



Australian Government
Department of Immigration and Citizenship

**Submission to the Standing Committee on Legal and Constitutional Affairs inquiry into
the *Australian Citizenship Amendment (Citizenship Testing) Bill 2007***

Purpose of the bill

The *Australian Citizenship Amendment (Citizenship Testing) Bill 2007* (the bill) amends the *Australian Citizenship Act 2007* (the Act) to provide for the testing of certain prospective applicants for Australian citizenship by conferral. The aim of introducing a citizenship test, is to help migrants successfully integrate into the Australian community and to maximise the opportunities available to them in Australia.

Background

The Australian Government released a discussion paper on 17 September 2006 seeking community views on the merits of introducing a formal citizenship test. More than 1644 responses were received with 60% of respondents supporting the introduction of the citizenship test.

Following the consultation process, the Government announced on 11 December 2006 its intention to introduce a citizenship test.

Content of the bill

Clause 2 Commencement

Schedule 1 to the Act will commence on a day or days to be fixed by proclamation.

The Senate Scrutiny of Bills Committee in Alert Digest Number 6, 2007 noted that the Bill does not specify a default commencement date if it is not proclaimed within a certain time and questioned whether it was possible to be more specific about the commencement date.

It is intended to commence testing on 17 September 2007. However, achieving this date is subject to the passage of the legislation through the Parliament and meeting logistical requirements within a short time frame.

Schedule 1, item 4

The bill amends the Act to require applicants for Australian citizenship by conferral under the general eligibility provisions (subsection 21(2)) to have successfully completed a citizenship test, before making an application, in order to be eligible to become Australian citizens. The bill provides that successful completion of a test will be the only way in which the Minister can be satisfied that an applicant has met the following eligibility criteria:

- An understanding of the nature of their application
- An adequate knowledge of Australia and the responsibilities and privileges of Australian citizenship
- A basic knowledge of the English language.

The requirement to have an adequate knowledge of Australia, as well as the responsibilities and privileges of citizenship, is new. The requirement to have a knowledge of the English language has been a requirement since the inception of the *Australian Citizenship Act* in 1949.

A citizenship test will provide an objective assessment as to whether prospective applicants for citizenship by conferral, under the general eligibility provisions, meet the criteria listed above.

Schedule 1, item 5

Item 5 of the bill inserts new section 23A in Division 2 of Part 2 of the Act. New subsection 23A(1) provides that the Minister must approve, by written determination, a test for the purposes of new subsection 21(2A). The determination must also specify what amounts to successful completion of a test. In addition, the determination may also set out the eligibility criteria a person must satisfy to sit the test, such as that the person is a permanent resident and that the Minister is satisfied of their identity. The determination may also cover any other matter related to the test the Minister thinks appropriate. These provisions will allow for:

- More than one approved test. This is important because it allows for the possibility that the Minister may consider that some people, for example those with low levels of literacy, may need to be given the opportunity to demonstrate that they meet the test requirements in a different way to the majority of prospective citizenship applicants
- Mandatory questions that must be answered correctly
- Special arrangements for people with special needs, such as those whose literacy skills make it difficult for them to undertake a test without assistance and that a test would be conducted using a computer program under the control of the Minister which randomly selects a number of questions from a larger collection of approved questions.

Although the determination is yet to be finalised, the Minister announced in his Second Reading Speech some of the policy parameters expected to surround the test including:

- Only permanent residents who are able to be satisfactorily identified and provide a photograph of themselves, or allow an officer to take a photograph, will be able to sit a citizenship test.
- The test will:
 - Be computer-based
 - Consist of 20 multiple-choice questions drawn randomly from a larger pool of confidential questions
 - Include three mandatory questions on the responsibilities and privileges of Australian citizenship
 - Be in English.
- The pass mark will be 60% including answering the three mandatory questions correctly.
- A person will be able to take the test as many times as required in order to pass.
- The test questions will assess knowledge of Australian history, culture and values based on information contained in a citizenship test resource book.

- The resource book will be free and will be widely available. It is intended that the resource book be available in paper, electronic and audio visual formats.
- Special arrangements will be made for people who would have difficulty taking a test because of their low levels of literacy. In these cases, it is proposed that the test administrator read aloud the test questions and possible answers to the person.
- Consideration is also being given to other testing arrangements to assist people with special needs. The proposed legislative framework provides the flexibility to quickly refine the testing arrangement if necessary.

There has been some public debate surrounding the proposed confidentiality of the test questions. Keeping the questions confidential will help to encourage prospective citizens to develop an adequate knowledge of Australia and the rights and privileges of citizenship as required by the legislation, rather than simply rote learning the answers.

People who are not required to have a knowledge of the English language or the responsibilities and privileges of Australian citizenship will not be required to sit a citizenship test. This includes applicants under the age of 18 or those 60 years or over, and those with a permanent physical or mental incapacity which prevents them from understanding the nature of their application.

The Senate Scrutiny of Bills Committee in Alert Digest Number 6, 2007 also raised an issue regarding the determination not being a legislative instrument and if the determination is administrative in nature, whether the exercise of the power granted by proposed new subsection 23A(1) should be subject to review.

The Committee stated that if the determination is not of a legislative character, then "... it may be considered not to apply generally to a group of people, but is more of an administrative decision, tailored to a particular applicant for Australian citizenship". This view seems to be based on the Committee's reading of paragraph 5(2)(a) of the *Legislative Instruments Act 2003* (LI Act), which provides that an instrument is taken to be of a legislative character if, among other things, "it determines the law or alters the content of the law, rather than applying the law in a particular case".

It does not follow, however, that if an instrument does not determine the law or alter the content of the law it must be an instrument that applies the law in a particular case. An instrument that does not determine the law or alter the content of the law may nevertheless be an instrument that applies the law (or makes provision for its application) to a group of people. The Government is of the view that the power in section 23A (1) is a power to make a determination that applies generally and not in relation to a particular case or cases and therefore merits review is not appropriate.

Whatever the precise 'character' of a determination under proposed section 23A(1), the Government does not believe that such a determination, which will approve the content of the new citizenship test, should be subject to the disallowance provisions of the LI Act.

Schedule 1, item 9

Item 9 of the bill provides that the fee prescribed for an application to become an Australian citizen under section 21 of the Act, in relation to persons who have sat a test or tests, may include a component that relates to the test or tests sat by the applicant.

This allows for some or all of the costs of a person sitting a test or tests (whether different tests or repeat sittings) to be recovered through the application fee when the person applies to become an Australian citizen.

On 8 May 2007, the Treasurer, the Hon Peter Costello MP announced that the citizenship application fee for persons who have sat a test will be \$240. This fee includes a component to recover part of the cost of sitting a test. The fee for an application for citizenship by conferral for people who are not required to have sat a test will remain at \$120.

Summary

This bill delivers an objective way of assessing whether prospective citizenship applicants meet the legal requirements for citizenship by conferral under the general eligibility provisions via a test. 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.

The bill also adds the requirement in the general eligibility criteria that the applicant must have an adequate knowledge of Australia. This knowledge and understanding will 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.