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AFFAIRS

Reference: Australian Citizenship Amendment (Citizenship Testing) Bill 2007

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

Monday, 16 July 2007

Members: Senator Barnett (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Kirk, Ludwig, Parry, Payne and Trood

Participating members: Senators Allison, Bernardi, Bob Brown, George Campbell, Carr, Chapman, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fifield, Heffernan, Hogg, Humphries, Hurley, Joyce, Kemp, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McGauran, McLucas, Milne, Murray, Nettle, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Watson and Webber

Senators in attendance: Senators Barnett, Crossin, Hurley, Kirk, Nettle and Parry

Terms of reference for the inquiry:

To inquire into and report on: Australian Citizenship Amendment (Citizenship Testing) Bill 2007

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Committee met at 9.06 am**KULASINGHAM, Mr Mark, Director, Federation of Ethnic Communities Councils of Australia****MESSIMERI-KIANIDIS, Ms Voula, Chair, Federation of Ethnic Communities Councils of Australia****WONG, Mr Sam, Chair, Canberra Multicultural Community Forum Inc.**

CHAIR (Senator Barnett)—Welcome. This is the first hearing of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007. The inquiry was referred to the committee by the Senate on 13 June 2007 for report by 31 July 2007, and the bill amends the Australian Citizenship Act 2007 to provide for the testing of prospective applicants for Australian citizenship by conferral. The committee has received 56 submissions for this inquiry. All submissions have been authorised for publication and are available on the committee's website.

I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question the witness should state the ground on which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, the witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

The Federation of Ethnic Communities Councils of Australia has lodged submission no. 51 with the committee and the Canberra Multicultural Community Forum has lodged submission no. 46 with the committee. Do you wish to make any amendments or alterations to those submissions?

Mr Wong—No.

Ms Messimeri-Kianidis—No.

CHAIR—I invite you to make a short opening statement and at the conclusion of that we will open up the opportunity for questions from members of the committee.

Ms Messimeri-Kianidis—Thank you very much for the opportunity to make a submission to this inquiry, which we welcome and have called for. The Federation of the Ethnic Communities Councils of Australia is a representative body and a peak body representing multicultural communities around Australia. Our members are of the view that a citizenship test for Australia is not needed. We believe that Australia has been well served in the past with arrangements the way they were. They were inclusive. There was a basic English test that

sufficed for people to demonstrate that they had a willingness to embrace values and acquire English in order to achieve citizenship.

It has been proven in the past that Australian citizenship is very much valued by the people who arrive on these shores. Evidence of this is the very high levels of citizenship that have been taken up by groups, particularly from non-English-speaking backgrounds. As we know, those least likely to take up citizenship are people from New Zealand and the United Kingdom. Certainly people from non-English-speaking background countries value and embrace Australian citizenship because often they have fled from areas of trauma, war, and they need and want the certainty that citizenship provides.

With that sort of background, we were dismayed at the introduction of a formal citizenship test, especially one that is touted to be a formal, computerised type of test that seeks perhaps to advantage those people who are university or high school trained, English speakers. It may disadvantage and put obstacles in the way of non-English-speaking background people and, in particular, people who are refugees, humanitarian entrants and those who come under the family reunion and may not be from an English-speaking background. Our particular concerns are for those people that have low literacy levels and because of traumatic situations may find it very difficult to achieve the level of English required to pass a formal citizenship test. With those introductory points, we call for a spelling out in any legislation if there is going to be a citizenship test about exclusions for people who fall into those categories that we are concerned about.

As we know, Australia has an increasing level of skilled migration and international student intakes, and many of those students apply for and obtain Australian citizenship. That is a welcome thing for Australia, particularly given our skills shortage. Our concern is not with those people, because we feel that anybody who has gone through university or high school can read through a little booklet, assimilate information and be able to sit and pass a test; our concerns are with refugees, humanitarian entrants and family reunion people with low literacy levels and from traumatic situations.

CHAIR—Thank you for that.

Mr Wong—Good morning. Thank you for the opportunity to be here today, representing the Canberra Multicultural Community Forum, to provide some feedback on this amendment to the citizenship legislation. The CMCF represents the needs and aspirations of the Canberra multicultural community, and we celebrate the achievements of the entire community and foster a spirit of cooperation and harmony. In this role, our key responsibility is to support multicultural communities and people who have experienced the refugee and migration process as well as the broader ACT community.

We recognise the important role of citizenship, both in what it represents and the rights it grants. However, the proposed changes to Australian citizenship will have a negative impact on the multicultural community and the broader ACT community and therefore the CMCF does not support the bill. This is where we align ourselves closely with the Federation of the Ethnic Community Councils and the previous speaker.

The amendment of the Citizenship Act is a significant policy change in the Australian government's approach to citizenship. The CMCF have deep concerns about the introduction

of a citizenship test. We are also worried about the lack of consultation in developing such a test and the ongoing lack of transparency this legislation will cement. The second reading speech says:

The test will encourage prospective citizens to obtain the knowledge they need to support successful integration into Australian society.

The CMCF disagrees. The test will not contribute to the government goal of instilling Australian values or helping migrants to integrate and maximising the opportunities available to them. It is unreasonable to suggest that a short, written, multiple-choice exam will test whether the applicant would be a good citizen rather than just test rote learning. The design and structure of any proposed test should be transparent, objective and open to public consultation and both public and parliamentary scrutiny. The content of the test should not be at the discretion only of the minister. While it could be argued that it would be appropriate to test citizenship applicants on their English skills and understanding of citizens' responsibilities, the suggestion that Australian values can be tested based on the view of a single minister is totally undemocratic. It is almost impossible to draft questions to test Australian values, particularly concerns like mateship, respect for freedom or commitment to democracy. Testing people on common values, which implies that there is only one set of Australian values and one type of Australian citizen, undermines the vital role that multiculturalism and diversity play in Australian society. A person's interaction with and contribution to the Australian community over time, particularly now the period of permanent residency has been extended, is a better gauge of good citizenship than any quiz. The proposed test could result in an individual who may have made meaningful contributions to Australia over the past four years missing out on citizenship because of their poor literacy or memory skills.

The CMCF strongly advocate continued commitment to multiculturalism, and we share the strong concerns about the introduction of a citizenship test that many groups such as FECCA have. Multiculturalism has been a cornerstone of the development of our nation. It has enriched and shaped our society throughout our short history, creating the Australian way of life. The proposal to place another barrier in the path of gaining citizenship is an insult to the positive impact that immigration has had on Australia. As the proposed test will prevent some people from gaining the rights of citizens, we should, therefore, look at it from a human rights perspective. People with a disability, those who have low literacy levels, people who have experienced torture or trauma and those who have fundamentally different beliefs are likely to be discriminated against by the test. Consistent with our attitude of a 'fair go for all', Australia as a nation has always valued diversity, inclusiveness and tolerance. These values, rather than a one-off quiz or test, are more likely to lead to the social unity that the government is seeking to achieve.

The introduction of a citizenship test is not an efficient use of public resources, as we stated in our submission. There are more practical and effective ways of using funds that will be spent on developing, administering and monitoring the proposed test—for example, on English language classes, ongoing community integration programs, employment skills programs, community support services, reciprocity programs—such as volunteer and community participation agreements—or a range of social cohesion or education programs.

The focus of any citizenship funds should be on ensuring successful settlement and on ongoing support to ensure good citizenship, rather than on one-off multiple-choice tests.

In conclusion, CMCF agree that Australian citizenship is much more than a ceremony. A multiple choice test would not change that. Australian citizenship is an opportunity to embrace the Australian way of life, which is different for all of us. Giving one minister the power to determine what is the Australian way of life and what values are Australian or un-Australian is the key issue for the Canberra Multicultural Community Forum. For all of these reasons the CMCF does not support the bill. Thank you for the opportunity to speak.

Mr Kulasingham—Some of the concerns that FECCA has in relation to the bill and the provisions are the ambiguity of the description of how the test will be conducted and of the structure of the test. We feel that there should be more public consultation into more practical questions that should be asked as opposed to the ones that it is rumoured will be asked. From my experience with migrants from the subcontinent, the most pressing issues that citizenship aspirants look for include such things as how to familiarise themselves with the Australian way of filling out a form, renewing their drivers licences, and knowing when something expires, like your Medicare card. We say that if the test is going to progress in that form, they should be tested on things like that—things that have practical uses for their lives in Australia.

Senator HURLEY—One of the justifications for bringing in English tests is that, in contrast to the big waves of immigration that occurred after the Second World War and during the fifties and sixties, English is now a more important requirement for getting by in our society. Would you agree with that and would you see that as a justification for introducing this test?

Ms Messimeri-Kianidis—Employment is now found in information technology and in much more sophisticated areas than, say, in the fifties and sixties, when my parents came to Australia and worked in factories. FECCA accepts and welcomes the focus of government on English acquisition and that needs to be stated without a doubt. What we take issue with is that that is then linked to the acquisition of citizenship. We do not feel that the two are necessarily synonymous. We support and actively encourage measures by governments—both state and federal—to devote as many resources as possible in as flexible a way as possible to ensuring that, while people may enter employment at a low skill level, they will have every opportunity to acquire English. This will enable them to get employment in their own professions—if they have got qualifications from overseas—and/or acquire English so that they can be competitive in the wider market. But linking that to citizenship is not something that we welcome. We are particularly concerned about people who may be from a non-English-speaking background and who may not have formal schooling. If you were a refugee from the Sudan who had spent the last 15 or 20 years in a camp with no formal education, learning English is sometimes going to be a life long journey. There are some migrants in Australia who have been here for 30 or 40 years but, because they have worked in unskilled industries, they have not been able to acquire English at a level that is sophisticated enough to enable them to answer the sorts of questions that we have been seeing in the newspapers. While we welcome a focus on English, we do not believe it needs to be linked into a citizenship test. The capacity to become a good and meaningful and productive citizen is not dependent only on the level of English that you have.

Senator HURLEY—There is a proposal to exempt people who are over a certain age and for particular arrangements for people who are illiterate. Nevertheless, will people whose English is, as you described it, difficult, be put off? How do you see it working?

Ms Messimeri-Kianidis—First of all, we have not seen any detail around what those exemptions might look like. There are some rumours—for instance, that the sort of exemption that may be available is that, instead of a person needing to sit behind a computer, reading and answering in a computer way, a department official may stand next to them and read the questions out in English. I do not think that is an adequate level of exemption, and it needs to be teased out, especially if you are talking about a woman who came here as a refugee from Africa, for example. If she has nine or 10 children, which is often the case for women from that part of the world, she may have a need to work straightaway. She needs housing and to look after the children. English is not going to be part of what she is necessarily able to tackle in the first few years of settlement. That person should not be denied the opportunity to become a rightful citizen of this country. We believe that citizenship is important and that no person should be denied that, particularly because of hardship.

Mr Wong—I fully support what Voula is saying, but there is another aspect of having this tacked on English test a prerequisite for citizenship. This English test is not a competency test. What we are talking about here—the objective, if I read the legislation properly—is using the English test to confirm that they know Australian values and that sort of stuff. I think it is sad if you look at that as something more like a job related English proficiency test, because basically we are talking about whether the person will be a good citizen or not. This is what the bill is all about and this test is what I call an indicator for that.

The sad part of all this is that I have not seen any published data from government and so on suggesting that people lacking English are not good citizens. I would be happy to look at that more closely, but the reverse is true: a lot of people who do not speak very good English are very good citizens. They pay their tax, they do their social capital work and they are good corporate citizens. There are many fine examples of that, I am sure. I do not want to repeat it to the learned senators here—you come across it in your constituents on many, many occasions.

Last but not least, I would like to point out something I have read. I picked up this book last night. I could not sleep—I was very nervous, I must confess. This morning when I could not sleep I walked around the house and looked at this book. It talks about Australia and China, and I am ethnic Chinese. I am a Chinese Australian; therefore, I am interested in that. This book was given to me when I first arrived here in the seventies by a very elderly, senior person who had been living in Australia for the last 20 years, in Melbourne. He showed it to me. It is about what happened between Australia and China for this whole period of history. When I opened the book last night, one of the things that struck me—I nearly cry when I read through it—is that the first legislation introduced by Australians after Federation, 1901, was the Immigration Restriction Act. What is this act all about? It talks about the same thing. People who want to be part of Australia need to take a European language test.

I will read to you, if I may. The book is called *Australia and China: The Ambiguous Relationship* and it is by Andrews from the University of Newcastle. It talks about the European language test: ‘The number of people who passed this test fell from 33 in 1902 to

13 in 1903, one in 1904, three in 1905 and none in 1907, and one each in 1908 and 1909, when the last person passed the test.' That came from a book about the documentation of our forebears, about the introduction of the Immigration Restriction Act. It was considered quite okay at the time. It was fair. Everything was okay at that point in time, back at Federation. But is it okay now that we look at it? No. But the same thing applies here, if you look at it on a more constructive basis.

Senator KIRK—Thank you for your submission. I want to explore with you the exemptions you speak of. There have been suggestions that there might be exemptions on the basis of age but it seems to be limited to that. You say on page 6 of your submission that the exemption should be spelled out explicitly in the act and made known to the applicants prior to their sitting the test. How exactly do you envisage that this would occur? You mentioned the various categories of people who no doubt will be disadvantaged by this citizenship test. If it is a matter of setting the boundaries, how do you define the categories of persons who, in your view, ought to be exempted? Or should it just be done on more of an application basis—where you make an application that you have certain difficulties or disadvantages and then it is left to the minister or some other official to make a decision?

Mr Kulasingham—Our concern with the language in the bill was that the word 'may' was used in the line, 'You may have to take a citizenship test.' While we are certain that the government will objectively cover the people who would need to be exempted—the elderly, the young and those people who would not be able to take a test—we are concerned that the ambiguity of the wording means that, for example, a business migrant could be waived from having to take a citizenship test. We are not sure if that is spelled out accurately in the bill and we would like to see some more detail on that.

Senator KIRK—That is kind of the opposite to what I was thinking of. You are suggesting in that case that the person ought to be required to take the test. I am thinking more of the socially disadvantaged and about what the process should be for a person who has difficulties yet still wants to become a citizen. Is it just a matter of their applying for an exemption or should the act actually list the criteria? How do you do that?

Ms Messimeri-Kianidis—Our concern is that a lot of people who would feel uncomfortable about any testing at all, particularly if they have a low level of literacy, will not apply for citizenship but will self-select out. Part of the deep concern we have about the introduction of a formal citizenship test is that it will create a two-tiered society, with the people who have been accepted into this country under humanitarian refugee settlement schemes in one tier. Australia is a welcoming and tolerant country in regard to its international obligations but, once we have accepted people as permanent residents, as opposed to having full citizenship, they will forever stay within that limbo.

I do not have a clear answer to your question, but it seems to me that people who have low levels of literacy even after going to classes and attempting to learn English should be able to apply for an exemption and use what there is at the moment—a basic English test showing their willingness to embrace Australian laws and to live in peace and harmony and to work for this land and for this society. We believe that those people should be able to pass the cursory test that already exists. That is why we do not approve of a more formalised test. The current test is done in a non-bureaucratic way. People can have somebody there from their family to

perhaps help them through up to a certain extent rather than sitting for a formalised high school or university entrance type of exam. Our concern is for women of a non-English-speaking background and refugee women, in particular, because they have the huge burden of settling in this country. It is well-documented that it takes a long time to acquire the basic needs to look after yourself and your family here.

