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Senate Legal and Constitutional Legislation
Committee
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By e-mail

Dear Ms. Morris,

Re: Inquiry into the *Australian Citizenship Amendment (Citizenship Testing) Bill 2007*

We thank you for the opportunity to provide a submission to this inquiry.

1. Refugee Advice and Casework Service (Australia) Inc. (RACS)

RACS, the oldest Community Legal Centre specialising in providing advice to asylum seekers, was originally set up in NSW in 1987 to provide a legal service to meet the specific needs of asylum seekers.

A not-for-profit incorporated association, RACS' principle aims may be summarised as follows:

- to provide a free, expert legal service for individuals seeking asylum in Australia;
- to provide referral for counselling and assistance on related welfare issues such as accommodation, social security, employment, psychological support, language training and education;
- to provide a high standard of community education about refugee law, policy and procedure;
- to provide training sessions, workshops and seminars on refugee law, policy and procedure to legal and welfare agencies and individuals involved in advising and assisting refugees;
- to establish a resource base of current information and documentation necessary to support claims, for use by RACS, community organisations and lawyers assisting refugee claimants;

- to participate in the development of refugee policy in Australia as it relates to the rights of those seeking asylum in this country; and
- to initiate and promote reform in the area of refugee law, policy and procedures.

At a broader level, RACS aims to promote the issues asylum seekers face by raising public awareness and to advocate for a refugee determination process which both protects and promotes the rights of asylum seekers in the context of Australia's international obligations.

2. Introductory Remarks

Given that citizenship is fundamental to membership of the Australian political community, it is vital that the legislative framework regulating citizenship is non-partisan and prospectively certain. The introduction of a formal citizenship test should be subject to careful consideration in order to prevent further marginalisation of migrants and particularly refugees. RACS does not support the introduction of a formal citizenship test but if it is to be introduced, we recommend that persons recognised as refugees be exempted from the requirements.

Due to various factors, refugees represent a particularly vulnerable and disadvantaged group within the broader migrant community in Australia. Although it may be impossible to determine exactly how many refugees have been the victims of torture or trauma, professionals often estimate that at least 20-30% of refugees have been the victims of past violent acts.¹ By definition every refugee has a "well-founded fear of being persecuted" in his or her country of origin or country of former habitual residence.² Further, refugees have often endured long and treacherous journeys fleeing persecution in their home countries to seek protection in Australia and, in many cases, have faced years of separation from close family members and uncertainty as to their ultimate fate.

The circumstances of refugees are special and unique. Refugees are a distinct group who, already particularly vulnerable and disadvantaged, will be further negatively affected by the introduction of a formal citizenship test as envisaged by the *Australian Citizenship Amendment (Citizenship Testing) Bill 2007*.

The citizenship test's English requirement is a particularly harsh one for refugees who, in many cases, will have arrived in Australia with little or no English language skills and due to a number of factors including trauma and/or other psychological conditions relating to past experiences of persecution, and lack of education in their home countries and/or illiteracy in their native language will struggle to learn English with the ease of other categories of migrants. Additionally, the stress and pressure created by a formal testing environment will also unfairly and unjustly affect refugees many of whom are victims of torture and trauma. Furthermore, the Bill, as an administrative rather than a legislative measure, grants

¹ International Rehabilitation Council for Torture Victims, *About Refugees, Asylum Seekers, IDPs and Torture* (March 2006), available at <http://www.irct.org/Admin/Public/DWSDownload.aspx?File=%2Ffiles%2Ffiler%2F26June%2F2007%2Fmaterials%2FRefugees_IDPs_and_torture.pdf>.

² United Nations, *Article 1, The 1951 Convention Relating to the Status of Refugees*.

excessive discretion to the Minister who will determine both the nature and content of the test, and will also determine who shall be exempt from taking the test.

3. English Language Requirement

The Bill expressly requires that, to be eligible for citizenship, a person must possess a “basic knowledge of the English language” (s. 21(2)), which will be evidenced by successful completion of the citizenship test. The level of English proficiency necessary to complete a written citizenship test will certainly be more than “basic.” While this requirement presents a hurdle for all citizenship applicants, it is especially harsh to refugees.

As many subclasses of permanent residence visas require the applicant to demonstrate proficiency in the English language, the English component of the citizenship test is more likely to negatively affect refugees than other categories of migrants who will already have skills upon their arrival. Further, unlike other categories of migrants, refugees will generally arrive in Australia with little or no advance planning by reason of their flight from persecution. For these reasons, they are more likely to lack English language skills:

Skilled entrants generally have already demonstrated proficiency in English language as a pre-requisite for getting a visa to work in Australia in the first place. So those migrants most likely to struggle with a language test are the 13,000 refugees and other displaced people who come to Australia each year under the humanitarian component of the migration program.³

Refugees who hold permanent Protection visas (PPVs) are eligible for 510 hours of free English language tuition through the Adult Migrant Education Program (AMEP). While the 510 hours will, in many cases, be far from sufficient for refugees to attain proficiency in the English language, we nevertheless recognise and value the Australian government’s efforts in this respect.

