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Reference: Australian Citizenship Amendment (Citizenship Testing) Bill 2007

TUESDAY, 17 JULY 2007

SYDNEY

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SENATE STANDING COMMITTEE ON

LEGAL AND CONSTITUTIONAL AFFAIRS

Tuesday, 17 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, Hurley, Kirk, Ludwig, Nettle, Parry and Trood

Terms of reference for the inquiry:

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

WITNESSES

Committee met at 9.01 am

DONALDSON, Ms Margaret, Director, Race Discrimination Unit, Human Rights and Equal Opportunity Commission

HELY, Mr Brook, Legal Officer, Human Rights and Equal Opportunity Commission

CHAIR (Senator Barnett)—Welcome. This is the second 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. 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 the evidence given to a 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 upon 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, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time. Do you have any alterations or amendments to your submission numbered 41?

Ms Donaldson—No.

CHAIR—Do you wish to make a short opening statement after which senators will ask questions?

Ms Donaldson—Thank you. I make this opening statement on behalf of Tom Calma, the acting Race Discrimination Commissioner. I would like to begin by acknowledging and paying my respects to the traditional owners of the land on which we meet today. I would also like to thank the Senate Standing Committee on Legal and Constitutional Affairs for the opportunity to speak at this important inquiry.

It is essential that there be extensive consultation and debate about the requirements and processes by which a resident of Australia becomes a citizen. After all, becoming a citizen brings with it significant rights and responsibilities which enable individuals to participate in all aspects of Australian society. Citizenship is also an important rite of passage for migrants seeking to embrace Australia and the many opportunities that this country provides.

In view of the importance of citizenship and the human rights principles that should be taken into account in considering the introduction of a citizenship test, HREOC made a submission to the Department of Immigration and Citizenship in November 2006—which is

available on our website—in response to the discussion paper *Australian citizenship: much more than just a ceremony*. HREOC submitted that there was inadequate justification for overturning the current system and that there had been inadequate consideration of the negative impact of introducing a citizenship test on particular groups of people within our society.

It is against this background that I speak to you today representing HREOC in my capacity as acting Race Discrimination Commissioner, speaking on behalf of Tom Calma. In making a submission on the proposed amendments to the Citizenship Act, HREOC has recognised the importance of citizenship and parliament's right to legislate in this area. At the same time, with a view to ensuring Australia's compliance with the spirit and letter of human rights principles, the commission makes constructive suggestions to improve the proposed process while ensuring its appropriateness for contemporary Australian society and its conformity with international standards. The proposed amendments to the Citizenship Act put a focus on the manner in which we grant citizenship.

Summarising our submission, HREOC contends that, on the one hand, the legislation confers too much discretion on the minister in formulating a citizenship test or possibly multiple tests for Australian citizenship. In this regard, the amendments do not limit the minister's discretion or subject it to external scrutiny. On the other hand, HREOC submits that there is insufficient discretion conferred on the minister to formulate alternatives or waive a formal test for applicants with special circumstances or in cases of hardship.

On the first of these concerns, namely the excessive discretion conferred upon the minister in formulating a test, the commission suggests that the instrument creating the test should be made a legislative instrument. This would provide an additional level of parliamentary scrutiny, as the instrument would then be subject to disallowance under section 42 of the Legislative Instruments Act 2003. In turn, this additional parliamentary scrutiny will enhance the credibility of the test in the eyes of the Australian public and applicants, who can be assured that the test procedures have been widely debated and examined on every possible occasion. Given the importance of citizenship in contemporary Australian society, the commission believes that additional parliamentary scrutiny, debate and examination are warranted. The submission makes a number of suggestions to deal with the possible impracticality that further parliamentary scrutiny might require by disclosing the actual test before applicants would actually sit it. These suggestions are at paragraphs 16 to 20 of our submission.

The second of the commission's major concerns in relation to the proposed amendments is that there is insufficient flexibility for the minister to cater for persons unfairly disadvantaged by the formal citizenship test. While the amended Citizenship Act will continue to apply the currently available exemptions of the new test, the commission suggests that there may be other types of applicants for whom special arrangements should be made. When framing citizenship requirements we must always keep in mind that amongst those applying for Australian citizenship there are likely to be individuals who, because they have suffered trauma or have had limited education, would be disadvantaged by the requirement to sit a formal test yet would still make worthy Australian citizens. For this reason, the commission suggests the option of an oral interview with an officer of the Department of Immigration and

Citizenship. This would be equally effective in assessing whether an applicant fulfils the relevant knowledge-of-Australia criteria. In exceptional circumstances the minister should also be empowered to waive the eligibility requirements of sections 23D, E and F of the act especially if service in the public interest or special hardship can be demonstrated. These alternatives are important in ensuring that Australia does not throw away the opportunity to embrace individuals who would make worthy citizens despite their inability to successfully sit a test.

The third area of concern in the commission's submission relates to the proposed power of the minister to determine eligibility for sitting the test. In short, the commission believes this power is superfluous and unnecessary. In view of the eligibility criteria already codified in section 21(2), there appears to be no need to satisfy additional criteria which the minister has unlimited discretion to formulate. The inclusion of additional eligibility criteria might lead to a situation where the minister is able to block certain applicants from taking the test despite these applicants satisfying all other eligibility criteria for citizenship.

The committee will note from HREOC's submission that some of our recommended changes to the citizenship amendment bill are modelled on the Canadian approach—an approach the government relied on in its discussion paper to support the introduction of a citizenship test. The commission believes that this approach is useful in designing the process and requirements of the citizenship test and not only as a justification for introducing a test. To this end, it should be noted that the Canadian model more closely confines ministerial discretion than that proposed by the bill. In Canada there is a mechanism for suitable applicants to take an oral interview with designated citizenship judges if they have failed the written test more than once. This approach is analogous to the commission's proposal for an oral interview alternative in certain circumstances. In addition, both the Canadian and New Zealand frameworks provide the minister with the residual discretion to grant citizenship or waive certain eligibility requirements in exceptional circumstances.

Ultimately, the future of our country depends on the composition of our citizens. Any citizenship procedure must ensure that Australia embraces individuals not only able to contribute to the common good but who have been given every opportunity to best demonstrate this. The commission hopes its submission will better help parliament achieve this goal.

CHAIR—Thank you. Mr Hely?

Mr Hely—I do not wish to add to that statement.

CHAIR—Thank you very much. Before I move to questions, I would indicate that the department did respond to the committee yesterday, indicating they would be looking at an amendment to address the concern you have raised on page 9 of your submission regarding section 23A(3) of the bill. So you can bear that in mind and it will be on the *Hansard* record, I understand, by Wednesday night, and you can look at the department's comments in that regard. We will now move to questions.

Senator HURLEY—You were citing the overseas tests that are in place, in particular in Canada. But there are other countries that the department used in modelling the test as well, particularly the United Kingdom, which it seems to have heavily relied on, the Netherlands

and the United States. Have you had a look at those other jurisdictions to see how they compare with the current Australian amendment?

Ms Donaldson—In researching this submission, those models were looked at. However, I personally do not have intimate knowledge of them and could take any questions in regard to those on notice.

Senator HURLEY—Do you have any feeling for how they have worked in practice? The United Kingdom one is relatively recent, but—

Ms Donaldson—Not directly, in terms of the administration of the test, although I did, in January, attend the Commission for Racial Equality in England and so I have a general sense of some of the issues that they are looking at in that country, yes.

Senator HURLEY—What are those issues?

Ms Donaldson—In particular, I went there to look at how they are addressing the issues of counterterrorism and discrimination against Muslim citizens of their country, and their response in terms of a policy of integration and cohesion. They were the general issues I looked at there.

Senator HURLEY—And do you think that the current legislation in the United Kingdom about citizenship impacts on that?

Ms Donaldson—I do not have specific evidence or information in respect of that relationship, although I do think it is important to distinguish what is happening in the UK from what is happening in Australia. I think it is quite a different situation. For us just to adopt precedents from the UK without understanding the basic differences between our countries—the issues around segregation in housing, employment and education that they face, and the demarcation between ethnic groups which is quite pronounced compared to, say, the make-up of Australian society—would be dangerous. It would be dangerous just to adopt the models that have been put up in the UK.

Senator HURLEY—In regard to the ministerial discretion that you were talking about, one of the responses to that has been that the department will be monitoring the way the citizenship test is applied and the results it produces as it goes along. The suggestion was that that would then give the minister rapid discretion to be able to alter the test to make allowances where there are seen to be problems. I suppose the implication was that, if anything, the minister would use that discretion to make the test more flexible in the sense that it would allow more people to pass it. Do you have any response to that?

Ms Donaldson—We acknowledge in our submission the need for flexibility. However, we think our suggestion in terms of making the determination in relation to the test a disallowable instrument would not conflict necessarily with the flexibility that enables the departmental reviews to be taken into account. So they can actually be taken into account by parliament as a whole, not just in terms of the minister's own discretion. I suppose what we are seeking is that the legislation provides a framework which has some boundaries around that discretion but which does not unduly hamper the discretion of the minister.

Senator HURLEY—How do you imagine that legislative instrument would look? Would it outline what kinds of questions should be asked or the principles of the questions?

Ms Donaldson—We simply state that it should be made a legislative instrument, which then subjects it to parliamentary scrutiny. We do have some concerns about whether that would require the disclosure of the actual questions themselves in order for parliament to examine that test and decide whether it is appropriate. There are a couple of suggestions there as to how you could overcome that. If you wish, Brook can go into some detail about that. Otherwise, we did think quite seriously about some further elements that might limit the discretion directly within the legislation rather than just making it a disallowable instrument. We looked at the Canadian examples which more specifically set out that the test pay regard to aspects of Canadian culture, society and history. I think they are the elements, although I am not exactly sure. We found perhaps that, in itself, did not really address our issue in that there is the potential, if you like, within the minister's discretion to actually affect and discriminate against particular groups. Those types of limitations in the Canadian model would not necessarily do that. Our preferred option then was that simply it be subjected to parliamentary scrutiny through it being a disallowable instrument rather than importing these specific limitations into the act.

Mr Hely—It is an interesting question you raise as to what this determination will actually look like. We had that similar thought ourselves, primarily because the bill does not give much away on that; it really leaves it completely open. A lot of our concerns stem from the fact that this determination can take one of many forms. That being the case, we considered it was appropriate that there be an extra level of oversight and that there be these other sorts of safeguards just to make sure that, once the determination is made, it is not a process that is locked in stone without any form of safeguard.

Senator LUDWIG—I want to explore that a little further. As you understand, the legislative instrument is rather a blunt instrument—you can either vote for it or against it. There seems to be little opportunity for us to be able to split it, mend it or change it as is the case with an ordinary bill. What role, then, would parliament play in that legislative instrument? That is what I want to explore a little further with you, in that what you are looking for, as I understand it, is an oversight of the operation to ensure that it is not discriminatory and that it is fair and appropriate and adapted for the purpose for which it was intended. That seems to be the submission that you are making. In being a legislative instrument, what role would parliament play in that oversight?

Ms Donaldson—There are two aspects that come to mind. The first is the importance of being able to vote against it, and that would be very important if required.

Senator LUDWIG—Yes, put that to one side. We know that.

Ms Donaldson—Putting that to one side, I suppose, there is the process of bringing it within the public purview so that there can be a debate that might emanate from that which would bring to the public's notice the issues that might be of concern. Part of our reasoning in recommending that approach was that affected people would take some assurance or comfort from the fact that there was greater scrutiny and an opportunity for them to raise concerns and for those to be aired.

Senator LUDWIG—The purpose is that it has been laid on the table. It is there for people to see what the legislative instrument is and then to have the opportunity to have that debated. Are they the types of issues that you are raising?

Ms Donaldson—Yes.

