

Submission to the Department of Immigration and Multicultural Affairs on the Merits of a Formal Citizenship Test

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) seeks to promote a just and democratic society by making strategic interventions on public interest issues.

PIAC is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

In making strategic interventions on public interest issues PIAC seeks to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly-based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Centre Funding Program. PIAC generates approximately forty per cent of its income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 The Discussion Paper

PIAC appreciates the opportunity to make this submission to the Department of Immigration and Multicultural Affairs (DIMA) on the merits of a formal citizenship test in Australia.

In September 2006, the Department released a discussion paper entitled ‘Australian Citizenship: Much more than just a ceremony’ (the Discussion Paper) exploring the possibility of English language and knowledge testing as a prerequisite to Australian citizenship. The Discussion Paper invites comment on the nature and meaning of Australian citizenship in two key regards: firstly, on the significance of familiarity with the

English language and with Australian history and culture to the exercise of citizenship; and second, on the necessity, feasibility and prospective form of a formal citizenship test.

This submission responds to a number of questions raised in the Discussion Paper in the three sections below: Section 2: Adequacy of the present system, dealing with the nature of citizenship and the necessity of new system of citizenship assessment; Section 3: The impact of a formal test, dealing with the potential adverse impacts of formal testing; and Section 4: The nature of the test, dealing with the steps that might be taken to minimise the risk of inequality and abuse arising from such a test.

2. Adequacy of the present system

2.1 Lack of need for change

Australia's existing citizenship framework has provided for effective administration of the process by which citizenship is bestowed upon new Australians for over half a century. The provisions of the *Australian Citizenship Act 1948* (Cth) (the Act) that pertain to those seeking a grant of Australian citizenship establish a process based upon simple and clear eligibility criteria, with the flexibility of a broad ministerial discretion to deny applications where necessary.¹ Since 1949 over 3.5 million immigrants² have become Australian citizens through the operation of the Act and the success of this well-established system is reflected in the decision to maintain the essence of the present provisions in the Australian Citizenship Bill 2005³, currently under consideration.

PIAC submits that in the absence of any compelling evidence as to the inadequacy of the system by which new Australians have acquired citizenship in the years since the Second World War, there is no imperative to amend the process. The Discussion Paper neither identifies inadequacies in Australia's current citizenship policy nor presents any firm evidence of the prospective benefits that might accrue from the introduction a formal citizenship test.

Although the Discussion Paper briefly makes reference to a correlation between English-language ability and labour participation and—less verifiably—social cohesion, it does not indicate that the present citizenship process is deficient in addressing such concerns, nor does it indicate how a formal citizenship test might remedy any perceived deficiency. PIAC submits that the current citizenship framework has demonstrated itself to be well adapted and effective in welcoming new citizens to Australia's multicultural community and should be preserved unaltered.

2.2 Existing prerequisites to citizenship

PIAC submits that existing language and knowledge criteria and assessment policies are consistent with the established notion of citizenship, and are sufficient to ensure that prospective Australian citizens are able to comprehend and discharge their obligations once they become citizens.

As the Discussion Paper notes, applicants for Australian citizenship must already satisfy a number of prerequisites enumerated in the Act by way of assessment at a compulsory citizenship interview. Applicants must satisfy the interviewer that they possess a basic

¹ *Australian Citizenship Act 1948* (Cth), s 13

² Department of Immigration and Multicultural Affairs, *Australian Citizenship Statistics*, <<http://www.citizenship.gov.au/resources/facts-and-stats/stats.htm>> at 15 November 2006.

³ Australian Citizenship Bill 2005 (Cth), cl 21.

knowledge of the English language and understand the nature of the application and the responsibilities and privileges of Australian citizenship. There are no compelling grounds to either increase the stringency of these prerequisites or alter how they are evaluated.

2.3 Language and citizenship

Although, as the Discussion Paper observes⁴, English language proficiency may be a desirable and advantageous attribute in many aspects of life in Australia, PIAC submits that it is not and should not be legally related to the notion of citizenship beyond the existing requirement.

The preamble to the Act characterises citizenship as a bond, based on reciprocal rights and obligations; uniting Australians and respecting diversity, rights and liberties; sharing ‘democratic beliefs’, and respecting and adhering to the laws of Australia.⁵ PIAC submits that ability in the English language is not a requisite factor in the observance of any of these undertakings beyond what might be deemed necessary to understand the notion of citizenship. Indeed, Australia’s prolific and enormously successful migration experience in the years since the Second World War and the commencement of the Act in 1950 has demonstrated language and the uptake and proper exercise of citizenship to be quite unrelated.

