Submission

Discussion paper on strengthening the test for Australian citizenship

Never Stand Still | Law | Andrew & Renata Kaldor Centre for International Refugee Law

Department of Immigration and Border Protection
PO Box 25
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BY ELECTRONIC SUBMISSION

1 June 2017

Dear Sir/Madam

Discussion paper on strengthening the test for Australian citizenship

Thank you for the opportunity to make a submission addressing the issues that arise out of this discussion paper. We do so in our capacity as members of the Andrew & Renata Kaldor Centre for International Refugee Law at the Faculty of Law, UNSW. We are solely responsible for the views and content in this submission.

We support the position, expressed in the Australian Government's 2017 Multicultural Statement and reinforced in the discussion paper, that Australian citizenship is an important part of 'our national identity as an integrated and united people'.[1] We also agree with the statement in the introduction to the discussion paper that '[b]uilding mutual obligations between government, the community and the individual, regardless of nationality, strengthens our resilience and sense of belonging'. The objective of fostering a diverse and harmonious Australia, comprised of people from a broad range of cultures, races, faiths and nations, who seek to contribute to our society is, in our view, a laudable one.

We are, however, concerned that the changes to the process for acquiring Australian citizenship proposed in the discussion paper will not serve the goal of fostering cohesion and integration amongst the Australian population, and may in fact have the opposite effect. Given the significant implications of the proposed changes for individuals and society, we suggest that it is incumbent on the government to justify why these changes are necessary.

In our view, the case for the proposed amendments has not been made out. Our submission will address four specific concerns:

1. The discussion paper does not make a clear, evidence-based case for why the proposed changes are needed.

[1] Australian Government, *Strengthening the Test for Australian Citizenship* (April 2017), 5.

2. There is considerable uncertainty about how the proposed changes will operate, and which applicants for citizenship will be affected.
3. The proposed changes are likely to have a disproportionate impact on people from refugee and humanitarian entrant backgrounds.
4. The proposed changes create inequalities amongst citizens, and in doing so undermine the stated goal of fostering integration and cohesion.

We outline each of these concerns in further detail below.

1. The discussion paper does not make a clear, evidence-based case for why the proposed changes are needed

The discussion paper states that the reforms it proposes are 'integral to Australia's future as a strong and successful multicultural nation, united by our allegiance to Australia and commitment to freedom and prosperity'. However, it does not provide evidence or clear reasoning for why this is the case with respect to its key proposals.

For instance, increasing the minimum period of permanent residence required to qualify for citizenship is said to 'enable greater examination of an aspiring citizens' integration within Australia'. It is not clear from the discussion paper why this is the case, or what criteria will be used to assess an aspiring citizen's integration. Many of the examples of integration listed in the discussion paper are legal requirements, incumbent not only upon citizens and permanent residents, but upon all people who reside within Australia. We examine this further in part [2.2] below.

The discussion paper says that English language skills are 'essential for economic participation and social cohesion', and that there is 'strong public support to ensure aspiring citizens are fully able to participate in Australian life, by speaking English, our national language'. We do not disagree. However, the discussion paper does not explain why the current English language requirements for aspiring citizens fail to achieve these objectives, or why the proposed new standard is an appropriate minimum threshold. We believe that the proposed English threshold is too high, for reasons we outline in part [3.4] below.

Finally, no justification is provided for why the proposed introduction of 'values testing' as part of the citizenship test is an effective mechanism for fostering national cohesion. There is rich literature about the appropriateness of 'values testing' within liberal-democratic countries such as Australia.[2] Some scholars take the view that a test that seeks to ascertain an aspiring citizen's 'true beliefs', as distinct from their behaviour, is inappropriate in a liberal democracy because it transgresses 'the thin line that separates the regulation of behavior from the control of beliefs'.[3] Regardless of whether or not this view is accepted, it is doubtful that a multiple choice test, administered only to a subset of prospective citizens, is the most

[2] See eg EUDO Citizenship Observatory; Robert Schuman Centre for Advanced Studies, *How Liberal are Citizenship Tests?* (2010) EUI Working Paper RSCAS 2010/41 <http://eudo-citizenship.eu/docs/RSCAS_2010_41.pdf>

[3] See eg Christian Joppke, 'Kickoff Contribution: How Liberal are Citizenship Tests?' in ibid, 3.

effective means via which to assess or foster a commitment to shared values. We consider that other mechanisms, aimed at the citizenry as a whole, would be better tools via which to achieve this end. We discuss this further in part 4 below.

