

## **Senate Legal Affairs and Constitutional Committee**

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

#### **Submission by the Office of the United Nations High Commissioner for Refugees**

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to comment on the Australian Citizenship Amendment (Citizenship Testing) Bill 2007 which has been referred to the Committee for inquiry.
2. UNHCR will be addressing its comments only to how the bill may affect refugees and stateless persons. The term “refugee” in this submission applies to all persons recognized by Australia under the 1951 Convention relating to the Status of Refugees (‘the 1951 Refugee Convention’) or its 1967 Protocol as well as to persons who have entered Australia through refugee resettlement programmes, irrespective of the visa they have been granted by Australia. The term “stateless persons” in this submission applies to persons who are not considered a national by any State under the operation of its law (Article 1 of the 1954 Convention relating to the Status of Stateless Persons (‘the 1954 Statelessness Convention’).
3. Australia has acceded to the 1951 Refugee Convention and its 1967 Protocol as well as the 1954 Statelessness Convention.

#### **UNHCR standing to comment**

4. UNHCR’s standing to comment is based on its Statute<sup>1</sup> and the 1951 Refugee Convention. The latter enjoins Contracting States to cooperate with UNHCR in its duty of supervising the application of the provisions of the Convention (Article 35). UNHCR is regularly requested to comment on national legislation regarding refugees and related issues by Contracting States to the Convention. UNHCR also has a statutory function of providing international protection for stateless persons and has been given a specific and global mandate to contribute to the prevention and reduction of statelessness by the United Nations General Assembly in 1974 and 1976 as well as through subsequent resolutions.<sup>2</sup>

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<sup>1</sup> General Assembly Resolution 428 (V), 14 December 1950: Statute of the Office of the United Nations High Commissioner for Refugees.

<sup>2</sup> Resolutions 3274 (XXIX) of 10 December 1974 and 31/36 of 30 November 1976.

## **Integration of refugees**

5. The 1951 Refugee Convention and its Protocol place considerable emphasis on the integration of refugees. The 1951 Convention enumerates social and economic rights designed to assist integration, and in its article 34 calls on States to facilitate the “assimilation and naturalization” of refugees.
6. UNHCR’s Executive Committee, of which Australia is a founding Member, has also recognized that integration into their host societies is the principal durable solution for refugees in the industrialized world and has called on States with developed asylum systems to support refugees’ ability to integrate “through the timely grant of a secure legal status and residency rights, and/or to facilitate naturalization”.<sup>3</sup>
7. UNHCR appreciates that many integration challenges faced by refugees are similar to those faced by other migrants and that the need to bridge language and cultural barriers affect refugees and other migrants alike. UNHCR has indeed argued that integration policies for refugees should be mainstreamed in general integration plans drawn up for third country nationals generally, but nevertheless considers it essential to include measures to address refugee-specific concerns where needed.<sup>4</sup>
8. Refugees are less likely than other migrants to move to countries where they already have some cultural, linguistic or economic links. Unlike other migrants, refugees do not enjoy the protection of their countries of origin and have to rebuild their lives in new countries of residence, without – at least in the short term – the option of returning home. Most come from non-English speaking countries. Many have been compelled to flee at short notice, leaving behind belongings and documents. They may have lost contact with family members and with social support structures in the country of origin. They may have suffered torture or trauma. They may not have had access to English language training or employment while seeking asylum or while being on temporary protection visas in Australia. All these factors need to be taken into account in planning and implementing integration measures.

## **Naturalization of refugees**

9. As stated above, Article 34 of the 1951 Refugee Convention provides that States shall make every effort to expedite naturalization proceedings for refugees and to reduce as far as possible the charges and costs of such proceedings.

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<sup>3</sup> UNHCR Executive Committee, Conclusion on Local Integration, No. 104 (LVI) – 2005, para. (d): The Executive Committee [n]otes that the 1951 Convention and its 1967 Protocol set out rights and minimum standards for the treatment of refugees that are geared towards the process of integration,” and “(j) Welcomes the practice in States with developed asylum systems of allowing refugees to integrate locally”.

<sup>4</sup> UNHCR, Note on the Integration of Refugees in the European Union, May 2007 – see <http://www.unhcr.org/protect/PROTECTION/463b462c4.pdf>.

10. A similar provision to Article 34 is contained in Article 6(4)g of the European Convention on Nationality, according to which each State Party “shall facilitate in its internal law the acquisition of its nationality for [...] stateless persons and recognized refugees lawfully and habitually resident on its territory”. The Council of Europe’s Explanatory Report to the Convention contains some examples of favourable conditions, which include a reduction of the length of required residence, less stringent language requirements, a simpler procedure and lower procedural fees.<sup>5</sup>
11. UNHCR encourages States to consider, when reviewing nationality legislation, the possibility of facilitating the acquisition of citizenship by refugees. Given that refugees are likely to remain outside their home country for long periods of time, the required period of lawful and habitual residence before the lodging of an application should be as short as possible and should ideally include the time spent as an asylum-seeker and as a recognized refugee on a temporary protection visa in Australia in calculating the waiting period required for refugees to submit an application for citizenship.
12. Article 34 of the 1951 Convention implies that State Parties should make good faith efforts to assist refugees to meet the requirements for naturalization. The Australian Citizenship Act 2007 already contains a range of eligibility requirements including basic knowledge of the English language as well as an adequate knowledge of the responsibilities and privileges of Australian citizenship. An additional citizenship test with stringent language tests and examinations on the history and culture of Australia, while not specific to refugees, may penalize certain categories of refugees, in particular elderly or illiterate persons. It may also penalize refugees on temporary protection visas who may have been in Australia for considerable length of time and, during that period, may not have had access to English language training.