While Australia’s English linguistic and cultural inheritance is reflected in the proportionately large number of new settlers who trace their heritage to the United Kingdom, New Zealand and other English-speaking countries, it is migrants from non-English speaking backgrounds who have demonstrated themselves to be most enthusiastically committed to the institution of citizenship. Eligible permanent residents from non-English-speaking countries consistently exhibit far higher citizenship take-up rates than those from English-speaking countries.⁶ Conversely, while the average citizenship take-up rate for eligible residents from all nations at census in 2001 was 74.4%, immigrants from the English-speaking United Kingdom and New Zealand—the two single largest countries of origin for new settlers—exhibited well below average take-up rates of 64% and 43% respectively.⁷

PIAC considers the value of the manifest commitment to Australia’s interests, enfranchisement in the political process and the symbolic gesture of inclusion that citizenship entails to far outweigh the potential value of marginally increased language ability. Migrants from non-English-speaking backgrounds have demonstrated themselves to be committed to the institution of citizenship and PIAC submits that a formal language test is not only inconsistent with the demands of citizenship, but a potential disincentive to a group of residents eager to become Australians and contribute to our country’s development, skills and prosperity.

2.4 Knowledge and citizenship

The Discussion Paper makes numerous references to a purported link between understanding and knowledge of ‘Australian values’ and integration and participation in the broader community.⁸ It raises the prospect that community involvement and social

⁴ Department of Immigration and Multicultural Affairs, *Australian Citizenship: Much more than just a ceremony* (2006) ¶¶ 30-33.

⁵ *Australian Citizenship Act 1948* (Cth), Preamble.

⁶ Australian Bureau of Statistics, *Year Book of Australia* (2006) Table 5.60
<<http://www.abs.gov.au/Ausstats/abs@.nsf/bb8db737e2af84b8ca2571780015701e/01408D0F3CFFA83ECA2570DE0006E28E?opendocument>> at 15 November 2006.

⁷ Ibid.

⁸ Department of Immigration and Multicultural Affairs, above at n4 ¶¶ 26-28, 44.

cohesion might somehow be furthered by the introduction of a formal test, examining knowledge of different aspects of Australian life.

In consideration of the impossibility of assessing highly subjective value systems and the adequacy of present requirements in this respect, PIAC submits that the introduction of a formal Australian knowledge test would be a futile exercise. Knowledge of ‘Australian values’, governance and history does not inherently impute an acceptance of or affinity with those notions. It would be naïve and contrary to Australia’s multicultural values to assume that it would.

Entry to the common bond of citizenship should be predicated so far as possible upon common and universal criteria. In instituting a formal knowledge test it is possible and even probable that the threshold for obtaining citizenship will be set at a level that many Australian citizens by virtue of birth would not be able to attain. There is no onus on such citizens to acquaint themselves with Australia’s political system or history yet their knowledge and skills in other areas remain valued. Similarly provided that, as presently required, prospective citizens understand their rights and obligations as such, their knowledge and experience of other nations and systems can only contribute to Australia’s political and social landscape.

Present policy requires applicants to demonstrate an understanding of their legal responsibilities and social undertakings as citizens. No evidence has been presented to indicate that new citizens presently lack an acceptable understanding of Australian values. Prospective citizens must have resided in Australia for a stipulated period, currently two years⁹ but potentially three under the proposed Australian Citizenship Bill 2005¹⁰, and would be expected in this time to become acquainted with Australian culture, customs and institutions.

2.5 Commitment and citizenship

Although citizenship should be regarded as a commitment based on common principle and shared identity rather than language, PIAC does not consider that this commitment can be tested or demonstrated beyond the present level in any productive fashion.

The Act prescribes a standardised and compulsory pledge of commitment to be made before an authorised person as a final prerequisite to the conferral of citizenship.¹¹ The prospect raised by the Discussion Paper of a written ‘pledge of commitment to Australia’ to be executed at the time of application or upon the acquisition of citizenship does not appear to be a novel policy but rather a simple change in format or duplication of the existing pledge.