However, under the current government policy, refugees who, through no fault of their own, initially arrived in Australia without authorization are only eligible for three year temporary Protection visas (TPVs). TPV holders over age 18, unlike PPV holders, do not have access to the free English language tuition under the AMEP. Therefore TPV holders are particularly disadvantaged in this regard. Given the unfortunate fact that the Australian government’s own policy acts as a deterrent to TPV holders learning English, it is particularly harsh to then deny citizenship to refugees who are unable to demonstrate basic English language skills.

Moreover, even with access to English language training, refugees, many of whom are victims of trauma, may experience added difficulty in learning English as a second language. Indeed, the Australian Citizenship Council suggests that new language skills might present a greater challenge for torture victims whose past experiences result in “a diminished capacity to learn a new language.”⁴ To deny these victims citizenship simply because they cannot display sufficient language skills is an unjust manifestation of the law.

³ Brian Costar & Peter Mares, *Australian Policy Online, Citizenship: A test that will divide, not unite*, <http://www.apo.org.au/webboard/results.html?filename_num=127508>.

⁴ Australian Citizenship Council, *Australian Citizenship for a New Century* (18 February 2002), 50, available at <<http://www.citizenship.gov.au/pdf/05.pdf>>.

Unfortunately, many refugees will experience further hardship with the written English skills necessary for the citizenship test because of their lack of previous education. Refugees from countries suffering from civil wars or internal armed conflicts frequently have had an interrupted or otherwise limited education. Further, as a result of factors such as discrimination in access to public education and the high relative cost of schooling in poverty stricken countries, in some cases refugees may have been denied the right to any form or basic education. As a result of these factors, a number of refugees are illiterate in their native language(s). Administering a citizenship test in English is particularly harsh in its application to refugees.

4. The Stressful Testing Environment

We oppose the application of the citizenship test for refugee applicants as envisaged by the *Australian Citizenship Amendment (Citizenship Testing) Bill 2007* because the stressful environment of a formal examination creates an unfair bias against refugees. Refugees have frequently been subjected to torture and trauma, and continue to suffer from debilitating after-effects. For this reason, many refugees may not be able to perform successfully under the pressure of the formal citizenship test.

The Bills Digest acknowledges that “[p]ermanence about [a refugee’s] situation can be a significant factor for the successful integration of refugees, especially those with torture/trauma issues.”⁵ However, as the citizenship test imposes yet another barrier to the acquisition of permanent and irrevocable Australian protection, it unfairly and unjustly inhibits those who most need the safety and security provided by citizenship.

Our client base represents a particularly vulnerable group in society. The periods of uncertainty, mental demands, and anxiety of formal testing will have a particularly detrimental effect on these individuals and serve to increase their sufferings and potentially act as a deterrent for refugees considering applying for citizenship.

We acknowledge that the Bill contains exceptions for certain persons not fit to take the citizenship test. The Minister’s Explanatory Memorandum states:

New subsection 23A(6) allows the determination to cover any other matter related to the test that the Minister considers appropriate. The determination could include provision for special arrangements for people with special needs, such as those whose literacy skills make it difficult for them to undertake a test without assistance.⁶

By way of explanation, it goes on to state:

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: with a permanent physical or mental incapacity that means the person is not capable of understanding the nature of their citizenship application.⁷

⁵ Department of Parliamentary Services, *Bills Digest: Australian Citizenship Amendment (Citizenship Testing) Bill 2007*, no. 188, 2006-07, ISSN 1328-8091 (19 June 2007), available at <<http://www.aph.gov.au/library/pubs/bd/2006-07/07bd188.pdf>>.

⁶ Kevin Andrews MP, *Australian Citizenship Amendment (Citizenship Testing) Bill 2007: Explanatory Memorandum*, available at <http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2695&TABLE=EMS>.

⁷ Department of Immigration and Citizenship: *General Questions on the Citizenship Test*, <http://www.citizenship.gov.au/news/citizenship-test/General_Qs.htm>.

This exception, while important, is not sufficiently broad to encapsulate many of the layers of disadvantage and vulnerability suffered by refugees. While a refugee may not be so incapacitated so as to be incapable of understanding the nature of their citizenship application, he/she may nevertheless find the pressures of the testing environment difficult to bear due to a history of torture and trauma and continuing after-effects. This bias against refugees inherent in any formal citizenship test cannot be underestimated.

Similarly while there is provision for “special arrangements” for individuals who may have difficulty taking the test without assistance due to literacy skills, there are many layers of educational disadvantage, apart from abject illiteracy, which may inhibit successful test completion by refugees. There is a real risk that such refugees will not be sufficiently accommodated under the existing provisions and will therefore be unfairly prejudiced.

5. Additional Fee for Citizenship Test

It is regrettable that the Bill establishes an additional fee for citizenship applicants. The proposed Section 46(1A) states that the citizenship application fees may now “include a component that relates to the sitting of that test or those tests.”