Senator KIRK—I want to go to the matter of exemptions. As I understand it, currently under the act, section 21(4) sets out those persons who may be exempted from the test. I was interested to see that you say on page 6 of your submission that you think that that section is in some instances 'unnecessarily wide', in particular the fact that it excludes people with physical, vision or hearing disabilities. You suggest that perhaps they ought to be included and that they just have different sorts of facilities made available. Can you expand on that?

Ms Donaldson—That was a point raised by the disability discrimination commissioner, Graeme Innis. We are particularly concerned that people with disabilities are being taken out of civil processes rather than any accommodation being made for their inclusion. It is really about ensuring that people who fit into that category are empowered by these sorts of processes rather than exempted from them.

Senator KIRK—That is a good point. From what I understand from your submission you are suggesting that rather than exempting people it is better in your view to just put in place an alternative procedure. You suggest an interview rather than exempting categories of people. In paragraph 26 you talk about applicants who have experienced trauma et cetera. Is that your view?

Mr Hely—The point that we were trying to make is that this test has the potential to unfairly disadvantage certain categories of people, but we should not necessarily label all people who fall within that category as being unable to pass this test and therefore apply a different system. There needs to be some sort of flexibility to reflect the fact that not all people are going to be on a level playing field in approaching this test. For people who might have a legitimate reason for being at a disadvantage, and are therefore unable to pass the test, there should be a mechanism to apply for an alternate format for demonstrating their ability to make a worthwhile contribution to Australia. The examples that we threw up—victims of trauma, victims of persecution or people who may have limited or no education—are the sorts of categories that we would imagine the minister should have in mind when deciding whether or not a person should be able to access this alternate format. Overlying that we suggested that there should be a sort of exceptional circumstance discretion for the minister, along the lines of what is in place in Canada and New Zealand. If there is someone who for whatever reason, it is hard to speculate because we are speaking in the abstract, there might be exceptional circumstances on compassionate grounds such that the minister might wish to suggest that they should be eligible for citizenship, notwithstanding the technical framework that is established under the bill.

Senator KIRK—So it would be at the discretion of the minister; you would need to make an application to the minister to exercise his or her discretion.

Mr Hely—We appreciate that what the government are trying to do is not to have two streams with regard to applying for citizenship—that they are trying to streamline it down one track of passing a test. We see this as a sort of safeguard, which in many ways would be an

exception rather than a simple alternative. I anticipate that it would be used infrequently, given that more is involved on the part of the applicant—to be able to put in an application to have the interview and then go through the interview, whereas I imagine that, for the vast majority of applicants, it would be far simpler to pass a multiple choice test. So we do not see this as establishing a two-track system; it is more a case of having a dominant test system but with a mechanism for exceptions in appropriate cases.

Senator LUDWIG—Are you arguing for a ministerial discretion type power exercised by the minister similar to 417? I want to clarify whether you would consider that that would be too broad a discretion.

Mr Hely—The process we had in mind is along the lines of that sort of ministerial discretion. In fact, I think we have put forward a proposed wording which would enable a person to make an application to the minister—I imagine along the lines of 417—although I am not particularly familiar with 417 discretions.

Senator LUDWIG—They are unappellable; it is an absolute discretion.

Mr Hely—In that case, I think we would be more inclined to be of the view that some form of review should be available, particularly where—

Senator LUDWIG—That is why I was asking the question. By all means, take it on notice and get back to us. If you want to add anything further, please feel free.

Senator PARRY—I want to return to the ministerial discretion and your assertion of it being too broad in relation to the test. In coming back to parliament if it is a disallowable instrument—because, as you realise, the whole instrument is thrown out, not just aspects of it; it cannot be debated or amended in that sense—the minister could end up in an auction style arrangement of trying to pick questions or the parameters for those questions. Do you have a response for that? It could become very unwieldy for the minister.

Ms Donaldson—I would imagine there would be a generic objection to any instrument being a disallowable instrument. I suppose that needs to be weighed against the benefit one gets from having scrutiny of these decisions. I suppose one would subject only very important exercises of discretion to that type of scrutiny. It reflects our position that the decision about citizenship and citizenship tests are of that nature.

Senator PARRY—Don't you think, though, that a minister would have the pressure of peers, of colleagues, if the test needed to be modified rapidly? There would also be the scrutiny of the public. The public would soon voice an opinion if the test was incorrect, severe or did not seem suitable in any way. I would have thought that a minister would have to respond to public opinion, as well as to the opinion of colleagues and cabinet colleagues. Do you have a response to that?

Ms Donaldson—That is probably a very likely scenario, although, unless for these very important decisions it is somehow encased in legislative or parliamentary processes, there is no guarantee that that necessarily will occur, and I think that, in relation to these types of decisions, one needs that guarantee.

Senator TROOD—I want to take up a couple of questions in relation to the remarks on page 3 of your submission regarding the matter of ambiguity and your recommendation with

regard to section 23A, which you seek to limit to apply to (d), (e) and (f) in section 21(2). Can you explain to me what your concern is about that.

Ms Donaldson—Yes. That is a fairly technical point. There does not seem to be a sufficient link between the formulation of the test and its reference to (d), (e) and (f). With the wording, we feel that there is some ambiguity in that and that it needs to be clarified.

Senator TROOD—It does include those provisions, doesn't it—subsection (d), (e) and (f).

Ms Donaldson—Yes.

Senator TROOD—Subsection 23(a) as cast now would cover those provisions. I am wondering what particular harm you would see as likely to occur if your amendment were not accepted.

Ms Donaldson—On the assumption that the legislation does have that ambiguity—and it is a technical area as to whether a court would say that the test does not necessarily have to be linked to (d), (e) and (f)—and that leeway, that would definitely give the minister too much discretion to go even beyond (d), (e) and (f), which in our view are very wide and should at least be limited to that.

Senator TROOD—The way that it is cast would allow the minister to relate to other subsections of 21(2), presumably. But I am not clear that the way in which he might exercise the determination would have dangerous, disadvantageous or discriminatory consequences which may not be in the interests of an applicant.

Mr Hely—The point we were making there is that given that section 21(2)(a) talks about the minister being satisfied that an applicant has met the requirements of (d), (e) and (f) if they have passed the test, it is a matter of common sense that the test should be referable to (d), (e) and (f). The point we are making in our submission is that that should be made clear just to avoid the potential for any ambiguity.

Senator TROOD—So this is an argument about precision mainly, is it?

Ms Donaldson—Yes.

Mr Hely—Yes.

Senator NETTLE—In your opening statement you talked about the HREOC submission to the discussion paper on the citizenship test. HREOC submitted that there was inadequate justification for overturning the current system. Have you since heard a justification or does that continue to be the view of HREOC in relation to the citizenship test?

Ms Donaldson—That continues to be our view. In that submission, in the event that the test is introduced, we also included some safeguards as to the format and the makeup of that test. It is directly referable to this inquiry. But we still maintain our position that there is not sufficient justification for overturning the current system and that in introducing a citizenship test there could even be negative impacts based on particular groups seeing that test as being aimed at them.

Senator NETTLE—Yesterday during the inquiry we had some discussion about the objectives that the government is seeking to achieve through bringing in a citizenship test that is about people having English language skills and having an understanding of Australian

values. From a number of witnesses yesterday there was discussion about whether or not the test was the most effective mechanism for achieving both those things, English language proficiency and a signing up to a way of life that operates in Australia. Does HREOC want to make any comments about that view? Yesterday, there was a general acceptance that it is good for people to have English language skills and for people to understand our way of life. But is a test the best way to achieve that particular outcome?

Mr Hely—We would probably refer back to our original submission. In the submission that we made to the current bill, we did not go into those issues because we felt that we had already covered the arguments about whether or not we should have a citizenship test at all. That was a debate in relation to the discussion paper, and our views on that are set out in our submission on that. Our submission on this bill is saying, 'If we are going to have a citizenship test, which we have previously said we oppose, then it needs to have certain safeguards.'

As far as whether or not a citizenship test is the most appropriate or the most effective way of testing someone's ability to speak English and their commitment to our Australian way of life, I think that is an assumption which is certainly open to a lot of challenges and it has been challenged in a lot of submissions that have been made in relation to the discussion paper—ourselves included. I do not know that I need to go into the nuts and bolts of that, because it is covered in our earlier submission, but I think that some of the points we were making, if memory serves me correctly, were about a greater focus on education of migrants and provision of services and facilities available to encourage new migrants to take up English rather than simply a hard and fast 20 multiple choice questions test, which is certainly a very fallible way of determining a person's ability to speak English as well as their commitment to Australian values.

CHAIR—Thank you for your evidence. Just to round it off regarding the legislative instrument, we put a number of your concerns to the department yesterday in a whole range of areas, including the legislative instrument one. I thought the department responded reasonably convincingly with regard to that in the sense that the legislative instrument would obviously include the range of questions which an applicant for citizenship would apply, under that legislative instrument and consistent with the questions in it, and would successfully gain citizenship. Because under that proposal at a subsequent time, because it is a disallowable instrument, it could be opposed at a later date then what would happen to those citizens in such a situation? They argued that it would be a flawed process. I am putting that back to you as one of the department's responses to the question that we put to them yesterday. I was wondering if you wanted to comment.

Senator LUDWIG—Feel free to take it on notice and have a look at the transcript.

Ms Donaldson—Yes, I think we might because I am not sure exactly what position those citizens would necessarily be in as a result of that process.

Mr Hely—I am not sure if I understood their point correctly. It might be useful to have a look at the transcript, but I would have thought that the test would not be in place until it has gone through that legislative instrument process. I do not know that there would be people caught in limbo.

CHAIR—My understanding is that the test would be in place and that, because it is a disallowable instrument, it remains disallowable, but it is in place until such time as it is disallowable. But Senator Ludwig and perhaps others might wish to comment on that.

Senator LUDWIG—It operates from when it is made, and then it is tabled in parliament and it has 15 days. The way a disallowable instrument works, it will come into operation and it will be there until such time as it is disallowed. The minister has 15 days, more generally, in which to table the document. It is 15 sitting days, so you can have a period—if the minister was to put it in on the last day of the winter session or during the winter session, then it is obviously in effect for some time before it comes to parliament and before the debate even comes on.

Ms Donaldson—So their demise is really as a result of the minister introducing it in a way that would allow a fairly long period before parliament has a chance to reflect on it.

Senator LUDWIG—I am not sure a minister would necessarily choose to do that; it is just sometimes how it falls.

CHAIR—I just wanted to draw to your attention to that as that was one of the arguments they put back to us, which seemed quite convincing. If you have any response to it, we would welcome that. As I and others indicated earlier, have a look at the transcript and please feel free to come back to us on notice if that seems appropriate. Thank you again for your evidence. We do appreciate your thoughtfulness and your submission. And pass on our best wishes and our get well wishes to Tom Calma.

[11.39 am]

POWER, Mr Paul, Chief Executive Officer, Refugee Council of Australia

SAMSON, Ms Anna, National Policy Director, Refugee Council of Australia

CHAIR—I welcome representatives from the Refugee Council of Australia. The Refugee Council has lodged submission No. 49 with the committee. Do you wish to make any amendments or alterations to that submission?

Mr Power—No.

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

Mr Power—As you would be aware, the Refugee Council is a peak refugee policy and advocacy body in Australia, with over 90 organisational members. We acknowledge the real concerns which are motivating the introduction of this bill. In the discussion paper preceding the legislation, the explanatory memorandum to the bill and the minister's second reading speech, the concerns seem to be: (1) there are currently insufficient incentives for migrants in Australia to learn English and that the introduction of English testing as part of the citizenship process will increase the impetus for migrants to improve their English skills, (2) Australian citizenship is currently too easy to obtain and therefore undervalued by those who seek it, and (3) too many people who do not adhere to Australian values are becoming Australian citizens.