Mr Wong—A nation like Australia is not about how to make the rich and powerful happier or how to give them stronger status. That is why I came to Australia and why I am proud to be an Australian. We should look after the weak and the socioeconomically deprived. Therefore, I think that having this test would not be a good thing.

Senator, going back to your question, it is spot-on, and one I would like to ask as well. So far we have not got any evidence as to how those groups will be affected. The department or the minister who introduced this bill should have given clear information on how those groups are going to be affected—how many people, based on the current intake of immigrants and the number of people who apply for citizenship. I have not seen any of that data. We are postulating and, as our federal chair said, we do our best from the non-government side to give you the best information. The government, if they introduce the bill—and your learned senators are here; I am glad they are here—should determine how many people will be affected and what sort of assistance they should be given. As a non-government organisation, we would be delighted to work with you guys provided we have that information because we are not funded to get that information from the government.

Senator KIRK—Hopefully, we will have the chance later on this morning to ask the department about a number of things you have raised.

Mr Wong—We are very grateful for that.

Senator KIRK—On page 7 of your submission you say that—this is FECCA—your consultations:

... returned opinions that any proposed test, if implemented, should be simple and limited to practical aspects of Australian life that will benefit all new citizens encompassing questions that existing Australian citizens would have a reasonable chance of answering correctly—

What was the nature of the consultations that you undertook? Was it a formal process of consulting the people you serve?

Ms Messimeri-Kianidis—Very much so. The federation is made up of each of the state and territory bodies and they, in turn, have membership—say, in Victoria, there are about 130 member organisations and some of those organisations have a membership of up to 50,000 or 60,000 people in their own right.

Senator KIRK—So you did a formal consultation.

Ms Messimeri-Kianidis—There was a formal consultation in each of the state and territory bodies and that information was fed to FECCA.

Senator KIRK—Were you consulted by the government in relation to this; by the Department of Immigration and Citizenship?

Ms Messimeri-Kianidis—We put in a paper to the initial discussion paper.

Senator PARRY—On page 7 you have set out some model questions which you feel would be ideal questions if a test were to be implemented. I gather from that that you are implying that you are not objecting to a set of questions as long as the questions are fair and relate more to citizenship applications than to general knowledge, if I can use that as a framework. The methodology of asking of the questions is also of concern. Again, you are comfortable with questioning, providing questions are asked in the right way for those people who do not have the skills to operate a computer to answer questions or people who need assistance for a variety of reasons. Given the two points I have just made, my question is: is it about methodology and content?

Ms Messimeri-Kianidis—We are trying to be constructive. Initially FECCA's preference and that of its members is that there be no citizenship test for the reasons we outlined. However, we are trying to be constructive around this process. If a test regime is introduced and implemented, then we would like to see something simple and practical, rather than the type of questions that were printed in the papers. We outlined those areas because there is a process of pre arrival and upon arrival settlement programs, particularly for non-English-speaking background people, through migrant resource centres and other settlement organisations. These programs introduce new arrivals, migrants and refugees to aspects of necessary skilling, if you like, in order to live in Australia, be safe in a new country and take up opportunities but they also introduce them to their obligations as residents of this country. That is why we included those areas, rather than other things out of the box.

In terms of methodology we are very much aware that people who may not have had any formal education would find, even after four years of living in Australia if they are unskilled people, working behind a computer in a formalised scenario very difficult and confronting and, therefore, they would probably choose not to present for citizenship. If a test goes through, it needs simpler, more practical questions and a methodology that is not confronting and that would make it okay for people to be able to present for and, therefore, have half a chance of passing a test.

CHAIR—I will get some clarity from witnesses about your understanding of the requirement for a knowledge of English. The department and others suggest that it is not a new requirement. It has been in the Australian Citizenship Act since 1949, I understand. Is that your understanding? What is so different about your argument under this legislation?

Mr Kulasingham—When I applied to migrate to Australia I was interviewed by a High Commission official in Kuala Lumpur who spoke to me in English. Basically, I was evaluated to see how I could answer the questions regarding my application. When I applied for Australian citizenship I was given the same interview by a department official. At both times I knew they were assessing my ability to understand the questions that were being asked—I apologise that I cannot remember the exact questions; it is a while ago. We believe that is sufficient, because it gives an objective consular or department official enough indication of whether a person understands what they are applying for or what they are doing. FECCA feels that an English test probably would be a disincentive to anyone who was, as Voula outlined earlier, concerned about their level of English.

CHAIR—Do you accept that it has been a requirement since 1949 to have a basic knowledge of English?

Mr Kulasingham—Yes.

Ms Messimeri-Kianidis—Yes.

Mr Wong—I went through those tests in 1977—I was a bit younger then, of course. The test at that time was very friendly. Usually the person interviewing basically talked. It was not a test; it was an interview. It was a much warmer and very courteous environment, and the questions were put to us in a very mild and very friendly manner. If you start having a test in an environment using a desktop or online computer, it is a different kettle of fish. I agree with you, Senator, about checking proficiency of general knowledge in English. But the test has never been seen by me—I would like to be corrected—as a proficiency test. Rather, it is an interview process with two-way communication to make sure that things on the application are correct, and so on.

CHAIR—Thank you. I want to ask a quick question about consultation because you expressed some concern in regard to the consultation process and I am seeking clarity. You made a submission to the government's discussion paper and had some consultation. I am of the understanding that it was released in September last year and the government announced its intentions in December last year following that consultation. I am also advised that there were over 1,600 submissions, which is quite a lot. Most people would suggest that is a lot of consultation, but is it your view that it was inadequate?

Ms Messimeri-Kianidis—The point we were making was about consultation around any proposed questions and the impact of it. I want to make a point also about the level of submissions. I have not gone through every submission that was made, but it is said that 60 per cent of them were in favour of a citizenship test. There are some questions about the weighting of some submissions. If a submission came from a local government, for instance, that represented 200,000 people and said no to citizenship testing, does it have the same weight as a submission from an individual that may say that they are in support of it? We had some questions of that sort around the process.

CHAIR—So you dispute the fact that a majority of Australians support a citizenship test?

Ms Messimeri-Kianidis—I think there may be some room to have look at those submissions in light of the level of representation of some of the submissions that were against a formal citizenship test.

Mr Wong—I think you have asked a very good question about so-called consultation and having 1,600. This is what we put in our submission and we did check the numbers and so on. So many people wish to voice their opinions about this situation but, interestingly enough, I have not seen any very selective group come and talk to you in Canberra. I would have thought that there would be more face-to-face consultation in some of the smaller towns and rural areas than capital cities and also people—not like me—speaking to you. In fact, I am a bit scared to speak in such an environment but I am doing it anyway. If Australia is to be genuinely democratic, we should at least spend a bit of time on this. This paper came out in November and we did everything we could to provide information. Now it is July. For such an important cornerstone of our immigration policy to be rushed through before the election, I do not think the consultation process has been comprehensive or supported by the majority. I am talking about the process.

CHAIR—Thank you very much for your submission. Senator Crossin is on the telephone.

Senator CROSSIN—Hello, everybody. I think my question is the same as what the chair asked but I wanted to clarify it with people who were there. I am failing to see how the proposed new testing regime will be an improvement on the existing informal interview that you have mentioned consistently throughout your evidence today. I think some of you touched on this when you went through your own experiences, but I have not seen or heard any evidence where the existing process of defining citizenship is flawed in any way. Have any of the members of your community organisations come to you and said, ‘I went through this process and it’s flawed and it needs changing’? Have any people made that sort of request of you?

Mr Kulasingham—Not in my experience. I work with a lot of the subcontinent migrants and many of them have sailed through the system and have said there is no need for a change. The ones who are currently permanent residents are fearful. They think it is a disincentive. They would rather remain permanent residents than step up towards the citizenship plate.

Mr Wong—I concur with my colleague. I have not heard anything from the Chinese community, in which I have a lot of connections here in Canberra, other than what you have just confirmed. Interestingly, those people in the FECCA submission speak a lot of English as they are from New Zealand and the United Kingdom. They are not likely to become citizens. I am not sure this is a reflection of their loyalty or patriotism.

CHAIR—I thank the witnesses for their evidence, We appreciate it very much.

[9.50 am]

MICKLETHWAITE, Ms Beth, Senior Research Officer, Australian Christian Lobby

YATES, Mr David, National Chief of Staff, Australian Christian Lobby

CHAIR—Welcome. Do you wish to make any amendments or alterations to your submission?

Mr Yates—No.

CHAIR—I now invite you to make a short opening statement at the conclusion of which I will invite members of the committee to ask questions.

Mr Yates—We appreciate your time. I am sure you have had a quick read of our submission, and there are about four or five things we want to comment on. In principle, we support the change. It is right and appropriate that immigrants who wish to become Australian citizens should expect to learn something about our history and culture before citizenship is conferred upon them. Such a process, we believe, would assist immigrants to understand something about the new country they are moving to and therefore help them to play their part in Australia's future. We also strongly support the minister's comments that applicants should be required to acknowledge Australia's Judaeo-Christian heritage. This does not require prospective citizens to share this faith in particular but it should be made clear that it is something factual about this country. We think this is a vital part to put in the test.

Beyond this in-principle support, we noted a number of other things—I think they have been answered subsequent to when we put this submission in. The fees charged to sit the test are now at \$240—at the time we were not aware of that. That is a fair price, so it is probably not going to exclude too many people from applying to do it. The *Sun Herald* earlier in the year printed a number of questions; I am not sure whether they were the actual questions or whether the immigration minister leaked things. The answers to some of those questions seemed ambiguous. If you are going to have multiple-choice questions, we would strongly urge that you make one answer very clear and the others absolutely wrong.

There is a requirement for the basic understanding of English. I assume that if people are going to sit the test they will have that basic understanding. We note the concerns of various other Christian groups that it may marginalise some people but at least it provides a benchmark if you are going to become a citizen. I think it has been the same since 1947. There should at least be a competent understanding. That is a good requirement. Again, this is not necessarily a concern but a point of note: we believe that some natural justice should be observed in the testing process and procedures. We understand that the minister just needs to get on with the job sometimes, and not detailing the exact questions or the nature of the questions in the legislation is not necessarily a bad thing. Even if there is a change of government in future obviously we think the questions should not be politicised, but there should be a process—and I assume the department will pick it up—whereby if somebody is having trouble with the test they will get a little help. A booklet is going to be produced that will outline the basic questions; we strongly support that. Even though the questions may not be that transparent, I hope the booklet will cover those issues. Our last point is that it is vital

that the minister approve all the test questions. In summary, our main addition would be strong support for a question which recognises the Judaeo-Christian heritage of the nation.

CHAIR—Thank you for that.

Senator CROSSIN—Who are you representing when you define yourself as the Australian Christian Lobby?

Mr Yates—We are an organisation that has thousands of supporters across the nation. We do not purport to represent a denomination—we are non-denominational. We have officers in each state and one at the federal level as well. We present a broad representative view of our membership.

Senator CROSSIN—I am still trying to get a handle on who you represent. Is it individuals who identify as Christians as opposed to representatives from the Catholic Church or the Uniting Church? Is that right?

Mr Yates—As I said, we do not purport to speak on behalf of a church hierarchy. Our supporter base is very representational; it covers most mainstream denominations. The Australian Christian Lobby is speaking on behalf of its thousands of supporters across the nation, not on behalf of a denomination.

Senator CROSSIN—The current citizenship interview is not so much a test but a process which people seeking to become citizens must undergo. Usually, it includes an interview by someone from the department of immigration. What is it about that that you believe is flawed such that we now need to move to a more formalised system?

Mr Yates—I am not quite sure whether the question of what role the interview will still play in this process has been answered. I am not sure whether it will be superseded by the questionnaire alone. I will say this: I am aware that Holland, the UK, Canada, the USA, South Korea and many other countries already have tests. It seems appropriate to have a range of questions which represent the political structure and the history and some basic things about the country, the culture and the values. I am aware that other countries have had this for a number of years. There does not seem to be any reason why Australia should not move towards that, either.

Senator CROSSIN—They may already be some of the questions that are being asked of people.

Mr Yates—In the interview process? A test does make more objective. In some ways if the department produces a little booklet which explains more about some of the questions that may be asked of prospective citizens of Australia then it is probably a good thing that they have to do a bit of research about the country of which they are going to become citizens.

Senator CROSSIN—There will be some exemptions and the minister will have the discretion to provide a different test or to grant exemptions from the test. What sort of exemptions do you think will be needed?

Mr Yates—We share some of the concerns that have been raised. There should be some exemptions for people, especially those from the humanitarian side, who have a poor understanding of English—for instance, they may have been in the country working a lot and have not necessarily had the chance to learn English to a proficient level. The minister may be

able to not have it necessary for them to go through the normal test. That would certainly be one. We agree with the test, and the minister should have some discretion, we believe, for special exemptions for those people who may not necessarily be able to complete in the normal way.

Senator CROSSIN—Thank you.

Senator PARRY—The final paragraph on the second page of your submission states that 68 per cent of people indicated in the 2001 census that Christianity was their religion. You have said that any questions on social norms should aim to reflect that. I am struggling to think of any questions that would fit. I agree with your comment about minor activist agendas and not being biased towards them. But I do not necessarily agree with your comment that we should be biased towards having 68 per cent of the questions being Christian. Can you expand upon that? What questions did you have in mind?

Mr Yates—I am happy to make some comments. Without actually seeing the questions, it might be hard. But we would be concerned if some of the questions were politicised. We do not want to see that. We would like to see the test sticking to the factual aspects of Australia's history, culture and values. The reasons we have put that in there is to demonstrate that the impact of Judeo-Christianity on the country has been significant. That is a factual element. I am aware that some of the questions may also identify Indigenous issues, but we think that the Christian issues should be put up there as well. Clearly, not everyone in the country is Christian; people who want to become a citizen would not be expected to pass a specific values test. But it is something that should at least be acknowledged.

Senator HURLEY—In my own state, many Christian groups put in a lot of work to assist refugees and understand some of the issues that are facing them, whether the refugees are Christian or of another religion. A lot of the people coming into this country come in under the skilled migrant category. It is undoubtedly the refugees and humanitarian entrants whom we have to be concerned about in this citizenship bill. You mentioned that the English test will require a higher level of English competence than a basic understanding. Are you concerned that some of the refugees and humanitarian entrants will either be deterred from sitting the test or find it too daunting?

Mr Yates—It may. But, with regard to what you are saying about other Christian groups also putting many submissions, I think you will find that the Christian groups are very keen to support the refugees coming into the country. They will also be very keen to help see many of these people gain citizenship. So, whether or not the government is going to help fund those areas, the compassionate and caring nature of the Christian churches will mean that they will assist many of these people to gain an understanding of English and also give them a little more information to assist them with the test. It will encourage more learning about the nation.

Senator HURLEY—So you are suggesting that the volunteer groups might set up English language training courses on this.

Mr Yates—Absolutely. I am sure the government will, but you will find that simply because of the compassionate nature of the Christians and the churches they will want to push an understanding of English and also a correct response to most of the questions that will, I

assume, appear in the government booklet about what the citizenship test will contain. So we are a little concerned. There may be some people who fall through the cracks, but we hope that other community based organisations will try to look after those possibly marginalised people. But overall, in principle, we are not in objection to a citizenship test.

