
**Friday, 21 July 2017**

**Submission to the Inquiry into the Australian Citizenship Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017**

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The Public Law & Policy Research Unit (PLPRU) contributes an independent scholarly voice on issues of public law and policy vital to Australia's future. It provides expert analysis on government law and policy initiatives and judicial decisions and contributes to public debate through formulating its own law reform proposals.

## 1. Purpose of Acquiring Citizenship

The acquisition of citizenship is the last step on the path to full membership in the Australian community. By the time someone is applying for citizenship, they have already lived in Australia for at least four years. Citizenship confirms an existing connection to Australia, adding security of residence and political participation to the existing membership rights of permanent residents. Significantly, permanent residents applying for citizenship have already been through an investigation of their identity and character. They have been found not to be a security risk, they have not committed significant crimes (as this would lead to probable cancellation of their visa or render them ineligible to apply for citizenship), and they have contributed to the social and economic life of the community.

Granting of citizenship is an important mechanism to foster integration and make people feel fully connected and committed to Australia through fulfilling the core responsibility of citizenship of participating in national, state and local elections. There is a risk that if citizenship is too hard to attain, a two-tier system of membership will develop in Australia: those who are citizens participating fully in the democratic system, and those who failed to become citizens, and remain marginalised from full political participation. The creation of a subset of second-class non-citizens is to the detriment not only of prospective citizens and their families, but to Australian society. As far as possible, then, citizenship laws should encourage permanent residents to take up citizenship and to commit fully to Australia.

It is important that any tightening of the criteria for citizenship be fully justified and evidence based. In this submission we focus on aspects of the proposed reforms which we believe are not adequately justified, and are counter-productive to Australia's continued status as a successful multicultural nation based on 'shared values, rights and responsibilities'.[1]

**2. Denial of automatic citizenship after 10 years to children born in Australia to parents who were unlawful non-citizens**

Under the current law, a child born in Australia and residing in Australia for the first 10 years of their life automatically attains Australian citizenship. Under the Bill, children will lose this right if they have ever been present in Australian as unlawful non-citizens, if they ever left Australia without a visa to return or if either of their parents did not hold a substantive visa at their birth.

The clear intent of this provision is to prevent refugees and asylum seekers gaining a 'hook' to Australia through their children. The government has established no evidence of this practice in support of the amendment, and it would be surprising if there was any such evidence. The ten year rule offers strong protection against migrants establishing a claim for citizenship on the basis of residency. The situation is very different from a country with birth right citizenship such as the US, in which migrants can establish a connection to the country simply through bearing a child on US territory. In rejecting a claim for birth right citizenship in Australia in 2004, the High Court upheld the validity of the ten year rule.[2] For asylum seekers travelling to Australia by sea or by air, who are concerned with their immediate safety, it is almost inconceivable that they would have a ten year strategy for remaining in Australia based on their child's citizenship.

[1] Minister for Immigration, Peter Dutton, Second reading speech, Australian Citizenship Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, 15 June 2017.
[2] Singh v Commonwealth (2004) 222 CLR 322.

In any case, the targeting of asylum seekers through making a special rule for unlawful non-citizens is misconceived. Asylum seekers do not commit an offence through entering Australia without a visa in search of protection from the Australian state. Their entry into Australia without a visa is envisaged by the Refugee Convention to which Australia is a committed signatory. The designation of asylum seekers as 'unlawful non-citizens' does not reflect on their character. An asylum seeker who has been in Australia for ten years will have been found to be a person in need of Australia's protection at least once and possibly up to 3 times in that period.[3] A child of a person in this position who has experienced no other life than in Australia and whose only other option is to return to a country from which their parents fled and from which their parents feared persecution for an extended period in the past, needs to be fully embraced by our nation.

As we stated in a submission to this Committee on the same issue in relation to the Australian Citizenship and Other Legislation Amendment Bill 2014:

> It is wrong in principle to deny automatic citizenship to a child who was born in Australia and spent their first 10 years living in Australia, regardless of their immigration status. There is no ground to deny full membership in the Australian community to a person who speaks Australian English, has only Australian and Australian-based friends, has lived only in the Australian landscape, is steeped in Australian culture, and has experienced all of their education in Australia. Young people in this position should have the full security of residence and other rights and duties of an Australian citizen, whether or not they have citizenship status in another country. Their immigration status, or that of their parents, is irrelevant to the depth of their connection to Australia.

