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Citizenship Submissions

Department of the Immigration and Border Protection

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## Strengthening the Test for Australian Citizenship

The Settlement Council of Australia (SCoA) is grateful for the opportunity to make a submission to the Department in relation to its discussion paper: “Strengthening the Test for Australian Citizenship” (“Discussion Paper”).

SCoA represents over 80 agencies in the settlement sector, which comprise the vast majority of agencies across Australia providing settlement support to recently arrived migrants, including those from a refugee background. Our members work directly with a wide range of new arrivals from diverse backgrounds, as well as the mainstream Australian community and various stakeholders.

SCoA believes that Australia should be proud of its multicultural community, and should recognise the role of settlement services in supporting newly arrived migrants. Our members witness firsthand the true value of the contribution made to multicultural Australia by those it welcomes as migrants, as well as the challenges those people face when attempting to settle in their new communities.

SCoA is concerned about the impacts of the proposed changes to Australia’s citizenship procedures on the settlement prospects of migrants, irrespective of their background. Our members have highlighted the fact that many of the proposed changes may be felt most acutely by humanitarian entrants, however we do not suggest that they are exclusive to this cohort.

For the reasons set out below, SCoA does not support the types, and scope, of changes suggested and we have therefore made recommendations in relation to each which we hope the government will consider before proceeding.

### 1. Background: Understanding the true value of Citizenship

Australia is a nation built on immigration. It is repeatedly celebrated for its ability to include people from diverse backgrounds, skills and experience, and for the diversity and prosperity that this brings. It is widely accepted that Australia’s citizenship laws have played a crucial role in fostering inclusion and enabling the country to welcome migrants and encourage them to become part of the Australian community.<sup>1</sup>

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<sup>1</sup> Sir Ninian Stephen, “Australian Citizenship: Past, Present and Future” *Monash University Law Review* [2000, Vol. 26, No. 2], p335; Australian Government, *Australian Citizenship... A Common Bond* (May 2001).

SCoA submits that the act of acquiring Australian citizenship is a crucial step in the personal transition for migrants as they develop a sense of belonging in their new community. That is, the opportunity to obtain Australian citizenship is vital to achieving the best possible settlement outcomes.

Settlement is a two-way process, requiring both migrants and the receiving community to commit to inclusive and common practices and values, without precluding the celebration and practice of one's own culture.<sup>2</sup> This outcome is crucial to successful settlement and fosters a harmonious and cohesive multicultural society.

Settlement requires that a migrant is able to enjoy security and stability in each of their interactions with their new home. This is directly linked to a migrant's independence, and their feeling of comfort in their dealings with the broader community.<sup>3</sup>

The security offered by obtaining citizenship is crucial for migrants who need to know that their participation in the Australian community can develop without fear of losing their status.

For these reasons, the conferral of citizenship has special meaning in the settlement journey, not only for migrants themselves, but also for Australia as a nation. Indeed, the benefits to Australia arising from welcoming new citizens are multiple and are widely celebrated.<sup>4</sup> Australia enjoys economic success largely because of the high-calibre individuals and families it attracts and the cultural diversity it enjoys.<sup>5</sup>

Australia also enjoys a rich and vibrant cultural heritage directly as a result of embracing immigration as a nation-building mechanism. In recent decades, this has become increasingly clear, with an influx of multicultural festivals, exhibitions, restaurants and other opportunities for commerce which have enriched Australia and imbued it with a vibrancy that fosters cooperation and growth.

By fostering a strong sense of citizenship, the government can unify Australia by promoting loyalty and pride, the benefits of which are not to be discounted.<sup>6</sup> SCoA submits that citizenship, if regulated fairly and properly, can bring tremendous benefit to Australia and those who seek to settle here.

This is not to suggest that there is not a need for careful regulation of citizenship, nor that international threats such as terrorism and the need to protect national security should not impact on that regulation. However, SCoA cautions that in the adoption of measures intended to combat concerns such as these, consideration must be given to the impacts they can have on social cohesion, Australia's cultural richness and of course, the settlement prospects of migrants themselves.