2. There is considerable uncertainty about how the proposed changes will operate, and which applicants for citizenship will be affected

The changes proposed in the discussion paper lack detail in a number of respects, outlined below:

2.1. English language testing

The discussion paper states that, under the proposed changes, '[a]spiring citizens will be required to undertake separate upfront English language testing with an accredited provider and achieve a minimum level of 'competent'. What this language testing will entail is not specified.

It has been widely reported[4] that the standard of English required to establish 'competent' English is equivalent to an IELTS score of 6. It is worth noting, though, that a number of other English tests are currently recognised by the Department of Immigration and Border Protection.[5] Whether all of these tests will be available to aspiring citizens is unclear. It is also not clear whether previous English tests that applicants may have undertaken will be acceptable, or whether a fresh test will be required as part of the citizenship application process.

Moreover, we query the use of such English tests, many of which were designed to test English proficiency with a specific purpose in mind (eg, entry into an academic institution). These tests are therefore an inappropriate tool to examine whether a person has proficient English necessary to promote "economic participation and social cohesion".

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[4] See eg Sally Baker & Rachel Burke,'English language bar for citizenship likely to further disadvantage refugees', *The Conversation*, 25 April 2017, <https://theconversation.com/english-language-bar-for-citizenship-likely-to-further-disadvantage-refugees-76520>; Simon Benson & Rachel Baxendale, 'Citizenship changes revealed: Fluent English, four years of residency, Australian values', *The Australian*, 20 April 2017, <http://www.theaustralian.com.au/national-affairs/citizenship-changes-revealed-fluent-english-four-years-of-residency-australian-values/news-story/47a5be9d81ba98145673cfd65fa44c85>; Sarah Kimmorley, 'Here are all the changes being made to Australia's citizenship test', *Business Insider*, 20 April 2017, <https://www.businessinsider.com.au/here-are-all-the-changes-being-made-to-australias-citizenship-test-2017-4#rEYSE03MLZbWGGMd.99>; Stephen Dziedzik & Henry Belot, 'Australian citizenship law changes mean migrants will face tougher tests', *ABC News*, 20 April 2017, <http://www.abc.net.au/news/2017-04-20/migrants-to-face-tougher-tests-for-australian-citizenship/8456392>.

[5] See eg Department of Immigration and Border Protection, 'How can I prove I have competent English?' <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/how-can-i-prove-i-have-competent-english>; Department of Immigration and Border Protection, 'Which English language tests are accepted by the Department?' <https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/aelt>

2.2. Requirement to demonstrate integration into the Australian community

The discussion paper states that citizenship applicants will be required to 'demonstrate their integration into the Australian community'. While some examples of what applicants might provide to demonstrate integration are listed, these do not collectively convey a clear sense of what 'integration' involves. A number of the examples of ways to demonstrate 'integration' merely restate legal obligations that are incumbent upon all residents in Australia.[6] The extent to which an applicant will need to demonstrate more than mere adherence to the law to establish that they are integrated is not clear.

2.3. Assessment for conduct inconsistent with Australian values

The discussion paper states that, in addition to existing police checks, applicants will 'be assessed for any conduct that is inconsistent with Australian values'. This suggests that there will be some ministerial power to conduct a values-based evaluation of candidates. It is not clear how such a power would differ from, and interact with, the existing ministerial powers to refuse citizenship to an applicant on the basis that they are not of 'good character'.[7] Indeed, the current Citizenship Policy guidance published by the Department of Immigration and Border Protection suggests that determining whether a person is of 'good character' for the purposes of obtaining citizenship encompasses a consideration of their values.[8]

2.4. Retrospective operation

Ordinarily, the lack of detail on the above matters in the discussion paper would not be cause for concern at the stage of soliciting community feedback. Here, however, the discussion paper suggests that although the government only plans to introduce its proposed changes into Parliament by the end of 2017, these changes, if passed, will apply retrospectively to all persons who applied for Australian citizenship after the policy change was first announced on 20 April 2017.

