Australian Senate Legal and Constitutional Affairs Committee

Inquiry into Australian Citizenship Amendment (Citizenship Testing) Bill 2007

SUBMISSION OF THE VICTORIAN BAR 12 JULY 2007

1. The Victorian Bar appreciates the opportunity to comment on the above Bill, and thanks the Committee for the short extension on lodging this submission.

2. The Victorian Bar sees the Bill as fundamentally flawed because the citizenship test for which it provides will be beyond Parliamentary scrutiny, as will whatever eligibility criteria the Minister may require for a person to sit the test. Exclusion from sitting the citizenship test constitutes exclusion from citizenship because satisfactory completion of the citizenship test is a prerequisite for application for citizenship under the "general eligibility" criteria – and, under this Bill, that will be on grounds not even considered, much less approved, by the Parliament. In our submission, the Bill should not be enacted.

3. The Bar has not been able to review all the submissions to this Committee, but we have reviewed the submission on behalf of the Human Rights and Equal Opportunity Commission, and the submission by Professor Susan Kneebone and Ms Katie Mitchell on behalf of the Castan Centre for Human Rights Law at Monash University. The Bar respectfully supports and adopts those submissions, and adds the following comments in relation to some of the proposed amendments (not in numerical order).

Proposed substitute section 21(2)

4. The proposed amendment to subparagraph 21(2)(f) to add a requirement that a person must have "adequate knowledge of Australia" is broad and vague, and may have human rights implications for citizenship applicants.

5. There is an obvious difference between "knowledge" and "values". "Knowledge of Australia" – knowing facts about Australia – is a very different thing from accepting Australian values.

6. The current Act already requires "understand[ing of] the nature of the application for citizenship", "a basic knowledge of the English language", and "an adequate knowledge of the responsibilities and privileges of Australian citizenship", subsections 21(2)(c), (e) & (f) of the *Australian Citizenship Act* 2007.

7. What the proposed amendment adds is "knowledge of Australia". What the Minister has said in his second reading speech is that the thrust of the citizenship test will be acceptance of, and commitment to, Australian values:

> While people are not expected to leave their own traditions behind, we do expect them to embrace our values….
>
> For generations, Australia has successfully combined people into one community based on a common set of values.
>
> Australian citizens….must…accept the common values and respect the rights and freedoms of others.
>
> The material which will form the basis of the citizenship test will highlight the common values we share, as well as something of our history and background.

8. Later in the second reading speech, the Minister says: “The test questions will assess knowledge of Australian history, culture and values based on information contained in a citizenship test resource book.”

9. The difficulty is in the disconnect between “knowledge” in the amendment, and the emphasis on “values” in the Minister’s second reading speech, notwithstanding the later reference to “knowledge of…values”.

10. This disconnect is of greater significance and concern because the proposed new section 23A gives the Minister such expansive and unfettered power to include whatever he or she wishes in the proposed citizenship test - which test must be approved by the Minister “by written determination”, proposed subsection 23A(1).

Proposed section 23A

11. The proposed amendment says nothing about the content of the test beyond the bare reference to proposed subsections 21(2)(d)(e) and (f) to which, in substance, the only addition in the proposed amendments is an “adequate knowledge of Australia”.

12. Proposed section 23A provides simply that a test be approved by the Minister, with a catch-all extension in subsection 23A(6) that the Minister’s determination “may cover any other matter related to the test the Minister thinks appropriate”.

13. Moreover, unlike the situation with subordinate legislation, the Minister’s determination will not be subject to review or scrutiny by the Parliament – see proposed sub-section 23A(7) providing that such determination “is not a legislative instrument”.

14. This is the fundamental flaw, namely that the form and content of the proposed citizenship test, satisfactory completion of which would become an absolute and unwaivable requirement for eligibility to even apply for citizenship under the "general eligibility" criteria, would not be subject to any consideration or review by the Parliament – and, lest anyone be in any doubt about that, it is spelled out in proposed subsection 23A(7).

15. Moreover, the Minister has implicitly recognised the centrality of the form and content of the proposed citizenship test to consideration of this Bill by the Parliament because, in his second reading speech on 30 May, he assured the Parliament that the citizenship test "is currently being drafted and will be released once completed". Now more than a month later, and with the Bill proceeding through the Parliament, the test is not yet available, so far as the Bar is aware. Nor has the booklet upon which the content of the test will be based been publicly released.[1]

16. The provisions in proposed section 23A that the test be established by Ministerial determination out of sight and examination by the Parliament are fundamentally flawed. The Minister's failure to make available to the Parliament the proposed test and information booklet for its information makes the situation worse. The statements in the second reading speech that what the Minister has in mind is the testing of values rather than knowledge is troubling.