In our view, it is arguable on some level that all of those perceptions of the current citizenship regime are misplaced. However, even if there could be some evidence provided that these concerns are in fact defensible, then it is our contention that enacting this piece of legislation will not resolve them effectively. Rather, without some significant amendments to the bill, the legislative provisions will operate in a discriminatory manner which runs counter to the intention of the legislation. In particular, as an organisation that represents refugee service providers and works with refugees and humanitarian migrants, we are keen to ensure that the legislation does not operate in a deleterious manner for this group of migrants who have a particular migration experience.

Refugees and humanitarian entrants are people to whom Australia owes protection obligations. These people have fled persecution. Some have no citizenship of any country—that is, they are stateless—while others are unable to rely on their home countries to provide them with the protection that they require. For refugees, arguably more so than any other category of migrants, obtaining citizenship in the country of their resettlement is crucial to ensuring good resettlement outcomes. That is demonstrated by the fact that there are much higher levels of citizenship uptake among refugees and humanitarian entrants than for any other category of migrant in Australia. As such, it must be recognised that any efforts to change citizenship requirements—in particular, any efforts to make citizenship more restrictive—will have a disproportionately adverse impact on this group of migrants.

Turning to the underlying tenets of the legislation, firstly, it is our experience that refugee and humanitarian entrants, like other migrants, are keenly aware that a grasp of English is important for their successful resettlement in Australia. However, there are additional barriers

faced by refugees to acquisition of English skills that cannot be achieved through English testing. For instance, experiences of torture and trauma—including detention in Australia—significant periods of time spent in refugee camps and pre-literacy or illiteracy in their mother tongue may compromise refugees' capacity to acquire the level of English required to pass the citizenship test. This does not mean that refugees will never attain this level of English, rather that their particular circumstances make such acquisition inherently difficult.

Further, the Refugee Council notes that there is no definition provided in the legislation of 'basic level of English'. It is our view that there are large numbers of both current and potential Australian citizens who are able to participate fully in the community with the working level of English already provided for under the current citizenship eligibility regime without the need for an additional test. Similarly, while possession of English skills may improve employment prospects, there is no evidence that English testing will improve employment outcomes for migrants. Rather, withholding citizenship from migrants will close off a range of job opportunities, including various public sector occupations, thus limiting their chances to engage in meaningful employment.

While English testing will not necessarily improve English skills, English language training most definitely will. Emphasis should therefore be placed on augmenting the availability and accessibility of language classes. For that reason, the Refugee Council applauds the Australian government's recent decision to increase funding for the Adult Migrant English Program for refugee and humanitarian entrants. However, we note that refugees on temporary protection visas—that is, people to whom Australia has a protection and resettlement obligation—do not have access to such classes, making it doubly difficult for these people to attain adequate levels of English.

The second identifiable motivator of the legislation, that Australian citizenship is too easy to obtain and thus undervalued, we submit is not accurate nor a concern that can be addressed through English or knowledge testing. As already mentioned, citizenship is highly valued among refugee and humanitarian entrants despite, or perhaps because of, their experiences of forced migration. In our experience, contentions that migrants simply choose to become citizens to take advantage of presumably generous citizenship privileges are without evidence. I will ask my colleague Anna to continue.

Ms Samson—As Paul has already mentioned, our concerns do not just rest there. There is little doubt that the test itself will operate in a discriminatory manner. On the one hand, it is arguable that this is perhaps a good thing. After all, if there is a belief that Australian citizenship needs to be more selective because people are seeking Australian citizenship to take advantage of the rights of citizenship without wanting to adhere to the responsibilities or that they are people who do not adhere to our common values and therefore should not be included as an official part of the Australian citizenry, then it is necessary to make citizenship harder to obtain.

However, as an organisation that works closely with refugees and humanitarian migrants, we are concerned that citizenship testing is a rather blunt instrument for achieving these goals. In its current articulation, the test will erect additional barriers to citizenship for refugees who have historically had the highest level of commitment to and enthusiastic support for the institution of Australian citizenship. In particular, the test will discriminate against those who

are from non-English-speaking backgrounds; those from lower socioeconomic or educational backgrounds who do not have the time to participate in language training on account of their inflexible work schedules; and women, who are often already socially isolated and unable to participate in language training due to their family responsibilities.

We would also like to alert the committee to the fact that such discrimination could amount to breaches of Australia's obligations under the refugee convention—in particular, article 34; the International Covenant on Civil and Political Rights—in particular, articles 25, 26 and 27; the Universal Declaration of Human Rights—in particular, article 15; and the Convention on the Elimination of all Forms of Racial Discrimination. It may also contravene the spirit of Australia's obligations under the UN statelessness convention.

We would also remind the committee that a similar test, in its early incarnation in Australia's history, was discredited and abolished due to its politicisation and racially discriminatory outcomes. Such findings have been replicated in more recent studies of contemporary language testing in other countries such as those raised in the submission by sociolinguist Dr Ingrid Piller and her 120 linguistic professional colleagues.

In our view, while it is admirable that the government appears committed to improving the quality of individuals whom we admit to be part of the select group known as Australian citizens, English language testing, coupled with the multiple-choice knowledge of Australia test, is unlikely to secure this outcome. If anything, it will instead exclude large numbers of people who can and do make substantial positive contributions to Australian society from being able to participate as full members of our society. Consequently, it is in the interests of all Australians that we ensure that any citizenship test does not prevent us from enjoying and valuing the contributions of these individuals.

Further, it is the Refugee Council's view that parliament should be mindful of establishing a two-tier system of Australian citizenship that privileges place of birth over any actual commitment to democratic participation in our community. If parliament is to press ahead with the citizenship-testing regime, as articulated in this bill, the Refugee Council would urge that steps be taken to neutralise the inherent discriminatory operation of the test by at the very least providing exemptions for refugees and humanitarian migrants or by requiring that all people wishing to hold Australian citizenship, both current and prospective, should pass the test. The legislation should also expressly mention in its objects that it is not intended to operate in a racially or otherwise discriminatory manner.

Finally, the Refugee Council notes with some curiosity that, given the policy has attracted much community debate and is far from controversial, this legislation leaves some of the most contentious aspects of the policy within the sole purview of the minister and beyond the scrutiny of the legislature. Such discretion is open to actual and perceived politicisation of citizenship admission the kind of which, in the Refugee Council's view, the parliament would do well to avoid.

Senator PARRY—I refer to your last point about ministerial discretion. I presume you were present and heard the evidence from the previous witnesses. Don't you feel as though the minister would have the pressure of public opinion to instigate changes, if necessary, to the test?

Ms Samson—I think I can only reiterate what my colleagues from the Human Rights and Equal Opportunity Commission have said already. In the democratic society in which we live in Australia it is hoped that there would be adequate public debate and pressure brought to bear on a minister if it were thought that the test would not achieve the objectives that it set out to do. However, we believe that an additional safeguard of some kind, either parliamentary scrutiny or, as we and I think some other submissions have mentioned, establishment of an independent body to set up and monitor the test would be—

Senator PARRY—The minister could do that. The minister could engage others to assist in the implementation of the test under his hand. But if we were to put every single test or every single portion of any act of parliament that requires some form of flexibility and constant monitoring firmly within the legislation, things would become very unwieldy. I have appreciation for your concerns but I think we do trust ministers to fulfil their roles and obligations, and one of those is to be cognisant of public opinion and the opinions of their colleagues. Do you have any further comment?

Ms Samson—I think that is true. I also think it is in the interests of the broader Australian community, given that citizenship is so crucial and that the consequences of citizenship are so important not only in the official admission into the Australian community but also the capacity to participate in a very concrete way within Australian public life, that there be a definite balance between the flexibility that is required if a citizenship-testing regime like this is going to be set up and the requirement that there be open, public accountability and scrutiny. Such scrutiny, not necessarily through legislation but through a legislative instrument or through some other form established and provided for within the legislation, would go a long way towards achieving that. But, of course, I guess striking that balance is a decision that the committee and the parliament need to make.

Senator PARRY—Thanks for your opinion. I will not debate the matter with you. If the methodology of the implementation of the test—that it is not simply a written or computer based test—were flexible enough to adapt to all circumstances, do you think you would be more accommodating of a test?

Mr Power—Certainly we would have a more positive view than if it were to be purely a written test, but that does not change the fundamental concerns that we have expressed. In practical terms, if the legislation is to go ahead and the test is to be implemented without significant flexibility in the way that testing occurs, it will be very difficult for a significant number of people who are very keen to become Australian citizens, and who would make excellent Australian citizens, to pass the test, particularly in the relatively early years of their time in Australia.

We are trying to say, and in fact the minister himself has said, that immigration is not an event; it is a process. For people who come from backgrounds where familiarity with English has not been part of their experience before they come to Australia, the acquisition of language takes a long time. It is widely recognised that the first generation that comes to Australia makes many sacrifices for the benefit of the children, and one of those sacrifices is a more limited access to Australian life because they are still making the adjustment and are still acquiring the language. Those who have had fewer educational opportunities before they come and those who are forced through family financial circumstances to put as much effort

as they possibly can into earning income have much more limited opportunities to learn English.

Those are our concerns. Any testing regime really has to seriously consider that people who are making that adjustment to Australia not be disadvantaged. Another of our concerns, and why we have taken a negative view of the legislation, is that in a lot of the public discourse there seems to be almost an assumption—perhaps I can phrase it in another way: among many people who do not have regular contact with those who have recently arrived as refugees through the refugee and humanitarian program there is a lack of awareness about the level of commitment and goodwill they have towards Australia.

In terms of an inclination towards embracing the country, what we see every day is that people who are coming through the refugee program have a very high commitment. They have beliefs about this country that Australia would benefit from if more citizens shared such an enthusiasm for Australia. But it does not necessarily mean that they are going to be in a strong position to pass, in all cases, an English language test or an Australian knowledge test. Certainly we would be keen to see a lot of flexibility in the way that the test is implemented and also options for full exemptions in some cases.

Senator TROOD—It would be a very sorry consequence if one of the results of traducing the test would be that people who come here in the circumstances that you have mentioned were less inclined to be enthusiastic about becoming Australian citizens. The point about the test is to indicate that we as Australian citizens value Australian citizenship and we want people to equally value it. It is true, isn't it, that the single most discriminatory element of people becoming better involved in Australian society, having employment prospects, is securing English language skills? All of the studies that we have looked at tell us that that is the most fundamental point in people becoming much more involved in Australian society and having opportunities for employment. In that sense, to the extent to which the test encourages the acquisition of those skills, wouldn't you agree that that is a valuable source of encouragement given the importance of having those skills?

Mr Power—I suppose we would agree that anything which encourages people to acquire English can have potential benefits, but it is misunderstanding the fact that it is widely understood by people who migrate to Australia that, unless and until they acquire English, they are not able to access many aspects of Australian life. You can see, certainly over the past 60 years of post-war migration, the keenness and focus that the vast majority of migrants, even if they have not had strong English skills themselves, have put into the education of their children is a clear indication that, even if people's English language skills are not strong, it is not that they do not value the learning of English; they understand quite clearly that for the future of their family the acquisition of English is fundamental. One of the issues we have raised in the submission is that further assistance to people learning English is a very positive thing, and we were really pleased with the government's decision in the budget to increase the funding for the Adult Migrant English Program for school-aged refugee and humanitarian entrants. It is a really positive move. It is our belief that if the resources we are putting into this testing regime were to further supplement the Adult Migrant English Program for adults, we would achieve more than through the system of having a citizenship test which involved an English language test.

Senator TROOD—Your recommendations were quite adamant about your position. Let us assume that the test is going ahead. How could we improve the legislation to make it if not enthusiastically received by the council, then at least acceptable to it? Do you have any suggestions for amendments which we might make?

Mr Power—There are two things. One is transparency. We have already discussed the issue of parliamentary scrutiny. But probably more important would be a regime of flexible testing that left some level of discretion for situations where people could be exempted entirely and for other systems where people could be tested orally.