CHAIR—Thank you for your submission. It is very much appreciated. With regard to the point that you have been discussing about the importance of Australia's Christian heritage, you say in your submission that it is important that new citizens be expected to learn something about our history and culture before citizenship is conferred upon them. Then you say that applicants should be required to acknowledge Australia's Judeo-Christian heritage. Why is it important for applicants to acknowledge the importance of Australia's Judeo-Christian ethic?

Mr Yates—Look at some of the tests in other countries. Even in England, which does have an established church, the Anglican Church, they ask who the leader of that church is. In Australia we are not necessarily expecting to see that type of question, but clearly the impact of the Judeo-Christian values on this country is significant. It is factual. We have many people who hold those views. It is even on our notes—our \$5, \$10 and \$20 notes. We are not saying that people have to subscribe to those views, but it is a fact that those values have been the predominant influence within this country. Therefore, it is fair that, even if someone is of another religious faith, at least they acknowledge that.

CHAIR—When you talk about 'influence' in this country, are you talking about influence in the political arena, in business, in our legal system, in education? Can you expand on that?

Mr Yates—We would argue that it is certainly across all areas, particularly law. It is political and even economic. Many of the principles of common law have been based on Judeo-Christian ethics. So we are not saying, necessarily, that everyone in the country is Christian, but it should be acknowledged. If you go to other countries around the world—for example, in the Middle East—it is obvious that they share different values and they make that very clear.

The other factor in Australia is the welfare sector. We are aware that the top 23 of the organisations doing welfare in the country have a Judeo-Christian ethic, very clearly, in their objects—

CHAIR—Are they run by Christian organisations?

Mr Yates—That is right—there are various Christian groups. They have in their objects that they have that heritage. We should be bold and acknowledge it. We should not shy away from it. The minister is keen to make sure that new citizens at least understand where the country has come from, and hopefully they can gain a better insight into some of the values that we share.

CHAIR—Sure. So the point you are making is that that history and heritage has infiltrated Australian values. The point that the minister has made in the bill and in his second reading speech is the importance of applicants understanding Australian values and having a knowledge of Australia. You are saying that that flows through to the Australian values that we want applicants to be aware of.

Mr Yates—Yes, that is right. I will read quotes from John Howard and Kevin Rudd: There does seem to be some bipartisan support for the recognition of this Judeo-Christian heritage. The Prime Minister said:

Judeo-Christian ethics, the progressive spirit of the Enlightenment and the institutions of British political culture have been central to the development of Australian values. Christianity has been an enormous force for good and it has shaped, not only the individual lives of people, but also the character of the nation.

Opposition Leader Kevin Rudd said:

Christianity, both in its institutional and spiritual forums, has had a profound and positive impact on what we call Western civilisation. Western civilisation, of course, is a broader compact than just Christianity itself, yet the connection between the two is not superficial, but profound.

So I think it is vital that, if you become a citizen of Australia, you simply acknowledge that heritage.

CHAIR—Thank you. In your submission you made a point about the importance of having a basic understanding of English. Why is that important? We have had some debate about that this morning. It may be an impediment to people from a non-English speaking background.

Mr Yates—It is exactly the same as most other countries that have tests. Again, Holland, the UK, Canada, the USA and South Korea all require a basic understanding of their own native tongue. We do not see why it should be any different in Australia. We do recognise that there are some people on the humanitarian visa side who may not necessarily have a proficiency in English, but to operate in the country we think it is common sense to at least have a basic knowledge of English. So we strongly support that an outcome of becoming a citizen requires that you do have a basic knowledge.

CHAIR—Thank you. I appreciate that.

Proceedings suspended from 10.09 am to 10.29 am

RUBENSTEIN, Professor Kim, Private capacity

CHAIR—Thank you for the submission you lodged with the committee. Do you wish to make any amendments or alterations to that submission?

Prof. Rubenstein—No.

CHAIR—Would you like to make an opening statement?

Prof. Rubenstein—Thank you for the opportunity to appear here today to present to my written submission. I have prefaced the written submission with several comments that I will now confirm for the record. Between November 2004 and 30 June 2007 I was a consultant to the Commonwealth of Australia represented by the Department of Immigration and Multicultural and Indigenous Affairs—later renamed as the Department of Immigration and Citizenship—in relation to its review and restructure of the Australian Citizenship Act 1948, which resulted in the Australian Citizenship Act 2007. This act came into force on 1 July this year. I want to stress that I have not been involved in any way in the amendment bill to that act. I am commenting completely on my own initiative on the questions that the committee may be considering in relation to that bill.

In my written submission I set out several aspects in my comments which relate to the different ways in which the Senate committee should review this bill. One is the basic policy aspects to this bill, because this clearly is an amendment to the existing act—an amendment to the way citizenship has been conferred since it was introduced on 26 January 1949. So it is a fundamental policy issue that is at stake in terms of the question of citizenship testing and of the nature of citizenship testing. I am not in favour of this form of testing as a way of determining conferral of citizenship—that is, citizenship for those who are not automatically citizens by virtue of birth or descent or by the other forms of automatic citizenship in Australia. In my written submission I have set out reasons that deal with the purposes that are outlined in the government's policy behind the bill, such as improving individuals' understanding of aspects of Australian life, issues to do with Australian citizenship and educational levels in relation to language. My personal view is that this testing is not the best way in which to improve those aspects of citizenship. However, if something like this were to be introduced, I believe that the issues at stake are not only issues for citizens who have been conferred with citizenship but are also fundamental questions about the identity and the membership of the entire Australian community. If something like this is to be introduced, there should be a more fulsome review throughout Australia involving all Australian citizens. It should include their knowledge of Australian issues as well as Australian citizenship issues, which, for the most part, I think most Australian citizens are not very familiar with. An example that I have given in my paper is that, if it is seen as so fundamental to Australian citizenship, perhaps it is something that everyone should be doing before they place their names on the electoral roll.

I also made some comments about the issues paper that was the basis of this new policy development. I raised some problematic issues in relation to an approach to Australian citizenship that includes a statement that Australian citizenship is a privilege, not a right. I explained that it is not such a clear issue that it can be stated in such black-and-white terms. I

also tried to highlight that the legal consequences of citizenship, which people will be required to answer questions about, are similarly not easy and straightforward. So there are some fundamental questions about how one goes about testing those aspects.

Finally, there is the legal structure, which is the most significant legal aspect that I will speak on this morning. As senators can see, this is shell legislation which specifically enables the minister to set up a framework for testing. When it was originally proposed I made some public comments about the fact that the existing act, as it is currently, has a similar requirement and that in order to be conferred Australian citizenship the law says that you need an adequate knowledge of the rights and responsibilities of Australian citizenship and a basic knowledge of the English language. There is already a requirement for those basic notions. The testing framework has been specifically introduced into this legislation in order to strengthen the legal framework for having a testing regime such as this policy change implements. But I am not entirely sure that this shell framework would be sufficient to support a test which went, perhaps, into areas that some would contest as to whether they are fundamental in terms of knowledge of Australia and the rights and privileges of Australian citizenship. For instance, there is nothing in the legislation which sets out the sorts of questions that would be relevant, because that would be difficult in the main structure of the act. But that leaves open to challenge, depending on the nature of the questions—and I do not have them before me—whether those questions fit within the formal structure of the act. Those are open questions, ultimately, until we are given the range of questions that will be involved in that framework.

CHAIR—Thank you.

Senator KIRK—Thank you for your submission. I want to ask questions on the point you were just talking about. I am assuming that you were talking about section 13 of the act and the provision that talks about the criteria, which includes understanding the nature of the application. Is it that section?

Prof. Rubenstein—That is right. That is the former act now, because the new act came into force on 1 July. But the equivalent of section 13 is section 21 of the new act, so application and eligibility for citizenship, which was in section 13, is now in section 21.

Senator KIRK—And it reads the same?

Prof. Rubenstein—It mirrors it exactly. It reads:

2(f) has an adequate knowledge of the responsibilities and privileges of Australian citizenship at the time of the Minister's decision on the application;

and:

2 (e) possesses a basic knowledge of the English language ...

Senator KIRK—So the point that you are making there is that, depending on the nature of the questions, the questions may not come within the scope of that provision.

Prof. Rubenstein—That is right. There are still administrative law questions that would need to be considered in terms of whether the questions fit within the scope of that provision.

Senator KIRK—And you cannot make any sort of assessment of that until you see the questions.

Prof. Rubenstein—That is right. There might be a question as to whether it is appropriate to ask a question about Australian cricket, for instance, and whether that is properly within the purview of an adequate knowledge of Australia. It raises uncertainty about the legal validity of the testing. This new amendment act will strengthen the legal validity of testing by making a specific provision in relation to the minister having the capacity to issue tests according to the act, but the content of the tests would still be open to legal scrutiny as to whether they properly fulfil the sections that set out the criteria for Australian citizenship.

Senator KIRK—So there is no proposal to amend the new section 21.

Prof. Rubenstein—This act that we are currently looking at is an amendment act to section 21.

Senator KIRK—Yes, but it just adds in provisions rather than changing the existing text.

Prof. Rubenstein—It adds in provision 21(2)A, which says that those provisions that I just read out to you are taken to be satisfied if, and only if, the minister is satisfied that the person has before making the application sat a test approved in a determination under section 23(A) and successfully completed that test worked out in accordance with that determination. So it is giving the minister the power to make a determination about the tests. In the same way, the minister determines when one has successfully completed the test. Then there is an extra provision, 23(A), which says that the minister must by written determination approve a test for the purposes of section 12(2)A. It is providing extra legal certainty for the act to make provision for a test.

There was some uncertainty, which I have raised before, as to whether sections 21(2)(e) and (f) were sufficient in and of themselves to allow the government to introduce testing. Theoretically they could have, as an administrative measure, to determine whether section 21(2)(e) and (f) had been satisfied. This government has decided it does not want to determine the satisfaction of those two provisions by an administrative process; this is now making it a legislative process. There is still a question about the strength of that legislative framework if the subject matter of the test is such that it goes beyond the power. Ultimately, the power is contained by the framework of the act, which is to provide for the conferral of Australian citizenship. If one of the test questions is ‘How many square metres is Australia?’—or something one would question as being relevant to and appropriate for the purposes of determining Australian citizenship—then there is a question as to whether it would be beyond the power.

Senator KIRK—I am also interested in your views about the scope for review of decisions. On page 5 of your submission it says that section 52A allows for reviews. I am assuming 52A might now be a different section—

Prof. Rubenstein—Yes, that is right. Thank you.

Senator KIRK—and the AAT review of the act is maintained in its current framework. Could you elaborate on that?

Prof. Rubenstein—Yes. It is still section 52 of the new act, which is ‘Review of decisions’. The provision now is that you can apply to the Administrative Appeals Tribunal for review of decisions. It refers to a decision under section 24 to refuse a person becoming an

Australian citizen. Section 24 is, in effect, the decision in relation to the conferral of citizenship under section 21(2), so there is a provision still for review of those decisions. So if an individual is denied citizenship there is the AAT review. Arguably, if the AAT stands in the shoes of the decision-maker, it can make that decision. However, if the threshold for being able to become a citizen is the successful passing of a test and that person clearly has not passed the test, then there would not be much review for the tribunal, perhaps beyond making a statement as to whether those questions, in their view, satisfy basic understandings of Australian citizenship. But beyond that, the tribunal would be somewhat restricted in its review.

Senator KIRK—Would it be at that point that the AAT might make a decision as to whether the questions come within the scope of the act or if that might be a matter for judicial consideration?

Prof. Rubenstein—It would ultimately be a matter of judicial consideration. The act sets out that paragraphs (2)(d), (e) and (f) are taken to be satisfied 'if, and only if, the minister is satisfied that the person has sat an approved test and has successfully completed that test'. So it is restrictive in relation to the minister having to be satisfied that an approved test has been passed. It would need to be a more fundamental challenge to the legal validity of the test in light of the framework of the act. I think the tribunal would be rather constrained in relation to that.

Senator HURLEY—Would you be happier if the test were made a legislative instrument so that it would be disallowable by the parliament?

Prof. Rubenstein—That would certainly provide for greater scrutiny of the testing in relation to the breadth of questions and whether they necessarily reflect the general community's belief in the matters that are relevant to Australian citizenship. If the testing framework were open and if there was consultation and general community acceptance of the range of tests—accepting that a test is necessary, which I would question in the first place—and certainly if the framework enabled greater scrutiny—that would be a positive statement.

Senator HURLEY—In relation to the more general question of whether there should or should not be a test, one of the justifications for introducing the test has been that many other countries have had the test in for a while or have recently introduced it. What is your response to the way they have operated?

Prof. Rubenstein—I do not have detailed knowledge of how successful those tests have been, but I think they would be a reflection of a global trend post September 11 in relation to concerns about legislative responses to terrorism. The fact that other countries have introduced this form of testing does not necessarily mean it is the best way forward. It is certainly important for Australia always to take note of what other countries are doing. You would find in the public records in those countries similar concerns about the effectiveness of the frameworks for encouraging a response to a greater sense of the values of the nation-state that an individual is seeking to become a part of. Citizenship testing is a very superficial way in which to exhibit some form of statement about wanting to make a difference in encouraging greater unity and commitment to the country in which a person is becoming a citizen. Passing the test does not necessarily evidence a sense of cohesion. It is just a matter of

learning the questions and being familiar enough to be able to answer them, and it does not necessarily represent a greater commitment to the nation-state that an individual is becoming a part of.

Senator HURLEY—You do not think that having formal testing and procedures elevate citizenship to a greater status?

Prof. Rubenstein—It is certainly a very interesting question and one that I deal with a little in my book on Australian citizenship law. There are different views about what we call ‘value-adding citizenship’. If you make something more exclusive it is arguably meant to be of greater value, but in some ways there is the argument to the contrary: by making it more exclusive you discourage a sense of desire to become a citizen in certain circumstances, and if your aim is to be inclusive and encourage a commitment to the greater community sometimes there are less overt ways in which to do that—for instance, encouraging knowledge of Australian values is fundamental. I am questioning the framework that signifies an acceptance of those things and I do not know that it necessarily adds value to citizenship in the sense that you describe. There are fundamental policy questions of how you make citizenship valuable, but exclusivity is not necessarily the only way: there are other ways of enhancing the value of something without making it exclusive.

Senator HURLEY—In the minister’s second reading speech he said:

Each test is expected to include three questions on the responsibilities and privileges of Australian citizenship.

The rest would be drawn at random. Again, we are handicapped by not knowing what kinds of questions they might be. How might you determine which of the three questions would best outline the responsibilities and privileges?

Prof. Rubenstein—In my written submission I have tried to also raise that the rights and responsibilities of citizenship are not always entirely clear or distinguished from the rights and responsibilities of presence in Australia. Anyone who is present in Australia is subject to the laws of Australia. The Defence Act is a good example. One of the current statements on the Australian citizenship website is that one of the consequences of citizenship is you may be called upon to defend the country in time of war, but the reality of our legislation at the moment is that anyone who resides here for a minimum of six months is liable under legislation to be called up to serve in the defence of Australia. Citizenship is not the basis on which that becomes a liability in Australia. Those distinctions are examples. Currently, the responsibility and the right to vote are consequences of Australian citizenship. The bottom line is that nothing is constitutionally entrenched in Australian citizenship, so any of the rights and responsibilities that we talk about of Australian citizenship are purely legislative rights that can be amended at any time.