<u>The Canadian comparison – Regulations defining content</u>

17. The Canadian *Citizenship Act 1977* has an essentially identical provision to the proposed Australian amendment, requiring "adequate knowledge

[1] See Parliamentary Library (2007) Bills Digest no. 188, 2006–07, ISSN 1328-8091, 19 June 2007, 15; Mark Metherell and Tim Dick 'New Citizens Face Test on 200 Questions', *Sydney Morning Herald,* 12 December 2006 [Available online: http://www.smh.com.au/news/national/new-citizens-face-test-on-200-questions/2006/12/11/1165685615942.html].

of one of the official languages of Canada" and an "adequate knowledge of Canada and of the responsibilities and privileges of citizenship".

18. In Canada, as in the Australian proposal, the Minister is responsible for compiling the citizenship test. However, in Canada, the Minister is guided by the *Citizenship Regulations* 1993, which expand on what "knowledge of Canada and of the responsibilities and privileges of citizenship" is to be tested.

19. The Canadian regulation 15 describes what is to be tested, and it is all "knowledge", not the "acceptance of values" that is the theme of the Australian Minister's second reading speech. Regulation 15 identifies the things of which an applicant for Canadian citizenship is required to have a general understanding: the right to run for elected office, and to vote in federal, provincial and municipal elections; and the chief characteristics of Canadian social, cultural and political history and geography.

<u>Acceptance of Australian values should, as now, be pledged not tested</u>

20. It is one thing for the preamble to the *Australian Citizenship Act 2007*[2], and the pledge of commitment under that Act,[3] to focus on acceptance of, and commitment to, Australian values, as they do.

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[2] The Preamble to the *Australian Citizenship Act 2007* (Cth) states: 'The Parliament recognises that Australian citizenship represents full and formal membership of the community of the Commonwealth of Australia, and Australian citizenship is a common bond, involving reciprocal rights and obligations, uniting all Australians, while respecting their diversity. The Parliament recognises that persons conferred Australian citizenship enjoy these rights and undertake to accept these obligations: (a) by pledging loyalty to Australia and its people; and (b) *by sharing their democratic beliefs*; and (c) *by respecting their rights and liberties*; and (d) by upholding and obeying the laws of Australia. [emphasis added]'

[3] The citizenship pledge as detailed in Schedule 1 of the *Australian Citizenship Act 2007* (Cth) is as follows 'I pledge my loyalty to Australia and its people, *whose democratic beliefs I share, whose rights and liberties I respect*, and whose laws I will uphold and obey. [emphasis added]'

21. It is entirely a different matter for the citizenship test to examine acceptance of Australian values, as the Minister has said it will – and that raises issues of human rights.

HREOC sees testing values as divisive

22. The Human Rights and Equal Opportunity Commission (HREOC) has pointed to the likelihood that values testing would be divisive and discriminatory and would result in the polarisation of ethnic groups by signalling to the broader community that these groups 'do not value the Australian way of life'.[4] This is particularly the case as a series of HREOC consultations with Arab, Muslim, African and Middle Eastern Australians indicated that particular sections of Australia's ethnic communities are subject to a heightened level of discrimination at the hands of the wider public.[5]

23. HREOC has also argued that failure to pass such a test is no indication of an applicant's capacity to integrate effectively into society or to respect its values.[6] The Refugee Council of Australia has convincingly termed such testing an 'inadequate and misleading'[7] measure of commitment to Australian values.

24. The Bar shares these concerns on the part of HREOC and the Refugee Council. Also, quite apart from the controversy as to which values are to be isolated and identified as "Australian", there is the obvious difficulty of testing the applicant's acceptance of the values when, rightly in our

[4] Human Rights and Equal Opportunity Commission (2006) 'Submission of the Human Rights and Equal Opportunity Commission to the Citizenship Taskforce (Department of Immigration and Multicultural Affairs) on the Discussion Paper 'Australian Citizenship: Much more than a Ceremony', September 2006, 9.
[5] Ibid, 9.
[6] Ibid, 10.
[7] Refugee Council of Australia (2006) 'Response to Australian Government discussion paper: *Australian Citizenship: Much more than a ceremony',* November 17, 2006, 4.