Ms Samson—To supplement that there needs to be continued support for resettlement programs to complement the citizenship testing regime and to improve the capacity of individuals who are already inherently disadvantaged when they come to the table to sit the test, to improve their situation and their standing in that regard. To add to Paul's point and to your point, Senator, the prospects of resettlement and having good settlement outcomes are intrinsically liked to one's enthusiasm, and particularly to refugees' and humanitarian entrants' enthusiasm, for obtaining Australian citizenship and continuing to participate fully in the Australian community in the way in which they desire. So, to complement a citizenship testing regime, I think there needs to be continued government support for good resettlement programs that include English language training and expanding the accessibility and availability of English language training.

Senator TROOD—It is conceivable the committee could make that recommendation, but it would be helpful if, in addition to that, we could say that there are two or three specific changes to the legislation that might accommodate the concerns that you and perhaps others have about these kinds of issues.

Ms Samson—I think my colleague made the point about increasing exemptions and flexibility within testing.

Senator NETTLE—I want to ask you about two issues. One you raise in your submission is about the difficulties for refugees in attaining the level of English language skills required in order to pass the test. You highlight the issue that that may mean a delay in those individuals being able to get citizenship. Could you expand on the implications for those refugees if there is a delay in their being able to get access to citizenship?

Ms Samson—There are a few things with this legislation. When the time that people must wait before they can actually apply for citizenship is increased to four years, that will increase the amount of time for anybody who is applying for citizenship. But in the case of refugees who may have spent time in detention centres, that is added on top of the four years. For refugees who do not necessarily have travel documents for their home countries or for those individuals who are stateless, it means they are unable to obtain secure travel documentation so that they can leave the country to visit relatives. From the Refugee Council's experience, we know that is a really important aspect of ensuring good settlement outcomes. So the travel documentation issue and the ability to travel overseas become important consequences for refugees that other people who have citizenship of another country or who have a state would not necessarily suffer.

Mr Power—The whole psychological impact of the refugee experience has many ramifications. Each year we conduct a national consultation within refugee communities and refugee settlement services about issues for the refugee intake, and it is interesting that the issues that people who are the professional service providers nominate as they key issues and the issues that people who have been through the refugee experience themselves nominate are quite different. The ones that refugees talk about are basically about security and about getting the family together. They are issues such as being able to reunite with family members, in particular, and being able to psychologically make the shift from the situation they have left to a permanent and secure life in Australia. Citizenship really is the final step in that process. Particularly if people have been able to reunite their family then gaining citizenship is a significant psychological step towards resettling in Australia.

I think refugees are in quite a different category in that they do not have a choice in leaving their country of origin and coming to Australia. People in other categories of migration weigh up whether they will stay where they are or whether they will come to Australia. People who are forced to flee do not have that choice. We need to think about their migration experience in a very different way from the way we think about the migration experience of people who come as skilled migrants or in another category.

Also, we can see the keenness of people who have been refugees to take up citizenship. That must tell us something. If we are introducing a regime that will make it the hardest of all for the people from that migration group—people who are most interested in taking up citizenship and who almost never exercise dual citizenship; they are interested in sole Australian citizenship—then when we are introducing new legislation we need to make sure that this group, who were the keenest for Australian citizenship, are not in some way frozen out.

Senator NETTLE—In your submission you also raise the issue of specified personal identifiers. I did not find that in the legislation.

Ms Samson—That already exists in the current Australian Citizenship Act. That was just to draw the committee's attention to it; it was not to make a broader point other than about the provision for the collection of this sort of information—and that is in the context of citizenship testing, where somebody can potentially repeat the test over and over again. The amount of data collected on a person and how long it is kept raises additional questions in this regard, as opposed to any other form of the current citizenship admission regime. But it was not a broader point than that. It is already within the legislation.

Senator HURLEY—As I understand the process from yesterday's evidence, what is happening is that the minister and his office are devising the resource booklet on which the questions will be based, and that will be used to make a series of 200 questions from which the 20 questions will be devised. Do you think there is any value in defining for people taking up citizenship, particularly refugees, exactly what citizenship represents?

Ms Samson—It is quite good to hear that the minister is engaging in what I hope is quite a broad process to identify what needs to go into this booklet. The difficulty we had in responding to the legislation and the discussion paper—we could only go on the information we had, and that was not available to us at the time. We would like to have a look at the

Hansard to understand it a bit better. But in the sense of the sort of development of the questions and the articulation of what citizenship means to refugees and to anybody who has applied for citizenship, I am sure that cannot hurt. If there is broader articulation of other aspects of Australian life, Australian values or Australian identity, those are perhaps more contentious issues. I am hoping that the minister will be looking more broadly than perhaps his department in gaining assistance for developing the information that goes into such a booklet.

Senator HURLEY—I understand the minister is not even going to the department. He is developing the questions within his own office.

Ms Samson—I think that the submissions to the discussion paper and to this inquiry, and the broader public discourse that has happened around the citizenship test and the proposal for the citizenship test, would indicate that these are relatively contentious issues. We are not experts in this area either but, in the Refugee Council's view, to remove some of the potential politicisation, it is important that other experts or a body of experts be established to be involved in the production of such a booklet. Because of its impact on where the questions are to be drawn from and how people are to be tested for their admission to citizenship, you can see how important the development of a sound booklet is.

Mr Power—The less political the process, the less likelihood there is for a change whenever the political environment changes. The more clear and open and consultative the process is, the less likelihood there will be for ministerial change at some other point, even when there is a change of minister.

Senator HURLEY—There was also evidence that the resource booklet would be produced only in the English language. Some other submissions said that it might be useful to have it produced in a range of languages so that people could read and understand it in their own language before going on to the English component of the test. What is your view of that?

Mr Power—We would support that. If the government is prepared to consider some alternatives in the way people are tested for English language, based on people's practical ability to acquire the language quickly, those who have lower levels of English at the time they are tested are obviously going to be disadvantaged if they do not have the opportunity to read fairly complex concepts in a language with which they are more familiar.

Senator HURLEY—I do not know how familiar you are with the AMEP course and the component of it that describes Australian culture and history and so on. It is called Let's participate: a course in Australian citizenship. Are you aware of that and how successful it is in allowing refugees to learn about the Australian way of life?

Mr Power—No, we have not really done an analysis of that, but we are aware of it in general terms. One of the challenges for AMEP is people's participation, largely because of work issues. That is of concern to us. We have been pushing for more flexibility in the delivery of the program so that those who are attempting to establish themselves in the Australian workforce have reasonable opportunities to access it. I think one of the things that need to be considered is that all people who are coming as refugees, who are humanitarian entrants, do not have full access to AMEP because of their own personal circumstances.

Senator HURLEY—Are you saying that that would limit their ability to—

Mr Power—Yes. It means that, if they are not able to access the program fully because of work or family commitments—the care of a number of children—they are not doing that part of the course. It is very difficult for newly arrived refugee women to be able to solve that issue. The way the program is being delivered in some parts of the country means it is more successful than in other parts—trying to resolve the issue of child care for women.

Ms Samson—The best way for attaining a knowledge or an understanding of the Australian way of life is not necessarily through sitting in a classroom and learning by rote exactly what it means to be Australian. The best way refugees and migrants learn about the Australian way of life is by living it and being integrated within the community and feeling like they are able to settle and rebuild their lives here. Any efforts to increase the knowledge of refugees or humanitarian migrants of the Australian way of life through any kind of educative program need to be matched by recognition of good settlement and good community integration outcomes. That is probably the best way people can learn about what it means to live in Australia.

CHAIR—I have one point to make and then a final question. In terms of Senator Hurley's interpretation of the minister's actions regarding the resource book and the questions, I draw your attention to the transcript in the *Hansard* for clarity, because there may be a different approach that you might glean from reading the *Hansard*. I have a question with regard to the UN convention. You indicated the possibility of Australia being in breach of a range of UN conventions; you mentioned several of them. In terms of the other countries that have a test—for example, the US, the UK, Canada and the Netherlands—are you aware of any action that has been brought against them for breach of the UN conventions?

Ms Samson—No, I am not aware of them but that is a question we are happy to take on notice, although I note that in the UNHCR submission to this inquiry they also made a mention of concerns about potential breaches of those conventions. The provisions I referred to are ones that refer specifically to resettlement obligations, discrimination and the acquisition of nationality. With regard to statelessness, delaying or excessively prolonging the period for which stateless people could achieve citizenship might contribute to an ongoing problem of statelessness, to which the Australian government has committed to assist the international community to reduce. I am happy to take that question on notice, if you require it.

CHAIR—If you think that would be of assistance to the committee, we would welcome it. Thank you for your evidence today.

Proceedings suspended from 10.14 am to 10.31 am

BIBBY, Dr Richard Martin, Assistant Secretary, New South Wales Council for Civil Liberties

CHAIR—Welcome. The New South Wales Council for Civil Liberties has lodged submission No. 32 with the committee. Do you have any amendments or alterations to make to that submission?

Dr Bibby—No.

CHAIR—Thank you. 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.

Dr Bibby—I would like to address four matters: values, facts, having a test at all and the manner of formulation of the test. I will begin with values. When I came to Australia in 1970, people were still taking Aboriginal children away from their parents. The double standard in sexual morality was widespread. There was a belief that what was called 'miscegenation' was disgusting and wrong. There was the idea that protesting against injustice was whingeing and accordingly somehow wrong or disgusting. And there was the idea that immigrants, who were called 'new Australians', should be seen and not heard and above all should not seek to make change. These were amongst the Australian values of the time. It was not only my right to reject them and to campaign against them; I deemed that it was incumbent upon me to do so and have accordingly attempted to do so in the years since.

What do we make of the belief that immigrants ought to adopt Australian values? It is impossible to find a coherent argument for such a view, and there is philosophical literature on the issue of values relativity and how you would argue for any sort obligation in relation to that. To argue for the idea that you ought to adopt Australian values you have to step outside Australian values—you have to appeal to universal values. And as soon as you do that you have the basis for criticism of Australian values.

What kind of universal principle would you appeal to? That people ought to adopt the values of any society in which they choose to live? That is plainly false. Think of Rwanda: you might choose to live in Rwanda for, say, the sake of your medical expertise, but you would not expect to adopt the values of the Hutu, or certainly not those of a few years ago. You might have chosen to stay in Nazi Germany. You might live at present in Zimbabwe. The notion that people ought to adopt the values of the society that they are in is plain nonsense. What alternative kind of argument could you produce—without ending up in incoherence—that would say that you ought to adopt the values of the society that you happen to live in?

There is a thing in ethics that is called the most stupid position, which is the notion that values are relative to a society and that something follows from this about how you ought to behave or what values you ought to adopt in a society. You cannot hold both of them together because you are applying a universal principle to support the notion of what you ought to do. It is actually an incoherent view. So the notion that has been put abroad, that people ought to adopt Australian values if they live in Australia, is simply nonsense.

A more sensible idea is that people who seek to become citizens of a democracy ought to adopt the values that a democracy relies upon, so those values are justified. But all values are

controversial, even the most basic—perhaps especially the most basic. So we might say that you should accept the fundamental principle of respect for persons and hence accept that people are entitled to a say in issues that affect them and so one ought to accept democracy on those grounds—a standard deontological argument. Or, you might say, you should hold that democracy is better than other forms of government because it produces better outcomes than, say, a benevolent dictatorship because democracy fosters widespread disputation and widespread disputation, leads to the production of more facts and more information and better arguments, and in the long run leads to better decisions. But if you are a Catholic theologian, you would reject both of those approaches on the grounds that morality is not founded in fundamental respect for persons at all, the fact that that deontological approach to moral reasoning is mistaken and the appeal to consequences is inherently immoral.