Knowledge of the current legislation is useful, but it is not necessarily always straightforward. Under Australia’s Commonwealth Electoral Act there are members of the community who are not Australian citizens who have a responsibility to vote: the British subjects who were on the electoral roll before the changes to the Electoral Act which took off British-subject status. So there are non-citizens in Australia who currently have a responsibility to vote if they are still on the electoral roll.

There are Australian citizens who have been disenfranchised by the changes to the Electoral Act at the end of last year—for instance, those who are prisoners at the time an election is called or Australians living overseas who, by virtue of going overseas, lose their place on the electoral roll and, if they have not followed the procedure set out in the Electoral Act, also lose their right to citizenship. So the legislation is not always entirely clear about what the rights and responsibilities of citizenship are. Again, that is an example of where the answers to the questions could be theoretically challenged. If one of the questions was whether you had a responsibility to defend Australia, there would be complications in relation to that as there are in relation to voting. But in the basic terms of the current framework, voting is one of those rights that we, on the whole, distinguish as a right of citizenship, save for those exceptions. The right to travel in and out of Australia under the Migration Act is currently regulated around the status of citizenship. They are two examples, but I think it would be hard to go for more than two in relation to those particular questions.

Senator CROSSIN—Do you have any evidence that suggests that this might discourage people from taking citizenship?

Prof. Rubenstein—That is a very important question, because the Department of Immigration and Citizenship in its various forms over the years has put a lot of effort and attention into encouraging people to become Australian citizens. Public exposure to advertising that encourages people to become citizens has been very strong and I think very effective. You could ask the department about the actual statistics, and I think it would be important to ask the department that question because they would have the knowledge. My understanding is that the largest group is British citizens who have not taken up Australian citizenship in the past. I certainly think—and this is really more my understanding of human nature—that a testing regime is something most people feel uncomfortable about in any context. Even as a professor, when I walk into the examination halls of my students I still get the feelings that I used to get as a student walking into those halls. I think any framework for testing is one that causes anxiety. I think many people around the country who are Australians by birth would say that they are not entirely clear as to whether they would pass these tests, so surely anyone who is not yet an Australian citizen would have some anxiety. If there were any equivocation as to whether they wanted to become a citizen, I think this is something that would add to their questioning of their desire to become an Australian citizen. My personal sense is that this would be more discouraging than encouraging. I anticipate a drop in the number of applications for citizenship once the test is introduced.

Senator CROSSIN—I put it to you that that might be the case if you were a non-English speaker. I imagine the test would be significantly easier if you were emigrating from the UK, Ireland or America. Do you believe it will encourage more English-speaking migrants to become citizens?

Prof. Rubenstein—I think the discouragement would be across-the-board. I do not think language would be the issue in the anxiety about being able to answer questions correctly. There are many individuals of high academic performance who have questioned whether they would be able to answer the questions successfully because of the range of questions that have been mooted in the press. Again, we really need to see the questions to have a stronger sense of the answers to these things, but my basic, threshold answer is that all people will be

less likely to want to take up citizenship by virtue of having a test than they would if there were no test. I think the language issue is relevant to that answer but not entirely conclusive.

Senator CROSSIN—So you do not believe that people wanting to emigrate from the UK, if they got a booklet and had to study it, like you do for your drivers licence, would find it a whole heap easier than would someone who might be coming, for example, from Iran?

Prof. Rubenstein—I am not entirely sure what the provisions are in relation to translations of the questions and whether the questions will be made available in languages other than English for preparation and study. Perhaps they are issues that might be relevant to your questions.

Senator PARRY—I can relate to you returning to school and shuddering. I walked past the disciplinarian's office of my school a week or two ago and I still shuddered. If the mix is right between the methodologies of the questions, how they are put to potential applicants for the test and the style of questions, do you feel as though the test will then be a worthwhile and valid thing to do?

Prof. Rubenstein—My comments are in relation to whatever style of testing there is. Any form of formal testing has the problem of anxiety no matter how accessible or easy that framework is because people have a sense of anxiety over any formal form of testing. Every effort to make that as palatable as possible for people who have that anxiety is better than not having it at all. The formal framework for testing raises those issues.

Senator PARRY—You could probably argue though that the mere fact of applying for citizenship has its own level of anxiety, with or without a test.

Prof. Rubenstein—Perhaps, but the legislation is clear about the criteria and there is a framework in place for the learning of English that has been important for the interview process for citizenship. That is a fair comment. Any framework where you have to meet someone for an assessment in order to be successful has a level of anxiety, but you certainly up that anxiety if there is a formal test involved, as opposed to a range of questions. But that does not take away from encouraging people to have knowledge of these areas. In the process of applying people can be given information about citizenship for the purpose of the interview, which is the current framework for satisfying the criteria under the current act. There could certainly be extra effort to ensure that as much information is given to an individual in the process of applying for citizenship, but the question of testing is separate to that.

Senator PARRY—You would not regard it as a right of passage. It has some form of degree of difficulty, however minimal that degree of difficulty may be.

Prof. Rubenstein—The current framework satisfies that element—it has those basic criteria so there is currently a right of passage in a way. It is a question of whether you up that right of passage to one of formal testing.

Senator NETTLE—Thank you for your submission, it raises lots of important issues and views. In your submission you talked about the objectives that the government is seeking to achieve and what you think might be some of the best strategies for achieving them. Can you

expand on what you think would be effective strategies for trying to achieve the government's objectives of people having a clear understanding of what citizenship means?

Prof. Rubenstein—I think the distinction between automatic citizenship and conferred citizenship should be lessened. The emphasis is entirely on those who are conferred citizenship but the overall objectives should be for all Australians. The evidence around the world about home-grown terrorists is a good example of that. As a country we want to encourage all Australians, no matter how they become citizens, to have a greater understanding of the values and frameworks for decision making and participation in our Western, broadly democratic framework. These are things that should be part of schooling for everyone going to school in Australia. That would be one way of achieving the objective, and it would be a much more holistic way than one that targets those who are becoming Australia citizens. For those who are being conferred citizenship, providing a range of mechanisms for people to learn this material would be useful. Just as there are English courses available for individuals, courses about these values could be made available for people who are becoming citizens without there necessarily being a formal framework for it at the end, so that individuals are put in the educational framework that we want for automatic citizens to be enabled to know this sort of information. Those would be broader strategies that would achieve the government's objectives without singling out those who are seeking to become Australia citizens, without making it more exclusive and therefore without discouraging people to become Australia citizens and to be included in the Australia community.

CHAIR—In terms of the legality and the constitutionality of the legislation—and you have referred to that in your submission—it is section 51(xix) and section 51(xxvii) under the Constitution where the Australian government has power over the naturalisation of aliens, immigration and emigration. So there is no doubt in your mind that that is the head of power under which the bill is put forward. But your concern relates to section 21(2), and I want to go through that with you and the reasons why. You have outlined that in answer to Senator Kirk at least in part. I want to drill down a little further there. Do you accept that the minister has the discretion and has to be satisfied that the person has met those tests?

Prof. Rubenstein—This act provides for the minister to have that power, and I agree with you that the minister is empowered under the constitutional framework in relation to aliens and naturalisation. Arguably, there would also be the implied nationhood power, which would give cause for this type of legislation. I think it is more of an administrative law question that I am raising than a constitutional question in terms of the range of issues that would be validly within the minister's discretion for making a decision under this act. If the minister decided that in order to pass the test you needed to have blue eyes, then we would see that as clearly unlawful because there is nothing within our understanding of membership of the community where a person's racial or physical attributes are relevant to membership of the community. So that would be an example. If the test included that one of the issues to do with whether you have successfully completed that test was that you had blue eyes, then there would clearly be a legal challenge to the legal validity of that.

CHAIR—But that would be outside the scope of the act. Your concern relates to the adequate knowledge of Australia, and so you are suggesting that it is possible that one of the

questions put forward is outside of the scope of the adequate knowledge of Australia. Is that your contention?

Prof. Rubenstein—Yes, that is right; that there are still legal questions about what would properly fall within that terminology.

CHAIR—That is what I am trying to get clarity on.

Prof. Rubenstein—Yes.

CHAIR—If you had the resource book with you today and you looked through all those questions, you would say that there would be no legal problem whatsoever if those questions met your view of what is adequate.

Prof. Rubenstein—Yes or, ultimately, it has to be a judge of a court if there were any questions. But, in terms of my own expertise and understanding, it would be easier to say the test is one that fulfils that part of the act.

CHAIR—Thank you for that. In terms of the legislative instrument argument that has been referred to in your submission, do you accept the fact that the government's intention and objective is not to require rote learning but rather an adequate knowledge of Australia, a basic knowledge of English language and so forth? As a result, my understanding is that they want to rotate some of those questions from time to time. So if you made it clear that it has to be a legislative instrument, the onus is on the government to regularly change the questions—every couple of months or whenever; we do not know exactly how often they want to do it. They would have to introduce a legislative instrument which could be disallowed. So that is your suggested approach. I am just getting clarity on that.

Prof. Rubenstein—That would be preferable. There would be nothing to stop the government introducing 500 questions from which 20 would be chosen. That would be a much greater range of knowledge that a person would have to study up on in anticipation of a test. Whether that just encourages rote learning of 500 questions as opposed to 20 is another issue, but I think any form of testing has to have an element of rote learning. It comes back to the policy objectives of whether testing is the best way of encouraging a greater understanding of—

CHAIR—Sure, but in terms of rotating the questions, would it be legally and legislatively burdensome and onerous to keep bringing in new legislative instruments every once in a while to ensure that that becomes a legal document?

Prof. Rubenstein—If we look at the other ranges of legislation with their regulations, which have reasonably regular changes that require parliamentary scrutiny, I do not think this would be too dissimilar to that.

CHAIR—Okay. I want to ask you about the overseas experience. With your history and background, which is substantial in this area—which we acknowledge and I want to thank you for that—you indicated that some of the countries have introduced testing since September 11. Can you advise us which countries they were? I am aware that some countries have had it for decades, but others are more recent. Can you give us some updated briefing on those countries that have introduced it since 9-11?

Prof. Rubenstein—I am afraid my expertise is not as broad as knowing all of the different citizenship testing regimes in existence since that time. The comments I have made are in relation to the responses to some of the legislative amendments in countries like Australia, such as in Canada and the US, which have been critical of those legislative changes. It is not necessarily in relation to citizenship testing; it is the whole breadth of security changes. I am afraid my expertise does not include a detailed knowledge of all of those and I cannot answer that question.

CHAIR—Has any country introduced citizenship testing since 9-11 as a result of 9-11?

Prof. Rubenstein—We are certainly an example of that, but beyond Australia I could not pinpoint any specifically. But I could get back to the committee on that.

CHAIR—If you had further advice on that, we would be happy for you to take that on notice.

Prof. Rubenstein—Certainly.

CHAIR—Can you share any experiences you had in those other countries—US, UK, Canada, Korea—where they do have testing, your views as to the pros and cons of how it works?

Prof. Rubenstein—Similarly, it is not an area I had much interest in before the introduction of this amendment bill. I cannot assist you on that, I am afraid.

CHAIR—That is fine. Finally, do you acknowledge that there has been or there is community support for a citizenship test? There was a wide range of consultation—over 1,600 submissions last year—after the September release of the government discussion paper. Do you acknowledge there is majority support for it or you do not acknowledge that?

Prof. Rubenstein—I am not in a position to acknowledge it because I have not looked at all of those responses. I did see that there was a government response to those responses, and I think there was some question as to whether that sufficiently represented the entire views or whether the community organisations were grouped with individuals. I remember hearing some question marks about those, but again I have not looked at those in great detail.

CHAIR—No problem. Thank you very much for your evidence today.

Prof. Rubenstein—Thank you.

[11.08 am]

ADONIOU, Ms Misty Liane, President, Australian Council of TESOL Associations

CHAIR—Welcome. Is there anything you would like to add about the capacity in which you appear today?

Ms Adoniou—Yes, TESOL stands for ‘teachers of English to speakers of other languages’.

CHAIR—Thank you for that. The Australian Council of TESOL Associations has lodged submission No. 34 with the committee. Do you wish to make any amendments or alterations to the submission?

Ms Adoniou—No.

CHAIR—We invite you to make an opening statement, at the conclusion of which I will invite members of the committee to ask some questions.

Ms Adoniou—If you do not mind, I will read my opening statement so that I do not distract myself. I act as a representative for the Australian Council of TESOL Associations. We are the national association representing ESL teachers in Australia. We are really pleased to be here to give evidence to the inquiry. It is exciting to be part of the democratic process and to share the expertise of our membership, but, more particularly, to give a voice to our clientele, which classically does not have a voice in such forums.

We understand emotionally and socially where this bill has come from. It comes from a desire to have a secure and cohesive society in a world which, currently, seems far from safe and secure. Not unreasonably, the belief is that such a society is more easily achieved if we all speak at least one common language—in this case, English—and if we all aspire to the same core values by which we should all live. With these two things in place we would be unified within and, as such, be stronger as a whole to resist any attacks, metaphorical or real, from without. We understand where the bill has come from.

We agree with those two key components for a unified society—that is, a common set of values to aspire to and live by and a common language. We need a way to achieve that and the government with this bill, via DIAC, proposes that a test would achieve that. The idea is that anybody wishing to become an Australian citizen—although not those who achieve it by virtue of being born here—should do a test of 20 multiple-choice questions and therefore prove that they, one, speak English and, two, aspire to and live by the values we deem to be Australian. In proposing the test, the government and DIAC are making some flawed cause and effect assumptions: the first is that the ability to pass a multiple-choice test would be evidence of a person’s language proficiency. We in the language teaching trade call that communicative competence—that is, the ability to get the job done with language, which is what we hope citizens of Australia would be able to do. That could include being able to negotiate the deli at Woolies, phone the bus timetable hotline to find out when and where the next bus leaves from, complete your tax form, read a newspaper, write a university essay or read the equipment safety instructions in the workplace—any of thousands of everyday language encounters that make up everyday living in Australia. A 20 question multiple-choice test will simply not give evidence of that kind of communicative competence.

The second flawed cause and effect is that the ability to recall facts about history and legislation has a causal link to aspiring to and holding certain values. For example, I could be given a choice of three questions: can I identify how many stars there are on the Australian flag and what they stand for, when Australia was federated and how many houses there are in parliament? If I can, therefore I aspire to values of equality for men and women, mateship, fair go or whatever values we deem to be Australian. Obviously, the test will neither prove that people can speak with communicative competence nor will it prove that people aspire to live by a certain set of shared values. The test will show us who is able to reproduce some knowledge about certain aspects of Australian history and legislation on the day of the test.

Our own test-taking experiences tell us that that is what you do in a test: you are able to reproduce something on the day of the test. That is not what DIAC wants proof of, it is not what we want proof of and it is not what the government wants proof of. It is not meeting the original aim of the bill. We all want a secure and cohesive society—a society that aspires to a common set of values which guide the way we live our lives and a society which speaks a common language which thereby guarantees that we all have equal access to the opportunities which living in Australia brings. The test will not give us these things, but let's not give up on the original goal. Let's rethink the challenge and come up with another solution. Let's come up with strategies that are more likely to achieve these aims. The simple, quick answer to both of those is if we want people to be able to speak English then we must teach it. If we want people to aspire to certain values then we must give them ownership of those values.