submission, only a "basic knowledge" of the English language is required.[8]

The International Convention for the Elimination of Racial Discrimination

25. As a signatory to the International Convention for the Elimination of Racial Discrimination (ICERD), Australia has an obligation to ensure that its legislation is not discriminatory.[9] ICERD defines racial discrimination to include:

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[10]

26. Although ICERD expressly excludes matters pertaining to citizenship unless they discriminate against a particular nationality,[11] the Committee on the Elimination of Racial Discrimination (CERD), which administers ICERD considers that parties to the Convention should '[r]ecognise that deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin is a breach of State Parties' obligations to ensure non-discriminatory enjoyment of the right to nationality'.[12]

27. Australia's commitment to ICERD requires careful consideration of the application of the proposed citizenship test and the likely discriminatory effect in its application.

A formal, written, computer based test in English is potentially discriminatory

[8] Proposed subsection 21(2)(e)
[9] 'International Convention Against All Forms of Racial Discrimination' International Treaty Series 1975 No 40, Department of Foreign Affairs, Canberra, Entry into force for Australia: 30 October 1975 (except Article 14: 28 January 1993), Article 2.
[10] Ibid, Article 1.
[11] Ibid, Article 1(3).
[12] Committee on the Elimination of Racial Discrimination (2004), General Recommendation 30 (Discrimination against non-citizens), [14].

28. The Proposed section 21(2) says only that there is to be a citizenship test – not that it is to be a formal, computer-based test in English.

29. Section 23A leaves everything about the test and its form to Ministerial determination, and the Minister's second reading speech refers to the proposed citizenship test as:

    - A "formal citizenship test";
    - "computer-based";
    - a "test in English"; and
    - the reference to the test administrator reading out the test questions and possible answers, in special cases of literacy problems, makes clear that it is to be a written test

30. Such a formal, written computer-based test in English, particularly if it is to test values and acceptance of values, as the second reading speech suggests, may well discriminate against certain groups who may be unable to comply with the testing requirements, or may find it substantially more difficult to do so than others due to the language, and their social situation, in their country of origin.

31. The Bar sees as worthy of consideration the concerns of the Federation of Ethnic Communities' Councils of Australia (FECCA) that, in particular, the following groups of non-citizens will be disadvantaged and excluded as a result of English language testing:

    - 'New migrants working long hours to support their families who cannot access English classes during working hours, and are ineligible for social welfare payments;
    - Parents with young children or carers of other family members, who cannot access classes unless others can pick up their caring responsibilities;
    - Refugees who have experience torture, trauma and/or long periods of displacement due to war or civil unrest. For many, post traumatic stress makes learning another language very challenging, requiring an

extended time period and flexible delivery of English language programs;

- People who have experienced a very disrupted education in their country of origin, are illiterate in their own language, or who speak a language which is an oral language only….; and

- People coming from countries of origin where English is not spoken or taught'[13]

32. The Equal Opportunity Commission of Victoria (EOCV) considers that the proposed test under subsection 21(2A) will discriminate on the ground of language against every applicant whose first language is not English,[14] and that is surely obvious. The EOCV has also raised the possibility that English testing neglects Article 26 of the International Covenant on Civil and Political Rights (ICCPR).[15]

33. The EOCV considers that English testing does not comply with Article 26 because it does not afford non-English speaking citizenship applicants, 'equal protection of the law'. The EOCV also questions whether a mandatory test meets the requirements set by the Human Rights Committee as to when differentiation of treatment may be justified.[16] It does not consider the proposed mandatory test is justified, and has raised concerns that it may not be proportionate to the objectives sought to be achieved.[17]

[13] Federation of Ethnic Communities' Councils of Australia (2006), 'FECCA Submission to discussion paper 'Australian Citizenship: Much more than a ceremony', 1-2.
[14] Equal Opportunity Commission Victoria (2006) 'Citizenship Testing: A Human Rights Issue (The Equal Opportunity Commission Victoria's response to the 'Australian Citizenship: Much more than a ceremony' Discussion Paper)', 22 November 2006, 8.
[15] Article 26 provides that 'All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' (New York, 16 December 1966), Entry into force for Australia (except Article 41): 13 November 1980, Article 41 came into force generally on 28 March 1979 and for Australia on 28 January 1993, Australian Treaty Series 1980 No, 23.
[16] Human Rights Committee, General Comment 18 (Non-Discrimination), Para 12.
[17] Ibid, 8.