The fundamental values that underlie our democracy are themselves controversial, not only in that sort of sense but because people want to nuance their values. What does respect for persons actually mean? Does it mean people ought to be respected equally? What does relationship to equal rights under the law, for instance, mean? If we respect people because they are rational beings who are entitled therefore to determine their own course of events as long as they do not harm others—or something along that line—then what do we make of the fact that people differ in their rationality? There are matters of controversy here about those values.

There is a considerable literature on just about any principle you can pull up as to what it means and how it is to be applied. Hence to set a test of values would mean that people would be required to say no when you would prefer them to say yes and when they would want to nuance their replies. Then you would have problems about marking it. I have spent 30 years teaching ethics. I know you cannot test people on what their values are. You can look at their arguments but not at their values. The point is that, although there are values that are readily appealed to in support of democracy, all those values are disputed.

Let me now turn to the facts. There is no good reason for requiring applicants for citizenship to have a knowledge of Australia—its history, customs and whatever—beyond what is already required under section 21, which is to say that you have got to know what the responsibilities and privileges of Australian citizenship are and you have got to understand the nature of the application that you are making and, presumably, the affirmation or oath that you are required to take. There is no obligation to know whether Perth is north of Sydney, who Australia's second Prime Minister was or, for that matter, what the rivers that flow through Sydney are.

If we talk of democracy, we could argue that it is more important to know about Runnymede, the English Civil War, the French Revolution and the Third Reich. It is more important that people should understand the high cost of getting democracy and of defending democracy and the ease with which it is lost than the role of Sir Henry Parkes in the formation of the Australian Federation. There is absolutely no reason—to use one notion that was put—to know the laws of cricket or, for that matter, why a citizen should be obliged to support the Australian Cricket Team.

I turn now to process. Giving the minister absolute discretion as to what goes into a test is a recipe for arbitrary choices and for exclusion on the basis of prejudice and political

expediency. If such exclusion occurred, it would create a large and dissident minority of people who would rightly feel themselves unfairly excluded. It is not a safe society when people are excluded in this fashion. The less open the process is and the less open the test is, the more it will be felt to be arbitrary and unfair.

There was comment earlier about trusting ministers. Can't we rely on public opinion to ensure that a minister does not produce an unfair test? I am a bit surprised, I must say. If there is prejudice or if a group can be sufficiently demonised then a minister can act with impunity. I invite you to consider the role of the language test that was applied in the United States and that was used for decades to prevent African Americans from voting. Was there public outcry? Some. Did it stop people from being elected to the legislature of the southern states? No, it did not. Let us consider the White Australia policy and the use of language tests there—sometimes outrageous use. It took an awfully long time before that policy was removed. More recently, it took five years to persuade the public at large that the proposed trial of David Hicks was going to be unjust. It took even longer to persuade people that keeping children in immigration detention was harmful and dangerous and that it should be stopped. It takes an enormous effort, a huge amount of time and lots of people being involved to bring public opinion to recognise things, even those that are pretty obvious.

If a process is going to exist then it should be open and it should be a better procedure than simply saying, 'The minister will decide; that discretion will not be a legislative instrument and so it is not changeable by parliament.' You have already heard some arguments about this, and I know there are many submissions on it, so I will not recount them. However, we suggest that, if it is going to exist, there ought to be a committee set up which will at least advise the minister and which will have a determination as to what will be put forward. We invite you to look at the model of the New South Wales Board of Studies. The New South Wales Board of Studies has a composition determined by act of parliament. Various organisations are required to nominate people to become members of the Board of Studies.

CHAIR—Dr Bibby, if I could interrupt you for a moment. I just want to alert you to the fact that this is a short opening statement. We would like the opportunity to ask questions. If you could wrap up your short opening statement that would be helpful, and then we can ask some questions.

Dr Bibby—I appreciate your indulgence so far. I have about three lines to go. The proposal is that that body should itself provide the tests and that the tests should go to parliament and be able to be overruled. As an open process, it will be better than what is being proposed. Thank you.

Senator HURLEY—In evidence yesterday, the Secretary of the Department of Immigration and Citizenship said that ministerial discretion about questions would not allow any prejudice in the question against one group or against many groups because the general legislation surrounding it prohibited any kind of discrimination and that there were safeguards within that legislation and others. Do you have any response to that?

Dr Bibby—I need to take that question on notice. It is obviously a matter of detail of the legislation.

Senator HURLEY—You have also said that the bill should provide alternatives to the citizenship test, such as attending an approved course of study. Could you go into more detail about that?

Dr Bibby—Remind me of where that was.

Senator HURLEY—That is at 8.6 of your submission, under the heading 'Summary of specific recommended amendments'.

Dr Bibby—If we are going ahead with this, instead of having a citizenship test, it would be appropriate to have people attend a course of study in which they would be taught about the responsibilities and the rights and privileges of Australian citizenship. A person having attended a course, one could take it that they knew the relevant material towards becoming an Australian citizen. The principal concern is that, while it is appropriate that people know about what it is to be an Australian citizen, it is not appropriate to go beyond that to other material.

Senator HURLEY—There is currently a course within the Adult Migrant English Program which teaches migrants about the Australian way of life. Would you consider it to be the kind of course that you are talking about?

Dr Bibby—Again, without looking at the program itself, I would not like to comment in detail, but it would be an appropriate location for such a program.

Senator HURLEY—With regard to your discussion about a review after, say, three years of operation—a sunset clause—the department of immigration intends to monitor the progress of the testing and the results of that testing. One might say that, their being on the ground and able to see the testing as it happens, they would be in the best position to do that. That would then be fed back to the minister to enable some finetuning or alteration of the process. Do you accept that that might be better than a formal review of the operation?

Dr Bibby—No, not at all. A public review referred to a parliamentary committee and so on is a much better process, partly because it is public. Also, one can hardly say that, after the department of immigration's recent performance, we should have any confidence whatsoever that it would do a good job. To the extent that it does, it can obviously make a submission to such a review.

Senator KIRK—On page 3 of your submission, you say at paragraph 3.7:

> The Bill should at the very least require that the test questions should be published for public comment prior to finalisation to insure objectivity and value-neutrality.

I suppose you are saying that, in the event that the test does go ahead, if and when the minister determines the questions, he ought to arrange for them to be made publicly available. Could you elaborate on how you see that process working?

Dr Bibby—I missed a little bit of what you said. I am just a wee bit deaf.

Senator KIRK—I was referring to point 3.7 of your submission. You are suggesting there that, when the questions are finalised, they should be released for public comment. I wonder whether you could elaborate on how you see that process working.

Dr Bibby—You mean the process by which they would then be revised?

Senator KIRK—You say that they should go out for public consideration. What sort of time frame would that involve and to whom would they be distributed for comment? What do you have in mind there?

Dr Bibby—I would imagine that the committee which produced the test in the first place would put forward the set of questions, that they would be presented to the parliament and made available for public perusal. What is an appropriate period of time? It depends partly on when parliament is sitting, I suppose. There would need to be adequate time for people to write in responses and time then for the committee to reconsider its proposals before they were sent to the minister and the parliament.

Senator KIRK—Whereas that seems to be not a bad idea, it is going to become quite cumbersome I would have thought, if and when the questions are to be revised down the track. If, at each stage, you are going to have to release them for public comment in that manner then—

Dr Bibby—Whether something is too cumbersome depends upon how important it is and this is no trivial matter.

Senator KIRK—I agree. Also you make mention here of what happens in the United Kingdom. I was interested to read at paragraph 3.9 whereby you say they have a website providing sample questions and test preparation. I am not familiar with that. Could you expand upon that and point out how you think that a similar system, I suppose that you are suggesting, may be introduced here in Australia?

Dr Bibby—I am afraid I had to step in at fairly short notice to replace my two colleagues, who had unfortunately other matters to attend to, so I would have to take that on notice too.

Senator KIRK—That is fine.

Senator PARRY—Dr Bibby, I have to challenge you on some of your comments in your opening statement. You mentioned that you would not necessarily adopt the values of the country that you were in but you did mention some dictatorships. We are a far different democracy than some of the countries that you mentioned. The people of this country decide on how our values end up through the democratic process so, without inviting you to debate the point, I do not know whether you have any comment.

Dr Bibby—I do think it is incumbent upon someone who comes to the country to use appropriate processes if they wish to change the values which are here. The acceptance of the peaceful ways of resolving disputes and that those are the sorts of ways that one should proceed seems to me to be really basic and important. But there is no obligation on me to accept that miscegenation is abhorrent.

Senator PARRY—No, but no-one is forcing you to accept that. We could debate it, but we would get away from the true matter that we are here to discuss.

Dr Bibby—Perhaps I could make a point. To put up a universal claim of a kind that says you ought to accept Australian values and not one that says you ought to accept the values that are inherent in a democracy is a universal claim that can be challenged by providing exceptions to it.

Senator TROOD—Are they mutually exclusive propositions though?

Senator PARRY—No.

Dr Bibby—That there should be exceptions?

Senator TROOD—No, the idea that Australian values are necessarily different to democratic values.

Dr Bibby—If what you mean by Australian values is the democratic values then that is what should be stated.

Senator TROOD—What I am saying is why could they not include democratic values?

Dr Bibby—They might. It is what they might also include that we would object to most strongly.

Senator TROOD—They might at the core include Australian democratic values.

Dr Bibby—I am sorry, I do not quite get the point that you are making. The minister would be able to specify a set of questions which test values. If there is no limit on those, anything that counts as an Australian value might be included.

Senator TROOD—And it might include values which relate to democracy.

Dr Bibby—It might. It is a question as to whether the power of the minister should be limited.

Senator TROOD—I am sorry I am interfering with Senator Parry's questions.

CHAIR—Some valuable points have been made across the table, we will go back to Senator Parry.

Senator PARRY—Thanks, Chair, and thanks, Senator Trood. We are on the same track. Coming back to your opening statement, the values we have in this country have evolved through a democratic process, not a dictatorial process. You tried to align us with or make a comparison between us and countries that have absolutely no similarity with our democratic structure. That was a point that I particularly wanted to get on the record. Secondly, and this is not necessarily your fault because this has been in the media, it is not accurate that people will have to name cricketers within the test. That is a flippant remark, but it is nice to put on the record that that is not proposed in any way, shape or form to be part of the test. The test as we understand it is still to be worked out. Whatever shape or form it will take will take into account the findings of this committee. Thirdly, and moving now away from your opening statement and following on slightly from Senator Kirk, do you accept the proposition that a minister would be subject at all times to peer review from within cabinet and also be subject to the views and opinions of colleagues within the parliament and also be very cognisant of public opinion as well as departmental opinion, and so therefore would be in a good position to design a test, the nitty-gritty details of which would be problematic if left to the floor of any chamber? What are your comments?

Dr Bibby—I have already commented in part. Would the minister be subject to criticism and input from his or her colleagues? No doubt. Would the minister be subject to criticism from public opinion? No doubt as well. Would that ensure that the minister would act well? No, it would not. We have had sufficient examples to see that. That was my point when I was talking about the White Australia policy and the values of Australia of the past. It takes a very

long time for public opinion to be changed. It is quite possible for a government to create a new prejudice. We have seen that happen in recent times. When a prejudice is created, it is much easier for discriminatory action to be taken. We need sufficient protection of what may be a demonised minority, and public opinion in that case will not ensure that the minister will stay on the right path.

Senator PARRY—On a day-to-day basis, ministers must make decisions that cannot tie down the legislative process by having every minute detail decided by a legislative instrument or public scrutiny by way of a committee or whichever way that process is deemed to take place. This is another one of those issues. I could give you many examples of ministerial responsibility which governs the country on a day-to-day basis without any scrutiny whatsoever apart from the methods that I mentioned earlier. I would suggest that a questionnaire may be one of those detailed issues that should be subject to the minister having that final discretion.