For those who have applied for citizenship after 20 April, or who had planned to apply in the near future, there is significant confusion about various aspects of the citizenship acquisition process. It is not clear what the Bill that is ultimately presented to Parliament will look like, nor is it clear whether all of the proposed changes will be passed by Parliament. Consequently, those engaged in or ready to engage in the application process are left

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[6] For example, the discussion paper says that evidence that an applicant has demonstrated integration may include documentation that shows that they are 'properly paying their taxes' (see *Income Tax Assessment Act 1997* (Cth) s 3-5); 'adhering to social security laws' (see *Social Security Act 1991* (Cth), *Social Security Administration Act 1999* (Cth)), and ensuring their children are being educated' (failing to enrol your child in school is an offence in every Australian state and territory: see *School Education Act 1999* (WA) s 9; *Education (General Provisions) Act 2006* (Qld) s 176; *Education and Training Reform Act 2006* (Vic) s 2.1.1; *Education Act 1972* (SA) s 75; *Education Act 1990* (NSW) s 22; *Education Act 2016* (Tas) s 11; *Education Act 2004* (ACT) s 10; *Education Act 2016* (NT) s 39).

[7] See *Australian Citizenship Act 2007* (Cth), ss 17(1A), 19D(2), 24(1A), 30(1A).

[8] See Department of Immigration and Border Protection, *Citizenship Policy*, June 2016, 147-48 <https://www.border.gov.au/Citizenship/Documents/acis-june-2016.pdf>.

unclear about what residency requirements, English standards and integration and values tests will determine their eligibility for citizenship.

While Parliament has the power to pass retrospective laws, it is often said that retrospective laws undermine the rule of law.[9] This is because an element of the rule of law is that the law should be accessible and, as far as possible, intelligible, clear and predictable.[10]

Nonetheless, as the ALRC noted in its 2016 report on Traditional Rights and Freedoms, retrospective laws are enacted quite frequently in Australia.[11] The ALRC noted that whether the justifications for a retrospective law are acceptable and sufficient will depend upon the circumstances of its enactment. In particular, it said:

> *...if the Government announces an intention to legislate, and then legislates promptly, with retrospective operation to the date of the announcement, this will be more acceptable than if the legislation is delayed.*[12]

Here, the discussion paper foreshadows that several months will transpire between the announcement of changes to the citizenship application process and the introduction of legislation reflecting these changes into Parliament. During this period, new citizenship applications are effectively left in limbo. We consider that leaving the pool of current applicants uncertain about their eligibility for citizenship for such a long period is unjustifiably harsh. This is especially so given that current statistics indicate that for 75% of citizenship applicants, the period from application lodgement to citizenship ceremony is less than 10 months.[13] For applicants in the current cohort, this timeframe is likely to be far longer.

3. The proposed changes are likely to have a disproportionate impact on people from refugee and humanitarian entrant backgrounds

3.1. International refugee law and the obligation on States to facilitate assimilation and naturalisation of refugees

Australia is a party to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. Article 34 of the Convention provides that:

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[9] See eg, Rule of Law Institute of Australia, 'Retrospective Legislation and the Rule of Law', 30 September 2015, <http://www.ruleoflaw.org.au/retrospective-legislation-and-the-rule-of-law/>; Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*, ALRC Report 129 (2 March 2016), [13.15] <http://www.alrc.gov.au/publications/common-law-principle-10>.
[10] See eg The Rt. Hon Lord Bingham of Cornhill KG, 'The Rule of Law' (Speech delivered at the 6th Sir David Williams Lecture, University of Cambridge Centre for Public Law, 16 November 2006) <https://www.cpl.law.cam.ac.uk/sir-david-williams-lectures2006-rule-law/rule-law-text-transcript>.
[11] Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*, ALRC Report 129 (2 March 2016), [13.58].
[12] Ibid, [13.57].
[13] See Department of Immigration and Border Protection, 'Global visa and citizenship processing times', <https://www.border.gov.au/about/access-accountability/service-standards/global-visa-citizenship-processing-times>.