CHAIR—Thank you. I appreciate your opening statement.

Senator NETTLE—How would you give people a sense of ownership over the set of values? On the first point about competency of language, you are obviously well qualified to be able to talk about how to do that. Do you have views or perspectives on how you would do the second part around values?

Ms Adoniou—Yes, I do because I am an educator. So I know that, in order for anybody to feel connected to anything that you wish to teach them, they must feel they contributed something to that, particularly something as abstract as a value. It is not a piece of knowledge that I have learnt and therefore I live by it. Abstract concepts like this need to be debated and there needs to be some kind of national discussion about what these values may be and also an acknowledgement that people coming into the country also aspire to these very same values. It is wrong to call them Australian values. We should perhaps be calling them values that Australians live by, acknowledging that many of these people come in with these values already. There is certainly nothing quintessentially Australian about mateship; there is nothing quintessentially Australian about a fair go. The things which are oft quoted—the birth of a nation at Gallipoli, where mateship was one of those defining things about being Australian—exist in other countries. That kind of mateship in war and in desperate situations is true of many other countries.

With respect to the notion of mateship, I will use my children as an example. You may be able to tell from my surname that I am married to a Greek. However, the other half of me is that quintessential Australianess—we could probably trace ourselves back almost to the convicts—a white Australian. My husband was a new immigrant to this country; he came here in 1984. My children's history and their values—the ones we all talk about—include the fact

that our Australianess was born in Gallipoli. They had great-great-grandparents who fought in the Great War and in the Second World War. But they have a great-grandfather on the other side who was also part of the Greek nationhood in the Second World War, when they said 'No' to the Germans and the Italians coming through. That was when Greece became a democratic country. That is their history, too, and my children are Australian. These values come to them from both their Greek side and their Australian side. They are these little Australians who, irrespective of where they came from, deserve to have all of their history and their values acknowledged.

I talk about my children because I know my children, but every person who comes into this country has a similar set of values that can so easily be acknowledged, talked about, shared and debated. Then we really will have a set of values that are Australian, rather than a patronising idea that they are somehow Australian values that you will come to and be given, forgetting that these values were already within the people who came here. It is just that they manifest in a different way. They may not manifest in Gallipoli or on the cricket pitch or wherever, but they manifested elsewhere in their experiences. When people can share that, then we will all be aspiring to and living by something. There is no way a test could do that. But debate, talk and acknowledgement right from the beginning. Before our refugee migrants come into Australia they do an AUSCO program—an Australian Cultural Orientation Program—a two-week program. They are given two weeks of Australian knowledge. They sit in classrooms in the camps and they are inundated for two weeks with all the things they may ever need to know about Australia. It also has a faulty piece attached to it—'Just sit there and let's pour facts into you, such as how a microwave works or what the voltage is in Australia.' It could easily be a discussion around much deeper things, including what you value, what you will find in Australia, what you want out of your life, how Australia will give this to you and how the common values you will find in Australia are the ones you already have. People are aspiring to the values that we offer them in Australia. That is why they want to come and why they want to leave where they are.

Senator NETTLE—In your submission you talk about the tests in the UK, Canada and the USA. You say that there is no evidence that these tests provide these countries with any greater sense of shared identity or values than ours. You go on to say:

Indeed, there are quantifiable statistics to suggest that it is just the opposite.

Can you expand on that?

Ms Adoniou—I do not have the stats here, so I will not be able to talk from a statistical point of view. We can probably talk from a media point of view. We do not have any evidence that either Canada, the United States or the United Kingdom have a society that does not have disenfranchised groups within it, even though they have citizenship of those countries.

We certainly saw that with the London bombings. These people had British citizenship, but it certainly did not mean that they automatically aspired to some kind of British value system—whatever that may have been—or that they felt part of that safe, secure and cohesive society. They certainly did not feel part of a cohesive society. There are many indications that there are many disenfranchised groups within the United States, including those who were born there but including people who have been given citizenship or who, in fact, have been denied citizenship and have since been sent home to their countries—for example, to

Cambodia and Laos. Up to this point, we seem to have the most cohesive society and it would seem strange to be suddenly pursuing policies pursued by other countries which do not seem to enjoy the cohesivity that we have. We seem to be fixing something that is not currently broken. I worry that what we will do is disenfranchise, disengage and marginalise people and the consequences of that could be exactly the opposite to what this test aspires to achieve.

Senator NETTLE—The other question I want to ask you—and we have heard commentary from a variety of different places—is whether there is any capacity for the testing regime to be divisive within the Australian community.

Ms Adoniou—Yes. Quite apart from the fact that it is impossible to say how it could achieve its aims, I can think of nothing more exclusionary than having a test to let you in. If we truly think of ourselves as an inclusive society then why would we use the most exclusive measure? A test is literally designed for you to fail or pass, so it is set up to keep people out. I was listening to comments made in the previous evidence: ‘Perhaps if we had more questions, we’d get a better depth of knowledge. People would be able to give a better indication of how much they understood about Australia. It would not just be a learning thing.’ As soon as you open up the breadth of the questions, you make it an extraordinarily difficult English language hurdle for people to jump over. That would be extraordinarily exclusionary. That would be an exercise in keeping people out on the basis of their ability to answer the English language questions, let alone the other questions in the test. I think it is very exclusionary. All through education, tests have been developed to gate-keep. That is what they are there for.

Senator HURLEY—Part of your submission says:

We harbour grave concerns that current English language programmes may have to abandon good language teaching practice to simply ‘teach to the test.’

Could you elaborate on that?

Ms Adoniou—This always happens in any education system. As soon as there is a test, teachers feel the need to get their students to pass the test and students put on pressure to be given what it is that they need to pass the test. Suddenly, lessons become all about passing the test. Certainly, from my experience overseas, where everybody is sitting English language tests to prove their English language proficiency, we have huge evidence that all good teaching practice goes out of the door as people do test preparation. That means they may pass the test but they will certainly lose out on all the other communicative competencies. So you focus on how to unpack the test question, you focus on understanding root words in the A, B, C part of it and you focus on picking out the key word in the root question and finding its match in the A, B, C version of it. It becomes an entire enterprise in teaching people how to pass tests.

It is very bad pedagogical practice because the aim is so limited. Your capacity to pass an English test is in no way an indication of your capacity to operate in the thousands of everyday communications you need to have. As it is, there are a number of highly researched and very complex English language exams that, for example, we ask our international students to do. They all have to do an IELTS test before they come and study in Australia. I currently teach in a school of education. Our university requires an IELTS score of 6.5. An international student can come in if they have passed this IELTS test at 6.5. It is a very

complicated test. It has four different parts to it: speaking, listening, reading and writing. A lot of study goes into this. These are students preparing for tertiary level. When they arrive, these students, at 6.5, cannot operate in normal social situations at the university or outside the university. They have achieved a very high level of competency, yet they struggle. They certainly cannot do the education degree. We have had to up the level of IELTS needed to get into education because these students cannot communicate orally with their peers or with the students in the classroom. We are talking about very, very complicated exams that these people study many years for, yet they still cannot operate with community competence in all the areas they need to.

Once the AMEP, for example, is forced to focus on getting these students up and ready to pass this particular exam we will not have achieved anything. They will not be more competent in English. It will not be that you can suddenly talk more easily with them over the back fence. It will not be that you can suddenly have a conversation with your mates over lunch. It will not be that you can suddenly think, 'I will give them the occupational health and safety manual to train everybody else.' None of that will happen. It will not be that they can get into tertiary institutions. It will not be that they can pick up the newspaper and read it. This test will not give us that, and these are the things that we really need. If you really want people to feel like this is their country and that they have everything that everybody else has in this country then you have to give them the English language skills. You cannot give them English language skills by giving them this test. This will not do it. And the preparation for this test will not give them those English language skills.

Senator CROSSIN—Given the kinds of questions that we think are out there—and bearing in mind that we have not seen any test questions yet—will the number of hours that you are allocated for teaching English as a second language be enough and, if they are enough, will they be used solely to teach the test?

Ms Adoniou—First of all, they will not be enough because they are currently not enough. I am sorry, I do not have the hours in front of me and I do not work in the AMEP sector, but the 500 hours—516 or something like that—will only ever give the beginning of English language instruction. English language instruction will go on. In fact, the statistics and research have said for many years that you need seven years of instruction to reach native-like proficiency. That means that if, say, we get good English language instruction for kids in schools from the time they come and throughout their school years then perhaps they will leave with proficiency. But 516 hours at an AME program will not be enough and, yes, I do fear that if they are the only hours they are going to get there will be real pressure from the students, who will say, 'Please use these hours to help me pass this citizenship test because I really want citizenship.'

That is the other problem. I know that there were provisions for refugee learners, but when I say seven years of instruction I mean for people who are literate in their first language; I do not mean for people who have had interrupted schooling and who are not literate in their first language, because then we are starting from far, far back. We will find that these 500 hours are the beginning of helping people understand the notion of literacy—the fact that these black marks on the paper say something. That is how far back we go with non-literate

refugees. So it would be impossible. Even if the hours were given over to test preparation they would not be enough—and what a horrible waste of 516 hours.

Senator CROSSIN—That was going to be my other question to you. That was why I asked you if they would just be used essentially to teach the test.

Ms Adoniou—I feel there would be no other choice as there would be the pressure from the students who are so desirous of what Australia has to offer. It is a funny notion that is in the community that somehow people come to Australia to use it. In fact, as it always has been, this is such a land of opportunity and hope for the people who come here. I know that my husband had no desire to come to Australia simply by the fact that he married me when I was backpacking over there. But when he, who came here with the notion that he would always return to his own country, went back to his own country, he decided that Australia was where he wanted to be. Now he is something like a reformed smoker and there is no other country in the world that is better than Australia. This is the notion of all the people who come here. Why would we want to muck that up with some kind of exclusionary thing that, really and sadly, takes away from our resources? Just think if there were so much by way of resources around so as to put a test together and have it there ready for people to do whenever they need to do it. I do not know how many times a year that it is going to become available, but obviously it sounds as if it will need an ongoing budget allocation.

You cannot understand how much more we need in English language teaching resources. This wave of African refugees has strained the already strained new arrivals budget. They have come with needs that we have not seen since the Vietnamese and Cambodian influx. They have not been to school. They are highly traumatised. The resources that they need are extraordinary yet we have not had any increase in new arrivals funding. We need to be teaching these people the language so that we do not have this underclass. Can you already see this underclass happening? When I go shopping out at Gungahlin or at Woolies at Dickson, I see Sudanese refugees getting and pushing the shopping trolleys. That will become the image that my children understand of black people in Australia, that that is what black people do; so they do these jobs. Why do they see this? Because these students are not being well catered for as to their English language skills at school. I do not want to see this underclass of people happening in Australia.

CHAIR—I think it is pretty well acknowledged that a knowledge of English has been a requirement since 1949 under our Citizenship Act. Obviously, you are expressing severe concerns that under this test it is going to be far more difficult or onerous. That is the sense that I am getting from you. Firstly, can you answer this: do you have any understanding of how it is tested at the moment?

Ms Adoniou—My thought is not that it will become more difficult or onerous. My question is that it would be a mistake to think that a test would be any measure of somebody's English language proficiency; it would not be. It would be a measure of how well they were prepared for that particular test. It would give you no confidence that the person would have access to newspapers and what is happening in Australia. It would not guarantee that they could listen to the news bulletin on TV at night and understand what is happening. It would not give them access to those everyday things that they really need to be able to access if they

want to feel like they are a part of Australia and that they can contribute to Australia. That is my concern with that.

I understand when you do the citizenship test that it can be an oral test and that you can be quite well supported in that. I understand that there would be provisions for something of that kind in the proposed test, which makes me wonder why it should then be discussed as a test of English language skills—because it would not be. But because it would be discussed like that, I fear that people would take it as evidence: ‘Ah, these people have some kind of English language proficiency.’ But they would not have that. This test would not give you that evidence at all.

Worst of all, we all know that you need English language proficiency to get by in this country and that it will be key to cohesion in this country, so we must make much more effort in the teaching of it. It is a misconception that people perhaps come to the country and do not try to learn English and that this test will make you try to learn English. That is not true at all. That is not my experience of any of the migrant populations that I come into contact with, and I come into contact with a lot of them. In order to learn a language, you need opportunity. In my husband’s case, when he got here he was desperate to start earning a living to support his family, so opportunity was not huge. But you also need to be taught. I know we have one or two success stories out there—‘I taught myself and now I’m a huge business mogul.’ But I spend a lot of time with the Greek community here in Canberra, and they are very successful business and land owners in the ACT, and they still cannot pick up the newspaper and engage with what is written there. They still rely on their children to fill out their tax forms. That is not equal access. Just because they own a couple of key buildings in the city does not mean that they have equal access to what Australia has to offer. There needs to be English language teaching. There needs to be opportunity and teaching, not testing.

CHAIR—We have the department here very shortly, and I am sure that they will alert us to exactly how the current arrangements apply to checking the basic knowledge of English and how that will change under the proposed bill. You seem to have a view that perhaps may differ from the public support for citizenship testing—if there is public support. Do you think that there is public support for citizenship testing? The department, in its submission, indicated that a majority of the submissions to the government report received last September, October or November were in support of citizenship testing. I am alerted to a Newspan survey in the *Australian* which was undertaken from 15 December to 17 December 2006. For other senators who may have an interest, this survey is in an alert digest from the parliamentary library. It is on the public record. It was in the *Australian*. It talks about the citizenship test coming in and then it asks whether people are in favour or against knowledge of English being a requirement to become an Australian citizen. It was totally in favour, with 85 per cent for and 12 per cent against. What would you say about that poll?

Ms Adoniou—I would say that the answer to the question is the same answer as I gave: yes, to really feel that you are contributing to Australia of course you would need to have English language proficiency. We all agree on that. What we get is a commonsense feeling out in the community—because they are not educators or teachers—that that is the end of the question: yes, they need to have English. But the next thing is: how do we make sure that people have English? We struggle with this in Australia, because, despite the fact that we are

multicultural, we are extraordinarily monolingual and very far away from other countries. We have the sense that we speak English and we have very little idea of how difficult it might be to learn another language. So it seems kind of logical to us that you would need to speak English and therefore people would come here and learn English. We have no understanding of how difficult that is and what support you would need to do that. So I understand their answer to the question. Yes, we need English. But then they need to move beyond the answer to the question of how it happens. It does not just happen because you are here; it happens because you get taught the language. All of us who travel overseas know the struggle of it and how it is easy to give up soon.

CHAIR—We will be able to ask the department about the support measures available for people to learn English.

Ms Adoniou—I did not read the 1,600 submissions that went to the department, but I read the 50 or so that came here and they were overwhelmingly against the citizenship test.

CHAIR—Sure. You referred in your submission and earlier to a question from Senator Nettle about the overseas countries that use testing. Do you have any research or evidence that says that those mechanisms used in the US, the UK and Canada do not work effectively?