We submit further that the extension of the 10 year rule might be open to constitutional challenge. Citizenship is not conferred in the Constitution. The Constitution creates a distinction between aliens and non-aliens, and invests the Federal Parliament with the power over naturalization and aliens. The existence of a power over aliens suggests there is a constitutional status of 'non-alien', and the existence of a power to naturalize suggests there are people who are already non-alien and not in need of naturalization. The High Court has held that non-aliens and citizens in Australia are effectively synonymous (*Shaw v Minister for Immigration and Multicultural Affairs* (2003) 218 CLR 28).

In *Singh v Commonwealth* (2004) 222 CLR 322, a 5:2 majority of the High Court rejected the claim that a person born in Australia was automatically a non-alien. However, *Singh* does not resolve the extent to which Parliament's power with respect to aliens is limited. There must be a point at which the length of residence of a person

[3] Under the current law, temporary protection visas must be renewed every three years, and will only be granted if a person continues to be in need of Australia's protection.

born in Australia is sufficient for them to attain the status of a non-alien. We would submit that for a child born in Australia, 10 years may be at the outer limit of the time required for them to be constitutionally a non-alien.

*In our submission, the proposed amendments to s 12 should be removed.*

**3. Adding a character requirement for minors in determining eligibility for citizenship**

The Bill proposes to extend the good character test requirements to minors. Under the current law, children of Australian citizens or permanent residents who are born outside Australia are not required to satisfy the character test.

The Explanatory Memorandum states that the amendment 'recognises that people under 18 have significant character concerns and/or have committed particularly serious crimes, and that the Minister should therefore have the discretion to refuse to approve such a person becoming an Australian citizen'.

Assessment of 'character' is enormously difficult. In our submission, such a subjective requirement should not be applied to minors who are still developing their characters.

Furthermore, 'good character' is not defined in the Act, leaving the Minister with a broad discretion in determining whether the criteria have been met.

It is important to note that refusing citizenship to a minor on character grounds leaves them open to the risk of deportation to another country following the cancellation of their visa pursuant to s501 of the Migration Act 1958 (Cth). The power of the Minister to cancel the visas of long term permanent residents on character grounds is a controversial power of the Minister.[4] The power should not be extended to the cancellation of the visas of minors, or young people who are still in the care of their families.

Conferring citizenship on minors is a way to guard against the separation of young people from their families. If in adult life the young person continues to exhibit issues with their character, it is important that the young person have their family as the

[4] See for an extended discussion of this power, Michelle Foster, "An 'Alien' by the Barest of Threads' - The Legality of the Deportation of Long-Term Residents from Australia" (2009) 33(2) *Melbourne University Law Review* 483.

primary support, and this will only be possible if the support can be offered in the country of the parent's citizenship, Australia.

The explanatory memorandum places issues of character alongside the commission of 'particularly serious crimes'. In our submission, it is only the latter which might be grounds for refusing citizenship of a minor. The commission of a particularly serious crime is an objective measure that has been assessed by independent courts, in contrast to the high level of subjectivity in assessing character. However, even this criteria for rejecting the citizenship application of minors should be limited to minors 16 years and over, in recognition that at a younger age, minors are not fully responsible for their actions.

*In our submission, the proposed amendments in ss 16(2), 19C(2) and 21 (5) should be limited to the commission of particularly serious crimes, and the crimes which are considered 'particularly serious' should be defined in legislation. Furthermore, in our submission, the refusal of citizenship of a minor on the grounds of having committed a particularly serious crime should be limited to minors who are aged between 16 and 18.*

**4. Extending the residency requirement to four years permanent residency**

The Explanatory Memorandum correctly identifies the residency requirement as being:

> an objective measure of an aspiring citizen's association with Australia. This period allows a person the opportunity to gain an understanding of shared Australian values, and the commitment they must make to become an Australian citizen. It also allows them time to integrate into the Australian community and acquire English language skills required for life in Australia as a successful citizen.

The proposed changes do not change the length of the residency requirement. This is appropriate, as 4 years is in line with the residence requirements in comparable countries, such as Canada and the UK. The proposed amendment only changes *the visa status* required during residency.