> *The Contracting States **shall as far as possible** facilitate the assimilation and naturalization of refugees. They shall **in particular** make every effort **to expedite naturalization proceedings** and to reduce as far as possible the charges and costs of such proceedings.*

While we recognise that the grant of citizenship is a matter for each individual state, it is important to emphasise that perhaps the most durable solution for refugees is obtained when they are granted citizenship — and thus full membership — of their host country.[14] As we argue below and throughout our submission, to the extent that the proposed changes to the *Citizenship Act 2007* (Cth) hinder a refugee's ability to demonstrate their suitability for citizenship, such measures may be inconsistent with the principle set out in Article 34.[15]

3.2. English Language Testing

The discussion paper outlines a proposal to replace the requirement that applicants have a 'basic' level of English to meet the requirements for citizenship with a requirement to undertake an upfront English language test with an accredited provider and achieve a minimum level of 'competent' English. It has been reported that this will require a band score of 6 in the International English and Language Test (IELTS) test.

This proposal is concerning to us. In our view, the current framework, which requires an assessment of whether the applicant has 'basic English', strikes the right balance, and the discussion paper makes no case as to why the new threshold of 'competent English' is necessary. In particular, we have concerns that the proposed test will disproportionately affect refugees and humanitarian entrants and prevent them from obtaining citizenship.

As a starting point, we agree that English language proficiency is something that an aspiring citizen should strive for. Research suggests that English language proficiency is one of the factors that hinders migrants — especially humanitarian entrants and refugees — from

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[14] See James Hathaway, The Rights of Refugees under International Law (2005), 980 commenting on the idea of local integration: "local integration, [as such] is not really an alternative to [solution] to simple respect for refugee rights, the focus [should be] instead on the possibility of moving beyond refugee status towards the acquisition of citizenship in the country of sojourn. In contrast to simple local integration, enfranchisement through citizenship is legally sufficient to bring refugee status to an end. Becoming [a national of the receiving country means that] not only is the refugee guaranteed the right to remain and to enjoy [basic rights] but he or she is entitled to also take part as an equal in the political [and social life] of the country [of sojourn]. By granting refugees the right to participate in the public life of the State, naturalisation eliminates the most profound gap in the rights otherwise available to refugees, since full political are not guaranteed to refugees under the Refugees Convention, nor no non-citizens under general principles of international human rights law". While international law distinguishes between mere 'nationality' and 'citizenship', "since citizenship means not only passive membership of a state community but also active membership; general principles of international law use use both terms synonymously". See, R Marx, "Article 34 (Naturalization/Naturalisation)" in Andreas Zimmerman (ed), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (Oxford University Press, 2011).

[15] Ibid, 948. Hathaway notes that the term 'assimilation' so conceived, "is not about compelling refugees to change their [identity and their individual] ways of life, but rather as a means of giving refugees a fair chance to persuade states of their suitability for citizenship'.

achieving the best possible outcomes in employment.[16] We also acknowledge that English proficiency is an important and necessary skill in order to become part of the wider community. The question is whether the current framework is adequate to meet these policy objectives.

3.3. The current framework – 'basic level of English'

The requirement that an applicant for citizenship possess a 'basic' knowledge of the English language was first introduced into the *Citizenship Act* in 1984.[17] The provision was introduced to enable those with limited English 'who have lived in Australia for some time and who would take pride in becoming citizens' to do so.[18] 'Basic English' is not defined in the *Citizenship Act 2007* (Cth),[19] but is understood under policy to mean 'having a sufficient knowledge of English to be able to live independently in the wider Australian community'.[20] Policy also dictates that where a person has successfully passed the Citizenship Test, they are also taken to have satisfied the English language requirement.[21]

The inclusion of the above understanding of basic English in the Citizenship policy appears to have flowed from a recommendation by Richard Woolcott AC who undertook a review of the Citizenship Test in 2008 (Woolcott Report).[22] We suggest that the current test is appropriate, as it allows for an understanding that while possessing a basic knowledge of English is important, it should only be relevant insofar as it affects a person's ability to integrate as a member of society. While the Woolcott Report also suggested that an English language test could be 'separated from other testing for citizenship' it also suggested that 'different testing pathways be made available for those with different levels of English'.[23] We explore this further in part 3.5 below.