Dr Bibby—I have two comments. Whether it is a small decision which one might reasonably leave to a minister or whether it is an important one that should be put before the parliament depends upon how significant the consequences are and how major the impact is. The question of who becomes an Australian citizen and the question of who is excluded from becoming an Australian citizen is not a trivial matter at all. We are talking about whether people will be granted very important rights. The notion that this is simply a matter of ordinary discretion that should not be subject to closer scrutiny seems to me to undervalue the significance of being excluded from Australian citizenship. There was a second point, but I am having a 'senior moment'.

Senator PARRY—That is fine. Feel free to come back to it.

CHAIR—Dr Bibby, feel free to come back to that or respond on notice. There is no problem with that.

Senator NETTLE—In your submission, Dr Bibby, you say on the first page:

> ... in addition to the existing requirement "an adequate knowledge of the responsibilities and privileges of Australian citizenship". This additional requirement is so broad and open to interpretation as to be dangerous.

Would you expand on the danger that you see?

Dr Bibby—I think the danger is that the power of the minister would be used in a discriminatory fashion. The consequences of that would be quite serious for the security of the country.

Senator NETTLE—Thank you.

CHAIR—Dr Bibby, the Australian Citizenship Act 2007, not the bill before us but the current act, requires that an applicant have a basic knowledge of English and also an adequate knowledge of the responsibilities and privileges of Australian citizenship. Do you support the current act?

Dr Bibby—In terms of my organisation I think I had better take that question on notice.

CHAIR—Thank you. Finally, you indicated in your opening statement, and I want to concur with some of the questions asked by Senator Parry and Senator Trood, that you had

been teaching ethics for 30 years and that you could not assess someone's values but that you could assess their arguments. Could you explain how you come to that conclusion?

Dr Bibby—There is a sense in which I could tell you what one of my student's values are; that is simply straightforward. But to set that against a scale or to set it against a set of values that they are required to accept is always problematic because of the desire of people to nuance their values. You ask them a question that you expect to be answered one way, and they answer it from a totally different perspective. Or you ask a question that relates to a specific value, and they do not want to answer that in any sort of straightforward fashion for what can be quite good reasons. So it is not that you cannot actually find out in the course of a discussion what a person's values are, of course you can. But to set a test of people's values which is going to be applied across the board and then hope to find a nice, say, computer marked answer, or something you can run through in a hurry and say, 'yes, yes, yes,' is just not going to work.

CHAIR—Can I use an example and draw your attention to the minister's second reading speech in which he said specifically:

> For generations, Australia has successfully combined people into one community based on a common set of values.
>
> These values include our respect for the freedom and the dignity of the individual, support for democracy, our commitment to the rule of law, the equality of men and women, respect for all races and cultures, the spirit of a 'fair go', mutual respect, compassion for those in need, and promoting the interests of the community as a whole.

Would you support that statement, or would you disagree?

Dr Bibby—With those values?

CHAIR—No, with his statement that they are a common set of values held by Australians for generations.

Dr Bibby—They are held in nuanced fashion by different people. Let me pick on equality of men and women, for instance; it is probably the easiest example. What that means in the context of, say, the Catholic Church is rather different from what it is taken to mean within, say, the Uniting Church. Just what is this equality? These are not straightforward.

CHAIR—So you disagree, or are you simply saying that these values mean different things to different people?

Dr Bibby—Yes, that they mean slightly different things to different people.

CHAIR—But would you concur with the thrust of the statement that there is a common set of values that has been held broadly by Australians over various generations?

Dr Bibby—They are not important because they have been held by Australians over various generations. That falls into a trap that I was trying to outline at the start. The fact that they are Australian is not relevant here. They are certainly values which have been held up as fundamental and important and to which in general terms, and perhaps more tightly than that, I adhere to. They are important values. They are not important because they are Australian values, and the fact that they have been held over generations in Australia is not significant on

matters of values themselves, what you can argue in support of them and what you do with them when you have got them.

CHAIR—Thank you for your evidence today, Dr Bibby. We appreciate your input.

[11.06 am]

ANDERSON, Ms Zoe, Solicitor/Migrant Agent, Refugee Advice and Casework Service

WRIGLEY, Ms Katie, Solicitor/Migrant Agent, Refugee Advice and Casework Service

SHERCHAN, Ms Depika, Convenor, Policy Working Group, and Treasurer, Victorian Immigrant and Refugee Women's Coalition

CHAIR—We welcome witnesses from the Refugee Advice and Casework Service and the Victorian Immigrant and Refugee Women's Coalition. Thank you for being here today. The Refugee Advice and Casework Service has lodged submission No. 39 with the committee and the Victorian Immigrant and Refugee Women's Coalition has lodged submission No. 20 with the committee. Do you wish to make any amendments or alterations to those submissions?

Ms Wrigley—No.

Ms Sherchan—No.

CHAIR—You can now make short opening statements, after which we will have questions from the Senate committee.

Ms Wrigley—We would like to thank the committee for the invitation to appear at this public hearing. We appear on behalf of the Refugee Advice and Casework Service, which is the only legal service in New South Wales which specialises in representing refugees. We wish to express our concerns at the contents of the Australian Citizenship Amendment (Citizenship Testing) Bill 2007, particularly as it affects our client base and specifically those recognised as refugees and granted either 866 or 785 visas who are seeking our advice as to the process for them to become Australian citizens.

These clients have all been accepted as having a well-founded fear of being persecuted in their country of origin or their country of former habitual residence for one or more of the five convention reasons. They have typically faced significant hardships in their often long and treacherous journeys fleeing persecution in their countries of origin. In seeking protection in Australia, they have faced years of separation from close family members and a lengthy period of uncertainty as to their fate. The proposed bill impacts on this specific group of people unduly harshly in a number of respects.

Firstly, the requirement that a person must possess a basic knowledge of the English language, as evidenced by successful completion of the citizenship test, will have a particularly adverse impact. A significant number of refugees are survivors of torture and trauma, and many continue to suffer from debilitating after-effects, including those associated with post-traumatic stress disorder as well as many other psychological conditions, for years to come.

Such after-effects are not only debilitating in their impact on day-to-day life but can also impact on an individual's ability to learn or process new material and, most relevantly in this context, to learn a new language. Some refugees may have had a very limited education in their home country, possibly due to a denial of access to basic education on the basis of their race, ethnicity or religion. Others may have had their education interrupted by civil war or

internal armed conflict, or may have simply been unable to access education due to poverty. In addition, some refugees are illiterate in their native language. All of these categories of people will struggle to learn English with the ease of other migrants.

Refugees who hold permanent protection visas are currently eligible for 510 hours of free English language tuition through the Australian migrant adult education program. As any English native speaker who has attempted to learn a language very different to English—for example, one with a different script such as Mandarin or Arabic—will tell you, 510 hours is insufficient in most cases to enable very recent students of a new language to attain even a functional level of English, let alone proficiency. The contents of the proposed test, including questions about Australian values, would be outside the vocabulary scope of basic language classes for those learning a new language within the first 510 hours of study. We note that temporary protection visa holders who have been accepted as refugees do not have access to these English language classes.

Many refugees are forced to spend large sums of money in order to secure their safe exit from the country where they fear persecution. Very few refugees have any amount of savings left by the time of their arrival in Australia and many have significant debts, having been forced to borrow in order to secure their flight and safe passage to Australia. Prior to being granted permanent protection visas, many protection visa applicants are given bridging visas without work rights, preventing them from working lawfully, studying, accessing Medicare or receiving Centrelink benefits in Australia while they await the determination of their applications. Some receive a limited amount of financial support from the Red Cross while others are in immigration detention prior to their visas being granted. Accordingly, by the time their permanent protection visas are granted, very few protection visa holders have sufficient funds at their disposal in order to self-fund further language classes that would enable them to obtain the level of proficiency in English required to sit the proposed test with confidence. For these same reasons, the additional fee for the citizenship test will have a particularly harsh impact on refugees unable to easily afford this additional expense.

Refugees have often been the victims of past persecution involving serious harm within the definition of section 91R of the Migration Act, and have therefore been exposed to highly traumatic situations. Many of our clients have been further affected by the stresses and demands of the exile and resettlement process, which can include periods of detention in Australia and lengthy periods of time where the possibility of a forced return to their home country is a very real one. The stress that will come with formal testing will have a particularly detrimental effect on these individuals and potentially could act as a deterrent for refugees considering applying for citizenship, further prolonging the period before refugees can access the full benefits of citizenship.

We say that it would be incredibly unworkable for refugees to apply individually for exemptions from the test, especially if it is left for this to be done by way of ministerial discretion. Currently, refugee applicants for ministerial discretion on other grounds face significant waiting times—around six months on average—for their applications to be determined under sections 417, 48B and 91L of the Migration Act. There is a significant gap in terms of service provision to assist clients in making such applications, and no organisation in Australia, as far we are aware, receives funding specifically in order to assist refugees with

these sorts of applications. It is highly likely that most of our client base would be seeking to make such a request if it was open to them. For all of these reasons, it is our submission that the bill be amended to generally exempt all refugees from the application of a formal citizenship test.

CHAIR—Ms Anderson, do you have anything to add?

Ms Anderson—Not at this stage.

CHAIR—Ms Sherchan, would you like to make an introductory comment?

Ms Scherchan—The Victorian Immigrant and Refugee Women's Coalition is Victoria's peak advocacy body representing the diversity of immigrant and refugee women. The VIRWC has 58 organisational members and more than 1,000 individual members with distinct experiences, skills and cultural backgrounds. The VIRWC undertakes direct lobbying and advocacy of immigrant and refugee issues to the mainstream community, service providers and governments. Its aim is to ensure access and equity for all immigrant and refugee women in Victoria. The Victorian Immigrant and Refugee Women's Coalition's organisational members are made up of mostly women's groups and ethnic/multicultural organisations with women's committees. More than 30 per cent of VIRWC's grassroots members are women with little or no English.

The Victorian Immigrant and Refugee Women's Coalition appreciates the opportunity to make a submission to the Senate Inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007. The VIRWC participated in the public consultation on the Commonwealth government's discussion paper, *Australian citizenship: much more than a ceremony*, in which we indicated our opposition to the proposed citizenship test. The VIRWC opposes the introduction of a formal citizenship test, and thus does not support the proposed amendments to the Australian Citizenship Act 2007. The VIRWC believes that the bill is unnecessary. There has been no evidence presented that indicates a change in Australian citizenship law is warranted. Secondly, even if there is an identified social issue that needs addressing, which VIRWC denies, implementing a citizenship test is inappropriate—that is, it is not an effective, suitable or fair way to fix any perceived problem.

With regard to the necessity of the bill, the proposed amendments, which will bring into effect a citizenship test, will require substantial funds for implementation and administration. As with any bill involving the substantial use of taxpayers' funds, critical analysis should take place in order to ensure that the legislative changes are useful, necessary and effective. The VIRWC submits that Australia has been well served by its existing inclusive citizenship laws, to the extent that we now have a culturally diverse and socially cohesive collection of people who are proud to call Australia home. There is very little evidence to suggest that any change to Australia's citizenship laws is necessary.

One rationale behind the current bill is that the introduction of a formal citizenship testing scheme will encourage the development of English skills among new migrants. The importance of English skills for new migrants is not underestimated by VIRWC, which recognises the important link between English and effective participation within the Australian workforce. However, there is already a requirement for basic knowledge of the English language under Australia's existing citizenship law, the satisfaction of which will be

changed if items 4 and 5—the amendment to subsection 21(2) and the addition of section 23A, respectively—of the current bill are successful. Migrants and humanitarian entrants do not need a formal citizenship test to provide a real incentive to learn English or understand the Australian way of life as claimed. All migrants and humanitarian entrants are very well aware of the importance of English—before and after they migrate—to settle, find employment and build a family life in Australia.

