

Dear Committee Members,

I would like add the following information as a further submission following my evidence to the Committee on Monday 16th July 2007.

Question on Notice

Further to the question on notice raised during my oral submission, I am not able to answer the question whether other countries have developed citizenship testing since 9-11 **as a result of 9-11**.

However, the information in the Australian government booklet "Australian Citizenship: Much more than a ceremony" which was the Discussion Paper issued in September 2006 for consideration of the merits of introducing a formal citizenship test sets, sets out in Annexure A - Citizenship Testing arrangements in other countries. It explains:

The Life in the UK test was introduced on 1 November 2005 (ie after September 11, 2001).
The Canadian test was introduced in 1994, (ie pre September 11, 2001),
The test in the Netherlands was introduced on 1 April 2003 (ie after Sept 11, 2001),
The US Test was introduced in the late 1980s (pre sept 11)

I also note the UK introduced the Life in the UK test for "Indefinite leave to remain applicants" from April 2, 2007 - see further at http://www.ind.homeoffice.gov.uk/6353/11464/knowledgeof_languageleaflet1.pdf

Administrative law concerns regarding the test

Members of the Committee will recall that I raised the issue of the legal validity of the test and its need to be within the scope of the Act. Throughout the evidence I stated that in order to ascertain the lawfulness of the test, one would ultimately have to look at the questions to see if they fall within the scope of the Act, and that ultimately a judge would need to ascertain such a challenge if the questions were ever challenged as unlawful.

For instance at L&CA page 12 I said:

But I am not entirely sure that this shell framework would be sufficient to support a test which went, perhaps, into areas that some would contest as to whether they are fundamental in terms of knowledge of Australia and the rights and privileges of Australian citizenship. For instance, there is nothing in the legislation which sets out the sorts of questions that would be relevant, because that would be difficult in the main structure of the act. But that leaves open to challenge, depending on the nature of the questions—and I do not have them before me—whether those questions fit within the formal structure of the act. Those are open questions, ultimately, until we are given the range of questions that will be involved in that framework.

However, it became clear through the evidence of the Department of Immigration and Citizenship at the hearing on Monday 16th July that the test questions will never be made available to the public. For instance at L&CA 27 Mr Metcalfe stated:

It is not the intention of the government to release the questions. That would seem to be self-defeating.

If the questions will not be made public, how will it be possible to scrutinise the test to determine whether it is in fact lawful?

In a discussion I had after the hearing with the departmental officers, I was informed that when a person sits the test they will not be told which questions they got right and which questions they got wrong - but rather the areas in which they need to improve if they haven't passed. So there will be no formal record of the test questions for a person to keep as a record of their failure. How can a person then challenge the test as unlawful?

I am therefore writing to emphasise my concern about this framework. While the Department acknowledges that in order for the test to be legally valid it must be within the scope of the Act, there is no avenue available in the current amendment legislation to allow for scrutiny of whether the test people sit is in fact lawful. While the resource booklet from which test questions will be developed will be on public record, that booklet itself is not the test. This booklet would not in itself be enough to satisfy the concern whether the test questions are lawful.

In my view, it is preferable that the test questions be made public as a matter of transparency and legal accountability given the test is a threshold test for such an important legal status.

I would be grateful for confirmation of receipt of this further submission.

Yours sincerely,

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