Statistics from the Department show that entrants under the Humanitarian Programme are twice as likely to re-sit the citizenship test compared to skilled or family entrants, but that

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[16] See eg, Centre for Development Studies, *Settling Better: Reforming Refugee and Settlement Services* (2017), 15 noting that currently, 'humanitarian migrants with good English are 70% more likely to have a job than those with poor English after 18 months in Australia' and that '85% of humanitarian entrants who speak English very well participate in the labour market compared to just 15% who cannot speak English'.
[17] An English requirement was included in the Nationality and Citizenship Act 1949 (Cth) and required an applicant to possess 'an adequate knowledge of English'.
[18] Commonwealth, *Parliamentary Debates*, House of Representatives, 7 December 1983 (Stuart John West, Minister for Immigration and Ethnic Affairs).
[19] *Australian Citizenship Act 2007* (Cth) s 21(2)(e) requires an applicant for citizenship by conferral to, among other things, 'possess a basic knowledge of the English language'.
[20] Australian Citizenship Policy Instructions, Ch 7 (Citizenship by Conferral). This is also consistent with the definition preferred by the Administrative Appeals Tribunal. See See *Liu and Minister for Immigration and Multicultural Affairs* [1999] AATA 251 per Senior Member Allen.
[21] Ibid.
[22] Australian Citizenship Test Review Committee, *Moving Forward … Improving Pathways to Citizenship* (2008).
[23] Ibid, 20.

they are also more likely to apply for the test.[24] This suggests that humanitarian entrants greatly value Australian citizenship, which is viewed as a marker to belonging.

3.4. IELTS score is too high and is not an appropriate tool

In our view, the proposed requirement to obtain a score of 6 in the IELTS test is too high for most humanitarian entrants.

It is worth pointing out that the requirement of IELTS 6 is the equivalent or higher than what Australia expects for high level students and highly skilled migrants, many of whom migrate permanently to Australia (see table below). Whereas these migrants have been able to obtain English skills through their previous work or education, refugee and humanitarian entrants may not have similar opportunities. Moreover, refugees and humanitarian entrants are more likely to come from countries where English is not a spoken language.

Visa subclass	English language requirement (IELTS)	Notes
457 (Temporary Skilled)	Overall band score 5[25]	The subclass 457 will be abolished in March 2018 and replaced by a new visa that will require applicants to have obtained IELTS score of 5, with a minimum of 4.5 in each test component.[26]
476 (Recognised Graduate)	Overall band score 6[27]	
186 (Employer Nomination Scheme)	Overall band score 6 (Competent English)[28]	

[24] Department of Immigration and Border Protection, *Australian Citizenship Test Snapshot Report* (2015). Statistics for the 2014-15 financial year demonstrate that Humanitarian Entrants on average take the test 2.4 times compared to 1.1 for skilled entrants and 1.4 for family entrants.
[25] Commonwealth of Australia, *Tests, Scores, Period, Level of Salary and Exemptions to the English Language Requirements for Subclass 457 (Temporary Work (Skilled)) Visas 2015,* IMMI 15/058.
[26] Department of Immigration and Border Protection (2017), *Fact sheet one: Reforms to Australia's temporary employer sponsored skilled migration programme—abolition and replacement of the 457 visa*.
[27] Commonwealth of Australia, *Specifications of English Language Tests, Scores and Passports 2015, IMMI 15/062*.
[28] *Migration Regulations 1994* (Cth) sch 2, cls 186.222 and 186.232.