We endorse the requirement that an applicant for citizenship must have been a permanent resident for at least one year as required by s 22 of the *Australian Citizenship Act*. However, whether a person is on a permanent or temporary visa for the other three years prior to their application for citizenship does not materially affect their opportunity to integrate into Australian society as described in the Explanatory Memorandum. On the other hand, the changes significantly disadvantage people who entered Australia on temporary work or humanitarian visas. These people will no longer be able to count their time as temporary residents toward the residence requirement for citizenship.

In an article reflecting on the proposed changes, Peter Mares outlined the effect of the change on temporary migrants.[5] Mares pointed out that a temporary migrant will 'generally have to live and work in Australia for at least seven years before applying to become a citizen', and that in 2016, '50,000 skilled migrants made the transition from a 457 visa to permanent residence'. Seven years is the minimum time. Many migrants move through a series of visas before attaining permanent residence. These include working holiday and student visas as well as temporary work visas. In a 2016 report, *Migration Intake into Australia*, the Productivity Commission found that the 'average duration of a multi-step pathway to permanent residency is approximately 6.4 years.'[6] For these migrants, the average time before they are eligible to apply for citizenship will rise from 7.4 years to 10.4 years.

The submission to the Refugee Council of Australia to this inquiry highlights the impact of the change in residency requirement on refugees. We endorse this aspect of the Council's submission.

*In our submission, the proposed changes to section 22 of the Australian Citizenship Act 2007 (Cth) should not be pursued.*

**5. English Language Requirements and the Citizenship test**

In Australia, the ability to communicate in English is clearly important to achieving integration. However, it is also important to note that people from many non-English speaking backgrounds have made enormous contributions to Australian society without a basic level of English. This is the case for a large proportion of post-WWII migrants from Europe, and migrants from Asia from the 1970s.

Under the current application process, the citizenship test is a grossly inadequate proxy for measuring English-language ability. A multiple-choice test with complicated concepts about Australia's institutions of government does not test 'basic' English-language skills.

Those who fail the test do so because their English-language skills are not adequate to understand the question and not because they do not understand Australian values. The role of English-language ability in failure rates is evident in Department of Immigration statistics on the citizenship test. In 2014-15, the failure rate among Chinese applicants was more than seven times higher than it was among Indian

[5] Peter Mares, 'The Department of Perverse Effects', Inside Story, 16 June 2017, http://insidestory.org.au/the-department-of-perverse-effects.
[6] Productivity Commission, Migration Intake into Australia, 12 Septemebr 2016, http://www.pc.gov.au/inquiries/completed/migrant-intake/report.

applicants. Among Vietnamese applicants it was 17 times higher. This is almost certainly related to the higher level of English competency among Indian applicants.[7]

A dedicated English language test is preferable to the current approach to testing English language ability through the citizenship test. In designing an English language test it is crucial that the level of English language proficiency required is cognisant of the applicant's capacity to learn English, and commensurate with the opportunities applicants have had to achieve the required level of proficiency. In relation to humanitarian entrants, for example, completion of the Adult Migrant English Program provides applicants with a level of 'functional English' that allows them to 'participate socially and economically' in the community. An English language test should test for English at a level no higher than this.

Although learning English is important for effective participation in the community and the economy, there are clear dangers in making English language a barrier to citizenship. Migrants should be encouraged and supported to learn English. This is the case regardless of their citizenship status. There is a danger that excluding applicants from full membership because of inadequate language skills will marginalise them, limit their successful integration and undermine social cohesion. It is important therefore that an English language test be established as an incentive and an enabler for permanent residents desiring to become citizens, and not be established as a marker of exclusion. For this reason, we reject the proposal that failing the English test or the Citizenship test should have any implications for future applications for citizenship. On the contrary, failure should be a trigger to offer more support for a person to ensure their success in future testing.

*We support the introduction of an English language test, but only if the test is used as a means to encourage and support migrants to learn English. The level of English language proficiency expected should be commensurate with the opportunities applicants have had to achieve that level of proficiency. Furthermore, migrants should be provided adequate government support and education opportunities to enable applicants to reasonably succeed in the test.*

**6. Assessing values and integration**

The Bill provides three ways for an applicant to demonstrate they understand and will comply with Australian values. They must sign an Australian Values Statement, pass a revised citizenship test, and pledge that they share Australian values. Furthermore, applicants for citizenship by conferral must demonstrate they have 'integrated into the Australian community'.

