see also pp 30 and 32.

alternative process for applicants who are unfairly disadvantaged by having to sit a test.⁷¹ HREOC suggested that:

...a suitable alternative procedure would be to enable an applicant to undergo an interview with an officer of the Department of Immigration and Citizenship to assess the requirements of s 23(2)(d), (e) and (f), along similar lines to the procedure that exists currently. This alternative procedure could be conditional upon the applicant sitting and failing the written test (either once or on a number of occasions) or could simply be triggered by an application to the Minister. In exceptional cases, it might also be appropriate for the Minister to waive the testing requirement altogether for a particular applicant.⁷²

3.55 HREOC therefore made detailed suggestions for amendments to be made to section 23(2A) of the Bill.⁷³ In support of these suggestions, HREOC pointed out that Canada's citizenship legislation allows a person to demonstrate adequate knowledge of Canada, and one of the official languages of Canada, by undergoing an interview with a citizenship judge as an alternative to a formal test. The Canadian legislation also provides their Minister with a discretion to waive the eligibility criteria on 'compassionate grounds'.⁷⁴ HREOC further noted that New Zealand's *Citizenship Act 1977* allows their Minister to grant citizenship to an applicant if it 'would be in the public interest because of exceptional circumstances of a humanitarian or other nature...'.⁷⁵

3.56 Several organisations suggested that the impact of the Bill should be monitored and/or reviewed. For example, FECCA advocated 'consistent monitoring of the consequences of the introduction of a citizenship test, to ensure that there are no unintended consequences, bias or lack of fairness'.⁷⁶ FECCA specifically suggested that data be collected to identify any groups or clusters of people who were failing the citizenship test.⁷⁷ The NSWCCCL suggested that the Bill should contain a sunset clause to ensure that the proposed testing regime is reviewed after three years. The NSWCCCL felt that this should include a review of the regime's impact on citizenship conferral rates and certain groups within society.⁷⁸

71 *Submission 41*, pp 3 and 6; see also Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 2.

72 *Submission 41*, p. 7; see also Ms Margaret Donaldson, HREOC, *Committee Hansard*, 17 July 2007, p. 2; Mr Brook Hely, HREOC, *Committee Hansard*, 17 July 2007, p. 4 and ALHR, *Submission 44*, p. 11.

73 *Submission 41*, see pp 8-9 for specific proposed amendments to address this issue.

74 See further *Submission 41*, pp 7-8.

75 *Submission 41*, p. 8.

76 *Submission 51*, p. 4.

77 *Submission 51*, p. 4; see also Community Relations Commission, *Submission 56*, p. 1 and Mr Sam Wong, CMCF, *Committee Hansard*, 16 July 2007, p. 5.

78 *Submission 32*, p. 6.

3.57 As outlined earlier, the Department noted that the Bill contains provisions to allow for different tests, and reassured the committee that the implementation of the test would be monitored on an ongoing basis to identify those prospective citizens for whom an alternative test or tests would be appropriate.⁷⁹

Committee view

3.58 The committee accepts the Department's evidence that the proposed citizenship testing regime will be more objective than the current system of an informal interview. The committee considers that the proposed test will encourage prospective citizens to familiarise themselves with Australian society and will therefore help them integrate and participate in Australian society. The committee also notes that there appears to be considerable public support for the introduction of a citizenship test, and that many overseas countries have similar tests. As discussed earlier, there is at least a perception that the introduction of citizenship testing in some of those countries is, in part, a response to concerns about terrorism. The committee acknowledges that the test is being introduced in the context of heightened security concerns in Australia but notes that this has not been put forward as a reason for introducing citizenship testing in this country.

3.59 The committee notes suggestions that the proposed regime could provide a disincentive for some people to apply for Australian citizenship. In the absence of evidence of the effects of testing on applications for citizenship in countries where testing is a feature of the application for citizenship, the committee was not able to test that proposition.

3.60 The committee also acknowledges concerns about the potential impact of citizenship testing on certain groups within society, such as refugee and humanitarian entrants. The committee is reassured by the evidence from the Department that the regime will be monitored on an ongoing basis and that the Minister will have discretion to approve different tests designed on the basis of identified need. This should cater for most applicants. However, the committee remains concerned that special cases might arise, for example, for non-citizens who have served the nation in some special way, and that there is apparently no provision for a waiver and for conferring citizenship in those cases.

3.61 The committee welcomes the Department's evidence that it will monitor and evaluate the regime on an ongoing basis. However, the committee believes that, in addition to this ongoing monitoring, a more formal and comprehensive review of the citizenship testing regime should be conducted three years after the commencement of the regime. In particular, the committee suggests that this review should examine the regime's impact on citizenship application and conferral rates and on certain groups within society, such as refugee and humanitarian entrants, women and people from non-English speaking backgrounds.

⁷⁹ *Committee Hansard*, 16 July 2007, p. 26.

Recommendation 1

3.62 The committee recommends that the operation of the citizenship testing regime be reviewed three years after the Bill's commencement, particularly to gauge the regime's impact on citizenship application and conferral rates and on certain groups within society, particularly refugee and humanitarian entrants.