Ms Adoniou—All I have done is to look into the actual tests themselves. I have had a look at the questions to get a sense of where I presumed we were feeding our questions off from. In Canada there were a lot of questions around Indigenous languages and Indigenous culture, so there seemed to be an agenda there to make sure that whoever was coming into the country understood the Indigenous history of the country. The Americans seemed to be quite focused on things like the colours or the number of stripes on the flag and those sorts of things. The United Kingdom one seemed quite focused on how parliament operates. All of those could be very fine things but they give you no indication of how someone would aspire to have the values of that country. For example, I am fairly sure that any of the doctors who are currently under investigation in the United Kingdom could have passed those tests with their eyes closed, and it would not have changed their attitude to what they were considering doing.

In America there are certainly indications that a deal of migrant language education time is set aside to the teaching of the test. They have booklets that they study. There are classes that they study in their early immigration programs that are around passing the test. That is an indication of the previous questions that were asked: people will teach to the test. Then what do you have? You have somebody who passes a test. That is what you have in the end. You have no indication that they can speak the language in all of the situations that they need to. You have no indication that they therefore aspire to the values that will keep us together. As I said at the beginning, I understand why the government has proposed the bill and why the community has responded. We are living in scary times and this seems like an easy way to close the doors. But it actually disenfranchises so many people who are living in our country and closes doors to people who would be so desirous and grateful to be in this country.

CHAIR—Thank you for your evidence today.

[11.43 am]

ELLIS, Mrs Mary-Anne, Assistant Secretary, Citizenship Branch, Citizenship, Settlement & Multicultural Affairs Division, Department of Immigration and Citizenship

HUGHES, Mr Peter, Deputy Secretary, Department of Immigration and Citizenship

METCALFE, Mr Andrew, Secretary, Department of Immigration and Citizenship

PARKER, Ms Vicki, Assistant Secretary, Legal Framework Branch, Legal Division, Department of Immigration and Citizenship

VARDOS, Mr Peter, First Assistant Secretary, Citizenship Test and Values Statements Task Force, Department of Immigration and Citizenship

CHAIR—I welcome officers from the Department of Immigration and Citizenship. The Department of Immigration and Citizenship has lodged submission No. 30 with the committee. Do you wish to make any amendments or alterations to the submission?

Mr Metcalfe—No.

CHAIR—Would you like to make a short opening statement, after which we will have questions from members of the committee?

Mr Metcalfe—Thank you, Chair, and I thank the committee for providing the Department of Immigration and Citizenship with the opportunity to make a submission and to appear before this inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007.

CHAIR—Before you continue, I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given a reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

Mr Metcalfe—I want to begin by addressing two issues that were recently raised by the Senate Standing Committee for the Scrutiny of Bills. The first relates to whether it is possible to be more specific about the commencement date for the bill. We anticipate that citizenship testing will be able to commence on 17 September 2007 and we are on track to meet this date. However, given the size and complexity of this undertaking, there are a number of requirements that will need to be completed before then, such as the establishment and fit-out of testing centres across Australia, the development and testing of information technology systems and the finalising of the test resource materials. Test commencement will of course be subject to the passage of the bill that is before this committee. Given the substantial list of

prerequisites for the introduction of testing, it would not be prudent to be more specific about when the legislation will commence, but I have noted 17 September as our current target date.

The second issue raised by the scrutiny of bills committee relates to the ministerial determination not being a legislative instrument and, if the determination were administrative in nature, whether it should be subject to review. Without repeating in detail the matters contained in our submission, I can advise that it is the government's view that the determination applies generally—that is, it does not relate to a particular case or cases—and therefore a merits review is not appropriate. It is also the government's view that the determination should not be the subject of disallowance provisions in the Legislative Instruments Act. This is because the government believes that this is likely to be a source of uncertainty and confusion, especially where potential applicants have sat and passed a test that may then be disallowed.

In a similar vein there has been some concern about the power in the bill that allows the minister to determine eligibility criteria for setting a test. Specifically, the concern is that a determination may establish eligibility criteria that are inappropriate and unfair, with no parliamentary scrutiny and no opportunity for disallowance. Our legal advice is that the determination making power in proposed section 23A does not allow the minister to set eligibility criteria for sitting the test that are inconsistent with the provisions of the act and, in particular, with the general eligibility criteria in subsection 21(2). For example, the determination could not legally provide that only persons with a certain language background or with a certain colour of hair would be eligible to sit the test.

The power is required for two purposes. One is to ensure that the resources available for testing are used only for prospective citizens. The second is to enable access to any special tests that may have to be limited to those for whom the special test is intended. In this regard, committee members may have noted that the bill refers to 'a test' rather than 'the test'. The use of the singular allows for more than one test to be approved by the minister. The introduction of formal testing will be carefully monitored to identify those prospective citizens for whom an alternative test or tests may be appropriate. This approach will enable the development of an alternative test or tests designed on the basis of identified need rather than on conjecture. To help alleviate the concerns about test eligibility criteria, the government proposes to amend the bill by inserting a note that will explain that the power to set eligibility criteria to sit the test does not allow the minister to set criteria that are inconsistent with the act and, in particular, inconsistent with the general eligibility criteria for citizenship.

My final point surrounds public concern that the content of the test, including the questions and answers, may be unreasonable. It is important to note that with one exception the requirement for citizenship under the general eligibility provisions, which applicants will be required to demonstrate by successfully completing the test, are of a longstanding nature. They are the requirements to have an understanding of the nature of the application for citizenship, to possess a basic knowledge of the English language and to have an adequate knowledge of the responsibilities and privileges of Australian citizenship. Indeed the requirement to have a knowledge of the English language has been a feature of Australian citizenship language since its commencement on 26 January 1949. I have been advised that

from 1949 until 1 June 1974 the requirements were that the person had an adequate knowledge of English, or that they had lived in Australia for at least 20 years, and that they had an adequate knowledge of their rights and responsibilities as a citizen.

Between June 1974 and November 1984, the tests were that the person have an adequate knowledge of English and an adequate knowledge of their rights and responsibilities. That was amended in November 1984 such that persons now need to have a basic knowledge of English. It is also the case that most applicants for citizenship, including refugee and humanitarian entrants, have been required to satisfy these requirements. The bill proposes the introduction of an objective form of assessment as to whether an individual satisfies these requirements with the addition of a requirement to have an adequate knowledge of Australia. The test questions will be designed to test knowledge contained in a citizenship resource book, which will be freely and widely available to all. We expect that a draft of the resource book will soon be released by the minister, and a copy will be provided to the committee at that stage.

In the view of the government, the resource book will not be a document that should be an instrument or indeed a legislative instrument. It clearly does not fall within the definition of a legislative instrument under section 5 of the Legislative Instruments Act. It will not be of legislative character and it will not determine the law or alter the content of law, will not affect the privilege or interest or impose an obligation, create a right, or vary or remove an obligation or a right. Thank you for giving us the opportunity to make those comments and we would be very happy to answer any questions that the committee might have.

Senator HURLEY—I would like to go through some aspects of the testing. You mention that the resource booklet would be freely available. Will it be available in any different languages?

Mr Metcalfe—No, it will be made available in the English language.

Senator HURLEY—We have had some submissions that indicate that people are best able to learn and absorb information in their own language, even if they are ultimately tested in English. That is not the department's thinking or why isn't it?

Mr Metcalfe—The government's thinking is the fact that the test will be conducted in English makes it important that the resource materials are based in English. But I think it is probably important to regard a person sitting the citizenship test and then applying for citizenship to be part of a journey rather than simply a destination in itself. We are talking about people who will have lived in Australia for some years, who will have had a visa granted on the basis of their work skills, family relationship, humanitarian or refugee need. Many people—in fact, the majority of migrants to Australia—come here as skilled migrants and an understanding of English is very much part of that application. Many applicants come here from non-English-speaking backgrounds and some will not speak English. Some will come from refugee backgrounds where they have had very limited educational opportunities.

The department is placing increasing and significant emphasis on pre-visa or information at the time of visa. We are revamping material that has existed for many years about life in Australia and soon we will be producing a new document called *Life in Australia*. It will be available in a full range of community languages and provide very similar information about

life in Australia as will be contained in the citizenship test book. People will have had access to that sort of material in their own language or certainly in more than 20 languages some years before they have considered applying for citizenship. So I think we regard citizenship as being the final step of fully participating in the Australian community, but it follows many other steps that have occurred in the journey of the person from being a visa applicant to becoming a prospective citizen.

Senator HURLEY—I believe in the US, for example, that the knowledge component of the test can be conducted in the language of choice. Have you considered that?

Mr Metcalfe—I think all options have been considered, and the government's position is quite clear on that point.

Senator HURLEY—How many questions are the 20 questions to be taken from; how many questions will there be in the booklet?

Mr Metcalfe—My understanding is that there will be a pool of 200 questions or thereabouts that will be derived from the citizenship test book, and the 20 questions will be taken from that pool. That pool will be refreshed from time to time. In addition, there will be three areas of mandatory questioning which go to a person's knowledge of rights and responsibilities of citizenship similar to the current requirements to have a knowledge of those rights and responsibilities.

Senator HURLEY—Can you give us an example of any of those questions? I am particularly interested in the mandatory ones.

Mr Metcalfe—I can not because the questions have not yet been written. I think it would be unhelpful for me to speculate upon what a question might or might not be like, but some of them will be self-evident. They are multiple-choice questions and they will go to issues that will be contained in the booklet which, as I said, will be released soon. The mandatory questions go to rights and responsibilities. That is an area that has always been the subject of discussions and interviews. They also go to the rights of citizenship, such as applying for and holding an Australian passport, applying for jobs in the Public Service, standing for parliament and voting. They also go to the responsibilities of citizenship such as the right to vote, which is also a responsibility. Those matters, including things such as jury duty, are well understood and will be the subject of mandatory questioning. A series of multiple-choice questions will go to more general information about Australia, its geography, history and its values.

Senator HURLEY—You have to understand that we are only two months away from the projected start of the testing and we are told that the questions have not been written yet. A number of groups are calling for consultation about the questions. That clearly will not be able to be done. It seems that the government is being secretive about the kind of questions that will be unleashed. People have no idea about the questions and that creates a bit of a climate of uncertainty for people who are considering citizenship.

Mr Metcalfe—That may be your view, but I do not agree with it. I think that the government has been quite clear. The minister has talked on a number of occasions about the type of questions, including multiple-choice questions, the sort of areas that they will be based upon and that there will be provision for the questions to be changed and topped up over time.

Some illustrations were given at a previous estimates committee hearing. Before this committee there was some discussion about whether certain questions that have been in the newspaper were the actual questions or the sorts of questions. I made it clear at that stage that they had not come from the department but were presumably made up by the journalist and were based upon the public comments that had occurred. I would prefer not to get into speculation as to what a question might or might not be, but I think there is sufficient information in the public domain from statements by the minister for people who have an interest in this matter to be quite clear that we are talking about questions that go to Australia, our values, history, geography, political system and national symbols. That will become more apparent when the test book is soon released. It is not the intention of the government to release the questions. That would seem to be self-defeating. But the questions would clearly be based upon the sort of material that will soon be made available.

Senator HURLEY—We had a submission from the Australian Christian Lobby regarding the desirability of including questions about our Judaeo-Christian background. The questions that you outlined did not include that.

Mr Metcalfe—I did say history, and part of Australia and its history would go to our belief system, so I imagine that that is an area that will be covered in the resource book.

Senator HURLEY—My understanding of the history of Australia is that it was a relatively secular environment and that our laws and institutions are derived in a secular fashion. Are you saying that it will include—

Mr Metcalfe—I think the minister has made it clear in his public statements that the view is that Australia, like a number of other countries, derives its overall values and belief systems from the Judaeo-Christian background. I think it is without doubt that you can ultimately trace our values and beliefs back to the body of knowledge derived from the Old Testament and upon which the Judeo-Christian background is based.

Senator HURLEY—I find that interesting, given that my understanding is that our laws and institutions are derived with the intention of being secular and not based on any of those belief systems. On the right to take multiple testing in the event of failure, my understanding is that people will take the test before they pay their citizenship fee and that they can undertake that test as many times as they like. There have been comments on why the ability to take multiple tests has not been included in the amendment. Can you explain why that is the case?

Mr Vardos—The construct of the test will be contained in the determination.

Senator HURLEY—The ability to take multiple tests; to have a limit to the number of times you can take the test.

Mrs Ellis—In the absence of a limit in the legislation, there is no limit and the minister has stated publicly that people can take the test as many times as they feel they need to.

Mr Vardos—As is necessary until a pass is achieved.

Senator HURLEY—And the fee for a citizenship application will double from \$120 to \$240.

Mr Vardos—For those people who fall into the categories of being required to undertake the test, the application fee—you are correct—at the time of application will be \$240. For those people who are not required to sit the test before they apply, it will stay at \$120, which remains unchanged since 1998.

Senator HURLEY—Who will not be required to sit the test?

Mr Vardos—Mrs Ellis can give the full list—for example, persons who have a mental or physical incapacity which prevents them understanding the nature of their application; persons under 18; persons over 60. It is the range of categories that we discussed at estimates in May.

Mrs Ellis—The structure of the legislation of the Australian Citizenship Act 2007 has a number of different subsections under application and eligibility for citizenship. Only one of those subsections, which is the general eligibility provision, has the requirement for the knowledge of English and the responsibilities and privileges of citizenship. It is that subsection that will be affected by the amendment bill. The other subsections, as Mr Vardos has mentioned, cover those with a permanent, physical incapacity, those over 60, under 18, etcetera.

Senator HURLEY—If you have a large family—a mother, father and a number of children—and both parents need to undertake the test, they will pay \$240 each; so it will be \$480 for the parents. Is that right?

Mrs Ellis—Yes. At the moment, adults are required to apply in their own right, so they apply separately. Children under the age of 16 may be included on a parent's application. Where the children are included on a parent's application, the children pay no fee.

Senator HURLEY—So children between 16 and 18 pay the fee.

Mrs Ellis—They are required to pay in their own right and required to pay the application fee. Post-testing, children between the ages of 16 and 18 are not required to complete the test, because they would be considered under a separate subsection of the act, and so the application fee for them would be \$120.

Senator HURLEY—Just reinforce that for me: children between 16 and 18 will not have to undertake the test.

Mrs Ellis—Subsection 21(2) is about people aged 18 and over and it is only that subsection where there is the requirement for knowledge of English and the responsibilities and privileges of citizenship.

Senator HURLEY—So a family with, say, four children, two of them under 16 and two of them over 16, would be paying \$480 for the parents and \$120 for each of the two children between 16 and 18, with no fee for the other children?

Mrs Ellis—Yes, if they are included in their parents' application. So the only difference post the introduction of testing is that because they are required to have successfully completed the test prior to application, there is an additional \$120 for each of the parents. There is no change to the fee structure for the children.

Senator HURLEY—So in other words it is another \$240 for that family?

Mr Metcalfe—For the sake of completeness, Senator, I should add that there are fee concessions that are available to applicants who are the recipients of certain pensions from Centrelink and the Department of Veterans' Affairs. The concession fee will be increased to \$40 for those who have sat a test and the \$20 concession fee will continue to apply for those not required to sit a test.

CHAIR—If somebody sits, fails, pays their \$240 and then sits again, do they pay another \$240?