34. The Bar also is concerned that the imposition of a mandatory citizenship test is disproportionate to any benefits it seeks to achieve. To deny people citizenship where their backgrounds prevent them from complying with formal test requirements undervalues the contribution that they may make to society in spite of their standard of English. Further, a formal test would simply assess skills in reading comprehension and ability to memorise set reading material rather than gaining any indication of an applicant's commitment to society.

35. How many Australian citizens today who have distinguished themselves in professional and public service, and made valuable contributions to Australia, are the children of immigrants who would have had no chance of satisfactorily completing the kind of purely factual "knowledge of Australia", and formal. written, computer-based English language test now proposed; and who may well have shared Australian values, but would have had little chance of demonstrating that in that sort of test, no matter how many times they were permitted to sit it?

Neither multiple sittings, nor reading questions aloud, sufficiently address discrimination in a formal, written test.

36. The proposed addition of a requirement under subsection 21(2A), that "[p]aragraphs (2)(d), (e) and (f) are taken to be satisfied *if and only if* the Minister is satisfied that the person has…successfully completed [an approved citizenship] test" (emphasis added) will discriminate against certain prospective citizenship applicants.

37. Successful completion of the test should not be the only possible way of satisfaction of the criteria under subsection 21(2) as proposed under subsection 21(2A).

38. Proposed section 21(2A)'s failure to provide for exemptions is contrary to CERD's recommendation that parties to ICERD '[e]nsure that particular

groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents.'[18]

39. The comments in the second reading speech that a person 'will be able to take the test as many times as required in order to pass'[19] are welcome, but the ability to sit multiple times will not entirely alleviate the discriminatory impact of the compulsory test.

40. In his second reading speech, the Minister conceded that "there will be some people who do not [have], and may never have, the literacy skills required. In these special cases," he said, "it is proposed that the test administrator read out the test questions and possible answers to the person".[20]

41. Like permission for multiple attempts at the test, this certainly appears to be possible by determination of the Minister under the catch-all provision of proposed subsection 23A(6): "A determination under subsection (1) [approving a citizenship test under the general eligibility provisions] may cover any other matter related to the test the Minister thinks appropriate".

<u>Claims that the Bill would permit approval of more than one test have no support in the Bill.</u>

42. However, the Minister went on to say: "The Bill also provides the flexibility to approve more than one test should different arrangements need to be made in the future for certain prospective citizens". The

[18] Committee on the Elimination of Racial Discrimination (2004), General Recommendation 30 (Discrimination against non-citizens), [13].
[19] Kevin Andrews MP, 'Australian Citizenship Amendment (Citizenship Testing) Bill 2007: Second Reading, 4.
[20] *Ibid.*

Explanatory Memorandum also claims that the Minister may approve more than one test,[21]

43. The Minister does not identify which provision in the Bill "provides the flexibility to approve more than one test", nor is that at all clear.

44. On the contrary, proposed section 23A, which provides for the approval of a test by the Minister is entirely in the singular. It provides for the approval of "*a* test", subsection 23A(1) (emphasis added), and then shifts to the definite article, referring to "*the* test" (emphasis added), always in the singular.

45. The Bar does not see anything in the Bill that would authorise the approval of more than one test.

46. The Bar sees no difficulty in the form of test described in the Minister's second reading speech, namely that:

> The test is expected to be computer based and consist of 20 multiple-choice questions drawn randomly from a large pool of confidential questions. Each test is expected to include three questions on the responsibilities and privileges of Australian citizenship. The pass mark is expected to be 60 per cent including answering the three mandatory questions correctly.

47. Such a test would, in the Bar's view, be a single test, albeit "randomly drawn from a large pool of confidential questions", within the authorisation of approval of "*a* test" under proposed subsection 23A(1) (emphasis added). That is entirely different from "more than one test should different arrangements need to be made".

Different tests would raise problems of selective exclusion.

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[21] *Australian Citizenship Amendment (Citizenship Testing) Bill* 2007, Explanatory Memorandum clause 17.

48. However, if the Explanatory Memorandum and the Minister's second reading speech are correct, the prospect of multiple different tests raises the spectre of history – the "White Australia Policy" and the selective use of different language tests to exclude immigrants of colour.

49. The *Immigration Restriction Act 1901* prohibited immigration of 'Any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in an European language directed by the officer.'[22] The immigration officer had the power to nominate a language with which the immigrant was unfamiliar.[23] Notoriously, that was done with prospective immigrants of colour.