Without careful consideration of these factors, a citizenship policy that seeks to exclude and which diminishes the value of migrants' contributions to Australia, will be detrimental to harmony and social cohesion and is likely to breed disenfranchisement.<sup>7</sup>

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<sup>2</sup> UNHCR (2005), *Conclusion on Local Integration* (Executive Committee Conclusion No. 93 (LIII), No. 104 (LVI) 7 October 2005, UNHCR).

<sup>3</sup> McKinsey Global Institute (2016) *People on the Move: Global migration's impact and opportunity*, p83.

<sup>4</sup> The Hon. M Turnbull MP (2016), *Australia's National Statement*, <http://malcolmturnbull.com.au/media/australias-national-statement-in-the-general-debate-of-the-71st-session-at>, accessed on 30 May 2017.

<sup>5</sup> Human Rights and Equal Opportunity Commission (HREOC), *Face the Facts* (2003), p32.

<sup>6</sup> Niklaus Steiner, *International Migration and Citizenship Today* (Routledge, New York, 2009), p94.

<sup>7</sup> Kim Rubenstein, "Citizenship and the Centenary – Inclusion and Exclusion in the 20<sup>th</sup> Century" [2000] MULR 24, (2000) *Melbourne University Law Review*.

## 2. Proposed Changes to Australian Citizenship

Relevantly, the Australian Citizenship Act 2007 (“the 2007 Act”) contains the legislative process for migrants seeking to become citizens. The process, known as “citizenship by conferral”, was initially enacted in the Australian Citizenship Act 1948 (“the 1948 Act”) and represents the pinnacle of the migration journey for many who seek to establish new lives here.

SCoA notes that since the concept of Australian citizenship was introduced in 1949, more than 5 million people have become citizens. In the 2014-15 program year, this included 136 572 from 210 different countries.<sup>8</sup>

We understand that the current proposal for changes to the 2007 Act arise from the recommendations of the Final Report of the National Consultation on Citizenship 2015, “Australian Citizenship, Your Right, Your Responsibility” (“the 2015 Report”),<sup>9</sup> conducted by Senator Fierravanti-Wells and Mr Philip Ruddock.

We recognise the importance of the public consultation conducted by Senator Fierravanti-Wells and Mr Philip Ruddock, and also this current consultation, however SCoA is concerned that the current suite of proposed changes are not fully justified by the 2015 Report. For the reasons set out below, SCoA is not convinced that there exists sufficient justification for the types of amendments that are being proposed.

Furthermore, we take this opportunity to place on the record our concerns about the consequences of the proposed changes which, intended or otherwise, are likely to serve to exclude large cohorts of migrants from ever accessing Australian citizenship and could, in turn jeopardise Australia’s successes as a socially cohesive multicultural nation.

## 3. Proposal 1: Amending the residence requirement

SCoA understands that the government seeks to amend the current residence requirement, which already requires 4 years’ residence in Australia, to require that each of those 4 years was spent in Australia *as a permanent resident*.

With respect, we do not understand the need for this distinction given that the practical result is the same: the applicant will have to spend at least four years in Australia prior to applying. The rationale provided in the Discussion Paper is that:

*Increasing the minimum period of permanent residence required to qualify for citizenship will enable greater examination of an aspiring citizens’ integration with Australia.*

This seems to imply that the earlier time spent in Australia by migrants on temporary or provisional visas does not have the same value (despite often having the same, or very similar rights and responsibilities). In the absence of any evidence to the contrary, SCoA submits that the entirety of a migrant’s time spent living and working in Australia should be considered as equal to time spent as a permanent resident, and therefore treated as such in the citizenship residence requirement.