Mr Metcalfe—The payment does not actually become 'eligible' until the person applies for citizenship, which is after they have successfully completed the test. They approach us and sit the test, and if they fail they can simply continue to sit it. When they are in receipt of a test result that says they have passed, they can then lodge their citizenship application and that brings with it the application fee.

Finally, Senator Hurley, I should, also for the sake of completeness, say that it is proposed that there be no changes to certain fee exemptions for people who have served in the Australian Defence Force or who are former British and Maltese child migrants. So there is a range of current exemptions or concessions that will continue, and the increase will be for those people who are required to sit the test, provided that they are over the age of 18 years.

CHAIR—Would you table that list for us?

Mr Metcalfe—We could certainly provide a piece of paper which sets out the fee structure.

CHAIR—I think that would be helpful to the committee.

Mr Metcalfe—We will do that on notice. We can do that quite quickly.

Senator HURLEY—A number, if not most, of the submissions have made particular reference to refugee and humanitarian entrants. As you said, Mr Metcalfe, a majority of people are now coming to Australia on some kind of visa which requires that they have some sort of English language proficiency, whether it be for work skills or whatever. Clearly, the cohort that is going to have most difficulty in acquiring citizenship is refugee and humanitarian entrants. As a number of submitters have said, this is probably the cohort that is most keen to get citizenship because of their members' circumstances and their having to leave their country of origin, so I think it is a very serious concern. A particular concern is where those refugees who are humanitarian entrants have language difficulties. I know that certain provisions have been made for people who are illiterate, but there will be people who have somewhat limited literacy and have difficulty in acquiring language sufficient to pass the test once they get to Australia. There is quite a deal of evidence that, even though people have access to AMEP and have a certain entitlement to language lessons, this may not be enough. As the previous person said, a lot of a language class may be taken up by learning to pass the test. What kind of input has the department had as to whether the proposed regime will disadvantage refugees and humanitarian entrants? Has it budgeted for any increase in language or any other help for this cohort?

Mr Metcalfe—Ultimately it becomes a philosophical question as to whether you see the test as a bar or as an incentive. Certainly it is the government's view that the test is an incentive for people to learn about Australia and to be able to communicate in English given

that citizenship is not a tokenistic thing. Citizenship is not something to be obtained simply through having served some time and done nothing else; citizenship is a prized status and therefore should be something that people see as being what it is: the opportunity to fully participate in all aspects of Australia. I have said it before on the record: the department is very proud of the role that it plays in administering Australia's refugee and humanitarian program. Almost 700,000 people have come here under that program since World War II, including 100,000 in the last 10 years. This year 13,000 people will enter under the program, so we see that as a very significant contribution that Australia makes as a good international citizen. We delight in the role that we can play in helping people find a new life in Australia.

I mentioned earlier that citizenship is part of a journey; it is not a journey in itself. Recently the assistant minister launched a new CD-ROM providing pre-departure settlement information in a variety of African languages for refugees coming to Australia. That will be used in a whole range of situations to provide that initial familiarity with Australia. We understand, and we absolutely accept, that refugees and humanitarian entrants may have low levels of education, they may have low levels of literacy and that being able to sit a test in English and to be able to have an understanding of Australia will be a significant task for them. No-one is denying that but, as I have said, citizenship is about inclusiveness. It is about the opportunity to fully participate in Australia and it is the government's view that you cannot do that if in fact you do not understand about the country and if you are unable to speak the national language.

You are aware from other questions and briefings that hundreds of millions of dollars are spent on English language training and English language services. The Adult Migrant English Program is certainly accessed by many of our refugee and humanitarian entrants. There are other Commonwealth funded language programs that go to education and to people entering the workforce. As I said earlier, the requirement to have knowledge of the English language has been there in one form or another since 1949, since the concept of Australian citizenship was created. So there always has been for refugees and humanitarian entrants the requirement that they have a basic knowledge of English. In this particular case under the proposed test, that will be established by the person's ability to understand and to complete a test in English. I also mentioned in my opening statement that we will clearly monitor the test in practice and if there is ultimately seen to be a need for some modifying test or some different form of test to be applicable to certain people, then that is certainly something the government would consider at that time.

Senator CROSSIN—Mr Metcalfe, I have had a look at the department's website in response to the discussion paper that you put out. Of the 985 that you tabulated who said they were in favour of a citizenship test, how many of those qualified that answer? In other words: 'We do not support a citizenship test but, if there were to be one, then this should occur'? Were they considered to be responses in support?

Mr Vardos—The way the 1,644 responses were determined was this: if there was a clear, 'Yes, we support the test unambiguously,' that was counted as support; those that unambiguously expressed opposition were calculated as such; those that expressed neither view but nevertheless put forward comments of one sort or another were not counted in the 'for' or 'against', they were calculated separately. We can provide you with a more detailed

analysis of the outcome of that process if you wish but, in sum, that is how the submissions were considered.

Senator CROSSIN—In the last week I have had the chance to look at quite a number of them and my overwhelming view is that either the test was not supported or, if it was, the support was severely qualified. Interestingly enough, most of the objections came from either migrant resource centres or ethnic groups.

Mr Vardos—You are correct. Of the 1,644 submissions, in round figures 10 per cent came from organisations and 90 per cent came from individuals. Of those organisations that responded, I would put in excess of 60 per cent in the ‘no’ category. It may even be a bit higher than that—65 per cent, from memory, who oppose the test. When you go to the individual submissions, the numbers are reversed. In excess of 60 per cent support it and a smaller number—

Senator CROSSIN—The individual submissions are not on your website, are they?

Mr Vardos—The only submissions that were put on there were those from people who indicated that they were willing for their submissions to go on the website. Those from people who expressly asked for their submissions to be kept confidential were.

Senator CROSSIN—You are saying that 60 per cent were individuals? So the majority of people who responded to the discussion paper were individuals?

Mr Vardos—Ninety per cent of the submissions were from individuals and 10 per cent were from organisations—that is, in round figures; there may be decimal points missing.

Senator CROSSIN—You do not have any background information as to where those individuals come from?

Mr Vardos—I cannot recall. It is some time since I looked at the complete list of submissions and I am not sure. I prefer not to attempt to answer that question.

Senator CROSSIN—Is there any evidence to suggest that people may feel very intimidated by this test and therefore will be discouraged from applying for citizenship?

Mr Vardos—That has been speculated about but there is no evidence to suggest that that will be a reaction.

Senator CROSSIN—What happens in other countries? Have you looked at the UK or Canada?

Mr Vardos—Off the top of my head I cannot recall what the trends were. Certainly the UK is the most recent marker country to have introduced a test, so I suspect their results are still pretty raw. The Canadians and the Americans have had tests since the 1980s or earlier. There may be more data available in relation to those two countries but I cannot recall it.

Senator CROSSIN—But the department has not done any research or had a look at whether this test would discourage people from applying for citizenship?

Mr Vardos—We are not aware of any research or data that would lead one to conclude that the tests in those countries were a disincentive. It is in fact quite difficult to determine why a person chooses not to apply for citizenship, which is the question being asked. It could be the test, it could be a fee or it could be a million other reasons. So the short answer is, ‘No,

we have not seen, to my knowledge, any data or research that would lead one to conclude that the tests were a disincentive for people to apply.'

Senator CROSSIN—I see that there are exemptions for children, very senior citizens and those with a disability. What consideration is given to someone, say, who has been in this country for five years, cannot grasp the English language but donates 100 per cent of their time to, for example, the Red Cross. Is there any thought of compensating people if they cannot pass this test or do not have the skills to sit a test but are doing other community based, mutual obligation kind of work?

Mr Vardos—The first point to make is that here has never been an exemption since 1949 in relation to a person's inability to grasp the English language. The government has made its position quite clear on this matter and that is: there is the regular test and there is the assisted test for persons who are determined, not necessarily to be illiterate, but to have low levels of literacy that would prevent them from attempting the test.

Senator CROSSIN—Regarding your response to my question, up until now hasn't it simply been an interview with a person from the immigration department who makes an individual assessment about that?

Mr Vardos—It is an interview at which questions are asked that are drawn from a publication. The questions are about the rights and responsibilities of Australian citizenship. The interviews—certainly the ones I sat in on as an observer—have been conducted in English.

Senator CROSSIN—Why is there a belief that this system will improve this process?

Mr Vardos—All I can do is repeat what was said before and that is that the government's position is that the introduction of a test firstly is an objective way of assessing the requirement in the act to demonstrate a knowledge of Australia. The incentive is there to learn English and to review the resource book so that you can demonstrate the knowledge of Australia needed to meet the requirements of the act in your application for citizenship.

Senator CROSSIN—What sorts of persons are putting together these questions and will put together the test? Are they people who have English as a second language expertise? Are they educationalists? Are they migrants themselves who have come here? Who is devising the questions?

Mr Vardos—I cannot answer questions about each individual's background such as their circumstances in coming to this country or whether they were born here. But the consultants—the organisation—we are recruiting have expertise in setting tests.

Senator CROSSIN—Who are those consultants?

Mr Vardos—The company's name is Acer.

Senator CROSSIN—So the putting together of this test has simply been contracted out to a consultancy?

Mr Vardos—The company was selected through a limited tender process based on their expertise.

Senator CROSSIN—Okay. When they put in their tender, did you specify at all that there had to be a demonstration of either educational expertise, TESOL expertise or such like?

Mr Vardos—I cannot recall the detail. I could take that on notice but I could not respond in detail at this point.

Senator NETTLE—Mr Metcalfe, you said that the tests will be an incentive for people to take out citizenship. Is that based on any evidence?

Mr Metcalfe—No, I did not say that. What I said was that you can have a view as to whether the test is a bar or whether it is an incentive to fully participate in Australia. It is the proposition of the government that in order to fully participate in the Australian community it is appropriate that you speak the national language or have a knowledge of the national language and that you have some understanding of Australia, its history, its values, its national symbols and its national geography. Therefore, in order to fully participate in our society, a test of this nature is an appropriate way to measure that person's commitment.

Senator NETTLE—Is there any evidence that a test is the best way to measure that? I accept that it is really helpful to operate in Australia if you have the English language and you understand the values. The question is whether the test is the most effective way to do that. Is there any evidence that the department looked at when determining that the test was—

Mr Metcalfe—The evidence basis is twofold. Firstly there was the consultation that occurred last year, following the discussion paper that was released by the former parliamentary secretary Mr Robb, which sought public comment and input in relation to whether there should be a test. You may recall the discussion paper from that time. It went through the issues quite explicitly and sought feedback and opinion in relation to that. Secondly, Australia is not unique or alone in embarking upon this arrangement. As was mentioned earlier by Mr Vardos, the United States and Canada have each had a test since the 1980s. The Netherlands and the United Kingdom have similar sorts of tests as well. So there are a range of countries which believe that, in forming a decision as to whether a newcomer to that country should access the rights and privileges of becoming a citizen, it is appropriate that the person have some understanding of the country, its background and its people. That is clearly seen as a worthwhile policy instrument by a number of other countries.

Senator NETTLE—So there was no specific discussion with educators, for example, to work out whether, in achieving these objectives, the test is the best way to get—

Mr Metcalfe—There was a community consultation process and everyone was free to comment in relation to that.

Senator NETTLE—When you talk about the overseas examples, for any of those countries that have citizenship tests, have they done any assessment to determine whether—clearly they have made a decision by implementing a test, but have they done any assessment of the effectiveness of the test in delivering the outcomes and objectives that are presumably the same as those that the Australian government has put forward?

Mr Metcalfe—We do not have any information at the table. If there is anything we can add, we will. I would note that those tests have been in place for quite a long time and so whether there have been evaluations and modifications made as a result of that is something

we can see if we can find out. We certainly made it clear in the opening statement I made earlier that we would not see our arrangements as set in concrete, that if there is a need to modify or develop the test in some way then that is something that can occur following a measured evaluation rather than simply on the basis of conjecture, which is where we are now with some submissions to the committee.

Senator NETTLE—Is there any process in place in the assessment of the proposed citizenship test in Australia? Is there something like, ‘In a year we’ll evaluate’, or is it intended to be an ongoing—

Mr Metcalfe—We will clearly evaluate it in an ongoing way. I have not seen any firm proposals as to an evaluation plan at this stage, if that is what you asking, but like all departmental programs we keep them under review. It would be a matter for the government as to what particular time it would seek a more formal evaluation and upon which basis that any modifications might be made, if there were a decision to do that.

Senator NETTLE—Going back to the overseas tests, I am particularly interested in any evidence about whether or not the tests improve the cohesiveness of the community. I do not know if anyone knows that. I wanted to add that in; it is something I am particularly interested in.

Mr Metcalfe—We will check and see if there is any research or evaluation that we are aware of and we will let you know. Ultimately, the fact is that sovereign governments have decided that this was a worthwhile measure and, on some occasions, are possible looking at extending the concept into a test even at the equivalent of our permanent resident stage, which is not something that is being suggested in the Australian situation. The impression I have from talking with colleagues overseas is that it is more likely that there is going to be an extension of the concept rather than a move away from the concept. I assume that they are doing that for good reason.

Senator NETTLE—It is not just the word ‘cohesive’, but you know what I mean in terms of the sense of security.

Mr Metcalfe—Yes, if there is anything we can provide to the committee, we will.

Senator NETTLE—Which countries are looking at extending their tests to permanent residents?

Mr Metcalfe—There has been some discussion in the United Kingdom about that.

Senator NETTLE—In the minister’s second reading speech he talked about responsibilities in relation to citizenship. The ones that he points out are obeying Australian laws, accepting common values, respecting the rights and freedoms of others and being involved in the community. I am wondering whether they are responsibilities that would apply to noncitizens as well as citizens. Obeying Australia’s laws is for anybody living in Australia, not just for its citizens.

Mr Vardos—You could make a distinction between what we call small ‘c’ citizenship and big ‘c’ citizenship. Small ‘c’ is community citizenship and the things that, as a member of the community, you have a moral or other obligation to be involved with. The responsibilities that go with formal big ‘c’ citizenship are, as Mr Metcalfe pointed out earlier on, the requirement

to enrol to vote, to serve on a jury if called upon to do so et cetera. You can make a distinction between the two.

Senator NETTLE—I accept what you are saying, but it is different to what the minister talked about in his speech on this bill. This bill is about responsibilities and what you are describing as the small ‘c’ citizenship in terms of members of the community rather than the capital ‘c’ citizen, which Mr Metcalfe—

Mr Metcalfe—Beyond what Mr Vardos has said, some of what we regard as responsibilities are not uniquely Australian. They would apply in many countries. They would not only apply to Australian citizens; they would apply to any members of the community. But there are certain things which taking that step in the journey of becoming a citizen gives you a right to do and gives you responsibility for. It goes to issues as fundamental as the ability to vote, to stand for a parliament, to serve on a jury and to become a member of the Australian Defence Force or the Australian Public Service, and there are responsibilities that go with that as well.

Senator NETTLE—We hear government ministers talk more about the broader set of responsibilities. I totally accept the narrower form of ‘citizen’. The bill talks about the responsibilities and the privileges of Australian citizenship. What are the privileges of Australian citizenship?