50. Proposed subsection 23A(1) leaves the form and substance of the proposed citizenship test entirely in the hands of the Minister: "The Minister must, by written determination, approve a test".

<u>A Canadian review recommends that determinations not be by the Minister.</u>

51. In Canada, there are regulations under the Act that enlarge on what is to be in the test – see paragraphs 17-19 above. In the United States, in terms of the language requirement for citizenship, the statute itself provides the guidance that 'no extraordinary or unreasonable conditions shall be imposed upon the applicant.'[24]

52. This Australian Bill gives the Minister no guidance beyond the provision in subsection 21(2A) that it is to test the matters in subsections 21(2)(d), (e) and (f).

53. A 2004 Inquiry into the Canadian citizenship laws, which also leave such matters for determination by the Minister, recommended that "All

[22] Section 3(a) *Immigration Restriction Act 1901.*
[23] http://www.immi.gov.au/media/fact-sheets/08abolition.htm.
[24] See *Immigration and Nationality Act* s 312(a)(1).

determinations under the Act should be made by an independent decision-maker in a judicial process free from political influence".[25]

The Bill provides for an additional layer of exclusion by eligibility criteria, not in the statute or reviewed by Parliament, for sitting the citizenship test.

54. Proposed subsection 23A(3) empowers the Minister to establish eligibility criteria a person must satisfy in order to sit the test. This may result in individuals or groups being precluded from sitting the test.

55. Subsection 21(2A) makes successful completion of the citizenship test a compulsory prerequisite to an application for citizenship under the "general eligibility" alternative because it requires that "before making the application".

56. Consequently, denial of eligibility to sit the citizenship test wholly excludes that person from even making an application for citizenship under the general eligibility criteria of subsection 21(2).

57. The Minister's power under proposed subsection 23A(3) to establish eligibility criteria for sitting the citizenship test is entirely open ended. Proposed subsection 23A(5) expressly states that the power is not limited to the permanent residence and identity criteria under subsection 23A(4).

58. Neither the Explanatory Memorandum nor the Minister's second reading speech give any clue as to the rationale for such wide exclusionary power in the Minister, or what other criteria than those of permanent residence and identity named in proposed subsection 23A(4), might be contemplated.

[25] *Updating Canada's Citizenship Laws: Issues to be Addressed* (2004).

59. There are, as the Act stands, no eligibility requirements for lodging an application for citizenship. Section 21 (1) provides simply that "A person may make an application to the Minister to become an Australian citizen". Why should there be? The Act sets out what is required for "eligibility to become an Australian citizen", and provides, in section 24(2), that the Minister "may refuse" the application, "despite the person being eligible to become an Australian citizen" under the earlier provisions.

60. What is the justification for an additional layer of exclusion from sitting the test, and thus from even applying for citizenship under the "general eligibility" provisions of section 21(2)?

61. And what is the justification for the eligibility criteria for taking the test not being set out in the statute, but left entirely to the Minister?

<u>The Bill excludes alternatives to the citizenship test such as the current AMEP language and citizenship courses.</u>

62. Under the current system, applicants may demonstrate a basic knowledge of English through providing evidence of having completed language tuition with an AMEP provider, [26] and may demonstrate 'an adequate knowledge of the responsibilities and privileges of Australian citizenship' through having completed the AMEP citizenship course.[27]

63. The Bill makes no provision for the retention of these alternatives, which have received support from migrant groups and human rights organizations as a more desirable alternative to a test, which would be better adapted to achieving the aim of assisting social cohesion.[28]

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[26] See chapter 5 *Australian Citizenship Instructions,* abbreviated version available online at http://www.citizenship.gov.au/_pdf/aci/CHAPTER_5-conferral.pdf, 9.
[27] See chapter 5 *Australian Citizenship Instructions,* abbreviated version available online at http://www.citizenship.gov.au/_pdf/aci/CHAPTER_5-conferral.pdf, 10.
[28] See for example Human Rights and Equal Opportunity Commission (2006) 'Submission of the Human Rights and Equal Opportunity Commission to the Citizenship Taskforce

64. The unambiguous exclusivity of the citizenship test ("if and only if…the person…successfully completed that test") would clearly exclude those alternatives.