189 (Skilled Independent)	Overall band score 6 (Competent English)[29]	Points can be awarded under the points test if the applicant has proficient English (IELTS 7) or superior English (IELTS 8)..
190 (Skilled Nominated)	Overall Band 6 (Competent English)[30]	
500 (Student)	Overall band score **5.5**; or Overall band score **5** if packaged with at least 10 weeks' ELICOS; or Overall band score of **4.5** if packaged with at least 20 weeks' ELICOS.[31]	Universities may require higher IELTS scores depending on the course the student enrols in.

This is part of the reason why settlement services exist for humanitarian and refugee entrants and not for other migrants. It is also well recognised that the Adult Migrant English Program (AMEP), which provides humanitarian entrants with up to 510 hours of English language tuition in the first 5 years of arrival in Australia, is only intended to provide applicants with a 'functional level' of English.[32] The term 'functional English' is used in the *Migration Regulations* as a requirement that needs to be met by secondary (family members) for certain visas.[33] Under a legislative instrument, 'functional English' is prescribed as only requiring a band score of 4.5 in the IELTS.[34]

The proposed requirement is also considerably higher than that required in other jurisdictions commonly used as comparators for Australia. For example, in New Zealand, an

[29] Ibid sch 2, cl 189.213.
[30] Ibid sch 2, cl 190.213.
[31] Ibid sch 2, cl 500.213. See also Commonwealth of Australia, *Specification of English Tests and Evidence Exemptions for Subclass 500 (Student) Visas 2016 – IMMI 16/019* (29 April 2016).
[32] See Department of Education and Training, *Adult Migrant English Program* < https://www.education.gov.au/adult-migrant-english-program>.
[33] See eg *Migration Regulations 1994* (Cth) sch 1 item 1114B which requires a secondary applicant for the Subclass 186 visa who is not assessed as having functional English to pay a visa application charge of $4890. Section 5(2) of the Act provides that the Minister can prescribe in a legislative instrument the evidence required to demonstrate English language proficiency. See also Migration Regulations 1994 (Cth) reg 5.17.
[34] Commonwealth of Australia, *Evidence of Functional English Proficiency 2015, IMMI 15/004.*

applicant for citizenship is only required to demonstrate 'a sufficient knowledge of English'.[35] To meet this requirement, a person only needs to include in their application something that proves that they can speak English and then be able to hold a conversation during an interview with a Departmental Officer.[36] In Canada, an applicant is required to demonstrate 'an adequate knowledge of the one of the official languages of Canada'.[37] This is defined to mean a level 4 score on the Canadian Language Benchmarks, which appears significantly lower that what is required to obtain an IELTS 6.[38] Similarly in the UK, an applicant is required to achieve a band score of B1 on the Cambridge English Language Scale – equivalent to an IELTS 4-5.[39]

Therefore, while the measure may appear legitimate at first glance, we would argue that requirement to obtain an IELTS 6 subjects humanitarian entrants to a higher hurdle vis-à-vis other migrants, when their circumstances are taken into account. It is important for policy to also recognise that refugees and humanitarian entrants face significant challenges in the first few years of integration into Australia. Many are recovering from trauma which may make learning difficult. Many will not be able to afford extra tuition and/or time to improve their language to the level required. Policy also needs to recognise that it is more difficult to learn English as an adult. Taken together, these factors exacerbate and hinder a refugee and humanitarian entrant's ability to pass the IELTS test. It is concerning to us that the discussion paper does not canvas whether additional measures will be put in place to support humanitarian entrants to improve their English.

Our concern therefore is that the English test will act as a significant barrier to refugees and humanitarian entrants who wish to become Australian citizens. Given the proposed limitations on taking the test (3 times, after which an application must be refused and no new application can be made for two years), we fear that many refugees may delay applying for citizenship. The exclusionary effect of not being able to obtain citizenship (and therefore becoming a full member of the Australian community) will have significant impacts on individual refugees and on multiculturalism in Australia.