Imposing this additional cost upon citizenship applicants will have a particularly detrimental effect on much of RACS’ client base. Our clients, in many cases, arrive in Australia with significant debts having been forced to borrow relatively large sums of money to secure the flight from their country of origin and safe passage to Australia. Further, many of them have endured long periods in the Australian community while awaiting determination of their status without the right to work and therefore without any source of income. Further debts are often accumulated during this time. Additionally, even once recognised as refugees and granted full work rights, many refugees will struggle to gain steady employment. This is due to a number of factors including the debilitating effects of torture and trauma as well as, in some cases, limited education in the country of origin.

In our submission, it is unfair and unjust to impose an additional cost upon a particularly vulnerable group in society who for all the reasons stated above is likely to suffer from financial difficulties. This extra fee represents an onerous burden on much of our client base, and would be likely to act as a deterrent from applying for citizenship.

6. Prolonging the Period before Citizenship can be Obtained

We oppose the introduction of a formal citizenship test because of its very real potential to lengthen the period before Australian permanent residents - and refugees in particular due to all the factors outlined above - can gain access to the full benefits of citizenship. These benefits include the right to vote and elect state and federal parliamentary representatives and the right to obtain an Australian passport and travel as an Australian. The benefits of citizenship are more than symbolic. They are real and tangible. Gaining access to benefits such as these is necessary to fully participate in Australian society and national/political life.

The introduction of the formal citizen test with its English language requirement will ultimately prolong the period before refugees can gain citizenship and will therefore have a particularly

detrimental effect on much of RACS' client base. We represent refugees, many of whom have already endured long periods of fear and uncertainty before the grant of permanent residency. These long delays result from a number of factors including the following:

- the often long and treacherous journeys to escape persecution in their home countries and find protection and security in Australia;
- the long periods spent awaiting a determination of refugee status (often endured while in immigration detention); and
- the TPV system, which forces large numbers of refugees who are only eligible for three year TPVs to reapply for protection after the expiry of their TPV and again submit themselves to a potentially long drawn out process before being granted permanent residency.

Our client base represents a particularly vulnerable group in society. Many of our clients are victims of torture and trauma and have endured much suffering before reaching Australia. The periods of uncertainty therefore have a particularly detrimental effect on these individuals and serve to both increase their sufferings and to act as a barrier to recovery from past experiences.

The proposed amendment will serve to further prolong this period of fear and uncertainty, affecting one of the most vulnerable groups in society.

7. Ministerial Discretion

As previously stated, the Minister will have the power to determine who is exempt from the citizenship test obligation (s 26A(6)). According to Section 23, the Minister will also have the power to approve the test format and content and also will determine what constitutes successful completion of the test. Finally, Section 23A(7) confirms that the citizenship test is not a legislative instrument, and is therefore subject to Ministerial judgment only.

Because of the complex nature of the test, and the potential for harmful results in its application, the Minister should not have sole discretion in these matters. The acquisition of citizenship is of inestimable value, especially to those who have been displaced from their native countries for whom it assumes a special significance. The exercise of this power should be subject to the highest political control – and accountability – rather than being exercised solely by departmental officials. If such a test is to be implemented, Australia would be benefited by the introduction of a system of Parliamentary review and amendment.

8. Recommendations

The Refugee Advice and Casework Service does not endorse the introduction of a formal citizenship test. However, if a citizenship test is introduced, we would limit its application. Given the biases against refugees inherent to the citizenship test, we recommend that all persons residing in Australia on protection visas should be excused from mandatory successful completion of the citizenship test as described in the *Australian Citizenship Amendment (Citizenship Testing) Bill 2007*.

Current exemptions from the formal test include persons with a permanent physical or mental incapacity, persons under age 18 or over age 60, and stateless persons, among others. It is important to note that this “stateless” category will include only a minute fraction of protection visa holders because it is limited to those persons who do not hold citizenship of any country.

Further, if the test should remain a requirement for protection visa holders, it should be administered in the applicant’s native language. Moreover, the requirements of revised Section 21(2)(e) and (f) should be accomplishable by alternative methods, aside from a formal test. For example, in the UK, citizenship applicants who have not attained a certain level of proficiency in English can satisfy the citizenship test requirement by attending an “English for Speakers of Other Languages” course which covers citizenship material.⁸ This system is preferable because it focuses on “educating” rather than “testing” potential citizens, and it alleviates the overly stressful environment of an all-or-nothing test.

9. Concluding Remarks

A submission such as this cannot possibly canvas all the issues which may be of interest to the Legal and Constitutional Legislation Committee.

Accordingly, please do not hesitate to contact Alison Davidian on (02) 9211 4001 if you require any further information or assistance with any aspect of this submission.

Yours sincerely,

REFUGEE ADVICE AND CASEWORK SERVICE (AUST) INC

Per:

Alison Davidian
RACS Coordinator

⁸ UK Home Office: Border and Immigration Agency website, <
<http://www.ind.homeoffice.gov.uk/applying/nationality/knowledgeoflifeintheuk>>.