### **Integration and naturalization of stateless persons**

13. Article 32 of the 1954 Statelessness Convention is identical to Article 34 of the 1951 Refugee Convention save for its reference to stateless persons rather than to refugees. It is therefore crucial that any changes in procedures for obtaining Australian citizenship facilitate rather than obstruct the acquisition of Australian citizenship both by refugees and stateless persons.
14. By facilitating naturalization of stateless persons, Australia will further contribute to the reduction of statelessness as recommended in the Executive Committee Conclusion on identification, prevention and reduction of statelessness and protection of stateless persons adopted in October 2006.<sup>6</sup>

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<sup>5</sup> See Explanatory Report to the European Convention on Nationality, adopted in Strasbourg on 6 November 1997 (ETS No. 166), para. 52.

<sup>6</sup> [UNHCR Executive Committee Conclusion 106 \(LVI\)-2006.](#)

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15. Due to the general considerations set out above, UNHCR would urge the Committee to recommend that an exemption be proposed in the Bill which could be used in the case of refugees and stateless persons, many of whom have survived torture or trauma and have been without the protection of a State for protracted periods.
16. UNHCR notes that the Explanatory Memorandum indicates that the proposed new subsection 23A(1) “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 criteria in paragraphs 21(2)(d), (e) and (f) in a different way to the majority of prospective applicants”.
17. UNHCR notes that in Canada, people who are illiterate may attend a hearing with a citizenship judge in lieu of taking a written test. UNHCR would urge that such an exemption or the introduction of an oral test for those with special needs apply in the case of refugees and stateless persons, where necessary.
18. In addition, UNHCR is particularly concerned by the proposed new Subsection 21 (2) which imposes an additional requirement of satisfying the residence requirement under Section 22 which in turn requires that the person must have been in Australia for four years immediately before the application and that the person must not have been present in Australia as an “unlawful non-citizen” at any time during that four-year period. In this regard, UNHCR draws the attention of the Committee to Article 31 of the 1951 Refugee Convention which imposes a prohibition on Contracting States penalizing refugees coming directly from territory where their life or freedom was threatened on account of their “illegal entry or presence”.
19. UNHCR has long-standing and well-known concerns about the practice of granting recognized refugees temporary protection visas on the basis of their arrival in Australia and set these out in some detail in its July 2005 submission to this Committee during its Inquiry into the Administration and Operation of the Migration Act.<sup>7</sup> If such refugees were required to wait another four years in addition to the period – in some cases many years - they had already spent on a temporary protection visa, as well as in some cases prolonged periods as asylum-seekers, this would impose considerable hardship on the individuals concerned as well as jeopardize their ability to integrate well into Australian society. UNHCR understands that the new residence requirements recognize time spent in Australia as temporary residents prior to the acquisition of permanent residence,<sup>8</sup> but is uncertain if this includes for those temporary residents who are on temporary protection visas. It would be desirable if the residence requirements included periods spent as asylum-seekers or on temporary protection visas in Australia.

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<sup>7</sup> <http://www.unhcr.org.au/pdfs/AdministrationandOperationMigAct.pdf>.

<sup>8</sup> [http://www.citizenship.gov.au/law-and-policy/legislation/changesResidenceRequirementsQA.htm#temporary\\_res](http://www.citizenship.gov.au/law-and-policy/legislation/changesResidenceRequirementsQA.htm#temporary_res)

## **Conclusion**

20. The integration of refugees and stateless persons as a durable solution is an important part of Australia's commitment under the 1951 Refugee Convention and the 1954 Statelessness Convention. UNHCR encourages Australia to facilitate the ability of refugees and stateless persons to obtain Australian citizenship as a key dimension of the naturalization process. To this effect, UNHCR urges the Committee:

- (i) to consider the impact on refugees and stateless persons of the provisions of the Australian Citizenship Amendment (Citizenship Testing) Bill 2007;
- (ii) to recommend that any exemption for persons with special needs – as has been proposed in the Explanatory Memorandum in the case of persons whose literacy skills mean they have difficulty undertaking the test - be extended where necessary to refugees and stateless persons; and
- (iii) to recommend that the required residency period of four years include any period spent by a refugee as an asylum-seeker or on a temporary protection visa in Australia.

UNHCR  
11 July 2007, Canberra