[7] Australian Citizenship Test Snapshot Report, 30 June 2015, https://www.border.gov.au/Citizenship/Documents/2014-15-snapshot-report.pdf

We acknowledge that applicants should have knowledge of and demonstrate Australian values to be eligible for citizenship. However, we submit that demonstration of values is primarily shown through applicants' four years of residency. Australian values are best reflected in Australian law and applicants must have been of good character, living within the law, during the period of residency. Requiring a demonstration of other values beyond living within the law imposes a higher standard of conduct on applicants than on existing Australian citizens. Requiring applicants to sign an Australian Values Statement, and to make a pledge that they will share Australian values should simply be a confirmation that they will continue to live as lawful residents in the future.

The Bill provides the Minister with a broad discretion to determine Australian values and to determine if a person has integrated into the Australian community. In our submission, this should not be left to the discretion of the Minister. These terms need to be defined in the legislation if they are to be eligibility requirements for citizenship. In our submission, it should be made clear that complying with the Australian law, and passing the English language test is a sufficient demonstration of Australian values and of integration. It is important to note that concepts such as Australian values and levels of integration are highly subjective and political. It is precisely for this reason that discretion should not be conferred on the Minister to determine their content.

It is important to note that citizenship itself assists with the integration of recent migrants into the community. If integration is important for full membership, then people should be assisted, as far as possible to become citizens.

Finally, we submit that rather than reorienting the Citizenship Test to an assessment of values, it should be abandoned. Since its introduction in 2007, the Australian citizenship test has been a controversial part of application process. The US, the UK and Canada all have citizenship tests. All test different things – history, values, institutions and symbols. New Zealand does not have a citizenship test.

It is hard to conceive how a multiple-choice test can possibly test a person's understanding of and commitment to shared values. The test of a person's values is in their actions, not their knowledge of values. Furthermore, as discussed above, those who fail the test do so because their English-language skills are not adequate to understanding the questions. Given that the government is proposing to introduce a dedicated English test, the citizenship test should no longer be testing English language ability.

If, however, the citizenship test is retained as a means of testing values, it is imperative that the test be written in very simple English commensurate with the level of English language ability that can be reasonably be expected of applicants taking the test.

Given the test's inadequacy, and its strong bias toward those with a higher level of English, the insertion of s 23A(3A) providing the Minister with the power to limit the number of times a person may sit the test and particular penalties for failing the test are concerning. This provision confirms that the citizenship test is being used as a barrier to citizenship when failure of the test does not truly reflect an applicant's values or their level of integration into the community.

These provisions will have a disproportionate effect on refugees applying for citizenship. The 2014-15 statistics reveal that, in the skilled stream, on average people needed to sit 1.1 tests to pass. In the family stream it was 1.4 tests. And, in the humanitarian stream, it was 2.4 tests. This means there is a significant number of humanitarian migrants requiring more than three attempts to pass the test. One possible implication of the limitation on attempts at the test is that humanitarian migrants will delay applying for citizenship. This has negative consequences for their wellbeing and their integration into the community.

Furthermore, using the citizenship test as a barrier to citizenship will exacerbate the problem of creating two tiers of membership in Australian society. Those who are citizens and those who are permanent residents but who are ineligible for citizenship because their English language is not adequate for them to pass the citizenship test.

*In our submission, the concept of 'Australian values' and 'integration in to the Australian community' need to be defined in the legislation if they are to be eligibility requirements for citizenship.*

*In our submission, living within the law during the period of residency prior to applying for citizenship, and passing the English language test should be considered a sufficient demonstration of Australian values and of integration into the community.*

*In our submission, the Citizenship Test should be removed. If it is to be retained, no penalty should be attached to failing the test. Instead, applicants should be provided additional support to assist them to pass the test on a future occasion.*

**7. Expansion of Executive Discretion**

a. Extension of Power to delay making of the pledge of allegiance from one year to two years.

We endorse the concerns raised by the submission of the UNSW Faculty of Law in relation to the expansion of executive discretion in citizenship decisions. In particular, we agree that there needs to be a clear justification for extending the period that the Minister can prevent an applicant making the pledge of allegiance from one year to two years.

