

Our ref: 2008-110019

30 May 2008

Mr Richard Woolcott AC
Australian Citizenship Test Review Committee
PO Box 1179
BELCONNEN ACT 2616

Dear Mr Woolcott,

Thank you for inviting this office to contribute to the review of the Australian citizenship test.

It is pleasing to see that the Terms of Reference invite consideration of both the content and operation of the test. The breadth of the review is itself a recognition of the importance of ensuring that the process of applying for and granting Australian citizenship is effective, timely and fair.

The most significant issue identified from complaints concerning the citizenship test is detailed below. I have also summarised concerns that have been expressed to this office in the course of community meetings about the impact of the test upon access to Australian citizenship.

The e-lodgement process and refund

Following the introduction of the *Australian Citizenship Act 2007*, the majority of applicants for Australian citizenship must first pass the citizenship test. However, the Act does allow a person to lodge a citizenship application before they have sat and passed a citizenship test.

In December 2007, this office received a complaint about the Australian citizenship e-lodgement application process. Ms F completed the e-lodgement and paid the \$240 application fee, \$120 of which was for the citizenship application while the remaining \$120 was for the citizenship test. Ms F had not yet sat a citizenship test, and was not therefore eligible for citizenship, but the e-lodgement process did not make it sufficiently clear that passing the citizenship test was a prerequisite.

Ms F's application for citizenship was unsuccessful. While the Department was able to refund Ms F \$120 for the citizenship test, it initially refused to reimburse her the remaining \$120 due to the limited circumstances in which refund is permitted under the Act. Ms F was also inappropriately booked in for a citizenship interview due to a procedural error.

We discussed these issues at a meeting with the Department and in correspondence. We were advised that several hundred people were in a similar position as Ms F. The Department explained that it had taken measures to reimburse the full \$240 application fee to those affected on the basis that the information on the Department's website about the need to pass the test was not as clear as it could have been. The Department also advised

that it had taken steps to ensure that the e-lodgment process alerted applicants to the need to complete the citizenship test before applying.

In reimbursing Ms F and others in a similar position, the Department took what it saw to be a beneficial view of its powers to issue refunds under regulation 13(1)(b) of the Australian Citizenship Regulations 2007. Relevantly, that regulation provides that the Minister may refund the whole or part of a fee that is payable under s 46 of the Act if a person has made an application as a result of incorrect advice given by the Department. This raises the question as to whether the powers to reimburse citizenship applicants part or the whole of the cost of applying for citizenship are sufficiently broad.

In addition, we suggest that the Committee may wish to consider whether the citizenship application process should be split into two stages. In the first stage, applications would be assessed as to their validity, including whether applicants who are required to sit the citizenship test have passed the test. If an application is found to be invalid, the applicant could be entitled to a refund of the application fee and the Department could decline to decide the application. If the application is valid, the matter will proceed to a decision to grant or refuse. It is noted, however, that changes to the refund powers and the processing of applications where the applicant has not passed a citizenship test would require amendments to legislation and policy.

Matters raised at community consultative meetings

Outside of our complaints processes, we have recently been advised of community concerns that the test has served to exclude certain groups of migrants from Australian citizenship. We were informed that the English language requirements of the test had become the source of anxiety in those parts of the community who are least likely to possess strong English language skills. We were advised that this is particularly so in the case of older migrants and relatively recent refugee arrivals and that the pressure to sit the test and pass had compounded existing psychological and health issues, as well as a sense of marginalization.

This office has not investigated any complaints of this nature and cannot offer further information. However, we did undertake to include these concerns in our submission to the Australian Citizenship Test Review Committee. We also encouraged people to raise these matters directly with the Committee. Anecdotal evidence indicates that this is a matter that is likely to be the subject of numerous submissions to the Committee.

Should you wish to discuss any aspect of this submission, please contact me on (02) 6276 0149.

Yours sincerely



Prof. John McMillan
Commonwealth and Immigration Ombudsman