

21 July 2017

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra, ACT 2600

Submission regarding the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA strives to ensure that the needs and aspirations of Australians from diverse cultural and linguistic backgrounds are given proper recognition in public policy.

FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

Key Message

FECCA welcomes the opportunity to provide feedback on the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (the Bill), which was referred to the Senate Legal and Constitutional Affairs Committee on 22 June 2017. The feedback detailed in this submission reflects views collected during multiple consultations with communities across the country by FECCA and its members.

FECCA strongly opposes the introduction of this legislation that will dramatically change the rules determining qualification for Australian citizenship.

FECCA believes that this Bill will create a permanent underclass of Australian residents who will be denied the rights and opportunities of being welcomed and included as Australian citizens. Such exclusion undermines the ideal described in the Preamble to the Australian Citizenship Act 2007, 'that citizenship is a 'common bond' that unit[es] all Australians'.¹

¹ See Andrew and Renata Kaldor Centre for International Refugee Law 2017, University of New South Wales, Submission Discussion paper on the strengthening the test for Australian citizenship.

As noted by the current Prime Minister, Australia is ‘the most successful multicultural society in the world.’² Citizenship to this point in Australia’s history has been used as a means of fostering inclusivity. It has encouraged many migrants not just to see Australia as the place where they live, but to see themselves as Australian, regardless of their country of origin. Australia’s approach to citizenship has contributed to the successful settlement of generations of migrants and the proposed changes run counter to Australia’s long-standing immigration and citizenship policy.

It is unclear what weaknesses have been identified by the Government in the current citizenship process and how this legislation will remedy such deficits. FECCA is deeply concerned about the proposed changes to our system of immigration and citizenship, as detailed in the Bill, which appear to be based on political considerations rather than empirical evidence.

The English Language Requirement

FECCA strongly believes that demanding higher levels of English to qualify for citizenship will prevent many deserving Australian permanent residents the chance to become full Australian citizens. It unfairly targets some of the most vulnerable arrivals in Australia including migrants of refugee background and women.

FECCA believes that the requirement for citizenship of a specific high level of English language proficiency, separately tested, is discriminatory and exclusionary. FECCA acknowledges that developing English language capacity is an important part of settlement. However, language learning is a lifetime journey and throughout Australia’s history, extraordinary contributions have been made by those who may not have achieved a high level of English language proficiency.

The changes proposed in the Bill regarding the English language requirement will have a disproportionate effect on women and more vulnerable migrants. Several studies have demonstrated the effect of trauma on adults learning English.³ This is particularly prescient for humanitarian entrants. A study of one cohort of refugees in Australia indicated the presence of Post-Traumatic Stress Disorder in more than 90% of that cohort and detailed the negative effects upon learning.⁴ Interruptions to education as a result of moving frequently because of unstable security situations or missing school to work in times of economic hardship mean that some migrants and refugees may have low levels of literacy in their own languages making the study of English a particular challenge. Women face additional barriers to education, as they are disproportionately burdened with caring and domestic responsibilities. To prevent applicants who have entered Australia as humanitarian entrants from becoming citizens because they experience difficulties with language is to effectively penalise them because of their traumatic experiences.

The English language skill requirement sends a strong message to previous generations of migrants from Europe and elsewhere, who came to Australia with little or no English, and who became citizens while they were still developing their English language skills: *that they should not have been accepted because they did not have high levels of English language proficiency.* These migrants to Australia subsequently enriched this nation through their cultural, economic, familial and social contributions. Their experience demonstrates that English language capacity is developed over time and that high level English proficiency is

² Remarks at the release of the Multicultural Statement 2017, 20 March 2017, Parliament House, Canberra: <https://www.pm.gov.au/media/2017-03-20/remarks-release-multicultural-statement-2017>

³ Gordon, D. Trauma and Second Language Learning among Laotian Refugees *Journal of Southeast Asian American Education and Advancement: 6(13)*. 2011

⁴ Stevens, A. Perspectives on the Meanings of Symptoms among Cambodian Refugees *Journal of Sociology 37(1):81-98* 2001

not necessary to be a valuable and contributing member of the Australian nation.

FECCA is concerned about the financial burden the English language requirement will place on migrants, many of whom work in low-wage sectors of the economy and who will be forced to pay for costly exam-focused English language courses and repeated tests. Indeed, particular communities may be disproportionately impacted by this test dependent on, for example: (a) language group of a person's first language (grammar, vocabulary, alphabet, pronunciation, tonal or non-tonal etc.); (b) prevalence of English in country of origin; (c) experience of learning / speaking other languages; (d) age of first learning English. It should also be noted that English is considered a particularly challenging language to learn because of its many irregularities.

A functional command of English is highly desirable for negotiating Australia's social and economic institutions and this is already tested when permanent residents sit the current citizenship test *in the English language*. If Australia is committed to ensuring that its citizens are all competent English speakers, then investment in comprehensive language services is a more appropriate consideration. Removing, for example, arbitrary time constraints for the Adult Migrant English Program and broadening the availability of child care will assist in this regard.