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<sup>8</sup> <https://www.border.gov.au/Trav/Citi/Lear/Facts-and-statistics>

<sup>9</sup> <http://www.border.gov.au/Citizenship/Documents/australian-citizenship-report.PDF>

### **Recommendation 1**

*The residence requirement as currently provided for in section 22 of the 2007 Act be retained without alteration.*

### **Recommendation 2**

*If the residence requirement is to be altered:*

- (a) consideration be given to adopting a fairer, more inclusive, alternative such as four years' total residence with at least 2 of those 4 years spent in Australia as a permanent resident;*
- (b) appropriate transitional provisions be enshrined in legislation to ensure certainty and fairness for those who are already in Australia as permanent residents; and*
- (c) careful attention be paid to ensuring adequate and sufficient concessions and/or exemptions to the residence requirement including but not limited to those currently provided for by the 2007 Act*

## 4. Proposal 2: Requiring “competent” English

The second proposal put forward in the Discussion Paper is to require applicants to demonstrate competent English through “separate upfront English language testing.” While there may be various interpretations of the meaning of the word “competent” (a term not defined in the Discussion Paper), SCoA understands from various media statements, as well as statements made by the Department before Senate Estimates,<sup>10</sup> that the intention is to adopt the measure of “competent” used by the International English Language Testing System (IELTS), which represents a test result of level 6 on each of the four components (Reading, Writing, Listening and Speaking).

SCoA accepts the importance of English language ability to a migrant’s ability to settle well in Australia, especially where that migrant and their family lacks a personal support network in Australia already fluent in English. However, we refute any suggestion that achieving a specific level of English language skills should be considered as a prerequisite of eligibility for citizenship. To do so would be contrary to the public interest, particularly in relation to humanitarian and certain family visa categories where English language ability is not relevant to visa eligibility.

SCoA notes and celebrates the commitment of settlement service providers and, increasingly, some government services, to cater for culturally and linguistically diverse clients; a commitment manifested through providing translators, interpreters and, often, staff fluent in community languages. Furthermore, we acknowledge the commitment of government to fund crucial English language tuition for certain migrants.

SCoA suggests that the government’s focus should be on enhancing the delivery of these services, and ensuring their effectiveness and suitability for *all* migrants that need them, rather than imposing an unnecessarily high bar on all applicants for citizenship.

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<sup>10</sup> Senate Hansard, Legal and Constitutional Affairs Committee, Tuesday 23 May 2017

SCoA is concerned that the proposed introduction of an English language requirement will adversely impact certain cohorts of migrants: most notably humanitarian and some family visa holders.

Migrants from a refugee background, for example, could be particularly disadvantaged, noting the significant hardships faced by those migrants both prior to their arrival in Australia, and following.

In 2016, the Australian Institute of Family Studies' (AIFS) published the findings of the first wave of its survey-based research project "Building a New Life in Australia", which details the challenges of recently arrived migrants.<sup>11</sup> It found that migrants from a refugee background often face multiple disadvantages because of their experiences, and while these differ greatly from individual to individual, they can include:

- psychological distress arising from pre-arrival trauma, with the majority of participants (89%) in the AIFS survey reporting that they or their immediate family had experienced at least one type of traumatic event before coming to Australia;<sup>12</sup>
- mental health issues;
- physical disabilities;
- limited, disrupted or no prior schooling.<sup>13</sup>

Furthermore, migrants who have lower than usual levels of literacy, even in their own language, will be particularly impacted, and so will those who, following their arrival in Australia, have been unable to access the full suite of available English-language training owing to their need to seek employment, care for family members, etc.

Finally, it has recently been noted that even for those humanitarian entrants who *are* able to complete their allocated hours of AMEP training, the results are significantly below that of "competent" English. Analysing AMEP results for the period 2004 to 2012, a researcher from the Australian National University recently published findings that indicate that zero per cent of participants scored an equivalent to IELTS 6 after completing their 510 hours of AMEP training.<sup>14</sup>

SCoA suggests, therefore, that to enforce a strict "competent English" requirement on all applicants (even allowing for the usual exceptions), the government risks alienating entire cohorts of migrants who may therefore never be eligible for Australian citizenship.<sup>15</sup>

The proposal to require "competent English" represents a departure from the Minister's own prior announcements foreshadowing changes to the 2007 Act. Relevantly, on January 2, 2017, the Minister for Immigration and Border Protection was quoted calling for changes to the Australian citizenship test, stating:

*"We want people to ... to take up English language lessons,"<sup>16</sup>*

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<sup>11</sup> Australian Institute of Family Studies (2016), *Building a New Life in Australia* (Fact Sheet 2016).

<sup>12</sup> *Ibid.*, p4

<sup>13</sup> *Ibid.*, p3.