In practical terms any oath or pledge represents a largely symbolic and sentimental demonstration of belonging rather than any real guarantee of allegiance. PIAC considers that the existing commitment requirement fulfils its role as such and that the adoption of a written pledge, while not overly problematic, would be an unnecessary duplication of effort.

2.6 Comparative schemes

The citizenship regimes of other jurisdictions do not, by virtue of existence alone, provide any information or context as to the desirability of a formal citizenship test in Australia. In the absence of any evidence that other nations enjoy direct benefits or have achieved

⁹ *Australian Citizenship Act 1948* (Cth) s 13

¹⁰ *Australian Citizenship Bill 2005* (Cth) cl 22

¹¹ *Australian Citizenship Act 1948* (Cth) s 15.

similar policy objectives as a consequence of formal testing, their citizenship schemes remain irrelevant in determining whether Australia's existing system requires amendment.

PIAC cautions that although the Discussion Paper makes favourable reference to policies in other jurisdictions in its discussion of the feasibility of testing in an Australian context, such comparisons should be considered as informative only in determining what form a test might take and not its utility or necessity.

3. The impact of a formal test

3.1 Potential for Discrimination

Eligibility for citizenship is not and should not be determined by reference to an applicant's country of origin or previous domicile and no applicant should be placed at an inherent disadvantage by virtue of these facts. PIAC is concerned that the introduction of a formal citizenship test, although ostensibly universal in its application, may in effect discriminate against applicants from non-English-speaking backgrounds.

Speakers of English as a second language would inherently be placed at a disadvantage when compared to native English speakers in any formal English testing arrangement and, consequently, may face greater difficulty obtaining citizenship.

To counter this potential for inequality to the greatest degree possible it would be vital to ensure that appropriate educational resources and support mechanisms are available to all prospective applicants. Either, any future test should be set at standard attainable with no more English education than the maximum 510 hours of tuition currently available under the Adult Migrant English Program, or the hours and nature of tuition provided by the program should be adapted to meet the rigours of the test.

Although the Discussion Paper acknowledges that the curriculum of government-subsidised English programs should be harmonised with the requirements of any formal citizenship test, PIAC is concerned that existing resources would simply be insufficient to meet the demands of a more rigorous test. The Federation of Ethnic Community Councils Australia (FECCA) has noted that many migrants are able to attain only a basic level of English on completion of the maximum 510 hours of language training available under the Adult Migrant English Program. DIMA reports that in 2005-06 only 19.3% of participants in that program achieved the level of English necessary to attain 'Certificate 3', the highest standard available under the program.¹² Certificate 3 indicates a level of English competency that DIMA characterises as 'intermediate' and which PIAC is concerned may be insufficient to successfully complete a formal aural and written language test for an expanded English-language citizenship test.

The Government would need to ensure that any increase in the standard of English-language ability expected of new citizens would be met with a corresponding increase in the availability of training and resources.

3.2 Consistency with policy objectives

Citizenship may be regarded in legal terms as a privilege, as the Discussion Paper frequently reiterates, yet it is one that eligible persons should be given all possible encouragement in attaining.

¹² Department of Immigration and Multicultural Affairs, *Annual Report 2005-06* (2006) 232.

Over the past six years, the Federal Government has enthusiastically demonstrated its affinity with this view, imploring all eligible persons to take up Australian citizenship by way of extensive media campaigns. Between the launch of the Government's citizenship media drive in 2001 and the beginning of 2004, close to \$6 million was spent on television, radio and print advertising inviting permanent residents to become new Australians¹³, and in September of this year Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs, the Hon Andrew Robb MP, publicly launched a new campaign intended to 'encourage those people who are eligible to take that next step and apply to become an Australian citizen'.¹⁴

Considering the potential difficulties faced by speakers of English as a second language and the additional effort, anxiety and expense that formal testing might entail, PIAC is concerned that the introduction of a formal citizenship test may undermine the effectiveness of these campaigns and frustrate the Government's underlying policy objective. Formalised testing may act as a deterrent to the uptake of citizenship by those who are currently the most enthusiastic applicants, permanent residents from non-English speaking backgrounds, who may feel they are unfairly disadvantaged by the test.