Regarding the appropriateness and efficacy of the changes, if there is a social problem within Australia which warrants the introduction of this bill—which the VIRWC submits has not been established by the federal government—the analysis must therefore turn to whether the proposed citizenship test is the most appropriate instrument to resolve these issues. VIRWC submits that the introduction of a formal citizenship test would at the very least do nothing to contribute to social harmony, integration and English proficiency among new migrants. A test will only address a person's memory, cognition and rote-learning skills, and will not provide a satisfactory method of determining a new migrant's desire to engage with Australian people and contribute to Australian society. VIRWC argues that it is more likely that the citizenship test will go further and actually restrict or discourage social cohesion by imposing barriers to entry and by creating a sub-class of non-citizens who have failed the test. Furthermore, it is argued that the imposition of a test places a particularly onerous burden on immigrant and refugee women. In the past and up to now, Australian immigration laws have classified most women who come with their husbands as secondary visa holders, which restricted their role and access to services. As such, their primary duties often revolve around childcare and housekeeping obligations, which severely restrict their ability to attend classes, read examination materials and booklets, practice English, and spend time revising for a test.

The VIRWC is also concerned that a formal test could discriminate against refugees and migrants from non-English-speaking backgrounds. It is submitted that exemptions should be made for refugee and humanitarian entrants and that these exemptions should be spelt out explicitly in the legislation, rather than being left to the minister's discretion. Thus it is argued that the implementation of a citizenship test should be treated with caution, given the real possibility of resulting hardship, divisiveness and potential discrimination. In any event—

CHAIR—If I could interrupt, we have your submission, No. 20, and I think you are giving pretty much a summary of or reading the submission. If you want to make any final comments as an introductory statement we would welcome that, but we do have your submission and I am sure that the senators are interested in asking questions.

Ms Sherchan—Sure.

CHAIR—So do you want to wrap up your introductory statement and then we will go to questions.

Ms Sherchan—I look forward to the questions.

CHAIR—Thank you.

Senator PARRY—I want to come back to Ms Wrigley. Leaving to one side people who arrive here on humanitarian grounds, who I know are your major caseload, do you have any objection to a citizenship test for others?

Ms Anderson—We do have objections to that, but such objections have been raised by number of other organisations. We would prefer to focus specifically on the particular impact on refugees, who are our client base and our area of expertise.

Senator PARRY—Comparing your particular client base to other prospective new citizens: do you regard them as being on different levels because of some of the humanitarian issues that were mentioned?

Ms Wrigley—Yes. We see that refugees are not in the same situation as migrants. Migrants choose when to leave their country, where they go and when they will return. Refugees flee their country for their own safety and cannot return until the situation in that home country has changed.

Senator PARRY—I am just trying to establish whether you see two different classes. Do I gather from your answer that the answer is yes? Do you see two different categories?

Ms Wrigley—Yes. Refugees have usually survived a multitude of traumatic experiences in their home country, on the journey to Australia and once they have arrived in Australia.

Senator PARRY—We certainly sympathise with and accept that. Do you see that a time of settlement in Australia would assist those people in overcoming some of those traumatic experiences? I am very much aware that their effects can last a lifetime. But would not being in Australia for a period of time lessen their severity? Do you feel as though some form of assimilation could take place so that then a test would not be onerous?

Ms Wrigley—Many people, prior to their citizenship being granted, are still in a state of uncertainty as to their fate and they do not see the process as having finished yet. So we would say that delaying the process of citizenship would not assist those people. Those people ought to be granted their citizenship at the earliest date possible and then be allowed to carry on with the process of recovery.

Ms Anderson—And, as we have noted a number of times, many refugees are victims of post-traumatic stress disorder. It is well recognised that continuing uncertainty about their ultimate fate acts as a real deterrent to effective recovery from that.

Senator PARRY—I appreciate that. Is there any evidence or research to show that being removed from their situation and arriving in a secure haven such as Australia lessens that anxiety?

Ms Anderson—There is research to that effect but there is also research to the effect that many refugees, when they first arrive in Australia, experience long delays before their status is finally determined. Further, a number of refugees are initially only granted temporary protection visas. That means that the possibility of an ultimate forced return remains a real one, and there is research that suggests that these periods of uncertainty about their ultimate fate do not assist the recovery process.

Senator PARRY—What I am trying to explore is: how would we implement a system, based upon the merits of each refugee's case, of deciding whether or not that was going to be a consideration in granting an exemption or lessening the requirements? Do you see grades within refugees where you would be able to say, 'Refugee A has a need to have a lessened testing regime'?

Ms Wrigley—There is certainly a very small minority of refugees who arrive in Australia with a fluent grasp of English so, by and large, we would say that the exemption ought to work on the whole in favour of all refugees being exempt from this requirement. Unless it is done on a case-by-case basis, which we would say would be unworkable—apart from those concerns we would say that it should be flexible. Some people would find it much easier to attend a course. We have heard some discussion about a component of the current language course being extended to include the proposed Australian values content. But, by and large, we would say that the most workable solution would be for all refugees to be exempt.

Senator PARRY—What about an adjustment to the methodology in the testing? Rather than an exemption, what about a methodology change?

Ms Wrigley—Taking the test in their own native language would be much more workable for most refugees, rather than in English for the reasons we have outlined in terms of the stressful context that a test takes place in. Daily basis we see the stress refugees face when they attend their interviews with the department and their hearings at the tribunal. They find those sorts of situations incredibly stressful. It would be naïve to expect that someone who has been the victim of interrogation and torture would not find even a simple conversation with a case officer to be stressful.

Senator TROOD—I am sympathetic to your position in some respects, but people who are fleeing and who have a well-founded fear of persecution, which is the test, are likely to come from a society where the values, if indeed there are any, are likely to be very different from those in Australia. They are precisely the kinds of people who perhaps need to be encouraged to understand more fully the nature of Australian society and the things in which we believe. So why isn't that an argument for encouraging these people to learn English and understand more about Australian society?

Ms Anderson—We do not have any objection to there being a mandatory course that all applicants must complete with respect to basic Australian democratic values. What we object to is the formal testing. We also encourage our clients, and refugees generally, to take English classes and we support the Australian government's AMEP program, which provides 510 hours of free classes.

Senator TROOD—Your argument is that they are coming from particularly disadvantaged circumstances, which justifies an exemption from the test; is that right?

Ms Anderson—That is correct.

Senator TROOD—Rather than treating everybody equally?

Ms Anderson—Our argument is that they are particularly adversely affected by the test, more so than any other category of migrant. There is an inherent bias against refugees in the test, for all the factors we have outlined in our submission and today.

Senator TROOD—If people on temporary protection visas were offered access to English language classes, would that ameliorate your concerns? Would that meet the anxiety you have about this?

Ms Wrigley—It would certainly help but, having said that, it is very difficult when faced with a language which is different from English, such as Arabic or other languages with a

different script. To obtain proficiency in English to the point of a written test within a number of years is a very difficult thing to do.

Senator TROOD—I agree with you that it is very difficult. I suppose the question is what the requirement to have basic English means. There is a doubt in my mind as to whether being able to satisfy the requirements of a test would require a level of knowledge about English beyond basic English. We need to clarify that, Chair.

Ms Anderson—We would certainly argue that the terminology surrounding concepts such as democracy and rule of law are well beyond basic English.

Senator NETTLE—The department's submission that we received yesterday outlined that the fee associated with the citizenship test is $240, an additional $120 to the existing fee. In your submission you say:

This extra fee represents an onerous burden on much of our client base, and would be likely to act as a deterrent from applying for citizenship.

I want you to expand on your experience with the refugees—the sorts of fees they need to pay and what kind of deterrent the extra fee represents. How are you able to make that assessment? Do you have refugees who have found those kinds of costs prohibitive in accessing other services? I want you to expand on how you came to that view.

Ms Wrigley—The current fees they are required to pay include the application fee for their form, which is $30 and which we ordinarily pay on their behalf, and the fee to get their Federal Police check done, which is $36. But as far as I am aware there are no other mandatory fees for refugees to pay on arrival. With regard to our experience, we do a preliminary assessment of their financial position for the purposes of the IAAAS in terms of whether we will act for clients and I do not think we have ever had to turn away a client on the basis that they were not eligible for funding because they had assets or savings over and above the criteria set out in the IAAAS.

CHAIR—What is the asset threshold at which you will not assist?

Ms Anderson—There is no precise income stipulated. The test is that they would not be able to afford a private lawyer or migration agent. It is fairly flexible, open-ended. In addition to the actual expenses that asylum seekers incur in Australia, many of them arrive in Australia with large debts, having borrowed significant amounts of money to pay for false passports and people-smugglers on their route to Australia. Many of them spend years awaiting status determination living in the community without the right to work, during which they typically incur even greater debts.

Senator NETTLE—Ms Sherchan, in your submission you say:

... it is argued that the implementation of a citizenship test should be treated with caution, given the real possibility of resulting hardship, divisiveness and potential discrimination.

Could you expand on what kind of divisiveness you envisage?

Ms Sherchan—VIRWC is not a service provider. We have leadership programs and stuff like that. A lot of the women have issues regarding health or work because of the problems they are experiencing.

Senator NETTLE—What divisiveness do you envisage may come from the proposal for a citizenship test?

Ms Sherchan—Women from different backgrounds have different levels of access to certain information or certain resources that others might not have. Even within the different groups, that might affect their way of dealing with their situation.

Senator NETTLE—So within the women with whom your service works there would be different levels of ability and capacity to deal with the citizenship test, and that is the divisiveness you are talking about?

Ms Sherchan—Yes.

Senator HURLEY—I would like to go back to that issue of the ability to cope with testing. Fortunately, I think most people in Australia do not have to deal with people who suffer from post-traumatic stress disorder or who have experienced very stressful lives. Probably the Vietnam veterans' cohort and others who have been in war zones might be the closest most people get. I think it is fairly well recognised that very often they have difficulty fitting back into society and dealing with rules and general systems by which other people have to live. Can you go back over the difference between the current system, whereby people go to an interview and answer questions to demonstrate their basic knowledge of English and Australian systems, and the actual testing environment and why that can be so difficult?

Ms Anderson—The current interview system may potentially be stressful as well for many refugees. But an informal interview with one case officer from the department of immigration would be much less stressful than a formal testing environment in which the applicant is required to answer questions in a language which is not their own and which they may only have a basic grasp of. The questions will be on complex concepts, such as democracy and the rule of law, which require a sophisticated grasp of English to answer.

Senator HURLEY—What percentage of your clientele might find that kind of testing difficult?

Ms Anderson—Certainly more than 50 per cent. A high number of our clients suffer from post-traumatic stress disorder and can find even being interviewed by us intimidating when we are their representatives. There can be a lack of trust of anybody who is perceived to be in a position of authority. Even the process of recounting a story to a sympathetic person can be extremely stressful and traumatic.

Senator HURLEY—You gave an example from the United Kingdom, where citizenship applicants can satisfy the requirements by attending a course called 'English for speakers of other languages'. We have also had evidence that in Canada people can appear before a citizenship judge and that in the United States people can take the knowledge component of the course in their own language. Obviously, you think those kinds of systems could be suitable for Australia, should the test go ahead.

Ms Anderson—Yes. Those proposals are worth exploring as alternatives.

Ms Wrigley—It needs to be borne in mind how the applicant will elect to do one of those things. Even making the request for an exemption can be difficult for someone if it is required to be done in writing.

Senator KIRK—Ms Scherchan, you have mentioned—and this has been mentioned by a few other witnesses—that the test that is devised by the minister should be approved by an independent panel. You suggest that it be made up of reputable experts on multiculturalism, history, migration and gender studies and the Chair of the Federation of Ethnic Communities of Australia. Could you elaborate on what role you see that panel or committee playing in this context.

Ms Scherchan—It is mainly important that the panel is made up of independent members with various different independent backgrounds and expertise in different areas so that when a decision is made it is based on human rights elements, and not just based on the minister on his own deciding to approve it.

Senator KIRK—Will the minister produce the test and then refer it to this panel? What powers will they have? Will they be able to suggest changes or disapprove the test? How would you see that working?

