Media Release

Law Council
OF AUSTRALIA

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No case for strengthening English language testing on prospective citizens

English language testing on prospective Australian citizens should be lowered from the new threshold the Government is proposing, the Law Council of Australia said today.

Appearing before a Parliamentary committee inquiring into the Government's Australian Citizenship Legislation Amendment Bill, the Law Council said the Bill would make a wide range of changes to the Citizenship Act and the Migration Act, several of which did not seem adequately justified.

Law Council of Australia President, Fiona McLeod SC, who was joined at the hearing by Mr David Prince and Ms Carina Ford from the Law Council's Migration Law Committee, said the purpose of the strengthened English test was not clear.

"The stated purpose of the strengthened English language test is to enhance economic and social participation, but the move is not substantiated by economic or social data," Ms McLeod said.

"The Australian economy has benefitted considerably from people who speak limited English. Humanitarian and partner visas do not have English skills as a criterion, for example, yet these visa holders have contributed significantly to the economy through successful businesses and employment.

"The introduction of the proposed competent English requirement may disadvantage particular groups, such as refugees and humanitarian entrants. Such individuals may not have had the benefit of education or may have experienced torture or trauma, and may find learning a new language difficult.

"Of course, it is difficult to assess the proposed English requirement properly at this stage, because a definition of the relevant English language threshold has not been included in the Bill. The Law Council would argue this definition should be provided now, and not later via a legislative instrument."

Ms McLeod said ambiguity about detail of certain aspects of the Bill applied to other key areas as well.

"The Bill would insert a new paragraph into the Act, which would provide that the Immigration Minister must be satisfied that an applicant had integrated into the Australian community," Ms McLeod said.

"But the factors the Minister would take into consideration when making a decision about a person's integration have not been included, and will be later set out in a legislative instrument. These factors should be included in the Bill itself now and not revealed at a later date."

The Law Council also raised its strong opposition to the inclusion of new powers for the Immigration Minister to ignore certain decisions of the Administrative Appeal Tribunal, which have the effect of undermining the rule of law.

“We are deeply concerned with the increased use of personal powers of the Immigration Minister compared to other areas of Government given the significance such decisions have on people and the limited review options available in such cases,” Ms McLeod said.

“This power also undermines the effectiveness of the appeal process where the Minister can simply set aside a decision of the AAT with which the Minister disagrees and the doctrine of separation of powers and the independence of the AAT.”

You can read the Law Council's earlier submission here.

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