It is also important to recognise that the IELTS test *was never designed* to be used a tool to test integration or, as the discussion paper provides, to set a standard that allows for 'economic participation and social cohesion'. As Dr David Ingram — a member of the team that develop the IELTS — pointed out in a submission to the Productivity Commission's Inquiry into Migrant intake in Australia:

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[35] *Citizenship Act 1977* (NZ) s 8(2)(e).
[36] New Zealand Government, *Apply for NZ citizenship* <https://www.govt.nz/browse/nz-passports-and-citizenship/getting-nz-citizenship/apply-for-nz-citizenship/#language-requirements>
[37] Citizenship Act R.S.C., 1985, c. C-29 s 5(1)(d).
[38] Government of Canada, <http://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=567&top=What does "adequate knowledge" of English or French mean when applying for citizenship?> This level only requires a person to be able to understand simple questions and instructions, use basic grammar and to show knowledge of enough common words to be able to take part in short, everyday conversations about common topics.
[39] UK Government, *Prove your knowledge of English for citizenship and settling* <https://www.gov.uk/english-language>

> *The principal test used for visa purposes at all levels is IELTS. While IELTS is a highly regarded test, it was developed specifically to test the English of international students wishing to enter English-speaking universities or other training programmes. Its content and design do not meet the needs of tests to assess proficiency for vocational purposes or for general survival purposes.*[40]

We argue that the proposed use of an IELTS test is therefore not consistent with the stated objective of testing English proficiency as "essential for economic participation and social cohesion".

3.5. Education-based pathways to English proficiency

If the government is serious about investing in the language proficiency of prospective citizens and wants to test English as a prerequisite for obtaining citizenship, we suggest that this could be achieved via education-based pathways rather than through a blanket IELTS test.

This model was proposed in the Woolcott report in which it was suggested that different methods could be used for those who are literate in English and those with little or low literacy skills. For example, those with who are considered 'literate' would be encouraged through self-directed learning undertake a computer based English test.[41] Those with no or low literacy could demonstrate English ability through successful completion of approved courses with in-built assessments or have their English assessed through an oral based test. The Committee noted from its consultations and submissions that:

> *The Committee received overwhelming feedback calling for a range of pathways to citizenship which do not discriminate against migrants and refugee and humanitarian entrants with poor literacy or education levels, or who may have no knowledge or experience of computers and computer based testing.*[42]

> *Education pathways were perceived by many to offer a just, fair, and flexible approach in preparing for a test. It was felt that participation in courses and discussions relating to shared values and attributes would help prospective citizens gain the knowledge required to pass a test in a safe learning environment.*[43]

We therefore urge the government to revisit this recommendation and consider mechanisms for testing English proficiency other than through an IELTS test.

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[40] David Ingram, Submission to the Inquiry by the Productivity Commission into Migrant Intake in Australia (June 2015), 2.
[41] See Australian Citizenship Test Review Committee, *Moving Forward … Improving Pathways to Citizenship* (2008), 29.
[42] Ibid, 27.
[43] Ibid.

3.6. Proposed 4-year permanent residency period

Under the current provisions, a person seeking to apply for citizenship must have been in Australia for 4 years immediately before the date of application and a permanent resident for 12 months.[44] The discussion paper proposes to extend the period of permanent residency from 12 months to 4 years.

This measure is contrary to the spirit of Article 34 of the Refugee Convention, which requires states to facilitate assimilation and expedite naturalisation proceedings for refugees as far as possible. Under the measure proposed, a person could be present in Australia for many years, living in the community, paying taxes, sending their children to school and otherwise building a connection to Australia without the possibility of obtaining citizenship. This measure disproportionately impacts refugees and humanitarian entrants who, by definition, cannot simply return home to their country of origin. As the Refugee Council has previously noted, Australian citizenship is 'often the first effective and durable form of protection' that refugees and humanitarian entrants receive. Consequently, it tends to be especially valued by these groups.[45]