The pledge of allegiance is the final stage in the citizenship process. Once a person has successfully complied with all the other requirements for citizenship, there is a reasonable expectation that applicants will be able to complete their citizenship applications in a timely manner. There may be legitimate reasons for delaying the pledge for allegiance so that the Minister can be satisfied that there is no new information that would make a person ineligible for citizenship as set out in proposed s32AB. However, the current period for making these investigations should not be increased from one year to two without evidence explaining why an extra year is required. As the UNSW Faculty of Law submission outlines, significant delays in citizenship applications can have detrimental psychological affects on applicants, particularly humanitarian entrants.

Furthermore, there are important rights associated with citizenship, such as right to family reunion, which are directly affected by the Minister's decision to delay the making of the pledge. These are set out in detail in the submission of the Refugee Council of Australia.

*In our submission, the maximum period of delay that the Minister can impose to the making of the pledge of allegiance should not be increased from one year to two years.*

b. Power to cancel citizenship by conferral before the pledge of allegiance has been taken

The Minister must have the power to cancel a person's approval prior to the pledge of allegiance when the Minister is satisfied that there are concerns over a person's identity or on account of national security considerations as established in s 25(1A).

We also accept that the Minister ought to have a discretion to cancel citizenship approval if a person is found not to satisfy other eligibility criteria under s 25(1). However, given the breadth of the new citizenship criteria, in particular the need to satisfy the Minister that the applicant has 'integrated into the community', and the proposal that the pledge of allegiance can be delayed for two rather than one year, we are concerned that this provides the Minister with too broad a discretionary power. As we submit above, the Minister should not be making an independent assessment of an applicant's 'integration' beyond the fact that they satisfy the residence requirement, and pass the English language requirements. A broad executive discretion based on highly subjective criteria leaves the discretion open to the potential for abuse.

*In our submission, the mandatory requirement to cancel approval under s25(1A) should be accepted. However, the discretionary power to cancel approval for other reasons should be limited to situations that are specified in the Australian Citizenship Act 2007, and not left to a broad discretion of the Minister.*

Similarly, the power to revoke citizenship acquired by descent under proposed s 33A provides too broad a discretion to revoke citizenship of a person whose citizenship has been approved. We acknowledge that the Minster should have the power to revoke citizenship in relation to objective criteria such as fraud in the application, but are concerned that the current wording of s 33A allows the Minister to make subjective retrospective judgments on issues such as a person's character prior to or during the process of their application, which are matters not defined in the Act. This concern is explained in detail in the submission of the UNSW Faculty of Law, which we endorse.

*In our submission, s 33A should be removed.*

**8. Expansion of Ministerial power exercised in the 'public interest'.**

There are a number of provisions in which the Bill expands the power of the Minister to make broad discretionary decisions in the public interest, including:

- **proposed s 22AA waiving general residency requirements in the 'public interest':**
- **proposed s 34AA expanding power to revoke citizenship for cases of fraud or misrepresentation if the Minister is satisfied it would be contrary to the 'public interest' for the person to remain a citizen.**
- **proposed ss 47(3A) and 52(4) removing AAT jurisdiction in the 'public interest'**
- **proposed s 52A setting aside AAT decisions in the 'public interest'**

We have a general concern with the use of ministerial discretion in the 'public interest' that is not tied to specific legislative considerations. Our concerns are exacerbated by the fact that the Minister is provided with a wide discretion to remove AAT jurisdiction or set aside AAT decisions.

In addition, we submit that Ministerial discretions 'in the public interest' should be confined to discretionary exercises of power that are beneficial to the person concerned (eg waiving general residency requirement, not revoking citizenship, setting aside adverse AAT decisions, or excluding review).

The Explanatory Memorandum (Item 325) justifies the removal of Ministerial decisions from review in the AAT in the following terms:

> As an elected Member of Parliament, the Minister represents the Australian community and has a particular insight into Australian community standards and values and what is in Australia's public interest. As such, it is not appropriate for an unelected administrative tribunal to review such a personal

> decision of a Minister on the basis of merit, when that decision is made in the public interest. As a matter of practice it is expected that only appropriate cases will be brought to the Minister's personal attention, so that merits review is not excluded as a matter of course.

We submit that it is erroneous to contend that being a representative of the community gives a minister a 'particular insight into community standards'. Ministers are not elected on the basis of their insight into community standards. Community standards are established by law, and this should also be the case in relation to the criteria for citizenship. We contend that it is precisely because the Minister is politically accountable and making a 'personal decision' that merits review in the AAT is necessary. Ultimately what is required of the executive process of determining a citizenship application is a decision based on merit and not a decision based on political or personal considerations.

