

OPENING STATEMENT BY TOM CALMA, ACTING RACE
DISCRIMINATION COMMISSIONER, TO THE SENATE LEGAL
AND CONSTITUTIONAL AFFAIRS COMMITTEE ON
AUSTRALIAN CITIZENSHIP AMENDMENT (CITIZENSHIP
TESTING) BILL 2007
17 JULY 2007

I would like to begin by acknowledging and paying my respects to the traditional owners of the land on which we stand today.

I would also like to thank the Senate Legal and Constitutional Affairs Committee for the opportunity to speak at this important inquiry today. It is essential that there be extensive consultation and debate about the requirements and processes by which a resident of Australia becomes a citizen. After all, becoming a citizen brings with it significant rights and responsibilities which enable individuals to participate in all aspects of Australian society. Citizenship is also an important rite of passage for migrants seeking to embrace Australia and the many opportunities that this country provides.

In view of the importance of citizenship and the human rights principles that should be taken into account in considering the introduction of a citizenship test, HREOC made a submission to the Department of Immigration and Citizenship in November 2006 (available on HREOC website) in response to the Discussion Paper *Australian Citizenship: Much more than just a ceremony*. HREOC submitted there that there was inadequate justification for overturning the current system and that there had been inadequate

consideration of the negative impact of introducing a citizenship test on particular groups of people within our society.

It is against this background that I speak to you today, representing HREOC in my capacity as Acting Race Discrimination Commissioner. In making a submission on the proposed amendments to the *Citizenship Act* HREOC has recognised the importance of citizenship and Parliament's right to legislate in this area. At the same time, with a view to ensuring Australia's compliance with the spirit and letter of human rights principles, the Commission makes constructive suggestions to improve the proposed process while ensuring its appropriateness for contemporary Australian society and its conformity with international standards.

The proposed amendments to the *Citizenship Act* put a focus on the manner in which we grant citizenship. Summarising our submission, HREOC contends that, on the one hand, the legislation confers too much discretion on the Minister in formulating a citizenship test, or multiple tests, for Australian citizenship. In this regard the amendments do not limit the Minister's discretion or subject it to external scrutiny. On the other hand, HREOC submits, there is insufficient discretion conferred on the Minister to formulate alternatives or waive a formal test for applicants with special circumstances or in cases of hardship.

On the first of these concerns, namely the excessive discretion conferred upon the minister in formulating a test, the Commission suggests that the instrument creating the test should be made a legislative instrument. This would provide an additional layer of

parliamentary scrutiny, as the instrument would then be subject to disallowance under s 42 of the *Legislative Instruments Act 2003* (C'th). In turn, this additional parliamentary scrutiny will enhance the credibility of the test in the eyes of the Australian public and applicants, who can be assured that the test procedures have been widely debated and examined at every possible occasion. Given the importance of citizenship in contemporary Australian society, the Commission believes that additional parliamentary debate and examination is warranted.

The submission makes a number of suggestions to deal with the possible impracticality that further parliamentary scrutiny might require disclosing the actual test before applicants would actually sit it. These suggestions are at paragraphs 16-20 of the submission.

The second of the Commission's major concerns in relation to the proposed amendments is that there is insufficient flexibility for the Minister to cater for persons unfairly disadvantaged by the formal citizenship test. While the amended *Citizenship Act* will continue to apply the currently available exemptions to the new test (due to age or disability, etc) the Commission suggests that there may be other types of applicants for whom special arrangements should be made.

When framing citizenship requirements, we must always keep in mind that amongst those applying for Australian citizenship there is likely to be individuals who, because they have suffered trauma or have had limited education would be disadvantaged by the requirement to sit a formal test yet would still make worthy

Australian citizens. For this reason the Commission suggests the option of an oral interview with an officer of the Department of Immigration and Citizenship. This would be equally effective in assessing whether an applicant fulfils the relevant 'knowledge of Australia' criterion. In exceptional circumstances, the Minister should also be empowered to waive the eligibility requirements of s 23(d), (e) and (f), especially if service in the public interest or special hardship can be demonstrated.

These alternatives are important in ensuring that Australia does not throw away the opportunity to embrace individuals who would make worthy citizens despite their inability to successfully sit a test.

The third area of concern in the Commission's Submission relates to the proposed power of the Minister to determine eligibility for sitting the test. In short, the Commission believes this power is superfluous and unnecessary. In view of the eligibility criteria already codified in s 21(2), there appears to be no need to satisfy additional criteria, which the Minister has unlimited discretion to formulate. The inclusion of additional eligibility criteria might lead to a situation where the Minister is able to block certain applicants from taking the test, despite these applicants satisfying all other eligibility criteria for citizenship.

The Committee will note from HREOC's submission that some of our recommended changes to the *Citizenship Amendment (Citizenship Testing) Bill* are modelled on the Canadian approach: an approach the government relied on in its Discussion Paper to support the introduction of a citizenship test. The Commission

believes that this approach is useful in designing the process and requirements of a citizenship test, and not only as a justification for introducing a citizenship test. To this end, it should be noted the Canadian model more closely confines Ministerial discretion than that proposed by the Bill. In Canada, there is a mechanism for suitable applicants to take an oral interview with designated citizenship judges, if they have failed the written test more than once. This approach is analogous to the Commission's proposal for an oral interview alternative in certain circumstances. In addition, both the Canadian and New Zealand frameworks provide the Minister with a residual discretion to grant citizenship or waive certain eligibility requirements in exceptional circumstances.

Ultimately, the future of our country depends on the composition of our citizens: any citizenship procedure must ensure that Australia embraces individuals who are not only able to contribute to the common good, but who have been given every opportunity to best demonstrate this. The Commission hopes its submission will better help Parliament achieve this goal.