<sup>14</sup> Sherrell H (2017), *A New Class of Migrants: the Never-to-be Citizens* (Inside Story, 27 April 2017) <http://insidestory.org.au/a-new-class-of-migrants-the-never-to-be-citizens>.

<sup>15</sup> We note that this risk extends beyond humanitarian entrants and includes certain secondary visa holders, family migrants and even some business visa holders whose selection for entry to Australia has never been contingent on meeting English language requirements.

<sup>16</sup> <http://www.sbs.com.au/news/article/2017/01/03/dutton-keen-overhaul-citizenship-test>

SCoA believes the Minister’s January 2017 comments represented a reasonable expectation and we therefore recommend that consideration be given to amending the proposal along those lines.

**Recommendation 3**

*English language training must be prioritised for all new arrivals, on an as needs basis, such that sufficient time is given, and funding provided, to ensure each person can learn English sufficient for them to participate in society, schooling and employment (as relevant) without being subject to the pressure of balancing English training with other obligations.*

**Recommendation 4**

*The eligibility criteria for Australian citizenship should **not** be altered to include a requirement that applicants demonstrate that they have achieved a level equivalent to “competent” on IELTS.*

**Recommendation 5**

*In order to demonstrate the importance of English language as a component of Australian citizenship, applicants could be required to demonstrate their attempts to avail themselves of government-supported language training, provided that sufficient concessions and/or exemptions apply for those whose circumstances prevent them from doing so and that applicants who have not done so are given an opportunity to rectify same, rather than face refusal of their citizenship application.*

## 5. Proposal 3: Testing Allegiance, Loyalty and adherence to Australian values

The third proposal put forward in the Discussion Paper focuses on the relationship between citizenship and concepts such as “loyalty” and “allegiance”. It is proposed that the testing of an applicant’s commitment to Australian values will be enhanced, though there is scant detail on how this may be achieved.

SCoA assumes that the proposed changes will continue to utilise a multiple choice style test for applicants which looks at those values. It is unclear how that test will differ from the current citizenship test provided for by section 23A of the 2007 Act.

Few would argue against the types of values listed on pages 10 to 12 of the Discussion Paper, though SCoA submits that while these may be values which Australia holds dear, they are by no means uniquely “Australian.”

We submit that citizenship, and the very process a migrant takes to achieve it, actually represents the adoption of those values. Our members report the significant weight placed by many clients on their acceptance for citizenship and the value this holds for them. We submit this is demonstrative in itself of the desire and commitment of those applicants to become part of the Australian society, and therefore represents a comprehensive statement of their loyalty and allegiance.

If the government is concerned about protecting Australian values, SCoA submits that the best way to enhance the role of, and respect for, these values among *all* Australian citizens is through education and by celebrating their contribution and importance. As a result, we submit that rather than using an easily manipulated multiple choice test to assess a migrant’s commitment to values, the discussion should instead focus on positive, inclusive dialogue about what citizenship means.

This can be achieved through education programs, both at school and also through dedicated channels for newly arrived adult migrants, as well as public campaigns to raise awareness. We note this was a key theme in many of the recommendations made by the 2015 Report,<sup>17</sup> but appear to be missing from the government's announced changes.

People of refugee backgrounds, and migrants generally, learn about citizenship and Australian values in civics and citizenship classes provided by members of settlement sector. This type of education promotes the value of citizenship at an early stage in the settlement process. Formally funding settlement programmes to provide citizenship education to new arrivals at the early stages of the settlement process would assist in creating an understanding of citizenship rights and obligations and create greater connections within the community.

For the reasons already specified above, we submit that this process should, by its very nature, be a positive and inclusive discussion.