Ms Scherchan—They would suggest changes and disapprove the test.

Senator KIRK—So they would be able to disapprove the test?

Ms Scherchan—Yes.

CHAIR—Thanks for your evidence today.

[11.39 am]

CHAVURA, Dr Stephen, Spokesman, Festival of Light Australia

CHAIR—We welcome Dr Stephen Chavura from the Festival of Light. The Festival of Light has lodged submission No. 4 with the committee. Do you wish to make any amendments or alterations?

Dr Chavura—No, not at this point.

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

Dr Chavura—Thank you for the invitation to speak and to make a submission. There has been some talk on morality and on the controversy of morality and the controversy of values. I was delighted to hear a philosophical contribution by the learned Dr Martin Bibby, but I think he proves too much. He says that values are too controversial, even hinting that perhaps they are relative. The problem is that then you cannot exclude any values—you cannot exclude Nazism and you cannot exclude extreme sexism and extreme racism. If values are so controversial then on no grounds can you even critique this particular bill, because any critique of this bill is going to be based on particular values. The moment you say that values are too controversial to legislate or to test people on, you close your mouth because you could not possibly have anything of value to say after that.

We live in a liberal democracy but ours is a very particular type of liberal democracy. A liberal democracy is marked by the idea of active citizenship, not passive citizenship—that is, that we actually take part in the process of government. This, of course, goes all the way back to Aristotle, who defined a citizen as someone who involves themselves in the judiciary. We are a social liberal country, and that means we believe in a particular type of freedom which is known as positive freedom. The idea behind that is that the state intervenes and even compels citizens to improve themselves and to give themselves the attributes that will allow them to become effective citizens—citizens who will give value to our liberal democratic values. What are some examples of this? In Australia we have compulsory education. We force people to be educated in order for them to effectively participate in the political system. We force people to vote, even though they do not like it—and I have worked as a scrutineer and I can tell you that they do not like it. We also force them to be involved on a jury. Surely basic English proficiency is necessary for citizens to fully participate in these rights and responsibilities. If there is little inclination on the part of potential citizens to participate in those activities then those activities themselves become devalued over time.

Those speaking on behalf of refugees were making excellent points. The danger of making English learning inaccessible is a good point. In response to that I affirm that we should strive to have learning centres that are easy to attend. I even suggest that the basic text could be the resource book that is used to study for the test itself. The course textbook could be the very resource book that they need in order to pass the test. What else could you do? You could have mock tests throughout the course. The whole course in English proficiency could be geared towards people passing that particular test. I am also very much in favour of increasing the number of hours from 510 to whatever researchers have discovered may be a more

reasonable amount of time for people to become proficient enough to pass this sort of test. With regard to the idea of single women with children having to fit in education, I teach at universities; I teach women just like that. They utilise child care and all sorts of other things. It makes it more difficult but it does not make it impossible. So, taking all of those excellent points into consideration, we see that the previous points prove that we should be ensuring that English language is accessible and the test is realistic but I do not think they are sufficient to show that such a test is intrinsically unjust.

To finish, I point out again that a liberal democratic state is not so much one of value relativism or value neutrality. A liberal democratic state is one with very particular and unique values such as personal freedom, intellectual development, respect for others' rights and public participation. To fully appreciate these and to fully participate in these sorts of things, basic English is something that is necessary, something to be encouraged and even something to be compelled.

Senator HURLEY—Based on the membership of the Festival of Light, I am interested in why the Festival of Light is concerned with English proficiency.

Dr Chavura—That is a good question. The Festival of Light has undergone changes. The Festival of Light has typically been concerned with issues of personal morality, so in this whole Australian values debate it sees itself as having a valid voice simply because it is concerned with values and its values are basically broad Christian values. It is concerned that Australia's Christian heritage might also be a part of this test—that is, showing immigrants what to expect when they become citizens, to expect public displays of Christianity, to expect Christian holidays, not to be shocked or necessarily offended by these things. The whole values debate has become one of the hottest topics in politics, and the Festival of Light is all about Christian values, it considers it is something worth investigating and speaking out on.

Senator HURLEY—I am sure many of us would know many Christians of a previous generation of immigrants—Greeks, Italians et cetera—who are Christians and yet not proficient in English. My mother-in-law is a Polish Catholic, for example.

Dr Chavura—I am not here to convert people to Christianity.

Senator HURLEY—Why is proficiency in English linked to morality in that sense?

Dr Chavura—It is not necessarily linked to morality; it is linked to being able to effectively participate in citizenship. How do you perform your judicial activities if you cannot understand what is being said, if you cannot read the manuscripts? How do you vote if you cannot read a newspaper? I am not saying that there is a link between English and morality, that is absurd; I am saying there is a link between understanding the national language and being able to participate in the national political system at your best capacity.

Senator PARRY—I could not help smiling about people not reading newspapers and voting. I think that would be a blessing in some respects. It is the first time holidays have been raised and I take on your point. It is a valuable point just to point out to people of different cultures in particular that we do exercise a holiday for certain Christian events in the calendar. In your submission, in number 6 on page 2, you state:

Applicants for permanent residence, other than refugee and humanitarian applicants—

and I notice you were present in the room with the previous witnesses. What is your view about how they should be treated?

Dr Chavura—One of the big issues that came up was post-traumatic stress disorder. That is very real. I teach at a university and some of my students suffer from that.

Senator PARRY—Not from your teaching!

Dr Chavura—I hope not—maybe after they get their mark back, but certainly not before that. I try to take their situation into consideration by giving extensions based on that. I would be happy for post-traumatic stress disorder to be taken into consideration if it is diagnosed and perhaps, if not given an exemption from the English component of the test, then at the very least a greater amount of time to prepare for the test. It should be something that, along with age and mental incapacity, should be taken into consideration. A very good point was made that refugees, in a sense, are compelled to come over here. There is a sense that there is less willingness about their status, and consequently I think their status does deserve some consideration. But I do not think being a refugee necessarily excludes one from having to do any sort of test. In the long run, to request that they take such a test is something that socially and politically would be to their benefit for them to fully integrate into Australia.

Senator PARRY—I refer to the phrase you used within your opening statement about being proficient in English. Do you think a working knowledge, a working level, is acceptable? Do you want to put a measure or a level on being proficient in English?

Dr Chavura—It all depends on what level the test is aimed at, and I would say a level that enables them to understand a basic newspaper or a basic memo, something that enables them to be able to understand what is going on in the country and the responsibilities that they have as a citizen. For example, I drive down the road and I see a big neon sign saying that rules for P-plate drivers are changing very soon and you cannot have more than one person in a car—or something like that. That is very basic English. They need to at least understand that to be able to carry on their duties as citizens. I am not saying they need to be able to read the *Sydney Morning Herald* or a learned article. Certainly they should read enough to be able to understand the news, read a basic newspaper, communicate and understand a discussion—a regular, everyday discussion—so they can understand what is going on and make their own contribution. I agree: I can see that is a sort of grey area. It is not grey enough to say that no English proficiency is necessary.

Senator TROOD—So, Dr Chavura, you are sympathetic to the need for some accommodation to people who come from a refugee background. I wish to understand this. Does your goodwill on this issue extend to their being excused from testing or is it a matter of their being given extra time and of particular accommodating provisions being introduced to meet their needs?

Dr Chavura—I think there are cases for which there should be exclusion: age, mental inability, illness. I think that any refugee should be able to take advantage of some of those. Again, I refer to simply excluding someone because they are a refugee. I think in the long run that will actually have a detrimental effect, because it does not really show that we are interested in them participating in our democracy. If we tell them, 'You must learn English if you can,' that shows that we are actually interested in their input. We are not just excluding

them immediately; we are actually giving them a sign that we want their opinions, we want their voice—but I would say actual exclusion of refugees on the same grounds that you would exclude anyone else: age, inability and under 'inability' you could have post-traumatic stress if diagnosed. I guess what I am saying is that someone should not be excluded from the test as a refugee simply for that reason.

CHAIR—You made a submission towards the discussion paper last year which is quite extensive and which you have attached to your submission to this committee. I note you refer to the privileges and responsibilities of Australian citizenship. Why is it important that applicants actually understand the full extent of those privileges and responsibilities? I note that you have actually set them out in dot point format, which is unlike other submissions.

Dr Chavura—As to the responsibilities, it is important that the applicants understand them so they know exactly what they are applying for when they apply for citizenship. It is like buying a box and not knowing what is in it. They need to know exactly what is going to be demanded of them. They need to know that if they do not vote they will be fined and that if they do not want to sit on a jury they will be fined. They also need to know these things to soften them to the requests for English proficiency, because all of these things require English proficiency.

In many ways, we are living in an age of rights. Human nature is such that we do not need to emphasise rights too much because it is our immediate inclination to look out for our rights. It is just part of the human condition. You also need to speak to people about their responsibilities, because it is the responsibilities that impose penalties if they are not carried out. The responsibilities require English proficiency, so it makes sense to show people what their responsibilities are, which then makes fuller sense of why we are asking them to bother or even telling them that they have to bother with the language. As to rights, I am sure that you would want to know your rights in any country that you came to.

CHAIR—Sure. But does a similar argument apply to the privileges that you have listed, like the privilege to vote and to stand for parliament and so on?

Dr Chavura—Voting is certainly a privilege. It applies because, if they want to fully take advantage of these privileges, these rights, English proficiency is necessary. You cannot stand for a seat in parliament if you do not understand English. It also shows them that we are prepared to do things for them; it is not a one-way thing. If, after all of that, they are not prepared to integrate themselves to that extent, perhaps they should not be trying to come here in the first place, because you do not get much better than this.

CHAIR—At the Canberra hearings yesterday, the Australian Christian Lobby talked about the importance of applicants acknowledging Australia's Christian heritage and history. You referred to it in your opening statement. Why is that important?

Dr Chavura—After World War II, we tried to get a lot of immigrants from Britain and failed, so we started getting them from eastern Europe. My grandparents fled Stalinist Russia to come here. What they had in common was a basic Judaeo-Christianity. This is something you read about in Mark Lopez's excellent book on multiculturalism in Australia. Multiculturalism as a movement started in Melbourne in the late sixties and early seventies. It is different from multiculturalism today because all of the groups involved in the origins of

multiculturalism were Judaeo-Christian. There was no problem with Christian holidays. There was a basic unanimity on values and things like that. Since the 1970s, we have been bringing in more people from cultures that either have nothing to do with any Judaeo-Christian heritage or are positively against it. Consequently, we need to tell them that, if they really want to come here, they will be faced with public Christianity. At Christmastime, they are going to see nativity scenes and things like that in shopping centres. Also, if you tell them what to expect, they will be more informed as to whether they want to stay in Australia or seek citizenship status elsewhere. It is an important part of our heritage, and it is still visible today. If they want to understand the society that they are coming into, our basic world view and where our social liberalism has come from, then having some knowledge or at least being informed of our Christian heritage will give them some idea of what they can expect when they do settle here.

CHAIR—I notice in the attachment on page 2 of your submission that you refer to the pledge that is spoken by applicants when they become citizens. You note that that has been the case since 1994, under the Australian Citizenship Act, and that at least a pledge does refer in part to the values that are embraced by Australians. Do you see that as important? Would you like the use of such a pledge to be continued?

Dr Chavura—I am happy for that pledge to continue, although I share Dr Bibby's concerns about placing too much emphasis on values simply because they are held by people. He is absolutely right about that. I am quite happy for that pledge to continue. But you cannot have a pledge that is so philosophical that only the Bibbys and the Peter Singers can understand it. You need something that everyone can understand. I am quite happy for that one to remain, but I do recognise his excellent point there.

CHAIR—Thank you and all the other witnesses today for giving their evidence to the committee. I declare this meeting of the Legal and Constitutional Affairs Committee adjourned.

Committee adjourned at 12.00 pm