Waiting Periods through Residence Requirements

The proposed amendment that require an applicant for citizenship to demonstrate four years of continuous permanent residence in Australia, for the purposes of 'greater examination' of their 'integration with Australia' will have a detrimental effect on community harmony, social cohesion and weaken the capacity of migrants to be empowered and integrated into Australian society. This is a direct contradiction of the purported goal of the Bill of 'a commitment to a multicultural Australia in which integration and contribution are core elements of our success'.⁵

It is the view of FECCA, and the tradition of Australia's immigration system, that Australian permanent residents should be encouraged to seek citizenship as soon as practically possible to foster a sense of inclusion and encourage integration. Citizenship is not only an offer of welcome by a host nation; it is also an expression of commitment by an arriving migrant and a compact between the two. Anything which delays or deters this should be resisted.

Good settlement and integration outcomes are, as demonstrated by ample research, dependant on the ability to feel welcome, to contribute and to participate in the new society. The ability to participate fully in Australian life is however, dependent upon immigration status. The right to vote and influence how the financial contributions one makes to the country are distributed; the right to ease of travel; the right to serve your country in jobs reserved for citizens; and access to improved opportunities for education are important facets of integration. These are also aspects of the integration process that are prevented and delayed by the extended waiting period proposed in the Bill.

For migrants to Australia, the granting of Australian citizenship is a symbol of acceptance into the Australian community. It is cherished by all in Australia's migrant communities and, for those arriving here as humanitarian refugees after years of flight and unsettled lives, provides much needed security and certainty. The changes to the waiting period requirement will lead to a greater sense of exclusion for migrants to Australia.

In some cases the people affected by these delays will have already lived here for many years, working, studying and contributing to the economic and social fabric of the nation. In the ACT, it is not uncommon for individuals with permanent residency to be forced to leave a Commonwealth Government position when the post is reassessed as requiring the holder to

⁵ <https://www.border.gov.au/ReportsandPublications/Documents/discussion-papers/citizenship-paper.pdf>

have security clearance and, therefore, Australian citizenship. The implications of this added delay to the ability to become a citizen for permanent residents living in regions where the Commonwealth is a major employer has dramatic implications. It will also impact the capacity of the Commonwealth to recruit, retain and promote competent and skilled staff from diverse backgrounds – a stated aim of the Commonwealth Government.

Widening Ministerial discretion

FECCA strongly opposes the unwarranted expansion of Executive powers on matters relating to Australian citizenship. The politicisation of immigration decision-making in individual cases threatens the fundamentals of our immigration system which has a long-standing reputation for being impartial, fair and transparent.

This sense of fairness and transparency linked with Australia's immigration process has also contributed to Australia's multicultural success and cohesion by treating all migrants equally and without discrimination in their pathway to becoming an Australian citizen. These positive interactions between new migrants and government institutions early on in the settlement experience contribute to an understanding of, and respect for, the principles of democracy, rule of law and separation of powers by new migrants. The proposed changes increase uncertainty, reduce accountability, and introduce unwarranted discretion and opacity to the immigration process and experience of Australian permanent residents.

In particular, FECCA is troubled by the following changes:

- The capacity of the Minister to set aside decisions of the quasi-judicial body, the Administrative Appeals Tribunal, in certain cases
- The capacity of the Minister to deny a person eligibility to sit the citizenship test based on previous failures
- The capacity of the Minister to cancel approval of Australian citizenship before making the pledge of allegiance or delay a person making the pledge of allegiance without neither clear criteria nor a clear and specified right to appeal.

FECCA would also take this opportunity to highlight that the proposed retrospective application of this legislation to all those who have applied for Australian citizenship after the 20 April 2017 further increases the unpredictability, uncertainty and opacity of Australia's immigration policy.

Other concerns

FECCA is concerned that many elements of this legislation have a disproportionate and negative impact upon vulnerable humanitarian entrants and their families who may have suffered significant trauma and already face many barriers and challenges to their life in Australia. This includes changes to the automatic acquisition of Australian citizenship and the application of the 'good character' test to applicants under the age of 18 years.

All citizens and residents of Australia have clear rights and responsibilities. FECCA believes that by emphasising universally recognised values such as democracy, rule of law, gender equality and freedom of speech as uniquely 'Australian values', there is a clear suggestion that migrants and culturally and linguistically diverse Australians do not share these values until they are 'learned' in Australia. This is a deeply unjust and divisive implication that demands interrogation and challenge.

Conclusion

The Federation of Ethnic Communities' Councils of Australia welcomes this opportunity to contribute to the national conversation on citizenship.

It is our considered view that the changes proposed in the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 will damage Australia's social cohesion and strong multicultural community.

This legislation impacts all migrants – past and present. It may lead to the exclusion from citizenship of large numbers of migrants from particular ethnic and linguistic backgrounds because of the stringent English requirements. It impacts international graduates from Australian institutions who wish to remain in Australia and contribute skills that are desperately needed in the Australian workforce, including in Commonwealth positions reserved for Australian citizens. It has particular implications for some of the most vulnerable Australian arrivals who may not even be literate in their first language. And it impacts established migrants who have struggled with English all their life implying that they are now less of an Australian because their first language was not English.

The proposed amendments to the legislation threaten to undermine the decades of successful migration, community harmony and cultural diversity that Australia has worked so hard to build. In the best interests of the broader Australian community, as well as the many migrants that have contribute so much to the social, economic and cultural fabric of this nation, FECCA strongly opposes this legislation.

The Federation would welcome the opportunity to expand on this submission to the Committee as required. For enquiries please contact the FECCA Director, Dr Emma Campbell at emma@fecca.org.au or on (02) 6282 5755.