Testing would-be citizens on their understanding of, and commitment to, certain values has the potential to significantly disadvantage applicants of low socio-economic backgrounds as well as those with little education or limited English.<sup>18</sup>

#### **Recommendation 6**

*SCoA recommends that in place of a test which assesses an applicant's commitment to Australian values, the government should adopt a more positive campaign of promotion and education designed to include all Australians in a discussion about values.*

#### **Recommendation 7**

*If a citizenship test is to be retained, SCoA urges the government to ensure appropriate concessions and/or exemptions to ensure those who would suffer hardship as a result of such a test have alternative options.*

There has been limited dialogue regarding some of the potential questions that could be used to test Australian values. It is suggested that these may include asking potential citizens about their views on childhood marriage, domestic violence and female genital mutilation.<sup>19</sup>

SCoA takes the view that these matters, while obviously important, do not hold special significance such as to require their specific inclusion in a citizenship test. While undeniably abhorrent, so too are crimes such as murder, rape, and child sexual offences. It clearly isn't appropriate to list every crime in an Australian values test.

Simply put, SCoA does not consider the citizenship test as an appropriate forum for dealing with these matters. For obvious reasons, they are dealt with under relevant Crimes Acts and Criminal Codes across the country and belong within the domain of the criminal justice system.

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<sup>17</sup> <http://www.border.gov.au/Citizenship/Documents/australian-citizenship-report.PDF>

<sup>18</sup> Michael Klapdor et al, "Australian citizenship: a chronology of major developments in policy and law" Parliamentary Library Background Note 2009-10, (Parliament of Australia, 2009), p3.

<sup>19</sup> <http://www.abc.net.au/news/2017-04-20/migrants-to-face-tougher-tests-for-australian-citizenship/8456392>



To single out only certain crimes for inclusion appears to reveal the existence of racial profiling underlying these proposed changes.

#### **Recommendation 8**

*If a citizenship test is to be retained, SCoA urges the government to ensure it focusses only on matters that are of normative significance to membership of Australian society and avoids matters that are better dealt with within existing legal structures such as the criminal justice system.*

SCoA notes the government’s proposal that applicants will have three attempts to pass the citizenship test and that after three attempts their application will be refused and they will face a two-year bar on making a new application. We do not accept that there is any justification for imposing such severe consequences. Again, SCoA suggests that this process should be supportive and seek to assist people in their journey to be included as Australian citizens, not penalise and exclude them.

#### **Recommendation 9**

*If a citizenship test is to be retained, SCoA urges the government to abandon plans to impose a “three-fail” maximum and a two-year ban on applicants who are refused.*

*Instead, SCoA recommends the government investigate ways of supporting applicants, including by retaining the course-based test.*

## **6. Proposal 4: Demonstrating integration**

SCoA has grave concerns about the proposal to require applicants for citizenship to demonstrate their level of integration in Australia as a requirement for approval.

Such a proposal does not, on its face, take into account the variety of experiences and backgrounds of Australia’s diverse migrant population. It also fails to acknowledge that for many migrants, especially those from a refugee background, the settlement process is long and varied, requiring assistance and support –only being fully realised once a migrant feels independent, secure and accepted in their new community.

The imposition of an ‘integration test’ as part of a citizenship application devalues the role that citizenship plays in the settlement journey.

The Discussion Paper provides a short list of matters on page 15 that can be considered to be examples of integration. We suggest that this must not be considered an exhaustive list. Indeed, there could never be an exhaustive list of what is considered “integration”, just as there is no one-size-fits-all model to what is successful settlement.

SCoA accepts that potential citizens should be required to demonstrate their capacity to abide by Australian laws (provided the standard for such law-abidance is measured appropriately with reference to the expectations, and realities, of the Australian community).

We believe, however, that any additional attempt to measure a migrant’s level of integration could become a highly inefficient processing hurdle, taxing Department resources and placing untenable levels of stress on applicants. Any suggestion that applicants would need to submit a ‘dossier’ of their



attempts to integrate creates an unacceptable level of uncertainty and will serve to disadvantage those from lower socio-economic backgrounds who can't receive support in their application, or simply can't afford to "participate".

It goes without saying that to each applicant, the concept of "integration" will be different. This is not just seen among migrant communities with different cultures, but is of particular importance in migrants from a refugee background who have the potential for traumatic experiences and/or a lack of or interrupted education. All of these factors could dictate very different outcomes.

Further, it is human nature that people respond differently to the concept of social participation whether born in Australia or otherwise (for example, an extrovert is likely to have very different experiences to an introvert).

For these reasons, SCoA does not see how it could ever be possible to measure 'integration' in a way that adequately appreciates the many and varied circumstances of potential applicants.