65. By way of comparison, the UK has maintained alternatives to its citizenship test. The British Nationality (General) Regulations 2003 expressly provide that applicants for citizenship in the UK whose knowledge of English is below level 3 English for Speakers of Other Languages (ESOL) will satisfy the requirement that they have sufficient knowledge of the English language and sufficient knowledge about life in the UK by attending an ESOL course rather than by sitting the 'Life in the UK' test.[29] The UK regulations also provide that these requirements are satisfied where, in the case of persons 'ordinarily resident outside the United Kingdom, a person designated by the Secretary of State certifies in writing that he has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom for this purpose.'[30]

<u>The Refugee Convention requires facilitation of assimilation</u>

66. A mandatory citizenship test neglects Australia's obligations under Article 34 of the Convention relating to the Status of Refugees to take steps, 'as far as possible, to facilitate the assimilation and naturalization of refugees'.[31] Requiring refugees to sit a formal test, while disallowing alternative avenues to citizenship, does not assist but in fact hinders their naturalization and hence their assimilation because if refugees are

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(Department of Immigration and Multicultural Affairs) on the Discussion Paper 'Australian Citizenship: Much more than a Ceremony', (September 2006), 10; Refugee Council of Australia (2006) 'Response to Australian Government discussion paper: *Australian Citizenship: Much more than a ceremony',* November 17, 2006, 6.

[29] Regulation 5A(1)(a) of the British Nationality (General) Regulations 2003, inserted by s 5A(1)(a) The British Nationality (General) (Amendment) Regulations 2005.

[30] Regulation 5A(1)(c) of the British Nationality (General) Regulations 2003, inserted by s 5A(1)(a) The British Nationality (General) (Amendment) Regulations 2005.

[31] Article 34 'Convention relating to the Status of Refugees' (Geneva, 28 July 1951), Entry into force for Australia and generally: 22 April 1954, Australian Treaty Series 1954 No 5.

unable to gain citizenship they will consequently be denied full access to the rights available to citizens.

67. Proposed section 21(2A) does not adequately address the CERD Recommendation that State Parties '[t]ake into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles.'[32]

Proposed amendment to section 2A

68. The proposed addition to the simplified outline of the Act in section 2A, "You *may* need to successfully complete a citizenship test" (emphasis added) could be more sharply focussed to make it clear that, for most applicants for citizenship by conferral, successful completion of a citizenship test is required because most applicants will be under the "general eligibility" provisions of subsection 21(2) – that, in practical terms, the test is more than a mere possibility ("you *may* need to").

69. The section 2A simplified outline in relation to citizenship by conferral could also be clearer in relation to "general eligibility" being a discrete alternative to specific provisions, and not of general application to all applicants for citizenship by conferral – for example, that applicants under 18 or over 60 years of age are covered by self-contained alternative provisions and not required to satisfy the "general eligibility" provisions.

70. An alternative amendment would be the following substitution for the paragraph to be omitted (only slightly modified from the substitution in the Bill):

[32] Committee on the Elimination of Racial Discrimination (2004), General Recommendation 30 (Discrimination against non-citizens), [15].

> The third is citizenship by Conferral. Generally, to apply for citizenship by conferral, you would need to be a permanent resident and willing to make a pledge of commitment. Most applications for citizenship by conferral are under the "general eligibility" provisions, which require successful completion of a citizenship test. There are a number of alternative eligibility provisions for specific classes of people, for example those under 18 or over 60 years of age, which do not require completion of the citizenship test. Citizenship by conferral is covered by Part 2, Division 2, Subdivision B.

Conclusion

71. The vesting of absolute power in the Minister in all respects of the proposed citizenship test, with almost no guidance in the statute raises serious concerns, particularly in light of the Minister's second reading speech indication of an emphasis on "values" in the test.

72. The provision for an additional layer of exclusion from sitting the test, that would exclude a person from ever making an application for citizenship is cause for, perhaps, even greater concern. The barriers to citizenship, even to being able to apply for citizenship, this Bill would permit have the potential to prevent people from being able to participate in society even on the most basic level.[33]

73. Until very recently the government celebrated the inclusiveness of Australia's citizenship policy[34] and proposed that the citizenship eligibility requirements should not be made more difficult.[35] There is no indication that there has been a sudden citizenship crisis or any changes warranting drastic and potentially discriminatory measures.

[33] It denies applicants their right to a nationality as enshrined in the Universal Declaration on Human Rights Article 15.1.
[34] See Australian Government (2001) 'Australian Citizenship…A Common Bond: Government Response to the Report of the Australian Citizenship Council', 4.
[35] Ibid, 7.