Mr Metcalfe—Again, this is not a new concept. For a long time a person has needed to have knowledge of their rights and responsibilities. I think it traces back to 1949. A privilege of Australian citizenship is the ability, subject to the law, to obtain an Australian passport and to receive consular assistance while overseas. If you have children born overseas you have the entitlement to register them as citizens. There are the privileges of being able to stand for parliament and of being able to vote. Many of the rights themselves also become privileges as well. This is not new or groundbreaking in relation to this amendment bill. This is something that we have had for many years.

Senator NETTLE—The phrase used is ‘responsibilities and privileges’.

Mr Metcalfe—That is correct.

Senator NETTLE—Are they all the one thing or is it that there are responsibilities and there are privileges?

Mr Metcalfe—As I think I have said, some of them intersect. Some would argue that it is a responsibility to vote. Others would argue that it is a privilege to vote. It is probably the same thing.

Senator NETTLE—When will the test questions be written?

Mr Metcalfe—It will be some time between now and 17 September.

Senator NETTLE—You cannot be more accurate than that?

Mr Metcalfe—I cannot help you further. Obviously we will need the citizenship test resource book to be finalised and the questions will be based upon that book. As I indicated in my opening statement, we are working on a commencement date of 17 September—subject to

the passage of the legislation, of course. I admit that time is tight and, clearly, we have some people working very hard to get things ready in time.

Senator NETTLE—Can you give us a time frame for when the booklet will be available or completed?

Mr Metcalfe—It will be soon.

Senator NETTLE—So the answer is no! I want to ask you about the \$240 application fee. Your submission says that it includes a component to recover the cost of sitting the test. Is there any cost breakdown of the \$240 in terms of what proportion of it is for the test?

Mr Vardos—The \$240 can effectively be divided into two. One half, \$120, is the application fee, which is the current cost of the application. The other \$120 goes towards partial cost recovery for those persons who are required to sit the test. As I said earlier on, those not required to sit the test will only pay \$120.

CHAIR—What does ‘partial cost recovery’ mean? Are you advising us that it does not cover the full cost?

Mr Metcalfe—Yes. We estimate it will cover less than the full cost. I do not know whether we have an estimate of how much of the cost it will recover.

Mr Vardos—We will need to consult with our colleagues to find that out.

Mr Metcalfe—Essentially what this means is that the applicant will be making a contribution towards the cost of administering and processing their application, including the test, but the taxpayer will be making a contribution as well.

CHAIR—Indeed.

Senator NETTLE—We had some discussion with Professor Rubenstein, who was a witness earlier today, about ways of encouraging people to take out citizenship, and there was mention of the television advertisements and other educational components to citizenship. Can you tell us whether those advertisements and other educational components have increased the number of people taking out Australian citizenship?

Mr Vardos—There has been a public information campaign since 2001 both to promote the value of citizenship and to encourage people to apply. Our research indicates that a spike in applications coincides with the running of the promotional campaign.

Senator NETTLE—What kind of level? What kind of spike?

Mrs Ellis—There have been significant increases. I think it is largely because it is a reminder to people. They may have been thinking about it for some time. It may be that the first time they see an advertisement they think, ‘Yes, I’m going to go and do it,’ or it may be the third or fourth time. There may well be other reasons as to why they apply when they do, but certainly our research shows that when there is promotion of citizenship the application rate increases. I do not have the figures with me but if you were to have a look at the figures we produce in the annual report each year you would see there has been a significant increase in the number of people becoming citizens since 2001.

Senator NETTLE—Will there be any comparison of the effectiveness of the information campaigns in encouraging people to become citizens as opposed to the citizenship test and the incentive that may provide for people to take up citizenship?

Mrs Ellis—I think I mentioned that there are a number of reasons why people apply at a particular time. Some of them may be related to the promotional campaign and some of them may not. For some people, for example, it is because they have lived here for a long time, they have decided they want to travel overseas and they would like to do that as Australian citizens. Obviously one indicator of the impact of the introduction of testing will be the number of applications that are made, but another factor that will impinge on the numbers of applications that will be made over the next 12 months or two years will be the changes to the citizenship act. To try to tease out how much is one, how much is the other and how much is other factors could be quite difficult.

Mr Vardos—We should state that there will be a continuation of promotional activities but also an information exercise to explain the new framework that will come into effect in September. With regard to the citizenship promotional campaign—I assume you have seen the ads—there will be a continuation of citizenship promotion activity alongside information dissemination.

Senator NETTLE—Will there be an increase in budget allocation for English language teaching in the lead-up to the citizenship test?

Mr Vardos—As you are probably aware, the principal program administered by our department is the Adult Migrant English Program. By my simple arithmetic, it has grown by 68 per cent since 2003-04 when it stood at about \$99 million. Although the final figures are yet to come in for the last financial year, we are estimating an output of about \$156 million, and the forward estimate for 2007-08 is at about \$166 million. So it is a demand driven program and the resources are always there to meet the level of demand. As you can see from those figures, there is a steady growth in the volume of resources dedicated by government through our portfolio, but at the same time you have the Language, Literacy and Numeracy program run by DEST, the Workplace English Language and Literacy Program and ESL for new arrivals run through schools. The latest figure I have is that, when you take all programs combined across all portfolios, the estimated outcome for 2006-07 is in the order of \$285 million. So there is growth over time.

Senator NETTLE—Is any of that growth connected directly with the citizenship test or is it all about the growth that is already occurring in each of those areas? I am trying to see whether there is anything associated with the test.

Mr Vardos—Clearly it is too early to make any judgements as to whether the test is acting as an incentive for people to take up their entitlement. Some people choose not to take up their entitlement. Others take all of it and wish they had more. Some take an average of 400 hours, which is the average of the last couple of years. So it is too early to say whether the citizenship test is having an impact on a person's decision to take up their full AMEP entitlement.

Senator NETTLE—But there is currently no specifically allocated money that is associated with the citizenship test.

Mr Vardos—Not in the AMEP, but there certainly have been activities, which were part of AMEP, that you could say were related to a person's interest in taking out citizenship. I am referring to the Let's Participate course. With the introduction of the test, we will need to look at whether that material is still relevant—whether it needs to be adjusted or changed. But to my knowledge—and it is not part of my patch at the moment—there is no intention to excise that from future AMEPs. In fact it will probably go in the other direction and be enhanced and made more relevant to the existence of the citizenship test.

Senator NETTLE—I recall a comment that was made, I think, by either the former parliamentary secretary or by the minister to the effect that, if we need to increase the amount of funding available for English language courses as a part of the citizenship test then we will do that. I was checking to see if that has happened or if it is something that may happen down the track.

Mr Vardos—I think you can take that as an articulation of the government's willingness to do something in this area if the evidence suggests that more needs to be done.

Senator NETTLE—So there is no evidence yet, but there may be something down the track. That is what I was trying to work out.

CHAIR—On that last point, there have been some questions put in a range of submissions, including some today from witnesses, in regard to English. Could you clarify for the committee current arrangements for assessing the basic knowledge and understanding of English? This has been occurring since 1949, but I would like to know about the current arrangements. Secondly, what are the arrangements under the new testing regime? Finally, Mr Vardos has answered, at least in part, the question about funding support measures for people who require English as a second language training et cetera and the different government departments which do that. Perhaps on notice you could clarify the measures that provide support for people to learn English and outline the costs or the investment by the government in those measures.

Mrs Ellis—Currently, of the people who make an application for citizenship, adults are required to attend an interview. Most people would attend an interview with the department. In the rural and regional areas they can attend an interview at a post office. There is what is referred to as a 'standard interview framework' which the interviewer works through with the applicant to ensure that all of the information on the form is still current. It asks a number of questions to test their knowledge of the responsibilities and privileges of citizenship. So the overall interaction in dealing with the application—checking that all relevant information is there and asking the question specifically on the responsibilities and privileges of citizenship—is used to assess whether the person has a basic knowledge of English.

CHAIR—And under the new regime you would be moving to a more objective assessment. Is that your response to the committee?

Mr Vardos—For the majority of people there will be no interview. It will be replaced by the test. For some people—those particularly who are not required to undertake the test—there will still need to be a face-to-face exchange with the department to verify their identity et cetera. So for that small cohort there will still be that direct exchange with the department.

But the interview will be replaced by the new testing framework which will commence in September.

CHAIR—You have also advised the committee, as has the minister, that there will be exemptions for those who are under 18 or over 60 and for those who have a mental or physical disability or incapacity.

Mr Vardos—Which prevents them from understanding the nature of their application, which is the key.

CHAIR—Are there likely to be any other cohorts where an exemption may apply?

Mrs Ellis—The way the legislation is structured, only those people who are seeking consideration under the general eligibility provision will be required to have the knowledge of English and of the responsibilities and privileges of citizenship.

For other groups of people, there are other provisions for people to apply under. For those under 18 and over 60 and for those with a substantial or permanent loss of sight, hearing and speech et cetera, there is no requirement to have knowledge of English or the responsibilities and privileges of citizenship. Therefore there is no question of them needing to complete a test. So the way the legislation is structured at the moment, it is not an exemption as such; there is simply no requirement for them to have that knowledge.

CHAIR—A range of submissions have been put to us saying there should be discretion or an exemption for refugees or people on a humanitarian basis or perhaps for some other reasons. How will those people be assessed? Will they be considered in a separate light or will they have to meet the general assessment approach?

Mrs Ellis—They will be treated in the same way as people who enter on those visas have been treated in the past. If they are applying under the general eligibility provisions, they will be required to have successfully completed a test to satisfy the minister that they have the required knowledge of English and the responsibilities and privileges of citizenship. Obviously if someone has entered as a refugee or on a humanitarian visa and they are under the age of 18 or over the age of 60, or fit into one of the other provisions where there is no requirement to have the knowledge of English or the responsibilities and privileges of citizenship, then they will not be required to sit the test. But there has never been separate treatment for people based on the type of visa they had to enter Australia on.

CHAIR—How will people in rural and regional Australia access this test? It is an issue for me and I know for many others, so can you answer that?

Mr Vardos—The test will be available in 47 locations around the country. Thirteen of those locations will be the DIAC offices, which are in the capital cities, Torres Strait, Southport and Cairns I think. The other locations will be in Medicare and/or Centrelink offices and we are currently in negotiations with those two organisations. We estimate, on past business levels, that the DIAC network will account for some 90 per cent of business, so the balance, 10 per cent, will have access via Centrelink and Medicare. In the short to medium term it will be DIAC staff who travel to those locations to administer the test using the facilities of our colleagues in those two organisations. The 47, as I think I mentioned, were mapped according to business levels. Clearly the current spread of Australia Post offices is

much wider than that, but some of those offices may not have seen a citizenship interview for some years, a decade or more.

CHAIR—HREOC has made some observations in its submission, and earlier today we heard from Professor Rubenstein with regard to section 21(2) and also 23A(3). HREOC say on page 9 of their submission:

The inclusion of additional eligibility criteria in s 23A(3) might lead to a situation where the Minister has a discretion to block a person from sitting the test who would otherwise meet the eligibility criteria in s21(2).

What is your response to that observation?

Mr Metcalfe—I refer you to my opening statement in which I indicated that, on advice available to the department, the test has to be consistent with the overall objectives of the act and that it would not be legally feasible, should a minister ever wish to do so—I hope that that would never be the case—for the test to be inconsistent or discriminatory in some way.

CHAIR—So the foreshadowed amendment will deal with that matter?

Mr Metcalfe—Certainly the note that has been foreshadowed will advise that, but that is quite plain. We understand the concern that has been raised, but we disagree with it.

CHAIR—Professor Rubenstein referred earlier to section 21(2) of the legislation, and you referred to the advice of the Scrutiny of Bills Committee, of which I am a member, so I would like to come back to your response to that advice and get some clarity on that. I think you said that the 200-odd questions would be refreshed from time to time and the view was put that that could be done via a legislative instrument when required. What is the problem with going down that track?

Mr Metcalfe—The legislative instrument track?

CHAIR—Yes.

Mr Metcalfe—The government's policy position, as I explained in my opening statement, is that there could be some uncertainty that develops as a result of the potential disallowance of a legislative instrument, particularly if a person has already sat the test and it is then disallowed. The policy position taken by the government is that the determination not be a legislative instrument within the meaning of that act.

CHAIR—I can see the reason for that. There has to be a surety that those questions are spot-on and not outside the ambit of section 21(2). I guess that is the confidence that you would have in going down that track?

Mr Metcalfe—In establishing the questions and refreshing the questions we will be very mindful of that requirement.

CHAIR—Mr Vardos, in response to Senator Crossin, you advised the committee that the consultant Acer had done some work for you. That is work that will come back to the department, or has come back to the department, and then you will review their report and recommendations and apply that accordingly. Is that how it works?

Mr Vardos—Once the resource book is launched or released by the minister then the resource book will go to the consultants. They will start drafting a bank of questions based on

the content of the resource book. That bank will go through processes that the development of questions for any testing regime will go through. The final set of questions will end up in the IT system that will run the test and that system will randomly generate 20 questions for each test-taker.

CHAIR—Earlier witnesses also asked us whether a majority of submissions were put in support of a citizenship test and in support of English coming through. You have advised us, based on your advice and a review of the figures in last year's report, that a majority of submissions were supportive. This morning I referred to an *Australian* article concerning a Newspoll survey of December last year. Can you advise the committee, or perhaps take it on notice, whether you are aware of any other surveys, opinion polls or advice which indicate the view of the Australian public about the citizenship test, the inclusion of English or related matters?

Mr Metcalfe—We will take that on notice.

Mr Vardos—If I can put on record the factoid I was searching for during Senator Crossin's questions, which I could not put my finger on: 64 per cent of the submissions that we received were marked 'confidential'—that is, the authors of them did not want them to be made publicly available.

Senator CROSSIN—Thank you.

CHAIR—Were their views represented in your percentage?

Mr Vardos—The views as to support, neutral or against were represented in the analysis but they were not put on the website because 64 per cent of the total received were marked 'confidential'.

Senator HURLEY—You were saying that Acer were responsible for compiling 20 questions out of 200. They did the 200?

Mr Vardos—No. They will—future tense—compile the complete bank of 200 or so questions. It could be 190, it could be 210, but we are talking 200 questions.

Senator HURLEY—They are now doing that?

Mr Vardos—No. They will when the resource book is released.

Senator HURLEY—So the resource book goes out. Who is compiling the resource book?

Mr Vardos—It is a government publication that is being prepared, as we discussed.

Senator HURLEY—Within the department of immigration?

Mr Vardos—We are certainly responsible for the production of the resource material.

Mr Metcalfe—The Minister for Immigration and Citizenship is overseeing the production of the book.

Senator HURLEY—So it is occurring within the minister's office?

Mr Metcalfe—It is an iterative process, as these things usually are. The department certainly had input and the minister has certainly taken the lead in preparing the material.

Senator HURLEY—Has the minister had input from anywhere other than the department?

Mr Metcalfe—I imagine he has.

Senator HURLEY—Do you know from where?

Mr Metcalfe—I do not know the full answer to the question.

Senator HURLEY—Partial will do.

Mr Metcalfe—I know that the minister has consulted with other members of the government. Certainly, his own staff have also been involved in providing advice on the development of the book.

Senator HURLEY—Have they consulted with any organisations such as FECCA, which are concerned with—

Mr Metcalfe—I think the answer is no. I will correct myself on notice if that is incorrect.

CHAIR—I thank all witnesses who have given evidence to the committee today. It is very much appreciated.

Committee adjourned at 12.56 pm