We submit that one only needs to look at the countless success stories from the settlement sector, which bring to light the hard work of the sector, the commitment of government to funding settlement services, and of course the hard work and resilience of migrants themselves, to see that integration is occurring across the sector and with great outcomes.

It is therefore unnecessary to ask migrants to prove their integration and, instead, SCoA submits that government's focus should be on supporting the work of the settlement sector and enhancing services which can be provided to all potential citizens, on an as needs basis.

#### **Recommendation 10**

*Plans to measure a citizenship applicant's level of 'integration' should be abandoned. Instead, government should focus on supporting the hard work of the settlement sector and enhancing settlement services, including by increasing eligibility criteria to all migrants on an as needs basis.*

### **7. Implementation of proposed changes**

As a result of significant member feedback, SCoA wishes to place on the record the sector's concern about the uncertainty and confusion that has arisen as a result of the proposed changes.

Members have raised concerns about the apparent retrospective application of the proposed changes. The government has announced that the changes will apply to all applications made after 20 April 2017. However, legislation has not yet been drafted and is likely not to be presented to parliament until the end of 2017 at the earliest, and even then, will be subject to the usual mechanisms of legislative scrutiny.

It is highly irregular for applicants, eligible now under the 2007 Act, to be told that their applications will be on hold pending new legislation. This is particularly the case given that many applicants who are eligible at present could, if the changes proceed, become ineligible at some point in the future

This approach to such a crucial element in the settlement process results in high levels of insecurity and confusion among migrants. We therefore urge the government to resolve this process as a matter of highest priority and suggest that no changes should be implemented retrospectively.

## 8. Conclusion

As set out above, SCoA holds grave concerns that the proposed changes could result in large portions of Australia's permanent resident population no longer being eligible for citizenship. In effect, this has the potential to forever deny citizenship to whole cohorts of migrants, creating a social divide between those who are eligible, and those who are not.

SCoA believes that both psychologically and socially this will be detrimental. It is likely to send a strong message that the value of some migrants is lower than others, thereby devaluing the very real contributions those persons do make and potentially breeding disenfranchisement.<sup>20</sup> Thus, the proposed changes could have the opposite effect, degrading social cohesion, promoting disloyalty and even leading to greater risk of radicalisation.

SCoA strongly believes that the purpose of citizenship is not to exclude people; rather, it is about fostering cultural diversity so all Australians have the opportunity to celebrate and enjoy the benefits of one of the world's leading multicultural nations.

For that reason, citizenship processes should not be complex or evidentiary based applications designed to 'protect the borders' (a function already managed by our immigration and visa system). That is, citizenship should not be seen as a gatekeeper. Rather it should be seen as a reward for commitment and a celebration of people from diverse backgrounds who choose to make Australia home.

This can only be done through embracing Australia's multiculturalism, which is of irrefutable importance in a globalised world,<sup>21</sup> and raising awareness in the public consciousness so as to foster inclusion rather than exclusion.<sup>22</sup> By accepting the diversity of its members and refraining from alienating those who do not meet a "test", a sense of unity and national loyalty will follow.

For these reasons, SCoA urges the Department to carefully consider each of the recommendations made above. We trust that they will assist in crafting amendments to Australia's citizenship processes that successfully achieve a balance between the needs of the state and the individual, thereby ensuring the concept of citizenship in Australia continues to operate to the benefit of all.

If the Department wishes to further discuss the contents of this submission, or any other matter of relevance, please do not hesitate to contact our National Office on 02 6282 8515.

Sincerely,



Dewani Bakkum, Chairperson

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<sup>20</sup> Kim Rubenstein, "Citizenship and the Centenary – Inclusion and Exclusion in the 20<sup>th</sup> Century" [2000] MULR 24, (2000) *Melbourne University Law Review*.

<sup>21</sup> Nick Dyrenfurth, "Battlers, Refugees and the Republic: John Howard's Language of Citizenship" *Journal of Australian Studies* (2005) Issue 84, p183.

<sup>22</sup> Australian Citizenship Test Review Committee, *Moving Forward... Improving Pathways to Citizenship* (August 2008).