Alarmingly, the explanatory memorandum seems to envisage that decisions made 'in the public interest' might not be based on merit. This begs the question of when it could be in the public interest not to make a meritorious decision.

Finally, the expectation that the Minister will only exercise their personal unreviewable discretion 'in appropriate cases' brought to the Minister's attention, is an inadequate safeguard against inappropriate exercises of the Minister's personal discretion. The proposed amendment provides no criteria for what is an 'appropriate case' or the procedure for cases to be brought to the Minister's attention.

In place of review in the AAT, proposed s 52B(1) requires that personal decisions of the Minster be tabled in Parliament. It is doubtful that Parliament can operate as an adequate safeguard against abuse of the discretion to refuse an application for citizenship. Tabling a decision in Parliament does not lead to a review of that decision. The individual affected gets no hearing, and Parliament's only power is to make a critical response of the Minister's decision in the Parliament. Furthermore, in cases in which the person making the application has limited public support, Parliament may have little interest in engaging with the Minister's reasons for decision. The Explanatory Memorandum makes it clear that decisions that are made outside of merits review in the AAT will still be subject to judicial review. However, judicial review is only available for errors of law, and the courts have found that the 'public interest' discretion is almost absolute leaving little or not room for a legal error.[8]

Proposed sections 52A and 52B confers a discretionary power in the Minister to override decisions of the AAT on the basis that they are not in the public interest. The

[8] See, eg, *South Australia v O'Shea* (1987) 163 CLR 378; O'Sullivan v Farrer (1989) 168 CLR 210.

justification for this change in the Explanatory Memorandum is that the AAT has made a number of decisions:

> outside community standards, finding that people were of good character despite having been convicted of child sexual offences, manslaughter or people smuggling. Three other recent decisions of the Administrative Appeals Tribunal have found people to have been of good character despite having committed domestic violence offences.

It should be noted that the same justification for introducing a discretionary power in the Minister to overrule AAT decisions was articulated when a similar amendment was proposed in the *Australian Citizenship Act* in 2014. There is no indication that the AAT has made decisions outside of community standards since that time.

In any case, the clear answer to the problem of the AAT making decisions that the Minister believes are not within community standards is to amend Ministerial guidelines on what is within community standards. The Explanatory Memorandum fails to explain why this approach has not already remedied the problem of the AAT making decisions outside community standards, or why it could not be used to remedy any such issue in the future.

The apparent suspicion of the AAT evident in the proposed changes and the explanation for the changes in the Explanatory Memorandum is concerning. The AAT is the peak national administrative review body. It has a general merits review function that applies across a wide range of executive portfolios. It is an important part of the Tribunal's function to overturn the decision of Ministers and other executive officers on occasions. Despite this, in other contexts the Tribunal maintains the trust of the executive government and forms a vital part of the accountability apparatus.

We can envisage only one substantive ground for avoiding merits review of Ministerial decisions; that is in relation to decisions based on highly sensitive defence and security information.

*In our submission, the Minister should not be provided with the discretionary power to remove the jurisdiction of the AAT or set aside AAT decisions in relation to citizenship applications.*

*We endorse the submission of the UNSW Faculty of Law that if the Minister retains the power to remove AAT jurisdiction or to set aside decisions of the AAT, there should be specific mandatory criteria for the Minister to consider before exercising this power, and not the broad unspecific 'public interest' criterion.*

**9. Expansion of Ministerial power to determine the criteria for citizenship in legislative instruments.**

The proposed changes to citizenship laws leave many decisions for the Minister to determine through legislative instrument. Most significantly it leaves to the Minister the determination of what the level of English language is required to meet the standard of 'competent English', what is relevant to the assessment of what a person has integrated into the Australian community. These determinations are central to the criteria for citizenship and in our submission the criteria for English language testing and community integration should be included in the primary Act. This is in line with the Government's own guidelines for drafting legislation which states that primary legislation should deal with 'rules which have a significant impact on individual rights and liberties'.[9]

*In our submission, the criteria for citizenship should be set out in the Australian Citizenship Act and should not be the subject of Ministerial discretion.*

[9] *The Department of Prime Minister and Cabinet Legislation Handbook* (February 2017), 1.10.