To illustrate how the proposed timeframes for citizenship acquisition will operate for refugees, it is helpful to consider the example of a person who arrived by boat as part of the Legacy Caseload,[46] and who is granted a Safe Haven Enterprise Visa (SHEV). The SHEV allows the holder to work and study in a remote area of Australia for 5 years before being eligible to apply a range of permanent visas.[47] Under the measures proposed, they will need a further 4 years of permanent residency on another visa before being eligible for citizenship. If one takes into account their time in Australia before being able to apply for a SHEV, persons in this cohort will need to be in Australia for at least 9 years before applying for citizenship. The possibility of a 9 year wait for citizenship is well beyond what would be considered best practice when it comes to facilitating naturalisation of refugees and humanitarian entrants.[48]

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[44] *Australian Citizenship Act 2007* (Cth) s 22(1)(a)-(c). A person is also required to not have been an unlawful non-citizen at any time during that four-year period.
[45] Refugee Council of Australia, 'Delays in citizenship applications for permanent refugee visa holders' (October 2015), 3 <http://www.refugeecouncil.org.au/wp-content/uploads/2015/10/1510-Citizenship-Delays-for-Permanent-Refugees.pdf>
[46] This refers to the cohort of asylum seekers who arrived in Australia by boat between 13 August 2012 and 1 January 2014.
[47] See *Migration Regulations 1994* (Cth) sch 2 cl 790.
[48] See eg, R De Costa, (2006), *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations* (UNHCR Legal and Protection Research Series), 186 noting that in accordance with best practice, "the required period of residency in order to be eligible for naturalization should not exceed 5 years".

4. The proposed changes create inequalities amongst citizens, and in doing so undermine the stated goal of fostering integration and cohesion

Finally, we are concerned that the changes proposed in the discussion paper create different thresholds for different groups of people. This undermines the idea, expressed in the Preamble to the *Australian Citizenship Act 2007*, that citizenship is a 'common bond' that 'unit[es] all Australians'.

For example, the values testing and English language requirements that the proposal makes incumbent upon those who seek citizenship by conferral do not apply to people who obtain citizenship at birth or by descent. Of course, a test governing admission to the citizenry would be inappropriate for natural-born citizens. However, we believe that there are better measures for enhancing integration, cohesion and a commitment to shared values across the entire citizenry than the proposed revisions to the citizenship test, which only target a subset of prospective citizens.

In particular, we note that the Final Report on the government's 2015 National Consultation on Citizenship highlights a number of suggestions, that arose out of the consultation, for how to 'increase the value and understanding of Australian citizenship' across the entire citizenry. For instance, the Report states:

> *Respondents listed civics education as a key area that should be addressed and updated to ensure that all Australians, including those born in Australia, understand the rights and responsibilities attached to Australian citizenship. A large number suggested the civics education component could be taught in the national curriculum as well as discussed within community and church groups. A majority of respondents also suggested that significant community events such as Australia Day, ANZAC Day and Harmony Day should be used to promote a sense of community; many felt the citizenship pledge could play a key role in achieving a greater sense of understanding and belonging*.[49]

It is our view that measures such as these would be a much more effective way of ensuring that Australian citizenship is regarded by all Australians as a common bond, characterised by reciprocal rights and responsibilities and a commitment to shared fundamental values, than the proposals outlined in the discussion paper, which only apply to certain prospective citizens, and which are constrained by the inherent limitations of citizenship testing as an integration device.

There have also been reports that the increased residency requirements will not apply to New Zealand citizens resident in Australia under the Pathway to Citizenship program.[50] We recognise that targeted exceptions may well assist in ensuring the fair implementation of any policy. That said, we think it is important to note that if a new and more onerous citizenship

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[49] Australian Government, *Australian Citizenship: Your Right, Your Responsibility*, National Consultation on Citizenship Final Report (2015), 4.
[50] See eg James O'Doherty, 'NZ PM secures citizenship change exemption', *Sky News*, 28 April 2017 <http://www.skynews.com.au/news/world/asiapacific/2017/04/28/nz-pm-secures-citizenship-change-exemption.html>

acquisition process is perceived as applying selectively to some categories of prospective citizens, this may undermine the objective of social cohesion. If the policy ultimately becomes law, this should be kept in mind when exceptions are considered.

Yours sincerely,

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