

Public Sector Informant: Citizenship test changes deserve an 'F'

Kim Rubenstein – *The Public Sector Informant* – November 2020

Significant changes to Australia's citizenship test, altering the way permanent residents can become Australian citizens, come into effect in just over two weeks. Mooted laws tightening access to citizenship and loosening the conditions for its loss have been on the federal government's to-do list for over three years. But while the government is claiming its single-minded focus on the pandemic is preventing it from doing other things, citizenship law changes are another matter. Despite earlier unsuccessful attempts to steer these laws through Parliament, COVID-19 has given the Morrison government cover enough to quietly operationalise the changes.

While eerily reminiscent of the White Australia policy and the immigration dictation tests of earlier times, sitting a formal test to become a citizen is a recent development. Until October 1, 2007 no one sat a formal test to become an Australian citizen. Beforehand, a government officer determined, after an in-person interview, whether the applicant "had a basic knowledge of English", and "an adequate knowledge of the responsibilities and privileges of Australian citizenship". But this was replaced by a multiple choice formal test for ascertaining the prospective citizens had the required "adequate knowledge of Australia". Critiqued as a smorgasbord of Australian trivia, including a practice question about Don Bradman's batting average, in 2008 the *Australian Citizenship Test Review Committee*, chaired by Richard Woolcott, made largely successful recommendations to change the test. Its focus thus settled on a putative citizen's understanding of the citizenship pledge. Once the pledge is declared a person becomes an Australian citizen. The official government book *Australian Citizenship, Our Common Bond* includes a lot of general information about Australia but only the clearly identified sections of it about the content and meaning of the pledge are actually tested.

These testable sections currently include "Part 1 - Australia and its people", "Part 2 - Australia's democratic beliefs, rights and liberties" and "Part 3 - Government and the law in Australia". But the depth-charge bobbing up after the November 15, 2020 date is a new testable section, "Part 4 - Australian values".

What are Australian values? The booklet lists "Commitment to the Rule of Law", "Parliamentary Democracy", "Freedom of Speech", "Freedom of Association", "Freedom of Religion", "Equality of all people before the Law", "Equality of Opportunity and a Fair Go", and "Mutual Respect and Tolerance for Others". A new set of five questions based on these sections of the booklet must *all* be passed correctly in order to pass the test, as well as getting 75 per cent or more correct for the other three parts.

Are these specifically Australian values, or Western liberal values that are affirmed in Australia? And are they indeed consistently affirmed in Australia? It is ironic that part of the test's explosive impact might well be on the government itself for would this government be able to pass its own test, in understanding and implementing and affirming these "Australian values"?

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Let's begin with the first value listed - "Commitment to the Rule of Law". The ongoing closed-court case by the Commonwealth government against Bernard Collaery raises questions about the government's commitment to this "Australian value". The Australian Law Council, for one, in its [October 16 2020 press release](#) identifies the lurking danger. The legislation requires this case, for the most part, to be conducted behind closed doors. The Council is concerned, as well it should be, that these legislative provisions offend the principles of open justice, because proceedings other than in an open court "contradicts a fundamental attribute of a fair trial". Moreover, it is a basic rule of the common law that underpins the rule of law, that the administration of justice should not take place behind closed doors but must take place in an open court. The Law Council pressed its concerns to the *National Security Information (Criminal and Civil Proceedings) Act 2004* calling for a recalibration of "the balance between the requirements of open justice and protecting the community against the disclosure of information that may genuinely prejudice national security". So far, as the errant student of its own laws, the government is lagging on this first listed "Australian value".

Let's turn to "Parliamentary Democracy". The government's sly changes do not sit well with this. Indeed, the return of the values tests instils a deep sense of foreboding about Australia's parliamentary democracy. In 2017, the Senate Legal and Constitutional Affairs Committee noted that "legislation by media release" has become a fact of life. Moreover, the [committee found](#) that the proposed bill to change the test did not define the meaning of "competent English" (a change to the current "basic" English requirement). Moreover, the minister was cloaked with far reaching discretion to make a determination on whether a person has integrated into the Australian community. What's more, the minister could make a new determination on the content of an Australian Values Statement and the requirements to meet it. Like a thief in the COVID night, without public scrutiny and despite the earlier bill lapsing, the government has stealthily returned "Australian values" testing. In the process of doing so, it has marked itself as a "fail" on another Australian value, a commitment to accountability as a central pillar of "parliamentary democracy".

How about a pass on "Equality of Opportunity and a Fair Go"? If one focuses on gender equality, a core aspect of my work in the 50/50 by 2030 Foundation, serious doubts trouble the government's commitment to this Australian value. One doubt centres on the narrow band of opinion allowed a voice when the government deliberates on law and policy. Hunting with this doubt is the extent government is both interested and attuned to differential impact of its decisions and the uneven benefits and costs uncovered by individual cases and circumstances. A listening and caring ear to these differentials is a key component to achieving true "equality of opportunity". The COVID pandemic has brought in its wake many structural and institutional barriers that are undermining of the government's commitment to this Australian value.

[Earlier commentary](#) on the government's recent budget identified how under current frameworks, those developing policy do not systematically contemplate different policy impacts by gender. Assessing the scale of the crisis for women, is the 0.036 per cent of the total budget spend to flow specifically to women really telling Australian women that proclaimed "we're all in this together"? Gender, combined with race, class and migrant

background all play into how well Australia is really doing when it comes to "equality of opportunity and a fair go".

Returning to Australian citizenship itself - the test is about admission to the Australian nation. Yet the flip side is how easily can one's citizenship be taken away? In 2015, Parliament passed the *Australian Citizenship Amendment (Allegiance to Australia) Act 2015* (Cth) which created three ways to automatically strip dual citizens of their Australian citizenship if they engage in terrorist-related activity. This year, the government passed further citizenship-stripping legislation, the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020*, giving the minister further considerable discretionary power to strip a *dual citizen* of their Australian citizenship and giving the affected person limited rights of review. This takes us back finally, to the "Equality of all people before the Law" Australian value. In this very Act, which determines who can become a citizen, the Australian government has stated that two Australians can and will be treated differently for the very same actions undertaken on the basis of one being a dual citizen and the other not. While this affirms on the one hand Australia's commitment to preventing people becoming stateless, it does not affirm the "equality of all people before the law".

In short, these are testing times and the government is failing them. It is the government and Australia's solemn responsibility to begin ticking the boxes of its own citizenship test. The government should start by living up to the new part - on Australian values - and it should do so by first repealing it. These values are best inculcated by the example of a government with a true, demonstrable commitment to those very same principles in its own test.