Rather, PIAC is of the view that formal testing may make indefinite permanent residency appear a more attractive option for many migrants. The Government is simultaneously promoting language assessment as a prerequisite to citizenship as an incentive to 'learn English quickly and get a job'¹⁵ and seeking to raise the qualifying residency period under clause 21 of the Australian Citizenship Bill 2005 (Cth) to three years (rather than two) in the last five. If the policy considerations underlying moves to introduce a formal test emphasize the importance of learning English in integrating into Australian society rapidly it seems inconsistent with such objectives that permanent residents will now be required to live in Australia for at least three years, but possibly substantially longer, before even becoming eligible for citizenship.

4. The nature of the test

4.1 Enabling instrument

While both current and proposed citizenship legislation establishes fundamental eligibility criteria for persons seeking to become Australian citizens, the broad and undefined discretion of the Minister in this area makes it important in the interests of transparency and equality that any new formal test requirement is implemented by similar legislative provisions.

The conferral of Australian citizenship by grant pursuant to section 13 of the Act is subject to a broad ministerial discretion. Regardless of whether the basic eligibility criteria are satisfied, the Minister may refuse an application for citizenship. There are no statutory criteria for the exercise of that discretion and it is retained and emphasized, as a separate section explicitly authorizing the minister to decline applications, in the provisions of the

¹³ Department of the Prime Minister and Cabinet, *Answers to Questions on Notice - Question: PM 60*, Parliament of Australia: Senate – Additional Estimates 2003-2004 <http://www.aph.gov.au/senate/committee/fapa_ctte/estimates/add_0304/pmc/index.htm> at 15 November 2006.

¹⁴ Andrew Robb, *Media Release - 'New campaign highlights value of Australian Citizenship'*, 17 September 2006, Website of the Minister for Immigration and Multicultural Affairs <<http://www.minister.immi.gov.au/parlsec/media/media-releases/medrel06/index.htm>> at 15 November 2006.

¹⁵ Andrew Robb quoted in Bernard Lane, *Citizenship test 'could face court'*, *The Australian* (Sydney), 20 May 2006, 2.

Australian Citizenship Bill 2005 currently under consideration.¹⁶ As a result, it appears possible that a test of the kind contemplated by the Discussion Paper could be introduced without legislative amendment as a matter of policy within the ambit of the Minister's discretion.

PIAC is concerned that the implementation of a formal test in such a manner increases the risk that the test may be applied in a discriminatory fashion or not be properly adapted to meet its original policy objectives. Any such test must be universally and transparently undertaken as a common precondition to entering the 'common bond' of citizenship. The most appropriate avenue to introduce such a test is therefore in the enumerated legislative preconditions to citizenship under section 13 of the Act or its equivalent.

4.2 Form and administration

Although the present Act requires that the Minister be satisfied that basic language and knowledge eligibility criteria under section 13(1) are met before citizenship is granted, it provides no indication of how such requirements are to be verified or at what standard they be set.

While the assessment of the minimal standards set by the Act at present does not necessitate extensive regulation, any increase in the stringency of English language and knowledge criteria will necessitate greater administration, planning and monitoring. While the legislature may be the appropriate body to determine the basic criteria and areas to be examined in a formal test, specialized linguistic and educational expertise is required to assess the appropriate language and knowledge standards a prospective citizen would be required to attain.

PIAC submits that should a formal test be implemented as a prerequisite to citizenship, its precise form and content should be determined by an independent body with suitable educational qualifications acting under delegated legislative authority. Objective formulation and assessment of any test requires specialised training, experience and absolute impartiality. The Government would need to ensure that any future test is devised and administered by an organization which can guarantee such standards.

5. Conclusion

The introduction of a formal citizenship test would necessitate a re-interpretation of the notion of citizenship that has informed Australian law and policy since 1948. A formal test may make Australian citizenship an institution based not simply on political enfranchisement and mutual respect for the rule of law but one based also on language and personal beliefs. Such a re-casting of the responsibilities and nature of citizenship is, in PIAC's view, both unnecessary and undesirable.

Australia's direct and overwhelmingly positive experience of immigration and settlement in the latter half of the 20th century demonstrates that citizenship and its exercise bear minimal relation to language. While no evidence has been adduced to indicate that the present process for conferring citizenship on new Australians is inadequate there are very real risks that the contemplated changes may discriminate against those who are currently the most enthusiastic applicants for citizenship and frustrate Government policies encouraging its uptake.

¹⁶ Australian Citizenship Bill 2005, cl 24